

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) AWA Docket No. 06-0009  
)  
David McCauley, an individual )  
d/b/a Dave's Animal Farm, )  
)  
Respondent ) **Decision and Order**

**PROCEDURAL HISTORY**

Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this proceeding by filing a Complaint on January 27, 2006, alleging David McCauley had committed a number of violations of the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act], and the regulations issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-2.133) [hereinafter the Regulations] during the period January 18, 2005, to December 15, 2005. In particular, the Administrator alleges Mr. McCauley operated as a “dealer” under the Animal Welfare Act, even though his Animal Welfare Act license had previously been revoked; sold and transported a wallaby to the Guatemala National Zoo; sold and transported to Germany two wallabies for use as pets; and offered animals for sale for exhibition and for use as pets (Compl. ¶ 3).

Mr. McCauley filed a timely Answer denying he had violated the Animal Welfare Act and the Regulations. Mr. McCauley stated he had been told by United States Department of Agriculture personnel that it was not unlawful to ship animals from the United States to another country without an Animal Welfare Act license and further contended he had not acted as a dealer of regulated animals once his Animal Welfare Act license was revoked.

On March 9, 2006, the Administrator moved that a date be set for a hearing. Chief Administrative Law Judge Marc R. Hillson [hereinafter the Chief ALJ] conducted a conference call on July 28, 2006, at which Colleen A. Carroll, Office of the General Counsel, United States Department of Agriculture, represented the Administrator and Mr. McCauley represented himself. At the conference call, the parties agreed to a hearing date of December 12, 2006. The Administrator agreed to deliver to Mr. McCauley, no later than September 15, 2006, a list of anticipated witnesses, a brief summary of anticipated witness testimony, and copies of exhibits intended to be introduced at the hearing. Similarly, Mr. McCauley agreed to deliver his witness list, summary of anticipated witness testimony, and copies of exhibits by October 20, 2006. On November 15, 2006, Brian T. Hill, Office of the General Counsel, United States Department of Agriculture, submitted a Notice of Appearance on behalf of the Administrator, replacing Ms. Carroll.

The Chief ALJ conducted a hearing in San Antonio, Texas, on December 12, 2006. At the outset of the hearing, Mr. McCauley notified the Chief ALJ that he had never received the initial exchange from the Administrator, nor had he submitted his exchange to the Administrator. Mr. Hill, who had not been involved in the case until 2 months after the Administrator's submission was due, could not document that the Administrator had mailed the exchange to Mr. McCauley, nor was he able to reach Ms. Carroll.<sup>1</sup> Mr. McCauley stated he was thus unable to fully prepare for the hearing (Tr. 16). The Chief ALJ stated the hearing would proceed, and he would "reserve the right to continue the hearing" if Mr. McCauley needed additional time to prepare his cross-examination of witnesses (Tr. 19-20).

At the hearing, the Administrator called five witnesses and introduced 25 exhibits. Mr. McCauley testified on his own behalf and introduced no exhibits. At the conclusion of the hearing, the parties and the Chief ALJ agreed that there was no need to continue the hearing, as Mr. McCauley had "put on all his evidence and said everything he wanted to say." (Tr. 206.) Both parties submitted briefs in early February 2007.

On May 14, 2007, the Chief ALJ concluded that Mr. McCauley violated the Animal Welfare Act by acting as a dealer of regulated animals with respect to at least one transaction even though his Animal Welfare Act license had been revoked in a prior

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<sup>1</sup>An exchange is normally not filed with the Hearing Clerk; therefore, the record does not indicate that the Administrator complied with the Chief ALJ's July 28, 2006, order regarding the exchange.

decision. The Chief ALJ found the Administrator did not show by a preponderance of the evidence that Mr. McCauley acted as a dealer with respect to two wallabies he transported to Germany. The Chief ALJ assessed Mr. McCauley a \$2,000 civil penalty.

On July 9, 2007, Mr. McCauley's appeal was filed with the Hearing Clerk. I found that Mr. McCauley's appeal was timely filed.<sup>2</sup> Based upon a careful consideration of the record, I adopt the Chief ALJ's decision, with minor changes, as the final Decision and Order. Additional conclusions by the Judicial Officer follow the Chief ALJ's conclusions of law.

## **DECISION**

### **Statutory and Regulatory Background**

The Animal Welfare Act regulates “animals and activities . . . in interstate or foreign commerce or [which] substantially affect such commerce or the free flow thereof . . . in order—(1) to insure that animals intended for . . . exhibition purposes or for use as pets are provided humane care and treatment[.]” (7 U.S.C. § 2131.) The Animal Welfare Act authorizes the Secretary of Agriculture to issue licenses to dealers (7 U.S.C. § 2133) and forbids any dealer from selling or offering to sell regulated animals without a license (7 U.S.C. § 2134). The Animal Welfare Act defines “dealer” as “any person who, in

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<sup>2</sup>Notice of Receipt of Respondent's Appeal Petition.

commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of,” any animal (7 U.S.C. § 2132(f)).

The Regulations define “commerce” as “trade, traffic, transportation, or other commerce: (1) Between a place in a State and any place outside of such State, including any foreign country, or between points within the same State but through any place outside thereof, or within any territory, possession, or the District of Columbia; or (2) Which affects the commerce described in this part.” (9 C.F.R. § 1.1.) The Regulations also provide that a person whose license has been revoked “shall not be licensed in his or her own name or in any other manner” (9 C.F.R. § 2.10(b)) and that any person whose license has been revoked “shall not buy, sell, transport, exhibit, or deliver for transportation” any animal (9 C.F.R. § 2.10(c)).

### **Facts**

David McCauley is an individual doing business as Dave’s Animal Farm, whose current mailing address is in McQueeney, Texas. Mr. McCauley was licensed as a dealer under the Animal Welfare Act and was in the business of selling Bennetts wallabies and other macropods and exotic pets. He is also a published author whose book “Macropods: Their Care, Breeding, and the Rearing of Their Young” is sold through his website.<sup>3</sup> He is an expert in macropod health and has for years consulted and published in that field.

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<sup>3</sup>The United States Department of Agriculture library lists this book in its catalog.

Mr. McCauley's Animal Welfare Act license was revoked by a decision issued January 30, 2004, *In re David McCauley*, 63 Agric. Dec. 79 (2004) (CX 8).<sup>4</sup> That decision became final on March 17, 2004. Mr. McCauley has not held an Animal Welfare Act license since that time. The Complaint charges Mr. McCauley with two specific transactions that the Administrator believes constitutes acting as a dealer without an Animal Welfare Act license, as well as a general violation for advertising sales of regulated animals through his website.

The Guatemala transaction. The Administrator presented evidence that Mr. McCauley shipped a wallaby to the Guatemala National Zoo in January 2005. The wallaby was shipped from San Antonio, Texas, on Continental Airlines (CX 3) with the requisite health certificates (CX 4, CX 5). Mr. McCauley does not deny this transaction, but consistently has maintained that he was specifically and clearly told, by an unnamed

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<sup>4</sup>At the hearing and again in his brief before the Chief ALJ, Mr. McCauley continues to urge that this earlier decision be reversed, even though he did not appear at the hearing, did not file a motion for rehearing, and did not timely appeal the decision. While Mr. McCauley stated he did not receive notice of the exact date of the hearing, and the file contains no evidence as to whether he received the exact time and location of the hearing, he knew what day the hearing was scheduled to occur and elected to not appear rather than call the Chief ALJ's office or the Hearing Clerk's office to inquire why he had not been notified. Further, Mr. McCauley signed a receipt for the decision at his usual place of business on February 11, 2004 (CX 8 at 1). The decision explicitly states that it would become final 35 days after service, unless appealed, and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) provide that an appeal must be filed within 30 days after receiving service of an administrative law judge's decision. On May 13, 2004, 2 months after the appeal was required to have been filed, Mr. McCauley filed his appeal to the Judicial Officer who denied the late appeal for lack of jurisdiction.

United States Department of Agriculture veterinarian, that he was allowed to ship animals outside the United States even though his Animal Welfare Act license was revoked. He testified that he called the United States Department of Agriculture's regional office, was transferred to a staff veterinarian, and asked him a great many questions so that it was clear that the person knew what Mr. McCauley was asking. Mr. McCauley stated he was told "what you do outside of this country is your business." (Tr. 162.) Unfortunately, Mr. McCauley has no recollection as to the name of the individual who gave him this advice. Even if this advice was actually given, the fact is that the activity did not take place entirely outside the United States, since Mr. McCauley shipped the wallaby from Texas (CX 3).

Mr. McCauley also testified that, after he received the Complaint, he spoke to his custom broker, who referred him to a Dr. Okino, another United States Department of Agriculture veterinarian, who also told him that the United States Department of Agriculture did not require an Animal Welfare Act license for exporting wallabies outside the United States (Tr. 163-66). Mr. McCauley did not attempt to subpoena Dr. Okino.

Thus, it is undisputed that Mr. McCauley sold and shipped a wallaby to the Guatemala National Zoo in January 2005.

The Germany transaction. The Administrator alleges Mr. McCauley acted as a dealer with respect to two joey<sup>5</sup> wallabies he transported to Germany in May 2005.

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<sup>5</sup>A joey is a juvenile wallaby.

Mr. McCauley states he did not act as a dealer, but rather instead brought the wallabies to Germany in furtherance of his business as an expert animal consultant and to participate in the taping of a television program/video on wallabies. Mr. McCauley testified he was only paid his expenses for his trip to Germany (Tr. 181-82) with the hope that the marketing of the video that was produced would net him a profit (Tr. 203). While the Administrator proposes a finding of fact that Mr. McCauley received two air tickets to Germany, Mr. McCauley testified that he received only one such ticket, as part of his expenses, and that he used accumulated airline miles to purchase a ticket for his daughter, who accompanied him on the trip (Tr. 150-51). The record contains no testimony to support the Administrator's proposed conclusion of law that the funds advanced to Mr. McCauley by Dagmar Grubnau, his German contact, were used to purchase Mr. McCauley's daughter's airplane ticket. However, it is undisputed that Mr. McCauley received approximately \$1,150 to cover his airline ticket and fees such as the international health certificate and other inspection costs.

Mr. McCauley testified that he did not sell the wallabies to Dagmar Grubnau. He stated he gave them away because Grubnau's wife had bonded with them and because he had an arduous trip to Germany with the wallabies (Tr. 165-68). However, the health certificate relating to the shipment of the wallabies from the United States to Germany lists Dagmar Grubnau as the consignee (CX 17). In addition, describing the transaction on his website, Mr. McCauley states he had traveled to Germany and had "delivered a



pair of bennetts joeys to a customer for use in a TV documentary” and the documentary would follow “the joey’s [sic] lives until they are parents themselves.” (CX 2 at 1.)

While there is evidence that the price for wallabies can run well over \$1,000 apiece, there is no evidence of any transaction between Mr. McCauley and Grubnau that would indicate an actual sale of the two wallabies.

The Administrator also contends, with respect to securing the possession of a female wallaby to take to Germany, Mr. McCauley acted as a dealer in regards to a complicated three-way transaction.<sup>6</sup> In essence, Mr. McCauley arranged for Arnold Sorenson to trade a male wallaby to Mike Smith, with the understanding that Mike Smith would give Mr. McCauley a female wallaby to take to Germany. Mr. Sorenson understood that Mr. McCauley would eventually provide him a male wallaby and \$300 to complete the deal, but apparently Mr. McCauley has not yet provided Mr. Sorenson with the wallaby and \$300 (CX 7; Tr. 84-89).

The Administrator also contends Mr. McCauley has acted as a dealer by maintaining a website which, until at least early May 2005, indicated that Mr. McCauley was selling wallabies and other macropods, and even posted the price for some wallabies (CX 1 at 3). Mr. McCauley’s homepage indicates that he “is available for future consulting and presentations and still owns his large mob of Bennetts wallabies in Texas, which he supplies to zoos, exotic animal breeders, and the bottle-fed joeys to the public as

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<sup>6</sup>This contention is not alleged in the Complaint.

pets.” (CX 1 at 1.) Some time subsequent to May 2005 and before August 2005, the price listings were left blank on Mr. McCauley’s website. Mr. McCauley contended at the hearing that he was not in the business of selling wallabies and essentially blamed all his difficulties with the website on his webmaster, Mike Clayton, who he stated was constantly delinquent in complying with his requests to update his website (Tr. 197-202). Mr. McCauley stated that he was paying him too much money to switch to someone else. He did not attempt to subpoena Mr. Clayton, even though Clayton’s whereabouts is known to Mr. McCauley since he is apparently an assistant professor at a local university (Tr. 197). Mr. McCauley also offered no explanation as to why Mr. Clayton was able to update his website to include details of his Germany trip, but did not eliminate the page “Pricing for Wallabies” on the website.

### **Discussion**

I find that Mr. McCauley has violated the Animal Welfare Act by acting as a dealer without an Animal Welfare Act license. However, I only find that he violated the Animal Welfare Act with regard to the transaction with the Guatemala National Zoo. Although it is a close question, I find that Mr. McCauley did not act as a dealer with regard to the transaction involving the shipment of wallabies to Germany. In addition, although I find Mr. McCauley was clearly holding himself out as a dealer on his website, and continues to do so, that in itself is not a violation of the Animal Welfare Act—a transaction must occur for there to be a violation, and only the Guatemalan transaction

was proven by a preponderance of the evidence. Accordingly, I order Mr. McCauley to cease and desist from violations of the Animal Welfare Act and the Regulations and assess Mr. McCauley a \$2,000 civil penalty.

At the outset, it is unequivocally clear that “commerce,” as used in the Animal Welfare Act and Regulations, covers the sale and shipment of animals from within the United States to a point outside of the United States. There is no dispute that such a transaction took place with respect to the sale of a wallaby to the Guatemala National Zoo. The principal area of dispute centers on Mr. McCauley’s claim that he was told by an unidentified veterinarian that it was permissible for him to ship wallabies outside the United States without an Animal Welfare Act license, and was told after-the-fact by another United States Department of Agriculture veterinarian that his shipping of animals outside the country without an Animal Welfare Act license was legal. The problem with Mr. McCauley’s claim of “justifiable reliance” is that the Regulations clearly define commerce as including transactions between a place in a state and any foreign country. There is nothing ambiguous about this language, and it was easily discernable to Mr. McCauley, who had a copy of the Regulations (Tr. 137-38). Even if Mr. McCauley could produce United States Department of Agriculture witnesses who gave him incorrect advice, he still would not prevail on this issue. The clear language of the Regulation prevails over the incorrect interpretation of an employee. While clear proof of bad agency advice might go to the issue of Mr. McCauley’s good faith on this issue and have

an impact on the sanction, the failure to name the person who allegedly gave him the bad advice before the transaction and the failure to subpoena the person who allegedly confirmed this bad advice after-the-fact, leads me to reject this defense. Further, the alleged advice does not appear to cover Mr. McCauley's transaction anyway, since the undisputed evidence clearly demonstrates that the wallaby was shipped from within the United States.

The German transaction presents a closer question. Bearing in mind that the Administrator has the burden of proof, I must rule in favor of Mr. McCauley on this issue. The revocation of Mr. McCauley's Animal Welfare Act license does not require Mr. McCauley to abandon all activities involving macropods. The loss of his license does not ban Mr. McCauley from utilizing his expertise by, for instance, writing, lecturing, and consulting about macropods. The record does not contain sufficient evidence to contradict Mr. McCauley's account of his trip to Germany. He stated he was being paid his expenses for a documentary on wallabies, and there is no evidence in this record to the contrary. The approximately \$1,100 Mr. McCauley states he was paid for his airline tickets and other expenses does not seem excessive, particularly in light of the length of the trip—less than 2 weeks. The record does not contain any evidence that he was paid any amount that would approach the amount he normally charged for joey wallabies. The record contains no evidence to support the Administrator's contention that the costs of Mr. McCauley's daughter's ticket to Germany was borne by anyone in Germany, rather

than Mr. McCauley's un rebutted statement that he used his accumulated airline miles to finance her ticket and paid her taxes with his own money. Basically, Mr. McCauley's account—that he took the trip to help create a documentary film/video with the hope that he would receive a share of the profits, if any, as well as an increase in profits from the sales of his book, has not been countered by the Administrator. Even though I find Mr. McCauley's account that he decided to donate the wallabies to be less than convincing,<sup>7</sup> the Administrator needs more than surmise to meet his burden of proof.

Similarly, Mr. McCauley's role in the three-way transaction in which Mr. McCauley participated to obtain a female joey wallaby to take with him to Germany does not appear to be that of a dealer as defined in the Animal Welfare Act. The net impact of the transaction is that Mr. McCauley arranged for a trade to allow him to obtain a female joey for his own benefit to take with him to Germany to utilize in the preparation of a documentary on wallabies.

I also find, even if Mr. McCauley advertised that he had wallabies for sale, that does not make him a dealer. The Administrator has consistently proven its unlicensed dealer cases, against Mr. McCauley and others, by demonstrating sales of animals at a time when the seller did not have an Animal Welfare Act license. *E.g., In re Marilyn Shepherd*, 65 Agric. Dec 1019 (2006). Each time a person without an Animal Welfare

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<sup>7</sup>Mr. McCauley's website narrative of the trip, where he indicates that the documentary would follow the joeys "until they are parents themselves," is flatly inconsistent with his testimony that he had intended to bring wallabies back to the United States (CX 2 at 1).

Act license acts as a dealer—generally by buying or selling a regulated animal—that person commits a violation of the Animal Welfare Act. Advertising prices for regulated animals does not in itself constitute a violation, as advertising is not listed as one of the regulated acts for which an Animal Welfare Act license is required. The Administrator’s brief is devoid of case citations on this issue, and I have found nothing to indicate that the mere act of advertising constitutes violative conduct.

I assess a \$2,000 civil penalty for the violation committed by selling and shipping a wallaby to the Guatemala National Zoo. Dealing animals without an Animal Welfare Act license is among the most serious violations of the Animal Welfare Act.

Mr. McCauley was fully aware that his Animal Welfare Act license had been revoked. His refusal to pay the civil penalty assessed in *In re David McCauley*, 63 Agric. Dec. 79 (2004); the fact that he has a history of prior violations; and the unambiguous language in the Regulations support a finding that his violation here was willful and that his conduct can be characterized as lacking good faith.

### **Findings of Fact**

1. David McCauley is an individual doing business as Dave’s Animal Farm and whose current mailing address is in McQueeney, Texas 78123.
2. Mr. McCauley at one time held Animal Welfare Act license # 74-B-0439. This license was revoked (and a \$10,000 civil penalty assessed) on January 30, 2004, in

*In re David McCauley*, 63 Agric. Dec. 79 (2004). The revocation became a final decision of the Secretary of Agriculture on March 17, 2004.

3. On or about January 18, 2005, Mr. McCauley sold a wallaby to the Guatemala National Zoo.

4. On or about January 18, 2005, Mr. McCauley transported a wallaby from Texas to the Guatemala National Zoo.

5. On or about May 11, 2005, Mr. McCauley transported two wallabies to Dagmar Grubnau in Germany. These wallabies were transported in order to allow Mr. McCauley to assist in the preparation of a documentary. Mr. McCauley received some expenses and a promise of a percentage of profits that would be generated from the documentary. Although the wallabies remained in Germany after Mr. McCauley returned to the United States, there is no evidence that Mr. McCauley sold the wallabies.

6. From on or about the time Mr. McCauley's Animal Welfare Act license was revoked through at least August 22, 2005, Mr. McCauley advertised the sale of wallabies on his website.

### **Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Mr. McCauley's sale and transportation of a wallaby to the Guatemala National Zoo in January 2005, when he did not possess an Animal Welfare Act license,

was a willful violation of section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

3. Mr. McCauley's transporting of two wallabies to Germany did not constitute a violation of the Animal Welfare Act or the Regulations.

4. Mr. McCauley's advertising wallabies for sale on his website did not in itself constitute a violation of the Animal Welfare Act.

5. Upon consideration of the factors enumerated in the Animal Welfare Act, I assess Mr. McCauley a \$2,000 civil penalty.

#### **ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER**

Mr. McCauley raises due process concerns in his appeal petition. He claims the Administrator never provided a list of anticipated witnesses, a brief summary of anticipated witness testimony, and copies of exhibits intended to be introduced at the hearing, as he was ordered to do by the Chief ALJ. The Administrator failed to provide a satisfactory explanation as to whether the documents were provided and if not, why not.<sup>8</sup> Mr. McCauley's suggested recourse for the Administrator's failure to provide the documents is dismissal of the case. Such a remedy is inappropriate.

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<sup>8</sup>The Administrator's suggestion, at page 3 of its Opposition to Respondents [sic] Petition of Appeal, that Mr. McCauley's use of a Post Office Box, which he argues "does not lend itself to the usage of certified mail that is signed in order to provide validation of receipt," is the cause of the problems regarding production of the documents, borders on the absurd. The United States Postal Service's Direct Mail Manual (DMM) states "any individual box customer or organization may receive through the box any mail properly addressed to the box number." DMM 508 § 4.4.1 located at <http://pe.usps.gov/text/dmm300/508.htm>.



The appropriate remedy is to ensure that Mr. McCauley had ample opportunity to present his case.<sup>9</sup> The Chief ALJ accomplished this. After noting that Mr. McCauley had an obligation to notify the Chief ALJ about the missed delivery of documents, the Chief ALJ stated “the witnesses are going to testify.” (Tr. 15.) Addressing Mr. McCauley, the Chief ALJ stated:

I think both parties are at fault here. We’ve got all the witnesses here. We can at least get their testimony on the record, and at the conclusion of the testimony, if there’s a need to continue the hearing, we may be able to do something through audiovisual -- you know, we have these television set-ups, and I’m sure there’s one around here somewhere where you could -- if you had further questions to ask or if you had other witnesses that you might want to call, that you would have called if you had known about this stuff, we might have to make some sort of accommodation.

Tr. 15-16. Then, to counsel for the Administrator, the Chief ALJ said:

I’m going to let you call them. If Mr. McCauley can demonstrate that he’s been prejudiced by the fact that, you know, he doesn’t know what to ask these people or he isn’t prepared, I may have to continue the hearing, and we may have to, you know, either call witnesses back or do something via audiovisual communication . . . so that he has a chance to prepare and recross-examine them. We may have to do that.

Tr. 18. After all the testimony and an off-the-record discussion with both parties, the

Chief ALJ concluded:

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<sup>9</sup>As the Chief ALJ noted during the hearing, Mr. McCauley is not without fault with respect to his failure to receive the Administrator’s witness list, summary of anticipated testimony, and copies of proposed exhibits prior to the hearing. Mr. McCauley was aware of the date on which the documents were to be sent, yet he failed to raise the issue until he arrived for the hearing. Furthermore, Mr. McCauley failed to comply with the order himself, in that he did not provide his witness list, summary of anticipated testimony, and copies of proposed exhibits to the Administrator as the Chief ALJ ordered.

Mr. McCauley, I believe, pretty much has gotten his whole case on, so I don't see any need to continue the hearing to another date. I mean, he's put on all his evidence and said everything he wanted to say.

Tr. 206. Mr. McCauley did not object to this conclusion, he did not ask for a continuation of the hearing, nor did he indicate at a later date that he had additional evidence to provide. Absent any disagreement by Mr. McCauley that he fully presented his case, I must conclude that additional hearing was not necessary.

There is one other point that must be addressed. In his Appeal Petition, Mr. McCauley notes that he plans to continue with his "writing and macropod consulting business." He continues that he has been unable to determine the parameters of authorized actions and unauthorized actions as he continues his business. Based on the revocation of his Animal Welfare Act license in *In re David McCauley*, 63 Agric. Dec. 79 (2004), Mr. McCauley cannot act as a dealer. Mr. McCauley should seek advice from the Animal and Plant Health Inspection Service regarding the limits on his consulting business.

For the foregoing reasons, the following Order is issued.

### **ORDER**

1. Mr. McCauley, his agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations, and in particular, shall cease and desist from

engaging in any activity for which a license is required under the Animal Welfare Act and Regulations without being licensed as required.

2. Mr. McCauley is assessed a \$2,000 civil penalty, which shall be paid by a certified check or money order with the notation "AWA Docket No. 06-0009" on the front of the check or money order made payable to the Treasurer of United States and shall be sent, within 60 days after service of this Order, to:

Brian T. Hill  
Office of the General Counsel  
United States Department of Agriculture  
Room 2343 South Building  
1400 Independence Ave., SW  
Washington, DC 20250-1417

#### **RIGHT TO JUDICIAL REVIEW**

David McCauley has the right to seek judicial review of the Order in this Decision and Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. Mr. McCauley must seek judicial review within 60 days after entry of the Order in this Decision and Order.<sup>10</sup> The date of entry of the Order in this Decision and Order is April 16, 2008.

Done at Washington, DC

April 16, 2008

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William G. Jenson  
Judicial Officer

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<sup>10</sup>7 U.S.C. § 2149(c).