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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWA Docket No. 16-0119
)	
CITY OF INDEPENDENCE, KANSAS,)	
a municipality doing business as)	
RALPH MITCHELL ZOO,)	
)	
Respondent)	CONSENT DECISION AND
)	ORDER

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(AWA or Act), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the Respondent violated the regulations issued pursuant to the Act (9 C.F.R. Part 2.)(Regulations). The parties have agreed that this Consent Decision should be issued in accordance with the consent decision provisions of the applicable rules of practice (7 C.F.R. § 1.138).

Respondent admits the jurisdictional allegations in the complaint and specifically admits that the Secretary has jurisdiction in this matter, and admits certain of the remaining allegations as set forth herein as findings of fact and conclusions of law, waives oral hearing and further procedure, and consents and agrees, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

Findings of Fact

1. Respondent City of Independence, Kansas, is a municipality doing business as Ralph Mitchell Zoo, whose mailing address is 1736 North 5th Street, Independence, Kansas 67301. At all times mentioned herein, respondent was an exhibitor, as that term is defined in

the Act and the Regulations, and held AWA license 48-C-0133.

2. On or about June 16, 2013, respondent failed to handle animals as carefully as possible in a manner that does not cause behavioral stress, physical harm, or unnecessary discomfort, and specifically, one spider monkey (Lukie) was able to escape from its enclosure and bit a zookeeper.

3. On or about the following dates, respondent failed to comply with the minimum standards for animals:

a. February 28, 2012. Respondent failed to ensure that housing facilities were structurally sound and maintained in good repair to protect animals from injury and to contain them:

- i. The elk building had loose siding.
- ii. An enclosure housing bison and elk had broken wires and wires with sharp points.
- iii. The shelter in the enclosure housing three female elk had torn siding.
- iv. An enclosure housing three bison and one elk had a broken, sharp pointed wire along the top.
- v. The ground under the chain link fence enclosing the feeding area for bison and elk was eroded, leaving large gaps, and exposed wire and pipe.

b. April 17, 2012. The primary enclosure housing two capuchins (Abu and Rambo), was not constructed and maintained so that it contained them securely, and Abu and Rambo were able to escape their enclosure.

c. July 10, 2013. The primary enclosure housing two capuchins (Abu and Rambo), was not constructed and maintained so that it contained them securely, and Abu

and Rambo were able to escape their enclosure, one of them bit and injured a visitor to the zoo, and Rambo died while uncontained in the zoo.

d. July 23, 2013. There was excessive rust on the tin on the top of the enclosure housing spider monkeys, and on a shade cover.

e. July 23, 2013. Respondent housed nonhuman primates in sheltered housing facilities that did not protect them from temperature extremes, and at 3:00 p.m., the temperature in the enclosure was 93.4 degrees Fahrenheit.

f. July 23, 2013. The door of the bobcat enclosure had rust along the bottom, and the sliding door had rusted, jagged, sharp edges.

g. July 23, 2013. There were four nail heads exposed in a door frame of the shelter structure of the wallaby enclosure.

h. July 23, 2013. Respondent failed to enclose its facilities by an adequate perimeter fence, as required:

i. There was no perimeter fence in the hoofstock area of the zoo, and wild deer were able to jump into the enclosure.

ii. Three sides of the aoudad enclosure did not have a perimeter fence.

iii. The walk-through gate on the west side of the kiddie park was open wide enough to allow animals to gain access to the premises.

iv. There was an 8-inch gap in the perimeter fence across from the barred owl enclosure.

i. July 23, 2014. A door in an enclosure on Monkey Island was in disrepair, and had jagged, sharp points.

j. July 23, 2014. A tunnel in the bobcat enclosures had one to two inches of

standing water and no drain.

k. May 26, 2015. The floors of two bobcat enclosures were cracked.

l. May 26, 2015. The floors of two enclosures for nonhuman primates were cracked and had missing concrete.

n. August 19, 2015. The fence of the aoudad enclosure had damaged wire mesh that reduced the fence's height by six to eight inches.

Conclusions of Law

1. On or about June 16, 2013, respondent willfully violated the handling Regulations, 9 C.F.R. § 2.131(b)(1).

2. On or about February 28, 2012, and continuing through April 10, 2014, respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to comply with the Standards for animals as follows:

a. February 28, 2012. 9 C.F.R. § 3.125(a).

b. April 17, 2012. 9 C.F.R. § 3.80(a)(2)(iii).

c. July 10, 2013. 9 C.F.R. § 3.80(a)(2)(iii).

d. July 23, 2013. 9 C.F.R. § 3.75(c)(1)(i); 9 C.F.R. § 3.77(a); 9 C.F.R. § 3.125(a); (9 C.F.R. § 3.127(d)).

e. July 23, 2014. 9 C.F.R. § 3.75(c)(1)(ii); 9 C.F.R. § 3.127(c).

f. May 26, 2015. 9 C.F.R. § 3.75(c)(2); 9 C.F.R. § 3.131(c).

g. August 19, 2015. 9 C.F.R. § 3.125(a).

3. Respondent having admitted the findings and conclusions set forth above, and the parties having agreed to the entry of this decision, such decision will be entered.

Order


1. Respondent, its agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the Regulations and Standards.


2. Respondent is assessed a civil penalty of \$5,000 to be paid by certified check or money order made payable to USDA APHIS, in ten monthly payments of \$500 each, beginning September 1, 2016 and ending on June 1, 2017 and sent to USDA, APHIS, Miscellaneous, P.O. Box 979043, St. Louis, MO 63197-9000.

3. For the purposes of this consent decision and order, the one-year period of time between September 1, 2016, and August 31, 2017, shall be referred to as the "probation period." Respondent agrees that if during the probation period APHIS notifies it that APHIS has documented a Direct Noncompliance by respondent for failure to comply with the Act or the Regulations, upon receipt of such notice and copies of the supporting documentation from APHIS, APHIS may, without further procedure, assess respondent a civil penalty of \$5,000 for each such documented Direct Noncompliance failure to comply with the Act or the Regulations. Respondent further agrees to a prospective waiver of its right to notice and opportunity for an oral hearing pursuant to section 19 of the Act (7 U.S.C. § 2149) as to any such failure to comply with the Act or the Regulations, or to meet the minimum Standards. Complainant and respondent agree that respondent may seek injunctive, declaratory or other appropriate relief in the United States District Court for the District of Kansas or in the United States District Court for the District of Columbia.


The provisions of this order shall become effective September 1, 2016. Copies of this decision shall be served upon the parties.

CITY OF INDEPENDENCE,
a municipality doing business as
RALPH MITCHELL ZOO
Respondent

By: 
Jeffrey Chubb
Its City Attorney


Lauren E. Becker
Attorney for Complainant

Done at Washington, D.C.
this 31st day of August, 2016


Administrative Law Judge
CAJ