

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

2018 MAY -4 PM 2: 59

In re:

STEARNS ZOOLOGICAL RESCUE & REHAB
CENTER, INC., a Florida corporation
doing business as DADE CITY WILD THINGS,

Respondent

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AWA Docket No. 15-0146

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STAY ORDER

Appearances:

Samuel D. Jockel, Esq., with the Office of the General Counsel, United States Department of Agriculture ("USDA"), for the Complainant, Animal and Plant Health Inspection Service ("APHIS"); and

Ellis L. Bennett, Esq., for the Respondent, Stearns Zoological Rescue & Rehab Center, Inc., a Florida corporation d/b/a Dade City Wild Things.

This is a proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131 *et seq.*) ("Act"), and the regulations promulgated thereunder (9 C.F.R. §§ 1.1 *et seq.*) ("Regulations"). This matter initiated with a complaint filed by the Administrator of the Animal and Plant Health Inspection Service ("APHIS"; "Complainant") on July 17, 2015. The Complaint alleged that Stearns Zoological Rescue & Rehab Center, Inc., a Florida corporation doing business as Dade City Wild Things ("Respondent"), willfully violated the Act and Regulations.

On February 15, 2017, then-Chief Administrative Law Judge Bobbie J. McCartney ("Chief Judge McCartney")¹ issued a Decision and Order in the instant proceeding. On April 7, 2017, Respondent filed an appeal petition, and on April 27, 2017 Complainant filed

¹ Chief Administrative Law Judge Bobbie J. McCartney retired from federal service effective January 19, 2018.

a response and cross appeal thereto. On May 1, 2017, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

On November 29, 2017, the Solicitor General, on behalf of the United States, submitted a brief in *Lucia v. SEC*, No. 17-130,² in which the Solicitor General took the position that administrative law judges of the Securities and Exchange Commission are inferior officers under the Appointments Clause, U.S. Const. Art. II, § 2, cl. 2.³

On December 27, 2017, the Judicial Officer addressed the Appointments Clause issue and remanded this proceeding to Chief Judge McCartney with the following directives:

Issue an order giving the Administrator and Stearns Zoological Rescue & Rehab Center, Inc., an opportunity to submit new evidence;

Consider the record, including any newly submitted evidence and all her previous and substantive procedural actions;

Determine whether to ratify or revise in any respect all her prior actions; and

Issue an order stating that she has completed consideration of the record and setting forth her determination regarding ratification.

(Remand Order at 2).

On January 10, 2018, this proceeding was reassigned to me, Acting Chief Administrative Law Judge Channing D. Strother, for further action in accordance with the Judicial Officer's Remand Order. On January 12, 2018, I issued an order directing each

² Certiorari was granted by the Court in that case on January 12, 2018, and oral arguments were held on April 23, 2018. An opinion is expected to be issued in the case by the end of June 2018.

³ On July 24, 2017—several months before the Solicitor General submitted his brief in *Lucia*—the Secretary of Agriculture ratified the Department's prior written appointment of Chief Judge McCartney, Administrative Law Judge Jill S. Clifton, and Administrative Law Judge Channing D. Strother and renewed their oaths of office.

party to file a statement of position in response to the Remand Order, which was to address the following:

The appropriateness of granting or denying a **STAY** of these proceedings before the Administrative Law Judge, including specifics regarding scope, duration and proposed language. If not proposing a **STAY**, the party shall provide a description of any previous substantive and/or procedural actions taken by Chief Judge McCartney in this proceeding which the parties dispute and the basis for doing so; and a brief summary of what new evidence, if any, the parties are proposing to submit in response to the subject Remand Order if this proceeding is not stayed.⁴

(Order at 2 (footnote omitted)). Complainant and Respondent filed their statements of position March 18, 2018 and May 2, 2018, respectively.⁵

The parties appear to agree to at least some postponement of substantive discretionary activity in this proceeding by the undersigned pending certain action by the Supreme Court.⁶ I therefore postpone any substantive discretionary activities in the proceeding by me, such as issuing further orders addressing the substantive issues of the proceeding, pending the issuance of a Supreme Court opinion in *Lucia* or July 2, 2018,

⁴ Note that pending before the U.S. Court of Appeals for the District of Columbia are consolidated cases challenging the Department of Agriculture's authority to adjudicate Horse Protection Act cases under its current administrative system. *Haselden v. USDA*, No. 17-1235 (Agri-HPA Nos. 17-0120, 17-0123, 17-0124, 17-0127, and 17-0128). In those cases, the Department agreed that the proceedings should be held in abeyance pending the Supreme Court's disposition of *Lucia v. SEC*, No. 17-130 (cert. granted Jan. 12, 2018), and *Bandimere v. SEC*, No. 17-475 (petition for cert. filed Sept. 29, 2017).

⁵ The Order directed the parties to file their position statements not later than February 5, 2018. However, on January 31, 2018, Respondent requested an extension of time to obtain an attorney. On February 2, 2018, I granted Respondent's request on and directed that the February 5, 2018 date be moved to March 19, 2018. On March 16, 2018, Respondent requested an additional forty-five day extension to bring its new counsel up to speed in the proceeding. On the same date, I granted Respondent's request and extended the filing deadline to May 3, 2018.

⁶ Complainant advocates postponing until the Supreme Court issues an opinion in *Lucia* and/or *Bandimere*. I note that, to date, the *Bandimere* petition for certiorari has not been acted upon by the Supreme Court. Revisiting this postponement is not contingent upon any action in *Bandimere* or *Haselden* or, for that matter, a "resolution" of *Lucia*, which may or may not be the result of actions by the Supreme Court.

whichever comes first. I do not order any limitation on the parties from continuing to act on or interact regarding this proceeding. Indeed, I encourage the parties to continue to interact. This postponement would not affect, for instance, my signing and entry of any consent decision to which the parties or a subpart thereof might agree.

ORDER

All substantive activities by me are hereby **SUSPENDED** in the above-captioned docket pending the issuance of a Supreme Court opinion in *Lucia v. SEC*, No. 17-130, or July 2, 2018, whichever comes first.

Copies of this Order shall be served by the Hearing Clerk upon each party, with courtesy copies provided via email where available.

Done at Washington, D.C.,
this 4th day of May 2018



Channing D. Strother
Acting Chief Administrative Law Judge

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