UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	
Jeffrey Lee Lowe, an individual;	)	AWA Docket No. 20-J-0152
Lauren Lowe, an individual; and	)	AWA Docket No. 20-J-0153
Greater Wynnewood Exotic Animal	)	AWA Docket No. 21-J-0003
Park, LLC, an Oklahoma limited	)	
liability company,	)	
	)	
Respondents.	)	
	)	

DECISION AND ORDER DENYING APPEAL PETITION AND AFFIRMING INITIAL DECISION AND ORDER OF THE CHIEF ADMINISTRATIVE LAW JUDGE

Appearances:

Ciarra A. Toomey, Esq.; with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Administrator for the Animal and Plant Health Inspection Service ("APHIS");

Jeffrey Lee Lowe, pro se Respondent;

Lauren Lowe, pro se Respondent; and

Greater Wynnewood Exotic Animal Park, LLC.

Decision and Order Issued by John Walk, Judicial Officer

PRELIMINARY STATEMENT

This is a disciplinary proceeding under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*) ("AWA"); the regulations issued thereunder (9 C.F.R. Part 2) ("Regulations"); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) ("Rules of Practice"). On April 1,

2021, Chief Administrative Law Judge ("CALJ") Channing D. Strother filed an initial Decision and Order Without Hearing by Reason of Default as to Jeffrey Lee Lowe and Lauren Lowe ("IDO"). Respondents, through former counsel,[1] filed their Petition for Appeal Pursuant to 7 C.F.R. 1.145 ("Appeal Petition") on May 4, 2021. For the reasons discussed herein the Appeal Petition is **DENIED** and the CALJ's IDO is **AFFIRMED**.

PROCEDURAL HISTORY

The Administrator of APHIS ("Complainant") instituted this disciplinary administrative proceeding by filing a Complaint alleging violations of the AWA against Respondents Jeffrey Lee Lowe and Lauren Lowe on August 17, 2020. Both Respondents Jeffrey Lee Lowe and Lauren Lowe filed timely answers to the Complaint. On October 26, 2020, Complainant filed an Amended Complaint which, among other amendments, added Respondent Greater Wynnewood Exotic Animal Park, LLC ("GWEAP") to the Amended Complaint as AWA Docket No. 21-J-0003 ("Amended Complaint"). The Amended Complaint was duly served upon all three Respondents on December 15, 2020.[2] Respondents filed an Answer to the Amended Complaint, on January 6, 2021 ("Answer to Amended Complaint"), outside of the twenty (20) day period prescribed by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). The Answer to the

[1] At the time Respondents filed the Appeal Petition, Daniel J. Card served as counsel for all three Respondents in this Proceeding. Subsequently, on July 13, 2021, Mr. Card filed a motion to withdraw as attorney of record for Respondents. On July 27, 2021, I granted Mr. Card's motion. Presently, Respondents are not represented by counsel in this Proceeding. Mr. Card is referred to herein as "former counsel."

[2] The record reflects that the Office of Hearing Clerk (OHC) sent the Amended Complaint to former counsel for the Respondents on December 7, 2020, by certified mail. According to the U.S. Postal Service, the certified mailing was delivered to former counsel on December 15, 2020. *See* U.S. Postal Service Certified Mail Receipt No. 7018 2290 0000 8606 8584.

Amended Complaint denied all the material allegations in the Amended Complaint, without more.

On January 26, 2021, Complainant filed a Motion for Adoption of Decision and Order by Reason of Default as to Respondents Jeffrey Lee Lowe and Lauren Lowe ("Motion for Default") and a proposed Decision and Order by Reason of Default as to Respondents Jeffrey Lee Lowe and Lauren Lowe ("Proposed Decision"). On February 17, 2021, the three Respondents filed Respondents' Objection to Complainant's Motion for Default Judgment and Request for Hearing ("Objection to Motion for Default"), and Respondents' Motion to Amend Answer to Amended Complaint ("Motion to Amend Answer"). The CALJ granted a request by Complainant for leave to file a response to the Objection to Motion for Default and granted an opportunity for Respondents to file a sur-reply. Respondents did not file a sur-reply.

On April 1, 2021, the CALJ filed the IDO finding that Respondents Jeffrey Lee Lowe and Lauren Lowe failed to file a timely answer to the Amended Complaint and that Respondents' objections to the Motion for Default were not legally meritorious. The CALJ granted in part[3] the Motion for Default; ordered that Respondents Jeffrey Lee Lowe and Lauren Lowe cease and desist from violating the Act and the Regulations and Standards; and revoked AWA license number 73-C-0230.[4]

---

[3] The IDO explained that "Complainant's proposed Decision and Order as to Respondents Jeffrey Lee Lowe and Lauren Lowe is not adopted verbatim but has been used to inform this Decision and Order." *See* IDO at 17.

[4] The CALJ issued a separate Decision and Order Without Hearing by Reason of Default as to Greater Wynnewood Exotic Animal Park, LLC on April 1, 2021, which is not subject to the Appeal Petition.

Respondents timely filed their Appeal Petition on May 4, 2021, seeking to reverse the IDO. On appeal, Respondents argue that the IDO violates due process, is arbitrary and capricious, and that Respondents did not have any opportunity to defend themselves on the merits. Complainant filed Complainant's Response in opposition to the Appeal Petition on May 24, 2021.

Based upon careful consideration of the record and pursuant to section 1.145(i) of the Rules of Practice (7 C.F.R. § 1.145(i)), I adopt the CALJ's IDO filed on April, 1, 2021, as the final Decision and Order in this Proceeding as to Jeffrey Lee Lowe and Lauren Lowe.[5]

DISCUSSION

Respondents Failed to Answer the Amended Complaint Within the Time Required and the IDO Correctly Applied the Rules of Practice

The argument raised in the Appeal Petition that the IDO is arbitrary and capricious is without merit. There is no dispute that Respondents failed to file a timely answer to the Amended Complaint. Section 1.36(a) of the Rules of Practice provides in part that "[w]ithin 20 days after the service of the complaint . . . the respondent shall file with the Hearing Clerk an answer signed by the respondent or the attorney of record in the proceeding."[6]

In addition, the Rules of Practice, § 1.136(c) provides:

> *Default*. Failure to file an answer within the time provided under paragraph (a) of this section shall be deemed, for purposes of the proceeding, an admission of the allegations in the Complaint, and failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation, unless the parties have agreed to a consent decision pursuant to § 1.138.[7]

[5] The effective date of the CALJ's Order is amended as specified herein in view of the appeal.

[6] 7 C.F.R. § 1.136(a).

[7] 7 C.F.R. § 1.136(c).

Further, section 1.139 of the Rules of Practice provides in part:

> The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk.[8]

Finally, section 1.141(a) of the Rules of Practice provides, in part, with respect to a request for hearing:

> Any party may request a hearing on the facts by including such request in the complaint or answer, or by a separate request, in writing, filed with the Hearing Clerk within the time in which an answer may be filed. . . . Failure to request a hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing.[9]

The Rules of Practice clearly state that an answer must be filed within twenty (20) days after service of a complaint and the consequences for failing to file a timely answer. The record in this Proceeding reflects that the Amended Complaint was served upon Respondents on December 15, 2020. Twenty (20) days after the date of service was January 4, 2021. Respondents filed their Answer to the Amended Complaint on January 6, 2021. Therefore, the Answer was not timely filed. In accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed its Motion for Default and Proposed Decision.

The failure by Respondents to answer the Amended Complaint within the time required by the Rules of Practice is deemed, for purposes of this Proceeding, "an admission of the

---

[8] 7 C.F.R. § 1.139.

[9] 7 C.F.R. § 1.141(a).

allegations in the Complaint"[10] and "constitute[s] a waiver of hearing."[11] Therefore, there are no issues of fact on which a meaningful hearing could be held. The Judicial Officer has consistently found that a default decision is proper where a respondent fails to file a timely answer to a complaint.[12] Accordingly, the CALJ properly issued the IDO in this Proceeding because Respondents did not file a timely answer to the Amended Complaint.

The CALJ also considered Respondents' objections to the Motion for Default and reasonably determined that they were not meritorious.

> Although, on rare occasions, default decisions have been set aside for good cause shown or where the complainant states that the complainant does not object to setting aside the default decision, generally there is no basis for setting aside a default decision that is based upon a respondent's failure to file a timely answer.[13]

---

[10] 7 C.F.R § 1.136 (a), (c).

[11] 7 C.F.R. § 1.139; *see also* 7 C.F.R. § 1.141(a).

[12] *See Richard L. Reece*, 70 Agric. Dec. 1061, 1068 (2011) (finding that default decision was properly issued where respondent filed an answer two (2) days late and respondent is deemed to have admitted the allegations in the complaint); *Carolyn & Julie Arends*, 70 Agric. Dec. 839, 852-53 (2011) (concluding that even if response to order to show cause was properly filed with OHC, Judicial Officer would have found the answer late-filed and deemed the late filing an admission of the allegations and a waiver of hearing where the answer was two (2) days late); *Beth Lutz*, 60 Agric. Dec. 53, 67 (2001) (finding that default decision was properly issued where respondent answered the complaint three (3) days late and that failure to timely answer is deemed an admission of the allegations in the complaint and constitutes a waiver of hearing); *Ron Morrow*, 53 Agric. Dec. 144 (1994), *aff'd* 65 F.3d 168 (6th Cir. 1995) (unpublished opinion) (finding that default decision was properly issued where respondent sought and received an extension of time but filed the answer three (3) days after the deadline); *Jack L. Rader*, 70 Agric. Dec. 995, 999 (2011) (finding that respondents are deemed to have admitted the allegations in the complaint and waived the right to a hearing where they filed their responses to the complaint six (6) days after the due date); *J.W. Guffy*, 45 Agric. Dec. 1742, 1747 (1986) (finding that default decision was properly issued where answer was filed ten (10) days late); *Robert Houriet*, 58 Agric. Dec. 306, 316 (1999) (finding default decision properly issued where respondent filed an answer ten (10) days late).

[13] *Beth Lutz*, 60 Agric. Dec. 53, 65 (2001) (citations omitted).

Further, "the Rules of Practice do not provide that a default decision may be set aside for excusable neglect."[14] The Judicial Officer has explained that:

> [I]n view of the increasingly heavy workload of this Department, the budget constraints on hiring additional personnel, and the importance of having administrative disciplinary cases decided promptly to effectuate the congressional purpose of the remedial statutes administered by this Department, it is necessary to take a hard-nosed approach as to answers filed late, following the letter of the rules of practice.[15]

The CALJ correctly decided that the unfortunate circumstances that Respondents' former counsel faced due to the illness and death of a family member around the time of the filing deadline did not excuse the failure to timely answer the Amended Complaint. The Judicial Officer previously held that even the death of a close family member of respondents' counsel was insufficient reason to deny a default decision for failure to file a timely answer to a complaint. In *Diana R. McCourt*, respondents' counsel's father passed away on the date the answer was due in that proceeding in which the answer was not timely filed.[16] The Judicial Officer explained:

> The death of a parent is generally a very sad event, and I know from first-hand experience that the final illness of a parent can cause one to neglect duties other than those owed to the parent. Nonetheless, Respondents failed to file a timely motion for extension of time and failed to file a timely answer. Thus, Respondents are deemed, for purposes of this proceeding, to have admitted the allegations of the Complaint and waived opportunity for hearing. The final illness and subsequent death of Respondents' counsel's father, tragic though it is, does not constitute a meritorious basis for the Chief ALJ's denial of Complainant's Motion for Default Decision.[17]

---

[14] *Anna Mae Noell*, 58 Agric. Dec. 130, 147-48 (1999).

[15] *Les Zedric*, 46 Agric. Dec. 948, 956 (1987); *see also J.W. Guffy*, 45 Agric. Dec. 1742, 1747 (1986) ("The requirement in the Department's rules of practice that respondent deny or explain any allegation of the complaint and set forth any defense in a timely answer is necessary to enable this Department to handle its large workload in an expeditious and economical manner.").

[16] *Diana R. McCourt*, 64 Agric. Dec. 223, 250 (2005).

If former counsel for Respondents needed more time to file an answer, he could have requested an extension. Former counsel never sought an extension of time to answer the Amended Complaint and admits "[i]n hindsight, [former] counsel should have filed a Motion to file the pleading out of time (as he did with the Eastern District Case) or requested an extension."[18] Although former counsel had the opportunity to seek an extension to answer the Amended Complaint, he declined to make such a request in this Proceeding.

The CALJ also correctly decided that the filing of answers to the original complaint by Respondents Jeffrey Lee Lowe and Lauren Lowe did not excuse Respondents' failure to timely answer the Amended Complaint. The Amended Complaint is the operative complaint in this Proceeding and the answers filed in response to the original complaint do not serve as a response to the Amended Complaint.[19]

I find that the CALJ's IDO correctly applied the Rules of Practice and USDA decisions to the facts in the record of this Proceeding. The IDO is not arbitrary and capricious.

---

[17] *Id*.

[18] Objection to Motion for Default at 2 (unnumbered).

[19] *See Jeffrey L. Green*, Docket No. 17-0205, 2020 WL 8174372, at *4 (U.S. Dep't of Agric. Feb. 25, 2020) ("[A]n amended complaint . . . supplants any preceding complaints and becomes the '*operative pleading'* in the proceeding for all purposes, including newly raised material allegations, to which a party respondent must File an answer within twenty' (20) days of the date of service or suffer the severe regulatory ramifications of failure to file a timely answer.") (citations omitted); *Marjorie Walker*, 65 Agric. Dec. 932, 966-67 (2006) ("Thus, the record clearly establishes that the operative pleading in this proceeding is the Amended Complaint, not the Complaint, and Respondent's response to the Complaint does not operate as a response to the Amended Complaint."); *Curtis G. Foley*, 59 Agric. Dec. 581, 599 (2000) (affirming default decision due to respondent's failure to timely file an answer to the amended complaint).

The IDO Did Not Violate Due Process

Respondents' argument raised in its Appeal Petition that the IDO violates due process is unavailing. "The fundamental elements of due process are notice and an opportunity to be heard."[20] Respondents were on notice of the allegations made against them by the duly served Amended Complaint. The record reflects that Respondents were fully informed of the time to respond and the consequences for failing to file a timely answer.

As previously discussed, the Rules of Practice clearly provides that an answer must be filed within twenty (20) days after service of the complaint and states the consequences of a respondent's failure to file an answer within that time. Moreover, the Amended Complaint expressly advised Respondents of their obligation to file an answer thereto, of the governing procedural rules, and of the consequences for failing to file a timely answer. In particular, the Amended Complaint states:

> WHEREFORE, it is hereby ordered that for the purpose of determining whether the respondents have in fact willfully violated the Act and the Regulations issued under the Act, this amended complaint shall be served upon the respondents. The respondents shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 *et seq.*). Failure to file a timely answer shall constitute an admission of all the material allegations of this amended complaint and a waiver of hearing.[21]

Also, the OHC cover letter that accompanied the Amended Complaint states in bold typeface:

> **The rules specify that you have 20 days from the receipt of this letter to file with the Hearing Clerk your written Answer to the Complaint signed by you or your attorney of record.**[22]

---

[20] *Dean Byard*, 56 Agric. Dec. 1543, 1558 (1997).

[21] Amended Complaint at 13.

[22] Letter from Caroline Hill, Hearing Clerk, United States Department of Agriculture to Daniel J. Card, *et al.* (Oct. 27, 2020) (emphasis in original).

Further, on October 27, 2020, the CALJ issued a Sua Sponte Order Suspending Order Setting Deadlines for Submissions and Amending Case Caption ("Sua Sponte Order") which explicitly notified Respondents:

> Pursuant to the Rules of Practice (7 C.F.R. § 1.136) the Respondents have twenty (20) days from service to file an answer or amended answer, respectively, to the Amended Complaint with the Hearing Clerk.[23]

The Sua Sponte Order also made clear that the answers filed by Respondents to the original complaint did not satisfy the obligation to answer the Amended Complaint:

> I note that answers previously filed in response to the original Complaint in Dockets 20-J-0152 and 20-J-0153 cannot operate as a response to the Amended Complaint as the Amended Complaint serves as the "operative pleading."[24]

Although the Appeal Petition argues that "Respondents did not have an opportunity to defend themselves on the merits,"[25] the record establishes that it was Respondents who waived their opportunity for a hearing in accordance with the Rules of Practice when they failed to file a timely answer to the Amended Complaint. And by operation of the Rules of Practice the allegations of the Amended Complaint are deemed admitted.

The facts in the record demonstrate that Respondents received notice and an opportunity to be heard. Moreover, application of the default provisions of the Rules of Practice did not violate Respondents' right to due process.[26] It is well settled that "[a]dministrative agencies

---

[23] Sua Sponte Order at 1.

[24] Sua Sponte Order at 1 n.1.

[25] Appeal Petition at 1 (unnumbered).

[26] *See Morrow v. Dep't of Agric.*, 65 F.3d 168 (6th Cir. 1995) (unpublished opinion) (rejecting petitioner's argument that USDA's Rules of Practice violated constitutional right to due process and denying petition for review of default judgment); *United States v. Hulings*, 484 F. Supp. 562, 567-68 (D. Kan. 1980) (concluding that a hearing was not required under the Fifth Amendment to the Constitution where the respondent was notified that failure to deny the allegations of the

should be 'free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.'"[27] The IDO did not violate the right to due process.

The IDO filed by the CALJ on April 1, 2021, was properly issued in this proceeding and is **AFFIRMED**. For the foregoing reasons, the following Order is issued:

ORDER

1. The Appeal Petition filed by the Respondents on May 4, 2021, is **DENIED**.
2. Respondents Jeffrey Lee Lowe and Lauren Lowe, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the AWA and the Regulations and Standards.

Paragraph 2 of this Order shall become effective on the day after service of this Order on Respondents.

3. AWA license number 73-C-0230 is **REVOKED.**

Paragraph 3 of this Order shall become effective on the 60th day after service of this Order on Respondents.

RIGHT TO JUDICIAL REVIEW

Respondents have the right to seek judicial review of the Order in this Decision and Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341,

---

complaint would constitute an admission of those allegations under the Rules of Practice and respondent did not specifically deny the allegations); *Bibi Uddin*, 55 Agric. Dec. 1010, 1023 (1996) ("Application of the default provisions of the Rules of Practice does not deprive Respondent of her rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.").

[27] *Cella v. United States*, 208 F.2d 783, 789 (7th Cir. 1953) (quoting *Fed. Communications Comm'n v. Pottsville Broad. Co.*, 309 U.S. 134, 143 (1940).

2343-2350. Judicial review must be sought within sixty (60) days after the date of entry of the Order in this Decision and Order, as indicated below.[28]

Done at Washington, D.C.,
this 9th day of August 2021

JOHN WALK

Digitally signed by JOHN WALK
Date: 2021.08.09 15:11:35 -04'00'

John Walk
Judicial Officer

Hearing Clerk's Office
United States Department of Agriculture
South Building, Room 1031
1400 Independence Avenue, SW
Washington, DC 20250-9203
Tel.: 202-720-4443
Fax: 844-325-6940
SM.OHA.HearingClerks@USDA.GOV

[28] 7 U.S.C. § 2149(c).