

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

In re:)	
)	
Michael Todd, an individual; and)	AWA Docket No. 18-0067
All Things Wild, Inc., an Illinois)	
Corporation, d/b/a All Things Wild)	
Country Line Farms & Ponies;)	AWA Docket No. 18-0068
)	
Michael Todd, an individual,)	
d/b/a All Things Wild Country)	
Line Farms & Ponies,)	AWA-D Docket No. 18-0069
)	
Respondents.)	

**ORDER DENYING MOTION TO REOPEN PROCEEDING, TO REHEAR/REARGUE,
AND TAKE FURTHER EVIDENCE**

Appearances:

John V. Rodriguez, 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”); and

Philip M. Dolci, Esq., of Dolci & Weiland, counsel for Respondents Michael Todd, d/b/a All Things Wild Country Line Farms & Ponies, and All Things Wild, Inc., d/b/a All Things Wild Country Line Farms & Ponies.

These administrative proceedings were initiated by the Administrator, Animal and Plant Health Inspection Service (“APHIS”), Complainant, via Complaint (Docket Nos. 18-0067 and 18-0068) and Order to Show Cause Why Animal Welfare Act License 33-C-0388 Should Not Be Terminated (“Order to Show Cause”) (Docket No. 18-0069) filed August 16, 2018. A Consent Decision was entered on September 18, 2020 regarding all three Docket Nos. 18-0067, 18-0068, and 18-0069.

On December 29, 2020, Marcus Cook, a non-party, filed “Respondent, All Things Wild, Inc.’s Motion to Reopen Proceeding To Rehear/Reargue And Take Further Evidence.” (“Cook’s Motion”). Respondents, by and through counsel, filed a Motion to Strike Pleadings

(“Respondents’ Response”) on January 12, 2021 and Complainant filed an Objection to Reopen Proceeding to Rehear/Reargue and Take Further Evidence (“Complainant’s Response”) on January 19, 2021. On January 21, 2021 Mr. Cook filed “Respondents [sic] Objection of Motion to Strike Pleadings” (“Cook’s Response”).

For the reasons detailed herein, Marcus Cook’s Motion to Reopen Proceeding to Rehear/Reargue and Take Further Evidence is DENIED.

SUMMARY OF MOTIONS AND RESPONSES

In his Motion, Mr. Cook purports to represent Respondent All Things Wild, Inc. (“ATW”), and asserts that Mr. Todd and Mr. Dolci had no authority to represent ATW, including no authority to enter into a consent decision on ATW’s behalf. Mr. Cook claims, at 3, that “Michael Todd has knowingly mislead the ALJ as to his authority with the respondent All Things Wild, Inc., at the time he signed the Consent Decision and Order on September 16, 2020” and that Respondent Todd had withdrawn from ATW over the summer, effective August 14, 2020.¹ Mr. Cook contends, at 4-5, that Respondent Todd “falsely represented himself as a dully authorized agent/officer for ATW, a completely separate respondent.”² Mr. Cook moves, at 8,

¹ Mr. Cook also claims that “Confirmation and notification of this completion, Todd requested, was also sent and received by Todd via certified instrument,” Cook’s Motion at 3-4, but does not provide any such documentation.

² Mr. Cook also makes several contentions regarding Respondent Todd’s counsel, Mr. Philip Dolci, including uncited quotes from alleged USDA inspectors, but does not provide any evidence of Mr. Dolci’s alleged “deception.” *See* Cook’s Motion at 7-8. I find these contentions not germane to my consideration of the current Motion. Further, Mr. Cook claims that Mr. Dolci was not counsel for Respondent ATW. *Id* at 9-10. Mr. Dolci entered an appearance as counsel on “on behalf of Respondent Michael Todd” on July 29, 2020. That Notice of Appearance does not expressly state that Mr. Dolci’s appearance was also entered on behalf of Respondent ATW. However, in the context of this proceeding, including interactions with the undersigned and discussions during pre-consent decision telephone conferences, it was apparent that Mr. Dolci intended to speak on behalf of Mr. Todd as an individual as well as Respondent ATW, and that Mr. Todd intended the same. Moreover, Mr. Dolci signed the September 18, 2020 Consent Decision and Order as “Attorney for Respondents,” and Respondent Todd’s signed for himself as

for “the ALJ in these proceedings to reopen, to rehear and reargue the proceedings and to take further Evidence.” Mr. Cook contends, at 9, that the evidence he requests to present would “not be cumulative as the issues of such evidence have not been addressed in these proceedings” and the evidence “would be provided for good reason as the such evidence [sic] and it’s [sic] relevance to these proceedings was not made and/or discovered up to the time of the issuing of the Consent Decision and Order of September 18, 2020.”

Both Respondent Todd and Complainant object to Mr. Cook’s Motion and contend that Mr. Cook’s motion should not be granted because: 1) he is not a party to any of these matters;³ 2) he is not an attorney;⁴ 3) Mr. Cook has a history of attempting to deceive the USDA;⁵ and 4) Mr. Cook was provided the specific opportunity in the present cases to file an appearance and demonstrate his authority to act as representative for Respondent ATW but failed to do so, and thereby waived any contention that he had such authority.⁶

an individual and as the president and representative of ATW. Mr. Dolci is a licensed attorney and as such an “officer of this forum.” This forum and Complainant are entitled to rely on his representations as to whom he lawfully represents unless and until proof is brought forth proving to the contrary and here is there has been none.

³ Respondents’ Response at 1, ¶¶ 1-2, 4; Complainant’s Response at 6 (citing 7 C.F.R. § 1.132.) (stating: “As Mr. Cook is neither a party to the proceeding, nor a representative of a party, his motion must be summarily dismissed as he has no legal right to have any motion heard in these proceedings.”)

⁴ Respondents’ Response at 1, ¶3; Complainant’s Response at 6 (citing Summary of March 24, 2020 Telephone Conference And Order Extending Respondents Exchange Deadline filed March 27, 2020, p. 1; *Irvin Wilson*, 54 Agric. Dec. 111 (U.S.D.A. 1995) (“Because he is not an attorney, however, he may not represent Pet Paradise, a corporation, in federal court.”)).

⁵ Respondents’ Response at 1-2, ¶7 (citing *ZooCats Inc.*, 67 Agric. Dec. 1048 (U.S.D.A. 2008)); Complainant’s Response at 6 (citing *ZooCats, Inc.*, 68 Agric. Dec. 737 (U.S.D.A. 2009), *aff’d sub nom. ZooCats, Inc. v. U.S. Dep’t of Agric.*, 417 Fed. App’x. 378 (5th Cir. 2011)).

⁶ Respondents’ Response at 2, ¶8; Complainant’s Response at 3 and 6 (citing Summary of March 24, 2020 Telephone Conference and Order Extending Respondents Exchange Deadline filed March 27, 2020).

Further, Complainant contends a Consent Decision and Order is, by its nature, not subject to judicial review and, even if the Consent Decision and Order was subject to judicial review, Mr. Cook's filing of the present motion was untimely.⁷ Complainant states, at 5, that neither it, any other portion of USDA, nor the undersigned, were informed of "an alleged change in corporate structure and/or registered agent of All Things Wild, Inc." but if such change had transpired "a proper representative should have notified USDA, APHIS and/or this Court." Complainant contends, *id.*, that Mr. Cook's allegations are not trustworthy as he was aware of the current proceedings and did not notify USDA, APHIS or the undersigned of any changes to Respondent ATW's corporate structure.

In his Response, at 2, para. 11, Respondents request that Mr. Cook's Motion be stricken from the record and that Mr. Cook be "precluded from acting as an attorney in this proceeding." Complainant likewise requests, at 7, that Mr. Cook's Motion be stricken and/or denied in total, and also requests that "[i]f the Court is so inclined to entertain Mr. Cook, a non-party to these proceedings, and grant his Motion . . . the consideration be only as to Respondent ATW, AWA Docket No. 18-0068."

In his January 21, 2021 Response, Mr. Cook admits, at 3, that he received the "ALJ's order of March 27, 2020, and July 24, 2020." Mr. Cook again contends that Respondent Todd failed to notify the ALJ of ATW's "change of corporate structure" and claims that Mr. Cook was to be "placed as a business manager with ATW." *Id.* Mr. Cook contends that he is a "responded [sic]" because "Cook and ATW both have '*responded*' to the related dockets" and "as of Todd's departure from ATW placed Cook within the management of ATW's corporate affairs." *Id.* at 4

⁷ Complainant's Response at 4-5 (citing the Consent Decision and Order entered on September 18, 2020; 7 C.F.R. § 1.147(c); *Velasam Veal Connection*, 55 Agric. Dec. 295, 297-298 (U.S.D.A. 1996); 7 C.F.R. §§ 1.145-146).

(emphasis in original). Mr. Cook also contests Respondent Todd's citations to and reliance on the Rules of Practice. *Id.* at 4-5. Mr. Cook contends that he has "adhered to all orders and directions of the Court and the Rules of Practice in these administrative proceedings" and that his Motion was filed "with breakneck speed amidst two holidays and as fast there after learning of the erroneous consent decision of September 18, 2020." *Id.* at 6.⁸ Mr. Cook requests that Respondent Todd's Motion to Strike Pleadings be denied. *Id.* at 7.

DISCUSSION

Under the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary (7 C.F.R. § 1.130 *et seq.*) ("Rules of Practice"), which apply to these proceedings,⁹ the "complainant" is "the party instituting the proceeding" and the "respondent" is "the party proceeded against." 7 C.F.R. § 1.132. The respondent must be identified in the complaint. 7 C.F.R. § 1.135(a). Here, the Complaint in Docket Nos. 18-0067 and 18-0068 names as Respondents Michael Todd and All Things Wild, Inc., an Illinois Corporation, d/b/a All Things Wild Country Line Farms & Ponies; and the Order to Show Cause in Docket No. 18-0069 names as Respondent Michael Todd an individual, d/b/a All Things Wild Country Line Farms & Ponies. Mr. Cook is not a named respondent. Whether Mr. Cook "responded" in any way in some alleged sense during these proceedings, *see* Cook's Response at 4, does not make Mr. Cook a respondent or otherwise make him a party to or party representative in these proceedings. He has not sought to become a party to these proceedings, much less been granted party status. His claim is rather that only he has authority to speak for ATW, a respondent herein.

⁸ Quoting and citing 7 C.F.R. § 1.138. Mr. Cook emphasized its text that "The Judge shall enter such decision without further procedure, unless an error is apparent on the face of the document" and contends "This is precisely what ATW did after learning of the unauthorized and erroneous acceptance of the Consent Decision on behalf of ATW." Cook's Response at 6.

⁹ *See* 7 C.F.R. § 1.130.

The Rules of Practice require the respondent (or respondents) to file with the Hearing Clerk an answer “signed by the respondent or the attorney of record in the proceeding.” 7 C.F.R. § 1.136(a).¹⁰ Although the Rules of Practice do not speak to entrance of appearance by a respondent’s “representative,” as opposed to “attorney,” the Rules do provide for service on the “*representative of record.*”¹¹ The Answers in 18-0067 and 18-0068 jointly, and 18-0069, were filed and signed by Respondent Michael Todd on his own behalf and on behalf of Respondent ATW as its president, respectively. Mr. Cook apparently does not contest that as of the time of the filing of those Answers Mr. Todd had the authority to speak for ATW before USDA and before me. Here, Mr. Cook did not file an answer to the Complaint in Docket Nos. 18-0067 and 18-0068 in any alleged role as to Respondent ATW, nor did he file documentation sufficient to be recognized in any of these proceedings as a “representative of record” for either Respondent Todd or ATW.

On March 11, 2020 Mr. Cook filed a “General Power of Attorney” designating Marcus Cook as Michael Todd’s Agent, signed May 1, 2013, which was filed purportedly on behalf of Respondent Michael Todd. On the same day, Respondents filed a Motion for Extension of Time to File Submissions.

Complainant filed an Objection to Respondent’s Motion for Extension of Time to File Submissions on March 12, 2020 in which it contends, at 2, that the allegations in the Order to Show Cause in Docket No. 18-0069 involve Mr. Cook in that Respondent Todd is allegedly “circumventing the revocation of [Mr. Cook’s] AWA license . . . by permitting Mr. Cook to transport and exhibit tigers using [Mr. Todd’s] AWA license.” Complainant also contended that

¹⁰ 7 C.F.R. § 1.136(a) also provides that “The attorney may file an appearance of record prior to or simultaneously with the filing of the answer.”

¹¹ See 7 C.F.R. § 1.147(e) (emphasis added).

Mr. Cook attempted to contact counsel for Complainant to “continue” settlement discussions that were originally between Respondent Todd and Complainant. *Id.*

On March 16, 2020, Respondents filed a Response to Complainant’s Objection to Respondent’s Motion for Extension of Time to File Submissions, which, in relevant part, states, at 2, that “Mr. Cook has been Mr. Todd’s assistant and has very detailed authority to act on Mr. Todd’s behalf for many years, even years prior to this matter.” Respondents also contend, *id.* that “Mr. Cook contacted Complainant’s council as directed by Mr. Todd.” This Response includes the Power of Attorney attached as Exhibit 2 (referenced at 2, fn. 2).

I note in the March 16, 2020 “Order Granting Respondent’s Motion for Extension of Time to File Submissions Pending Telephone Conference to Include Respondent Michael Todd and Order that the Parties Provide Dates for Such a Telephone Conference,” at 3-4, that:

Mr. Marcus Cook is not an attorney. There has been no notice of appearance filed on behalf of Respondents, and Mr. Michael Todd has not notified the Office of Administrative Law Judges (“OALJ”) that Mr. Cook is representing him. The only document related to Mr. Cook that is on file with the Hearing Clerk's Office is the above-mentioned May 2013 General Power of Attorney. And as Complainant has pointed out, Mr. Cook has had his own AWA license terminated by USDA. It does not appear that Mr. Cook is a proper representative for the respondents in a USDA proceeding such as this one.

Subsequently, I held a telephone conference on March 24, 2020.¹² Mr. Cook was on the call. As explained in the Summary, at 1-2, counsel for Complainant stated that he could not negotiate settlement with Mr. Cook as it would be “contrary to the AWA, the regulations, and the orders revoking ZooCats, Inc’s license.” Further, I noted, at 2, “Mr. Cook is not an attorney and has not filed a notice of appearance on behalf of Respondents.” I also noted, *id.*, that:

this is problematic for Respondents because: (1) Mr. Cook is not a named party in this case; (2) as a general rule, non-attorneys are not permitted to speak on behalf

¹² See Summary of March 24, 2020 Telephone Conference and Order Extending Respondents’ Exchange Deadline (“Summary”).

of parties in OALJ proceedings; and (3) there is reason to believe that Mr. Cook was personally involved in the activities and/or events alleged in the Complaint and Notice to Show Cause, and a party representative should not be personally involved in the proceeding. . . . a purported representative of a party should not have conflicts of interests with that party.

I ordered, *id.* at 3, that:

If Respondents wish for Mr. Marcus Cook to appear on their behalf, Mr. Cook shall file a written Notice of Appearance with the Hearing Clerk. The Notice of Appearance shall be signed by both Mr. Michael Todd and Mr. Cook and must include the following information:

- a. Which party, or parties, Mr. Cook intends to represent;
- b. What, specifically, the scope of Mr. Cook's duties would be;
- c. A statement confirming the party, or parties, would like to be represented by Mr. Cook; and
- d. A statement that Respondents will not raise any contention that Mr. Cook is not or was not qualified to represent Respondents.

To date, Mr. Cook has not filed any written Notice of Appearance of any kind with the Hearing Clerk in any of these dockets.

Mr. Cook's Motion can only concern Docket No. 18-0068 as his contention is that he speaks on behalf of Respondent ATW. The Complaint states, at 1, para. 2, that "Respondent All Things Wild, Inc., is an Illinois Corporation (File No. 68144485) whose president and registered agent for service of process is respondent Michael Todd" to which Respondent Todd admitted in his Answer at 1, para. 2. Further, the Complaint states "At all times Material herein, respondent All Things Wild, Inc., operated as an exhibitor, as that term is defined in the Act and the Regulations." Complaint at 1-2, para. 2. As Complainant contends, had ATW changed its corporate structure, as an "exhibitor" under the AWA and Regulations promulgated thereunder, ATW is responsible for notifying USDA, APHIS. *See* 9 C.F.R. § 2.27.

Mr. Cook misunderstands the Regulations, 7 C.F.R. § 1.138. It is the judge (here the undersigned) who shall enter a Consent Decision "unless an error is apparent on the face of the document." Based on the record of these cases, there was no error on the face of the Consent

Decision and the decision was signed and became final upon issuance on September 18, 2020.

As Complainant points out, Complainant's Response at 4-5 (citing 7 C.F.R. § 1.147(c); *Velasam Veal Connection*, 55 Agric. Dec. 295, 297-98 (June 25, 1996)), the right to appeal or seek judicial review of a consent decision, which becomes final on issuance, is waived by the signing of the consent decision.

Even if the Consent Decision and Order, as it applies to Docket No. 18-0068, were not final and could be reopened/reheard, as I have previously stated,¹³ I maintain concern as to the appropriateness of Mr. Cook representing either Respondent in these matters due to ATW's standing as an exhibitor under the AWA and Regulations and considering Mr. Cook's previous involvement in AWA violations.¹⁴ Even if a corporate structure change took place under ATW prior to the signing of the Consent Decision and Order on September 18, 2020, I would be remiss to entertain Mr. Cook's representative claims without entry of appearance on the record as ordered in the March 24, 2020 Summary.

Mr. Cook contends that he assumed a position of "business manager," or otherwise took a place amongst ATW's corporate management, upon Respondent Todd's alleged withdrawal as president for ATW.¹⁵ A "business manager" would not normally be expected to have authority to speak for a corporation in this forum. Mr. Cook makes no allegation, and certainly provides no documentation to support an allegation, that he has authority to speak for ATW in this

¹³ See March 24, 2020 Summary at 2-3 ("It is difficult for me to see at this juncture, for instance, how Mr. Cook could appropriately speak for Respondent in settlement negotiations concerning an order to show cause that alleges Mr. Cook is improperly acting under Respondents' AWA license, where a logical provision of a final order in this case should Complaint prevail could be that Mr. Cook have no further involvement with Respondents.")

¹⁴ See *supra* *Zoo Cats, Inc.*, note 5.

¹⁵ See Cook's Response at 3-4.

proceeding. Contrary to Mr. Cook's contentions,¹⁶ he did not comply with the March 24, 2020 Summary Order to enter his appearance as a representative of record and therefore has no right to file pleadings on behalf of ATW even if a final decision were not issued. As Complainant points out, Mr. Cook's challenge to the approved Consent Decision, even if otherwise allowed by the rules of practice, would be barred as grossly out-of-time.¹⁷

ORDER

For the reasons stated herein, Marcus Cook's "Motion to Reopen Proceeding to Rehear/Reargue and Take Further Evidence," filed on December 29, 2020 is **DENIED**.¹⁸

Copies of this Order shall be served by the Hearing Clerk upon each of the parties.

Issued this 24th day of February 2021, in Washington, D.C.


Channing D. Strother
Chief Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building, Room 1031
1400 Independence Avenue, SW
Washington, D.C. 20250-9203
Tel: 1-202-720-4443
Fax: 1-844-325-6940
SM.OHA.HearingClerks@USDA.GOV

¹⁶ Cook's Response at 6.

¹⁷ *See supra* note 7.

¹⁸ Mr. Cook's filings are ruled upon as set out in this order, and are, thus, essentially nullities. However, I will not strike them as requested by the Complainant and Respondent as that additional step is unnecessary.