

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) AWA Docket No. 11-0380  
)  
Jeffrey W. Ash, an individual, )  
d/b/a Ashville Game Farm, )  
)  
Respondent ) **Decision and Order**

**PROCEDURAL HISTORY**

Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this proceeding on August 31, 2011, by filing an Order to Show Cause Why Animal Welfare Act License 21-C-0359 Should Not Be Terminated [hereinafter Order to Show Cause]. The Administrator instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-2.133) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Administrator alleges: (1) at all times material to this proceeding, Jeffrey W. Ash was an “exhibitor” as that term is defined in the Animal Welfare Act and the Regulations; (2) at all times material to this proceeding, Mr. Ash held Animal Welfare Act license number 21-C-0359; and (3) on April 29, 2011, Mr. Ash was convicted of reckless endangerment in the second degree in violation of New York Penal Law § 120.20, in connection with his exhibition of animals at the Ashville Game Farm, in Greenwich, New York.<sup>1</sup> The Administrator seeks an order terminating Animal Welfare Act license number 21-C-0359<sup>2</sup> and disqualifying Mr. Ash from obtaining an Animal Welfare Act license for a period of not less than 2 years based upon Mr. Ash’s violation of a state law pertaining to ownership and welfare of animals.<sup>3</sup>

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<sup>1</sup>Order to Show Cause at 1 ¶ 1 and at 2 ¶¶ 3-4.

<sup>2</sup>The Administrator also states Animal Welfare Act license number 41-C-0122 should be terminated (Order to Show Cause at 1). I find the Administrator’s reference to Animal Welfare Act license number 41-C-0122 puzzling as the record contains no evidence that Mr. Ash held Animal Welfare Act license number 41-C-0122, and I find no further reference to Animal Welfare Act license number 41-C-0122 in the record. Therefore, I decline to terminate Animal Welfare Act license number 41-C-0122.

<sup>3</sup>Order to Show Cause at 2 ¶ 5 and at 4.

On September 20, 2011, Mr. Ash filed a response to the Order to Show Cause:

(1) admitting, at all times material to this proceeding, he was an “exhibitor” as that term is defined in the Animal Welfare Act and the Regulations; (2) admitting, at all times material to this proceeding, he held Animal Welfare Act license number 21-C-0359; (3) admitting that, on April 29, 2011, he was convicted of reckless endangerment in the second degree in violation of New York Penal Law § 120.20; (4) stating New York Penal Law § 120.20 does not contain any element pertaining to the welfare and treatment of animals; and (5) denying his conviction of reckless endangerment in the second degree resulted in any finding that he abused, mistreated, or neglected any animals or that he was not fit to exhibit animals.<sup>4</sup>

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<sup>4</sup>Answer and Request for Hearing ¶¶ 1-4.

On March 6, 2012, the Administrator filed Complainant's Motion for Summary Judgment in which the Administrator contends there is no factual dispute requiring a hearing. On March 27, 2012, Mr. Ash filed Respondent's Opposition to Motion for Summary Judgment asserting Complainant's Motion for Summary Judgment should be denied and the matter scheduled for hearing. On April 2, 2012, Administrative Law Judge Janice K. Bullard [hereinafter the ALJ] filed a Decision and Order Granting Summary Judgment in which she: (1) found that, on or about April 29, 2011, Mr. Ash was convicted of reckless endangerment in the second degree in violation of New York Penal Law § 120.20, in connection with his August 10, 2010, exhibition of animals at the Ashville Game Farm, in Greenwich, New York; (2) concluded Mr. Ash's conviction of reckless endangerment in the second degree in violation of New York Penal Law § 120.20 involved the possession and exhibition of animals; (3) concluded Mr. Ash's conviction of reckless endangerment in the second degree in violation of New York Penal Law § 120.20 establishes that Mr. Ash's conduct was willful; (4) concluded Mr. Ash's conviction of reckless endangerment in the second degree in violation of New York Penal Law § 120.20 demonstrates he is unfit to hold an Animal Welfare Act license; (5) concluded the revocation of Mr. Ash's Animal Welfare Act license promotes the remedial purposes of the Animal Welfare Act; and (6) revoked Animal Welfare Act license number 21-C-0359.<sup>5</sup>

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<sup>5</sup>Decision and Order Granting Summary Judgment at 11 Findings of Fact ¶¶ 3, 8; at

On April 27, 2012, the Administrator filed Complainant's Petition for Appeal; on May 3, 2012, Mr. Ash filed a Request for Oral Argument and an Appeal Petition; on May 23, 2012, the Administrator filed Complainant's Response to Request for Oral Argument and Petition for Appeal; and on May 29, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

Based upon a careful review of the record, I affirm the ALJ's Decision and Order Granting Summary Judgment, except that I do not adopt the ALJ's Order revoking Animal Welfare Act license number 21-C-0359. Instead, I terminate Animal Welfare Act license number 21-C-0359.

## DECISION

### Discussion

The Animal Welfare Act provides that the Secretary of Agriculture shall issue licenses to dealers and exhibitors upon application for a license in such form and manner as the Secretary of Agriculture may prescribe (7 U.S.C. § 2133). The power to require and issue licenses under the Animal Welfare Act includes the power to terminate a license and to disqualify a person whose license has been terminated from becoming licensed.<sup>6</sup> The Regulations specify certain bases for denying an initial application for an Animal Welfare Act license (9 C.F.R. § 2.11) and further provide that an Animal Welfare Act license, which has been issued, may be terminated for any reason that an initial license application may be denied (9 C.F.R. § 2.12). The Regulations provide that an initial application for an Animal Welfare Act license will be denied if the applicant has been found to have violated any state law pertaining to ownership or welfare of animals or is otherwise unfit to be licensed and the Administrator determines that issuance of an Animal Welfare Act license would be contrary to the purposes of the Animal Welfare Act, as follows:

**§ 2.11 Denial of initial license application.**

(a) A license will not be issued to any applicant who:

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<sup>6</sup>*In re Kathy Jo Bauck*, 68 Agric. Dec. 853, 856 (2009), *appeal dismissed*, No. 10-1138 (8th Cir. Feb. 24, 2010); *In re Animals of Montana, Inc.*, 68 Agric. Dec. 92, 94 (2009); *In re Amarillo Wildlife Refuge, Inc.*, 68 Agric. Dec. 77, 81 (2009); *In re Loreon Vigne*, 67 Agric. Dec. 1060, 1062 (2008); *In re Mary Bradshaw*, 50 Agric. Dec. 499, 507 (1991).

(6) Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

9 C.F.R. § 2.11(a)(6).

The purposes of the Animal Welfare Act are set forth in a congressional statement of policy, as follows:

**§ 2131. Congressional statement of policy**

The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—

- (1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;
- (2) to assure the humane treatment of animals during transportation in commerce; and
- (3) to protect owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

7 U.S.C. § 2131.

The Animal and Plant Health Inspection Service [hereinafter APHIS] has determined that Mr. Ash is unfit to be licensed under the Animal Welfare Act and that allowing Mr. Ash to hold an Animal Welfare Act license is contrary to the purposes of the Animal Welfare Act. APHIS's determinations are based upon Mr. Ash's conviction of reckless endangerment in the second degree in violation of New York Penal Law § 120.20 in connection with Mr. Ash's exhibition of wild and exotic animals.<sup>7</sup> Mr. Ash admits being convicted of reckless endangerment in the second degree in violation of New York Penal Law § 120.20.<sup>8</sup> I conclude Mr. Ash has been found to have violated a state law pertaining to ownership and welfare of animals. I affirm the determinations that Mr. Ash is unfit to hold Animal Welfare Act license number 21-C-0359 and that allowing Mr. Ash to hold Animal Welfare Act license number 21-C-0359 is contrary to the purposes of the Animal Welfare Act. Therefore, I terminate Animal Welfare Act license number 21-C-0359.

### **Findings of Fact**

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<sup>7</sup>Complainant's Mot. for Summary Judgment Decl. of Elizabeth Goldentyer ¶ 7.

<sup>8</sup>Answer and Request for Hearing ¶ 4.

1. Mr. Ash is an individual who did business as Ashville Game Farm (Answer and Request for Hearing ¶ 1; Complainant’s Mot. for Summary Judgment Decl. of Elizabeth Goldentyer ¶ 3).

2. Mr. Ash’s mailing address is in Greenwich, New York (Answer and Request for Hearing ¶ 1; Complainant’s Mot. for Summary Judgment Decl. of Elizabeth Goldentyer ¶ 3).

3. At all times material to this proceeding, Mr. Ash was an “exhibitor” as that term is defined in the Animal Welfare Act and the Regulations (Answer and Request for Hearing ¶ 1).

4. At all times material to this proceeding, Mr. Ash held Animal Welfare Act license number 21-C-0359 (Answer and Request for Hearing ¶ 1).

5. On or about December 18, 2010, APHIS Regional Director, Animal Care, Eastern Region, Elizabeth Goldentyer, D.V.M., was notified by a member of her staff that Mr. Ash had been indicted on 29 counts of alleged criminal conduct related to his exhibition of animals at the Ashville Game Farm in Greenwich, New York (Complainant’s Mot. for Summary Judgment Decl. of Elizabeth Goldentyer ¶ 4).

6. Mr. Ash plead guilty to Count Twenty-Nine of the indictment referenced in Finding of Fact number 5, which Count reads as follows:

COUNT TWENTY-NINE

The Grand Jury of the County of Washington, by this Indictment, accuses Defendant Jeffrey Ash, of the crime of Reckless Endangerment in the Second Degree, a class A misdemeanor, in violation of § 120.20 of the Penal Law of the State of New York, committed as follows:

Defendant Jeffrey Ash, on or about August 10, 2010, in the Town of Greenwich, Washington County, New York, did recklessly engage in conduct which created the risk of serious physical injury to another person by running Ashville Game Farm and by not properly caging animals including lemurs, monkeys, bears, turtles, alligators, pigs[,] goats, deer and other animals, and by encouraging visitors to the game farm including children to feed the animals, and did allow visitors to the Game Farm to have contact with the animals, and did not have the animals vaccinated for rabies and did allow children to have contact with turtles known to carry salmonella, and did have reptiles such as snakes and lizards in unsecured cages, and did have a tarantula in a cage with an unsecured lid with a figurine of the cartoon character Sponge Bob in the cage with the poisonous spider making it likely a child would reach into the cage, and did have alligators in a cage with fencing which visitors could reach over and which visitors could reach through and which was not properly secured. Jeff Ash did fail to protect the public from attack, and disease.

Complainant's Mot. for Summary Judgment CX 2 at 10.

7. On or about April 29, 2011, Mr. Ash was convicted of reckless endangerment in the second degree in violation of New York Penal Law § 120.20, as alleged in Count Twenty-Nine of the indictment quoted in Finding of Fact number 6 (Answer and Request for Hearing ¶ 4; Complainant's Mot. for Summary Judgment Decl. of Elizabeth Goldentyer ¶ 5 and CX 2 at 11-16).

8. APHIS determined Mr. Ash was unfit to hold a license under the Animal Welfare Act based upon Mr. Ash's April 29, 2011, conviction of reckless endangerment in the second degree in violation of New York Penal Law § 120.20 (Complainant's Mot. for Summary Judgment Decl. of Elizabeth Goldentyer ¶ 7).

9. APHIS determined that permitting Mr. Ash to continue to hold Animal Welfare Act license number 21-C-0359 would be contrary to the purposes of the Animal Welfare Act (Complainant's Mot. for Summary Judgment Decl. of Elizabeth Goldentyer ¶ 7).

10. On or about June 8, 2011, Dr. Goldentyer requested that APHIS institute an administrative proceeding to terminate Mr. Ash's Animal Welfare Act license based upon Mr. Ash's April 29, 2011, conviction of reckless endangerment in the second degree in connection with his exhibition of wild and exotic animals (Complainant's Mot. for Summary Judgment Decl. of Elizabeth Goldentyer ¶ 7).

11. In a letter dated June 29, 2011, the New York State Department of Environmental Conservation denied Mr. Ash's applications for renewal of his state licenses to possess and exhibit animals, in part, due to Mr. Ash's April 29, 2011, conviction of reckless endangerment in the second degree in violation of New York Penal Law § 120.20 (Complainant's Mot. for Summary Judgment Decl. of Elizabeth Goldentyer ¶ 6 and CX 3).

12. On July 27, 2011, the State of New York provided Dr. Goldentyer with a certificate of Mr. Ash's April 29, 2011, conviction of reckless endangerment in the second

degree in violation of New York Penal Law § 120.20 (Complainant's Mot. for Summary Judgment Decl. of Elizabeth Goldentyer ¶ 5 and CX 2 at 11-16).

13. On or about August 10, 2011, APHIS received a copy of a letter dated June 29, 2011, from the New York State Department of Environmental Conservation directed to Mr. Ash, in which the New York State Department of Environmental Conservation denied the renewal of Mr. Ash's state licenses to possess and exhibit animals (Complainant's Mot. for Summary Judgment Decl. of Elizabeth Goldentyer ¶ 6 and CX 3).

### **Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. The material facts involved in this matter are not in dispute and the ALJ's entry of summary judgment in favor of the Administrator was appropriate.
3. Mr. Ash's conviction of reckless endangerment in the second degree under New York Penal Law § 120.20 involved ownership and welfare of animals.
4. Mr. Ash's conviction of reckless endangerment in the second degree under New York Penal Law § 120.20 establishes that Mr. Ash's conduct was willful and implicated public health and safety; therefore, the Administrator was not required to provide Mr. Ash with written notice of the facts and conduct concerned with this proceeding and an opportunity to demonstrate or achieve compliance prior to instituting this proceeding, as provided in 5 U.S.C. § 558(c) and 7 C.F.R. § 1.133(b)(3).

5. Mr. Ash's conviction of reckless endangerment in the second degree under New York Penal Law § 120.20 demonstrates Mr. Ash is unfit to hold Animal Welfare Act license number 21-C-0359.

6. APHIS did not rely upon factors other than Mr. Ash's conviction of reckless endangerment in the second degree under New York Penal Law § 120.20 for its determination to seek termination of Mr. Ash's Animal Welfare Act license.

7. The termination of Mr. Ash's Animal Welfare Act license pursuant to 9 C.F.R. §§ 2.11(a)(6), .12, promotes the remedial purposes of the Animal Welfare Act.

### Mr. Ash's Request for Oral Argument

Mr. Ash's request for oral argument, which the Judicial Officer may grant, refuse, or limit,<sup>9</sup> is refused because the issues have been fully briefed by the parties and oral argument would serve no useful purpose.

### Mr. Ash's Appeal Petition

Mr. Ash raises four issues in his Appeal Petition. First, Mr. Ash contends the ALJ erroneously held New York Penal Law § 120.20 is a state law pertaining to the transportation, ownership, neglect, or welfare of animals (Appeal Pet. Issue and Argument No. 1 at unnumbered pages 3-5).

New York Penal Law § 120.20 sets forth the elements of reckless endangerment in the second degree and defines the crime as a misdemeanor as follows:

#### **§ 120.20 Reckless endangerment in the second degree**

A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

Reckless endangerment in the second degree is a class A misdemeanor.

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<sup>9</sup>7 C.F.R. § 1.145(d).

While transportation, ownership, neglect, and welfare of animals are not elements of the crime of reckless endangerment in the second degree, Mr. Ash's exhibition of animals was extrinsically related to Mr. Ash's execution of the crime so as to be an instrumentality of the crime as is evident in Count Twenty-Nine of the indictment charging Mr. Ash with a violation of New York Penal Law § 120.20.<sup>10</sup> Mr. Ash pled guilty to, and was convicted of, Count Twenty-Nine of the indictment.<sup>11</sup> Mr. Ash's indictment and conviction were based upon the manner in which Mr. Ash conducted the operation of Ashville Game Farm and specifically on his exhibition of animals regulated under the Animal Welfare Act.<sup>12</sup> Thus, I conclude New York Penal Law § 120.20 can pertain to ownership and welfare of animals and, under the circumstances in *People v. Ash*, Case No. I-192-2010 (Crim Ct, Washington County Apr. 29, 2011), New York Penal Law § 120.20 did pertain to ownership and welfare of animals.

Second, Mr. Ash asserts there are triable issues of fact relating to Mr. Ash's fitness to hold Animal Welfare Act license number 21-C-0359; therefore, the ALJ erroneously granted Complainant's Motion for Summary Judgment (Appeal Pet. Issue and Argument No. 2 at unnumbered pages 5-9).

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<sup>10</sup>Complainant's Mot. for Summary Judgment CX 2 at 10.

<sup>11</sup>Answer and Request for Hearing ¶ 4; Complainant's Mot. for Summary Judgment Decl. of Elizabeth Goldentyer ¶ 5 and CX 2 at 11-16.

<sup>12</sup>The term "animal" is defined in 7 U.S.C. § 2132(g); 9 C.F.R. § 1.1.

The conclusion that Mr. Ash is unfit to hold Animal Welfare Act license number 21-C-0359 is based upon Mr. Ash's April 29, 2011, conviction of reckless endangerment in the second degree in violation of New York Penal Law § 120.20.<sup>13</sup> The determination that a respondent is unfit to hold an Animal Welfare Act license may be based upon a conviction of any federal, state, or local law or regulation pertaining to transportation, ownership, neglect, or welfare of animals.<sup>14</sup> As discussed in this Decision and Order, *supra*, under the circumstances in *People v. Ash*, Case No. I-192-2010 (Crim Ct, Washington County Apr. 29, 2011), New York Penal Law § 120.20 did pertain to ownership and welfare of animals. Mr. Ash admits

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<sup>13</sup>Decision and Order Granting Summary Judgment at 9-10 and at 12 Conclusion of Law ¶ 6.

<sup>14</sup>9 C.F.R. §§ 2.11(a)(6), .12. See also *In re Kathy Jo Bauck*, 68 Agric. Dec. 853, 866-67 (2009) (concluding the respondent was unfit to be licensed under the Animal Welfare Act based upon her conviction of animal torture in violation of Minnesota Stat. § 343.21 subdiv. 1), *appeal dismissed*, No. 10-1138 (8th Cir. Feb. 24, 2010); *In re Animals of Montana, Inc.*, 68 Agric. Dec. 92, 96-102 (2009) (concluding the respondent was unfit to be licensed under the Animal Welfare Act based, in part, upon violations of the Lacey Act and the Endangered Species Act); *In re Amarillo Wildlife Refuge, Inc.*, 68 Agric. Dec. 77, 83-85 (2009) (concluding the respondent was unfit to be licensed under the Animal Welfare Act based upon violations of the Endangered Species Act); *In re Loreon Vigne*, 67 Agric. Dec. 1060, 1067 (2008) (concluding the respondent was unfit to be licensed under the Animal Welfare Act based upon her conviction of violations of the Endangered Species Act); *In re Mark Levinson*, 65 Agric. Dec. 1026, 1038-39 (2005) (concluding the respondent was unfit to be licensed under the Animal Welfare Act based upon his conviction of violations of New York state laws pertaining to the transportation and ownership of animals).

he was convicted of violating New York Penal Law § 120.20;<sup>15</sup> therefore, there is no genuine issue of material fact regarding Mr. Ash's fitness to hold Animal Welfare Act license number 21-C-0359 to be heard, and I reject Mr. Ash's assertion that the ALJ erroneously granted Complainant's Motion for Summary Judgment.

Third, Mr. Ash contends the ALJ erroneously gave preclusive effect to Mr. Ash's conviction of violating New York Penal Law § 120.20. Mr. Ash asserts the ALJ should not have given preclusive effect to his conviction because Count Twenty-Nine of the indictment charging him with violations of New York Penal Law § 120.20 is bombastic and contains misstatements of science. Further, Mr. Ash asserts he only plead guilty to violating New York Penal Law § 120.20 because a guilty plea was financially more prudent than incurring the expense of defending against the indictment. (Appeal Pet. Issue and Argument No. 3 at unnumbered pages 9-11.)

Mr. Ash's conviction of violating New York Penal Law § 120.20 is a material fact in this proceeding; the reason Mr. Ash plead guilty to violating New York Penal Law § 120.20 and the purported defects in the indictment filed in *People v. Ash*, Case No. I-192-2010 (Crim Ct, Washington County Apr. 29, 2011), are not material facts in this proceeding. Mr. Ash cannot relitigate his past criminal conviction in this Animal Welfare Act license termination

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<sup>15</sup>Answer and Request for Hearing ¶ 4.

proceeding. If Mr. Ash wishes to contest his conviction in *People v. Ash*, Case No. I-192-2010 (Crim Ct, Washington County Apr. 29, 2011), he must turn to the State Courts of New York, as that is the proper forum in which to direct his arguments.

Fourth, Mr. Ash contends the ALJ erroneously determined that Mr. Ash's willfulness had been established as a matter of law (Appeal Pet. Issue and Argument No. 4 at unnumbered pages 11-13).

As an initial matter, an Animal Welfare Act license may be terminated under 9 C.F.R. § 2.12 based upon a violation of any state law described in 9 C.F.R. § 2.11(a)(6) and there is no requirement under 9 C.F.R. § 2.11(a)(6) that the violation of state law must be willful. However, under the Rules of Practice, except in a case of willfulness or in a case in which public health, interest, or safety otherwise requires, the Administrator must provide an Animal Welfare Act licensee with written notice of the facts or conduct concerned and an opportunity to demonstrate or achieve compliance, prior to instituting a proceeding that may affect the Animal Welfare Act license, as follows:

**§ 1.133 Institution of proceedings.**

....

(b) *Filing of complaint or petition for review.*

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(3) As provided in 5 U.S.C. 558, in any case, *except one of willfulness or one in which public health, interest, or safety otherwise requires*, prior to the institution of a formal proceeding which may result in the withdrawal, suspension, or revocation of a "license" as that term is defined in 5 U.S.C.

551(8), the Administrator, in an effort to effect an amicable or informal settlement of the matter, shall give written notice to the person involved of the facts or conduct concerned and shall afford such person an opportunity, within a reasonable time fixed by the Administrator, to demonstrate or achieve compliance with the applicable requirements of the statute, or the regulation, standard, instruction or order promulgated thereunder.

7 C.F.R. § 1.133(b)(3) (emphasis added). A willful act is an act in which the violator intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice, or acts with careless disregard of statutory requirements.<sup>16</sup> Generally, a criminal act involves at least a careless disregard of statutory requirements. In the instant proceeding, the Administrator seeks termination of Mr. Ash's Animal Welfare Act license as a result of Mr. Ash's conviction of reckless endangerment in the second degree in violation of New York Penal Law § 120.20. Mr. Ash's conviction of recklessly engaging in conduct which creates a substantial risk of serious physical injury to another person establishes willfulness and implicates public health and safety; thus, the Administrator was not required to give Mr. Ash written notice of the facts or conduct concerned and an opportunity to demonstrate or achieve compliance prior to instituting this proceeding.

### **The Administrator's Appeal Petition**

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<sup>16</sup>*In re Kathy Jo Bauck*, 68 Agric. Dec. 853, 860-61 (2009), *appeal dismissed*, No. 10-1138 (8th Cir. Feb. 24, 2010); *In re D&H Pet Farms, Inc.*, 68 Agric. Dec. 798, 812-13 (2009); *In re Jewel Bond*, 65 Agric. Dec. 92, 107 (2006), *aff'd per curiam*, 275 F. App'x 547 (8th Cir. 2008); *In re James E. Stephens*, 58 Agric. Dec. 149, 180 (1999); *In re Arab Stock Yard, Inc.*, 37 Agric. Dec. 293, 306 (1978), *aff'd mem.*, 582 F.2d 39 (5th Cir. 1978).

The Administrator raises one issue in Complainant's Petition for Appeal. The Administrator asserts the ALJ erroneously revoked Mr. Ash's Animal Welfare Act license (Complainant's Pet. for Appeal at 3-4).

Throughout this proceeding, the Administrator has consistently sought termination of Mr. Ash's Animal Welfare Act license pursuant to 7 U.S.C. § 2133 and 9 C.F.R. § 2.12 rather than revocation of Mr. Ash's Animal Welfare Act license pursuant to 7 U.S.C. § 2149. Nonetheless, the ALJ revoked rather than terminated Mr. Ash's Animal Welfare Act license.<sup>17</sup>

Revocation of Animal Welfare Act license number 21-C-0359 would prohibit Mr. Ash from obtaining an Animal Welfare Act license in the future,<sup>18</sup> whereas termination of Mr. Ash's Animal Welfare Act license would not prohibit Mr. Ash from obtaining an Animal Welfare Act license in the future. As this proceeding was instituted under the authority of the Secretary of Agriculture to terminate an Animal Welfare Act license and the Administrator consistently sought termination of Mr. Ash's Animal Welfare Act license, I do not adopt the ALJ's Order revoking Animal Welfare Act license number 21-C-0359. Instead, I terminate Animal Welfare Act license number 21-C-0359.<sup>19</sup>

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<sup>17</sup>Decision and Order Granting Summary Judgment at 13.

<sup>18</sup>See 9 C.F.R. §§ 2.10(b), .11(a)(3).

<sup>19</sup>In addition to termination of Animal Welfare Act license number 21-C-0359, the Administrator originally sought Mr. Ash's disqualification from obtaining an Animal Welfare

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Act license for a period of not less than 2 years (Order to Show Cause at 4). The Administrator appears to have abandoned the request for a period of disqualification and now seeks only termination of Animal Welfare Act license number 21-C-0359 (Complainant's Mot. for Summary Judgment at 7; Complainant's Pet. for Appeal at 7; Complainant's Response to Request for Oral Argument and Pet. for Appeal at 9); therefore, I do not include a period of disqualification from obtaining an Animal Welfare Act license in the Order in this Decision and Order.

For the foregoing reasons, the following Order is issued.

**ORDER**

Animal Welfare Act license number 21-C-0359 is terminated. This Order shall become effective on the 60th day after service of this Order on Jeffrey W. Ash.

Done at Washington, DC

September 14, 2012

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William G. Jenson  
Judicial Officer