

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Tracy Oliver, an Individual,) AWA Docket No. **20-J-0160**
doing business as)
Top Dog Talent Agency, LLC, and)
Animal Actors, LLC,)
)
Respondent.)

Decision and Order

Appearances:

John V. Rodriguez, Esq., and Samantha M. Dorsey, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington D.C. 20250, for the Complainant (“APHIS”);¹ and

James D. White, Esq., Bellevue, ID, counsel for the Respondent Tracy Oliver, doing business as Top Dog Talent Agency, LLC, and Animal Actors, LLC.

Decision Summary

1. Each of the 3 allegations in the Complaint was PROVED: Respondent Tracy Oliver exhibited 3 AWA regulated animals without the required USDA Animal Welfare Act Exhibitor license. Each of Tracy Oliver’s defenses FAILED. The principal issue is whether Respondent Tracy Oliver should be permanently disqualified (banned) from being issued a USDA Animal Welfare Act license. I decide that permanent disqualification would be premature. I decide that a cease and desist order, plus civil penalties totaling \$4,500, suffice as just and appropriate remedies for Respondent Tracy Oliver’s 3 violations of the Animal Welfare Act and Regulations specified in the Complaint. 7 U.S.C. § 2134. 9 C.F.R. § 2.1.

¹ The Complainant is the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (“APHIS” or Complainant).

Parties, Allegations, and Hearing

2. The Complainant is the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (frequently “APHIS” or Complainant).

3. The Respondent is Tracy Oliver, an individual, doing business as Top Dog Talent Agency, LLC, and Animal Actors, LLC.

4. The Complaint, filed by APHIS with the USDA Hearing Clerk on September 17, 2020, alleged 3 violations, each stating that Tracy Oliver operated as an exhibitor (of a cat, of a dog, of a dog), as exhibitor is defined in the Animal Welfare Act and the Regulations, without holding a valid license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a)(1). APHIS requested orders as are authorized by 7 U.S.C. § 2149. APHIS is represented by John V. Rodriguez, Esq., and Samantha M. Dorsey, Esq., each with the USDA Office of the General Counsel, Washington, District of Columbia.

5. The Answer, filed by Respondent Tracy Oliver with the USDA Hearing Clerk on October 5, 2020, denied the allegations, raised fourteen affirmative defenses, requested oral hearing, requested that the claimant take nothing, and requested that she be awarded her costs of suit and reasonable attorney’s fees. Tracy Oliver is represented by James D. White, Esq., Bellevue, Idaho.

6. The Hearing via Dial-In Telephone Conference lasted for portions of 16 days during 2021, beginning April 26 and concluding June 2. APHIS’s proposed Transcript Correction is accepted (see enclosed). Exhibits that, during the Hearing, were admitted into evidence, or rejected, are part of the Record. The following exhibits are part of the Record.

Government Exhibits (APHIS or Complainant) ADMITTED INTO EVIDENCE

GX 3, GX 4, GX 7, GX 8, GX 9, GX 10, GX 11, GX 12, GX 13, GX 14, GX 15, GX 19, GX 20, GX 21, GX 22, GX 23, GX 24, GX 32

Government Exhibits (APHIS or Complainant) REJECTED

GX 2, CX 25, CX 33, CX 35

Administrative Law Judge Exhibits ADMITTED INTO EVIDENCE

ALJX 1, ALJX 2, ALJX 3

7. I took official notice of the USDA Judicial Officer Order (final document) issued March 11, 2019, in docket nos. 12-0294 and 12-0295.

Findings of Fact

8. The evidence PROVED all three allegations in the Complaint regarding Respondent Tracy Oliver, filed by APHIS with the USDA Hearing Clerk on September 17, 2020. These three PROVED allegations are detailed below in paragraphs 13, 14, 15, 16 under the heading Conclusions.

9. The evidence FAILED TO PROVE any of Respondent Tracy Oliver's defenses, contained in her Answer and her numerous subsequent filings; argued throughout the 16-day Hearing beginning April 26 and concluding June 2, 2021; and reinforced in her post-Hearing briefs.

10. Tracy Oliver's income from AWA regulated activity was substantial compared to her income from nonregulated activity: there is NO evidence that Respondent Tracy Oliver had ANY income from nonregulated activity during the relevant time frame.

11 Respondent Tracy Oliver's cat Prince William, her dog Hollywood, and her dog Titus, were each her pet animal that she trained and used for exhibition; and were each her

regulated animal because Respondent Tracy Oliver's AWA-related business activity was NOT *de minimis*. Respondent Tracy Oliver maintained for exhibition during the relevant time frame more than eight animals, including at least the following 11 animals: Prince William (cat), Harry (cat), Hollywood (dog), Titus (dog), Wednesday (dog), Ice Man (dog), Maverick (dog), Chewy (dog), Cinderella (cat), Prince (cat), and Bob (cat).

Conclusions

12. The Secretary of Agriculture has jurisdiction over the parties and the subject matter.

13. Respondent Tracy Oliver willfully violated the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.), particularly 7 U.S.C. § 2134; and the Regulations issued thereunder (9 C.F.R. § 1.1 et seq.), particularly 9 C.F.R. § 2.1, when she exhibited regulated animals without a valid Animal Welfare Act license on the 3 occasions alleged in the Complaint filed by APHIS with the USDA Hearing Clerk on September 17, 2020. Details of the 3 occasions are described in paragraphs 14, 15, and 16.

14. Respondent Tracy Oliver willfully violated the Animal Welfare Act and Regulations when she operated as an exhibitor without holding a valid Animal Welfare Act license by exhibiting her cat Prince William, a regulated animal, for an episode of "The Walking Dead" about November 6, 2019 in Newnan, Georgia. The amount Tracy Oliver or her entity Top Dog Talent Agency, LLC earned was about \$2,265. 7 U.S.C. § 2134. 9 C.F.R. § 2.1.

15. Respondent Tracy Oliver willfully violated the Animal Welfare Act and Regulations when she operated as an exhibitor without holding a valid Animal Welfare Act license by exhibiting her dog Hollywood, a regulated animal, portraying "Sandy", for 5 shows plus rehearsals of a church stage play fundraiser "Annie" about December 12-15, 2019 in Eagles Landing, Georgia. Probably about 3,500 people saw the stage play. The amount Tracy

Oliver or her entity Top Dog Talent Agency, LLC earned was about \$1,000. 7 U.S.C. § 2134. 9 C.F.R. § 2.1.

16. Respondent Tracy Oliver willfully violated the Animal Welfare Act and Regulations when she operated as an exhibitor without holding a valid Animal Welfare Act license by exhibiting her dog Titus, a regulated animal, for the short film “Polly” about February 19, 2020, in Jacks Creek, Georgia. The amount Tracy Oliver or her entity Top Dog Talent Agency, LLC earned was about \$1,135. 7 U.S.C. § 2134. 9 C.F.R. § 2.1.

17. Respondent Tracy Oliver’s 3 violations affected commerce, within the meaning of 7 U.S.C. § 2132 (Definitions).

18. Ferrets are NOT pet animals, within the meaning of 7 U.S.C. § 2132 (Definitions). See enclosed Declaration by Aaron A. Rhyner, DVM dated September 21, 2021.

19. The evidence does not support Respondent Tracy Oliver’s claim of substantial income from nonregulated activity, compared to her income from AWA regulated activity: there is NO evidence that Respondent Tracy Oliver had ANY income from nonregulated activity during the relevant time frame. 7 U.S.C. § 2132 (Definitions).

20. The evidence does not support Respondent Tracy Oliver’s claim that her AWA-regulated business activity was *de minimis* within the meaning of 9 C.F.R. § 2.1.

Respondent Tracy Oliver maintained for exhibition during the relevant time frame more than eight animals, including at least the following 11 animals: Prince William (cat), Harry (cat), Hollywood (dog), Titus (dog), Wednesday (dog), Ice Man (dog), Maverick (dog), Chewy (dog), Cinderella (cat), Prince (cat), and Bob (cat).

21. The evidence does not support Respondent Tracy Oliver's claim that some of those 11 animals (paragraph 20) had been retired.

Order

22. Respondent Tracy Oliver, and her agents, employees, successors, and assigns, directly or indirectly, through any corporate or other device or person, shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards issued thereunder, particularly any violation of section 2134 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1 of the Regulations (9 C.F.R. § 2.1) by exhibiting regulated animals without holding a valid USDA Animal Welfare Act Exhibitor license.

23. Respondent Tracy Oliver is assessed civil penalties totaling **\$4,500**, which she shall pay by certified check(s), cashier's check(s), or money order(s), made payable to order of **USDA / APHIS** , referencing **Tracy Oliver AWA 20-J-0160, delivered to USDA / APHIS, Miscellaneous, PO Box 979043, St Louis MO 63197-9000** within **60 days** after this Decision becomes final.

Finality

24. This Decision and Order becomes final and effective thirty-five (35) days after service of this Decision and Order upon Respondent Tracy Oliver, unless appealed to the Judicial Officer by a party to the proceeding by filing with the Hearing Clerk within thirty (30) days under section 1.145 of the Rules of Practice (7 C.F.R. § 1.145). See Appendix A.

Copies of this Decision and Order shall be sent by the Hearing Clerk to each of the parties.

Issued this 4th day of October 2021, in Washington, D.C.

Digitally signed
by JILL CLIFTON
Date: 2021.10.04
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Jill S. Clifton
Administrative Law Judge

Enclosed:

- (a) Transcript Correction
- (b) Declaration by Aaron A. Rhyner, DVM dated September 21, 2021
- (c) Appendix A

Hearing Clerk's Office
United States Department of Agriculture
South Building, Room 1031-S
1400 Independence Ave SW
Washington, DC 20250-9203

Phone: 1-202-720-4443
Fax: 1-844-325-6940
sm.oha.HearingClerks@usda.gov

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time

for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145

DECLARATION

I declare that my name is Aaron A. Rhyner. I am presently employed by the United States Department of Agriculture, Animal Plant Health Inspection Service, Animal Care as an Assistant Director. My present work address is 2150 Centre Ave, Bldg. B, MS 3W11, Fort Collins, CO 80526. I am over the age of eighteen and I am fully competent to make this declaration. I know each of the facts set forth herein based in personal firsthand knowledge.

1. On Thursday June 10, 2021, Mr. John Rodriguez sent me an electronic mail (e-mail) message he had received from Mr. Jim White with the subject line: Notice and Demand and had a PDF attachment titled: 2021_06_10_13_23_52.pdf.
2. Upon review of the PDF attachment and contained within, Mr. White provide screenshots from the following web address: <https://www.aphis.usda.gov/aphis/pet-travel/definition-of-a-pet>
3. Further, the PDF attachment contained the following statements from Mr. White regarding the screenshots and web address:
 - a. Counsel, Please see attached. I suggest we discuss the matter tomorrow. Either Dr. R was seriously mis-informed or deceptive.
4. I have reviewed the information provided by Mr. White and the web address. The web address is maintained by USDA APHIS Veterinary Services under a different statutory authority (i.e. not the Animal Welfare Act) for the purposes of providing information to the general public about traveling to/from the continental United States with their pets. The definition for pet provided on this website is as follows: A pet is a **privately-owned** companion animal **not intended for research or resale** and includes the following animal groups only.
5. As I testified to several times during the hearing, the only definition that is applicable in these proceedings (AWA Docket No. 20-J-0160) is the definition of "Pet Animal" provided in the Animal Welfare Act section 1.1 *Definitions* and is as follows: Pet animal means any animal that has commonly been kept as a pet in family households in the United States, such as dogs, cats, guinea pigs, rabbits, and hamsters. The term excludes exotic animals and wild animals.
6. USDA APHIS Animal Care (not USDA APHIS Veterinary Services) is the agency responsible for carrying out activities under the Animal Welfare Act and has been delegated authority to apply and interpret the AWA and its regulations. Animal Care, through regulation rulemaking, further clarified under section 2.1(a)(3)(vii) that small exotic or wild animals include hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, jerboas, domesticated ferrets, chinchillas, and gerbils.
7. According to USDA APHIS Animal Care, ferrets are considered a wild animal as stated above.
8. I provided this information in a response e-mail to Mr. Rodriguez on June 17, 2021.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on September 21, 2021.

AARON
RHYNER

Digitally signed by AARON
RHYNER
Date: 2021.09.21 10:00:51
-06'00'

Aaron A. Rhyner, DVM

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Tracy Oliver, an Individual, doing business as) AWA Docket No. 20-J-0160
Top Dog Talent Agency, LLC, and Animal)
Actors, LLC,)
)
Respondent.)

PROPOSED TRANSCRIPT CORRECTION

The government respectfully requests the following correction to the transcript for the above referenced matter:

1. Transcript page 1207, line 5 reads, "...your attention to what has been marked as Exhibit D, which..."
2. The government did not offer any exhibits marked as "Exhibit D" during the hearing.
3. The transcript should be corrected to read, "...your attention to what has been marked as Exhibit **8**, which..."
4. This requested correction is supported by lines 10 through 15 on page 1208 which correctly refer to Exhibit 8.

Respectfully submitted this 29th day of July 2021,

/s/ Samantha M. Dorsey
Samantha M. Dorsey

/s/ John V. Rodriguez
John V. Rodriguez

Attorneys for Complainant
Office of the General Counsel
United States Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250