

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 04-0023
)
Mary Jean Williams, an)
individual; John Bryan Williams,)
an individual; and Deborah Ann)
Milette, an individual,)
) **Decision and Order as to**
Respondents) **Deborah Ann Milette**

PROCEDURAL HISTORY

Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on August 19, 2004. Complainant 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].

Complainant alleges Mary Jean Williams, John Bryan Williams, and Deborah Ann Milette willfully violated the Regulations (Compl. ¶¶ 5-11). The Hearing Clerk

served Respondent Deborah Ann Milette with the Complaint, the Rules of Practice, and a service letter on February 18, 2005.¹ Respondent Deborah Ann Milette failed to file an answer to the Complaint within 20 days after service as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)).

On March 18, 2005, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a Motion for Adoption of Decision and Order as to Respondent Deborah Ann Milette [hereinafter Motion for Default Decision] and a proposed Decision and Order as to Respondent Deborah Ann Milette [hereinafter Proposed Default Decision]. On April 14, 2005, Respondent Deborah Ann Milette filed objections to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision.

On April 28, 2005, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued a Decision and Order [hereinafter Initial Decision]: (1) concluding Respondent Deborah Ann Milette willfully violated sections 2.40(a) and 2.131(a)(1) of the Regulations (9 C.F.R. §§ 2.40(a), .131(a)(1)); (2) ordering Respondent Deborah Ann Milette to cease and desist from violating the Animal Welfare Act, the Regulations, and the standards issued under the Animal Welfare Act (9 C.F.R. §§ 3.1-.142) [hereinafter the Standards]; and (3) revoking Respondent Deborah Ann Milette's Animal Welfare Act license (Animal Welfare Act license number 21-C-0218) (Initial Decision at 4-6).

¹United States Postal Service Track and Confirm for Article Number 7003 2260 0005 5721 3953.

On May 17, 2005, Respondent Deborah Ann Milette appealed the ALJ's Initial Decision to the Judicial Officer. On June 6, 2005, Complainant filed "Complainant's Response to Respondent Deborah Ann Milette's Appeal Petition." On June 13, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision as to Respondent Deborah Ann Milette.

Based upon a careful review of the record, I agree with the ALJ's Initial Decision as it relates to Respondent Deborah Ann Milette, except that I disagree with the ALJ's failure to conclude Respondent Deborah Ann Milette willfully violated section 2.40(b)(1) of the Regulations (9 C.F.R. § 2.40(b)(1) (2004)), as alleged in the Complaint, and the ALJ's revocation of Respondent Deborah Ann Milette's Animal Welfare Act license. Therefore, I adopt the ALJ's Initial Decision as it relates to Respondent Deborah Ann Milette as the final Decision and Order as to Deborah Ann Milette, with exceptions. Additional conclusions by the Judicial Officer follow the ALJ's conclusions of law, as restated.

APPLICABLE STATUTORY AND REGULATORY PROVISIONS

7 U.S.C.:

TITLE 7—AGRICULTURE

.....

**CHAPTER 54—TRANSPORTATION, SALE, AND HANDLING
OF CERTAIN ANIMALS**

§ 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 the 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.

§ 2132. Definitions

When used in this chapter—

.....

(h) The term “exhibitor” means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the

public for compensation, as determined by the Secretary, and such term includes carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not; but such term excludes retail pet stores, organizations sponsoring and all persons participating in State and country fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary[.]

§ 2149. Violations by licensees

(a) Temporary license suspension; notice and hearing; revocation

If the Secretary has reason to believe that any person licensed as a dealer, exhibitor, or operator of an auction sale subject to section 2142 of this title, has violated or is violating any provision of this chapter, or any of the rules or regulations or standards promulgated by the Secretary hereunder, he may suspend such person's license temporarily, but not to exceed 21 days, and after notice and opportunity for hearing, may suspend for such additional period as he may specify, or revoke such license, if such violation is determined to have occurred.

(b) Civil penalties for violation of any section, etc.; separate offenses; notice and hearing; appeal; considerations in assessing penalty; compromise of penalty; civil action by Attorney General for failure to pay penalty; district court jurisdiction; failure to obey cease and desist order

Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 2142 of this title, that violates any provision of this chapter, or any rule, regulation, or standard promulgated by the Secretary thereunder, may be assessed a civil penalty by the Secretary of not more than \$2,500 for each such violation, and the Secretary may also make an order that such person shall cease and desist from continuing such violation. Each violation and each day during which a violation continues shall be a separate offense. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing with respect to the alleged violation, and the order of the Secretary assessing a penalty and making a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States Court of Appeals. The Secretary shall give due consideration to the appropriateness

of the penalty with respect to the size of the business of the person involved, the gravity of the violation, the person's good faith, and the history of previous violations. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed by a final order under this section, the Secretary shall request the Attorney General to institute a civil action in a district court of the United States or other United States court for any district in which such person is found or resides or transacts business, to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. Any person who knowingly fails to obey a cease and desist order made by the Secretary under this section shall be subject to a civil penalty of \$1,500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

(c) Appeal of final order by aggrieved person; limitations; exclusive jurisdiction of United States Courts of Appeals

Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 2142 of this title, aggrieved by a final order of the Secretary issued pursuant to this section may, within 60 days after entry of such an order, seek review of such order in the appropriate United States Court of Appeals in accordance with the provisions of sections 2341, 2343 through 2350 of title 28, and such court shall have exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of the Secretary's order.

§ 2151. Rules and regulations

The Secretary is authorized to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this chapter.

7 U.S.C. §§ 2131, 2132(h), 2149(a)-(c), 2151.

28 U.S.C.:

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

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PART VI—PARTICULAR PROCEEDINGS

....

CHAPTER 163—FINES, PENALTIES AND FORFEITURES

§ 2461. Mode of recovery

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FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT

SHORT TITLE

SECTION 1. This Act may be cited as the “Federal Civil Penalties Inflation Adjustment Act of 1990”.

FINDINGS AND PURPOSE

SEC. 2. (a) FINDINGS.—The Congress finds that—

(1) the power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring violations and furthering the policy goals embodied in such laws and regulations;

(2) the impact of many civil monetary penalties has been and is diminished due to the effect of inflation;

(3) by reducing the impact of civil monetary penalties, inflation has weakened the deterrent effect of such penalties; and

(4) the Federal Government does not maintain comprehensive, detailed accounting of the efforts of Federal agencies to assess and collect civil monetary penalties.

(b) PURPOSE—The purpose of this Act is to establish a mechanism that shall—

(1) allow for regular adjustment for inflation of civil monetary penalties;

- (2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and
- (3) improve the collection by the Federal Government of civil monetary penalties.

DEFINITIONS

SEC. 3. For purposes of this Act, the term—

- (1) “agency” means an Executive agency as defined under section 105 of title 5, United States Code, and includes the United States Postal Service;
- (2) “civil monetary penalty” means any penalty, fine, or other sanction that—
 - (A)(i) is for a specific monetary amount as provided by Federal law; or
 - (ii) has a maximum amount provided for by Federal law; and
 - (B) is assessed or enforced by an agency pursuant to Federal law; and
 - (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts; and
- (3) “Consumer Price Index” means the Consumer Price Index for all-urban consumers published by the Department of Labor.

CIVIL MONETARY PENALTY INFLATION ADJUSTMENT REPORTS

SEC. 4. The head of each agency shall, not later than 180 days after the date of enactment of the Debt Collection Improvement Act of 1996 [Apr. 26, 1996], and at least once every 4 years thereafter—

- (1) by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency, except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.], the Tariff Act of 1930 [19 U.S.C. 1202 et seq.], the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], or the Social Security Act [42 U.S.C. 301 et seq.], by the inflation adjustment described under section 5 of this Act; and
- (2) publish each such regulation in the Federal Register.

COST-OF-LIVING ADJUSTMENTS OF CIVIL
MONETARY PENALTIES

SEC. 5. (a) ADJUSTMENT.—The inflation adjustment under section 4 shall be determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this subsection shall be rounded to the nearest—

- (1) multiple of \$10 in the case of penalties less than or equal to \$100;
- (2) multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;
- (3) multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;
- (4) multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;
- (5) multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and
- (6) multiple of \$25,000 in the case of penalties greater than \$200,000.

(b) DEFINITION.—For purposes of subsection (a), the term “cost-of-living adjustment” means the percentage (if any) for each civil monetary penalty by which—

- (1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds
- (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

ANNUAL REPORT

SEC. 6. Any increase under this Act in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.

LIMITATION ON INITIAL ADJUSTMENT.—The first adjustment of a civil monetary penalty . . . may not exceed 10 percent of such penalty.

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

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PART 3—DEBT MANAGEMENT

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SUBPART E—ADJUSTED CIVIL MONETARY PENALTIES

§ 3.91 Adjusted civil monetary penalties.

(a) *In general.* The Secretary will adjust the civil monetary penalties, listed in paragraph (b), to take account of inflation at least once every 4 years as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. No. 104-134).

(b) *Penalties—*

....

(2) *Animal and Plant Health Inspection Service.*

....

(v) Civil penalty for a violation of Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of \$2,750; and knowing failure to obey a cease and desist order has a civil penalty of \$1,650.

7 C.F.R. § 3.91(a), (b)(2)(v).

9 C.F.R.:

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

**CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE,
DEPARTMENT OF AGRICULTURE**

SUBCHAPTER A—ANIMAL WELFARE

PART 1—DEFINITION OF TERMS

§ 1.1 Definitions.

For the purposes of this subchapter, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also signify the plural and the masculine form shall also signify the feminine. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

. . . .

Exhibitor means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not. This term excludes retail pet stores, horse and dog races, organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, field trials, coursing events, purebred dog and cat shows and any other fairs or exhibitions intended to advance agricultural arts and sciences as may be determined by the Secretary.

PART 2—REGULATIONS

....

SUBPART D—ATTENDING VETERINARIAN AND ADEQUATE VETERINARY CARE

§ 2.40 Attending veterinarian and adequate veterinary care (dealers and exhibitors).

(a) Each dealer or exhibitor shall have an attending veterinarian who shall provide adequate veterinary care to its animals in compliance with this section.

(1) Each dealer and exhibitor shall employ an attending veterinarian under formal arrangements. In the case of a part-time attending veterinarian or consultant arrangements, the formal arrangements shall include a written program of veterinary care and regularly scheduled visits to the premises of the dealer or exhibitor; and

(2) Each dealer and exhibitor shall assure that the attending veterinarian has appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use.

(b) Each dealer or exhibitor shall establish and maintain programs of adequate veterinary care that include:

(1) The availability of appropriate facilities, personnel, equipment, and services to comply with the provisions of this subchapter[.]

SUBPART I—MISCELLANEOUS

....

§ 2.131 Handling of animals.

(a)(1) Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort.

**ADMINISTRATIVE LAW JUDGE'S
INITIAL DECISION
(AS RESTATED)**

Statement of the Case

Respondent Deborah Ann Milette failed to file an answer to the Complaint within the time prescribed in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides the failure to file an answer within the time provided in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) shall be deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the failure to file an answer or the admission by the answer of all the material allegations of fact contained in the complaint, constitutes a waiver of hearing. Accordingly, the material allegations in the Complaint that relate to Respondent Deborah Ann Milette are adopted as findings of fact. This Decision and Order as to Deborah Ann Milette is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Deborah Ann Milette is an individual whose business mailing address is 30-8 Needle Park Circle, Queensbury, New York 12804. At all times material to this proceeding, Respondent Deborah Ann Milette was a licensed *exhibitor*, as that word is defined in the Animal Welfare Act and the Regulations, and held Animal Welfare Act license number 21-C-0218.

2. Respondent Deborah Ann Milette has a small business. The gravity of Respondent Deborah Ann Milette's violations of the Regulations is great. Respondent Deborah Ann Milette has no record of previous violations of the Animal Welfare Act, the Regulations, or the Standards.

3. On September 27, 2002, Respondent Deborah Ann Milette failed to have an attending veterinarian provide adequate veterinary care to animals. Specifically, Respondent Deborah Ann Milette, who is not a veterinarian, provided a sedative solution, which was administered to a young tiger. (9 C.F.R. § 2.40(a) (2004).)

4. On September 27, 2002, Respondent Deborah Ann Milette failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate personnel. Specifically, Respondent Deborah Ann Milette failed to provide personnel capable of handling a tiger safely. (9 C.F.R. § 2.40(b)(1) (2004).)

5. On September 27, 2002, Respondent Deborah Ann Milette failed to handle animals as expeditiously and carefully as possible in a manner that would not cause unnecessary discomfort, behavioral stress, or physical harm. Specifically, Respondent Deborah Ann Milette, who is not a veterinarian, administered or attempted to administer sedatives to a young tiger. (9 C.F.R. § 2.131(a)(1) (2004) [9 C.F.R. § 2.131(b)(1) (2005)].)

Conclusions of Law

1. On September 27, 2002, Respondent Deborah Ann Milette failed to have an attending veterinarian provide adequate veterinary care to animals. Specifically,

Respondent Deborah Ann Milette, who is not a veterinarian, provided a sedative solution, which was administered to a young tiger, in willful violation of section 2.40(a) of the Regulations (9 C.F.R. § 2.40(a) (2004)).

2. On September 27, 2002, Respondent Deborah Ann Milette failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate personnel. Specifically, Respondent Deborah Ann Milette failed to provide personnel capable of handling tigers safely, in willful violation of section 2.40(b)(1) of the Regulations (9 C.F.R. § 2.40(b)(1) (2004)).

3. On September 27, 2002, Respondent Deborah Ann Milette failed to handle animals as expeditiously and carefully as possible in a manner that would not cause unnecessary discomfort, behavioral stress, or physical harm. Specifically, Respondent Deborah Ann Milette, who is not a veterinarian, administered or attempted to administer sedatives to a young tiger, in willful violation of section 2.131(a)(1) of the Regulations (9 C.F.R. § 2.131(a)(1) (2004) [9 C.F.R. § 2.131(b)(1) (2005)])

ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER

Respondent Deborah Ann Milette raises four issues in her appeal petition. First, Respondent Deborah Ann Milette denies the material allegations of the Complaint.

Respondent Deborah Ann Milette's denial of the allegations in the Complaint comes far too late to be considered. Respondent Deborah Ann Milette is deemed, for purposes of this proceeding, to have admitted the allegations in the Complaint because she failed to file an answer to the Complaint within 20 days after the Hearing Clerk

served her with the Complaint. The Hearing Clerk served Respondent Deborah Ann Milette with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter on February 18, 2005.² Sections 1.136(a), 1.136(c), 1.139, and 1.141(a) of the Rules of Practice state the time within which an answer must be filed and the consequences of failing to file a timely answer, as follows:

§ 1.136 Answer.

(a) *Filing and service.* Within 20 days after the service of the complaint . . . , the respondent shall file with the Hearing Clerk an answer signed by the respondent or the attorney of record in the proceeding

. . . .

(c) *Default.* Failure to file an answer within the time provided under paragraph (a) of this section shall be deemed, for purposes of the proceeding, an admission of the allegations in the Complaint, and failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation, unless the parties have agreed to a consent decision pursuant to § 1.138.

§ 1.139 Procedure upon failure to file an answer or admission of facts.

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.

²See note 1.

§ 1.141 Procedure for hearing.

(a) *Request for hearing.* Any party may request a hearing on the facts by including such request in the complaint or answer, or by a separate request, in writing, filed with the Hearing Clerk within the time in which an answer may be filed Failure to request a hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing.

7 C.F.R. §§ 1.136(a), (c), .139, .141(a).

Moreover, the Complaint informs Respondent Deborah Ann Milette of the consequences of failing to file a timely answer, as follows:

[T]his complaint shall be served upon the respondents, who shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an answer shall constitute an admission of all the material allegations of this complaint.

Compl. at 4.

Similarly, the Hearing Clerk informed Respondent Deborah Ann Milette in the August 20, 2004, service letter that a timely answer must be filed pursuant to the Rules of Practice and that failure to file a timely answer to any allegation in the Complaint would constitute an admission of that allegation, as follows:

CERTIFIED RECEIPT REQUESTED

August 20, 2004

Ms. Mary Jean Williams
Mr. John Bryan Williams
Route 1, Box 67
Ivanhoe, Texas 75447

Ms. Deborah Ann Milette
30-8 Needle Park Circle
Queensbury, New York 12804

Dear Sir/Madame:

Subject: In re: Mary Jean Williams, an individual; John B. Williams, an individual; and Deborah Ann Milette, an individual, Respondents - AWA Docket No. 04-0023

Enclosed is a copy of a Complaint, which has been filed with this office under the Animal Welfare Act, as amended.

Also enclosed is a copy of the Rules of Practice which govern the conduct of these proceedings. You should familiarize yourself with the rules in that the comments which follow are not a substitute for their exact requirements.

The rules specify that you may represent yourself personally or by an attorney of record. Unless an attorney files an appearance in your behalf, it shall be presumed that you have elected to represent yourself personally. Most importantly, you have 20 days from the receipt of this letter to file with the Hearing Clerk an original and three copies of your written and signed answer to the complaint. It is necessary that your answer set forth any defense you wish to assert, and to specifically admit, deny or explain each allegation of the complaint. Your answer may include a request for an oral hearing. Failure to file an answer or filing an answer which does not deny the material allegations of the complaint, shall constitute an admission of those allegations and a waiver of your right to an oral hearing.

In the event this proceeding does go to hearing, the hearing shall be formal in nature and will be held and the case decided by an Administrative Law Judge on the basis of exhibits received in evidence and sworn testimony subject to cross-examination.

You must notify us of any future address changes. Failure to do so may result in a judgment being entered against you without your knowledge. We also need your present and future telephone number.

Your answer, as well as any motions or requests that you may hereafter wish to file in this proceeding should be submitted in quadruplicate to the Hearing Clerk, OALJ, Room 1081, South Building, United States Department of Agriculture, Washington, D.C. 20250-9200.

Questions you may have respecting the possible settlement of this case should be directed to the attorney whose name and telephone number appears on the last page of the complaint.

Sincerely,

/s/

Joyce A. Dawson
Hearing Clerk

Respondent Deborah Ann Milette's answer was due no later than March 10, 2005.

Respondent Deborah Ann Milette's first filing in this proceeding is dated April 9, 2005, and was filed April 14, 2005, 1 month 4 days after Respondent Deborah Ann Milette's answer was due. Respondent Deborah Ann Milette's failure to file a timely answer is deemed an admission of the allegations of the Complaint (7 C.F.R. § 1.136(a), (c)) and constitutes a waiver of hearing (7 C.F.R. §§ 1.139, .141(a)).

On March 18, 2005, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed Complainant's Motion for Default Decision and Complainant's Proposed Default Decision. Respondent Deborah Ann Milette filed objections to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision on April 14, 2005.

On April 28, 2005, the ALJ issued an Initial Decision: (1) concluding Respondent Deborah Ann Milette willfully violated sections 2.40(a) and 2.131(a)(1) of the Regulations (9 C.F.R. §§ 2.40(a), .131(a)(1)); (2) ordering Respondent Deborah Ann Milette to cease and desist from violating the Animal Welfare Act, the Regulations, and the Standards; and (3) revoking Respondent Deborah Ann Milette's Animal Welfare Act license (Animal Welfare Act license number 21-C-0218) (Initial Decision at 4-6).

Although, on rare occasions, default decisions have been set aside for good cause shown or where the complainant states the complainant does not object to setting aside

the default decision,³ generally there is no basis for setting aside a default decision that is based upon a respondent's failure to file a timely answer.⁴

³See *In re Dale Goodale*, 60 Agric. Dec. 670 (2001) (Remand Order) (setting aside the default decision because the administrative law judge adopted apparently inconsistent findings of a dispositive fact in the default decision and the order in the default decision was not clear); *In re Deora Sewnanan*, 60 Agric. Dec. 688 (2001) (setting aside the default decision because the respondent was not served with the complaint); *In re H. Schnell & Co.*, 57 Agric. Dec. 1722 (1998) (Remand Order) (setting aside the default decision, which was based upon the respondent's statements during two telephone conference calls with the administrative law judge and the complainant's counsel, because the respondent's statements did not constitute a clear admission of the material allegations in the complaint and concluding the default decision deprived the respondent of its right to due process under the Fifth Amendment to the Constitution of the United States); *In re Arizona Livestock Auction, Inc.*, 55 Agric. Dec. 1121 (1996) (setting aside the default decision because facts alleged in the complaint and deemed admitted by failure to answer were not sufficient to find a violation of the Packers and Stockyards Act or jurisdiction over the matter by the Secretary of Agriculture); *In re Veg-Pro Distributors*, 42 Agric. Dec. 273 (1983) (Remand Order) (setting aside the default decision because service of the complaint by registered and regular mail was returned as undeliverable, and the respondent's license under the Perishable Agricultural Commodities Act had lapsed before service was attempted), *final decision*, 42 Agric. Dec. 1173 (1983); *In re Vaughn Gallop*, 40 Agric. Dec. 217 (1981) (Order Vacating Default Decision and Remanding Proceeding) (vacating the default decision and remanding the case to the administrative law judge to determine whether just cause exists for permitting late answer), *final decision*, 40 Agric. Dec. 1254 (1981); *In re J. Fleishman & Co.*, 38 Agric. Dec. 789 (1978) (Remand Order) (remanding the proceeding to the administrative law judge for the purpose of receiving evidence because the complainant had no objection to the respondent's motion for remand), *final decision*, 37 Agric. Dec. 1175 (1978); *In re Richard Cain*, 17 Agric. Dec. 985 (1958) (Order Reopening After Default) (setting aside a default decision and accepting a late-filed answer because the complainant did not object to the respondent's motion to reopen after default).

⁴See generally *In re Bodie S. Knapp*, 64 Agric. Dec. ____ (May 31, 2005) (holding the default decision was properly issued where the respondent filed his answer 1 month 15 days after his answer was due and holding the respondent is deemed, by his failure to file a timely answer, to have admitted the violations of the Regulations and Standards alleged in the complaint); *In re Wanda McQuary* (Decision as to Wanda McQuary and
(continued...)

⁴(...continued)

Randall Jones), 62 Agric. Dec. 452 (2003) (holding the default decision was properly issued where respondent Wanda McQuary filed her answer 6 months 20 days after she was served with the complaint and respondent Randall Jones filed his answer 6 months 5 days after he was served with the complaint and holding the respondents are deemed, by their failures to file timely answers, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re David Finch*, 61 Agric. Dec. 567 (2002) (holding the default decision was properly issued where the respondent filed his answer 3 months 18 days after he was served with the complaint and holding the respondent is deemed, by his failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re Heartland Kennels, Inc.*, 61 Agric. Dec. 492 (2002) (holding the default decision was properly issued where the respondents filed their answer 3 months 9 days after they were served with the complaint and holding the respondents are deemed, by their failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re Steven Bourk* (Decision as to Steven Bourk and Carmella Bourk), 61 Agric. Dec. 25 (2002) (holding the default decision was properly issued where respondent Steven Bourk's first and only filing was 10 months 9 days after he was served with the complaint and respondent Carmella Bourk's first filing was 5 months 5 days after she was served with the complaint; stating both respondents are deemed, by their failures to file timely answers, to have admitted the violations of the Animal Welfare Act and the Regulations alleged in the complaint); *In re J. Wayne Shaffer*, 60 Agric. Dec. 444 (2001) (holding the default decision was properly issued where the respondents' first filing was 5 months 13 days after they were served with the complaint and 4 months 24 days after the respondents' answer was due and holding the respondents are deemed, by their failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations alleged in the complaint); *In re Beth Lutz*, 60 Agric. Dec. 53 (2001) (holding the default decision was properly issued where the respondent filed her answer 23 days after she was served with the complaint and 3 days after the respondent's answer was due and holding the respondent is deemed, by her failure to file a timely answer, to have admitted the violations of the Regulations alleged in the complaint); *In re Curtis G. Foley*, 59 Agric. Dec. 581 (2000) (holding the default decision was properly issued where the respondents filed their answer 6 months 5 days after they were served with the complaint and 5 months 16 days after the respondents' answer was due and holding the respondents are deemed, by their failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re Nancy M. Kutz* (Decision as to Nancy M. Kutz), 58 Agric. Dec. 744 (1999) (holding the

(continued...)

⁴(...continued)

default decision was properly issued where the respondent's first filing in the proceeding was 28 days after service of the complaint on the respondent and the filing did not respond to the allegations of the complaint and holding the respondent is deemed, by her failure to file a timely answer and by her failure to deny the allegations of the complaint, to have admitted the violations of the Animal Welfare Act and the Regulations alleged in the complaint); *In re Anna Mae Noell*, 58 Agric. Dec. 130 (1999) (holding the default decision was properly issued where the respondents filed an answer 49 days after service of the complaint on the respondents and holding the respondents are deemed, by their failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint), *appeal dismissed sub nom. The Chimp Farm, Inc. v. United States Dep't of Agric.*, No. 00-10608-A (11th Cir. July 20, 2000); *In re Jack D. Stowers*, 57 Agric. Dec. 944 (1998) (holding the default decision was properly issued where the respondent filed his answer 1 year 12 days after service of the complaint on the respondent and holding the respondent is deemed, by his failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re James J. Everhart*, 56 Agric. Dec. 1400 (1997) (holding the default decision was properly issued where the respondent's first filing was more than 8 months after service of the complaint on the respondent and holding the respondent is deemed, by his failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations alleged in the complaint); *In re John Walker*, 56 Agric. Dec. 350 (1997) (holding the default decision was properly issued where the respondent's first filing was 126 days after service of the complaint on the respondent and holding the respondent is deemed, by his failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re Mary Meyers*, 56 Agric. Dec. 322 (1997) (holding the default decision was properly issued where the respondent's first filing was 117 days after the respondent's answer was due and holding the respondent is deemed, by her failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re Dora Hampton*, 56 Agric. Dec. 301 (1997) (holding the default decision was properly issued where the respondent's first filing was 135 days after the respondent's answer was due and holding the respondent is deemed, by her failure to file a timely answer, to have admitted the violations of the Regulations and Standards alleged in the complaint); *In re City of Orange*, 55 Agric. Dec. 1081 (1996) (holding the default decision was properly issued where the respondent's first filing was 70 days after the respondent's answer was due and holding the respondent is deemed, by its failure to file a timely answer, to have admitted the violations of the Regulations and Standards alleged in the complaint); *In re*

(continued...)

Respondent Deborah Ann Milette's first filing in this proceeding was filed with the Hearing Clerk 1 month 4 days after Respondent Deborah Ann Milette's answer was due.

⁴(...continued)

Ronald DeBruin, 54 Agric. Dec. 876 (1995) (holding the default decision was properly issued where the respondent failed to file an answer and holding the respondent is deemed, by his failure to file an answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re James Joseph Hickey, Jr.*, 53 Agric. Dec. 1087 (1994) (holding the default decision was properly issued where the respondent failed to file an answer and holding the respondent is deemed, by his failure to file an answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged the complaint); *In re Ron Morrow*, 53 Agric. Dec. 144 (1994) (holding the default decision was properly issued where the respondent was given an extension of time until March 22, 1994, to file an answer, but the answer was not received until March 25, 1994, and holding the respondent is deemed, by his failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint), *aff'd per curiam*, 65 F.3d 168 (Table), 1995 WL 523336 (6th Cir. 1995), *printed in* 54 Agric. Dec. 870 (1995); *In re Dean Daul*, 45 Agric. Dec. 556 (1986) (holding the default decision was properly issued where the respondent failed to file a timely answer and, in his late answer, did not deny the material allegations of the complaint and holding the respondent is deemed, by his failure to file a timely answer and by his failure to deny the allegations in the complaint in his late answer, to have admitted the violations of the Animal Welfare Act and the Regulations alleged in the complaint); *In re Ronald Jacobson*, 43 Agric. Dec. 780 (1984) (holding the default decision was properly issued where the respondents failed to file a timely answer and holding the respondents are deemed, by their failure to file a timely answer, to have admitted the violations of the Standards alleged in the complaint); *In re Willard Lambert*, 43 Agric. Dec. 46 (1984) (holding the default decision was properly issued where the respondent failed to file an answer and holding the respondent is deemed, by his failure to file an answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re Randy & Mary Berhow*, 42 Agric. Dec. 764 (1983) (holding the default decision was properly issued where the respondents failed to file an answer and holding the respondents are deemed, by their failure to file an answer, to have admitted the violations of the Standards alleged in the complaint).

Respondent Deborah Ann Milette's failure to file a timely answer is deemed, for purposes of this proceeding, an admission of the allegations of the Complaint (7 C.F.R. § 1.136(c)) and constitutes a waiver of hearing (7 C.F.R. §§ 1.139, .141(a)). Therefore, there are no issues of fact on which a meaningful hearing could be held in this proceeding, and the ALJ properly deemed Respondent Deborah Ann Milette to have admitted the allegations of the Complaint, except that the ALJ failed to conclude Respondent Deborah Ann Milette willfully violated section 2.40(b)(1) of the Regulations (9 C.F.R. § 2.40(b)(1) (2004)), as alleged in the Complaint.

Moreover, application of the default provisions of the Rules of Practice does not deprive Respondent Deborah Ann Milette of her rights under the due process clause of the Fifth Amendment to the Constitution of the United States.⁵

Second, Respondent Deborah Ann Milette asserts her Animal Welfare Act license "keeps [her] going on a daily basis" and revocation of her Animal Welfare Act license is a "severe disservice" to her educational programs.

⁵See *United States v. Hulings*, 484 F. Supp. 562, 567-68 (D. Kan. 1980) (concluding a hearing was not required under the Fifth Amendment to the Constitution of the United States where the respondent was notified that failure to deny the allegations of the complaint would constitute an admission of those allegations under the Rules of Practice and the respondent failed to specifically deny the allegations). See also *Father & Sons Lumber and Building Supplies, Inc. v. NLRB*, 931 F.2d 1093, 1096 (6th Cir. 1991) (stating due process generally does not entitle parties to an evidentiary hearing where the National Labor Relations Board has properly determined that a default summary judgment is appropriate due to a party's failure to file a timely response); *Kirk v. INS*, 927 F.2d 1106, 1108 (9th Cir. 1991) (rejecting the contention that the administrative law judge erred by issuing a default judgment based on a party's failure to file a timely answer).

The effect of license revocation on Respondent Deborah Ann Milette's educational programs and on Respondent Deborah Ann Milette's ability to keep going on a daily basis are not relevant to my determination whether to revoke Respondent Deborah Ann Milette's Animal Welfare Act license. However, for the reasons discussed in this Decision and Order as to Deborah Ann Milette, *infra*, I do not revoke Respondent Deborah Ann Milette's Animal Welfare Act license.

A sanction by an administrative agency must be warranted in law and justified in fact.⁶ The Secretary of Agriculture has authority to revoke the Animal Welfare Act

⁶*Butz v. Glover Livestock Comm'n Co.*, 411 U.S. 182, 187-89 (1973); *Havana Potatoes of New York Corp. v. United States*, 136 F.3d 89, 92-93 (2d Cir. 1997); *County Produce, Inc. v. United States Dep't of Agric.*, 103 F.3d 263, 265 (2d Cir. 1997); *Potato Sales Co. v. Department of Agric.*, 92 F.3d 800, 804 (9th Cir. 1996); *Valkering, U.S.A., Inc. v. United States Dep't of Agric.*, 48 F.3d 305, 309 (8th Cir. 1995); *Farley & Calfee, Inc. v. United States Dep't of Agric.*, 941 F.2d 964, 966 (9th Cir. 1991); *Cox v. United States Dep't of Agric.*, 925 F.2d 1102, 1107 (8th Cir.), *cert. denied*, 502 U.S. 860 (1991); *Cobb v. Yeutter*, 889 F.2d 724, 730 (6th Cir. 1989); *Spencer Livestock Comm'n Co. v. Department of Agric.*, 841 F.2d 1451, 1456-57 (9th Cir. 1988); *Harry Klein Produce Corp. v. United States Dep't of Agric.*, 831 F.2d 403, 406 (2d Cir. 1987); *Blackfoot Livestock Comm'n Co. v. Department of Agric.*, 810 F.2d 916, 922 (9th Cir. 1987); *Stamper v. Secretary of Agric.*, 722 F.2d 1483, 1489 (9th Cir. 1984); *Magic Valley Potato Shippers, Inc. v. Secretary of Agric.*, 702 F.2d 840, 842 (9th Cir. 1983) (per curiam); *J. Acevedo and Sons v. United States*, 524 F.2d 977, 979 (5th Cir. 1975) (per curiam); *Miller v. Butz*, 498 F.2d 1088, 1089 (5th Cir. 1974) (per curiam); *G.H. Miller & Co. v. United States*, 260 F.2d 286, 296-97 (7th Cir. 1958), *cert. denied*, 359 U.S. 907 (1959); *United States v. Hulings*, 484 F. Supp. 562, 566 (D. Kan. 1980); *In re La Fortuna Tienda*, 58 Agric. Dec. 833, 842 (1999); *In re James E. Stephens*, 58 Agric. Dec. 149, 186 (1999); *In re Nkiambi Jean Lema*, 58 Agric. Dec. 291, 297 (1999); *In re Limeco, Inc.*, 57 Agric. Dec. 1548, 1571 (1998), *appeal dismissed*, No. 98-5571 (11th Cir. Jan. 28, 1999); *In re Kanowitz Fruit & Produce Co.*, 56 Agric. Dec. 942, 951 (1997) (Order Denying Pet. for Recons.); *In re Volpe Vito, Inc.*, 56 Agric. Dec. 269, 273 (1997) (Order Denying Pet. for Recons.); *In re Kanowitz Fruit & Produce Co.*, 56 Agric. Dec. 917, 932 (1997), *aff'd*, 166 (continued...)

license of any person who has violated the Animal Welfare Act, the Regulations, or the Standards.⁷ Respondent Deborah Ann Milette violated sections 2.40(a), 2.40(b)(1), and 2.131(a)(1) of the Regulations (7 C.F.R. §§ 2.40(a), (b)(1), .131(a)(1) (2004)). Therefore, the ALJ's revocation of Respondent Deborah Ann Milette's Animal Welfare Act license is warranted in law. However, based on the limited record before me, I find revocation of Respondent Deborah Ann Milette's Animal Welfare Act license is not justified in fact; instead, I assess Respondent Deborah Ann Milette a civil penalty.

With respect to the civil monetary penalty, the Secretary of Agriculture is required to give due consideration to the size of the business of the person involved, the gravity of the violations, the person's good faith, and the history of previous violations.⁸

Respondent Deborah Ann Milette is deemed to have admitted she has a small business, the gravity of her violations of the Regulations is great, and she has no record of previous violations of the Animal Welfare Act, the Regulations, or the Standards.⁹

Respondent Deborah Ann Milette's three violations of the Regulations all occurred on the same date, September 27, 2002, and concern one animal. Based on the limited

⁶(...continued)

F.3d 1200 (Table), 1998 WL 863340 (2d Cir. 1998), *cert. denied*, 526 U.S. 1098 (1999); *In re Saulsbury Enterprises*, 56 Agric. Dec. 82, 97 (1997) (Order Denying Pet. for Recons.); *In re Volpe Vito, Inc.*, 56 Agric. Dec 166, 257 (1997), *aff'd*, 172 F.3d 51, 1999 WL 16562 (6th Cir. 1999) (not to be cited as precedent under 6th Circuit Rule 206).

⁷U.S.C. § 2149(a).

⁸U.S.C. § 2149(b).

⁹Compl. ¶ 4.

record before me, I find no ongoing pattern of violations establishing a “history of previous violations” for the purposes of section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)).

The United States Department of Agriculture’s current sanction policy is set forth in *In re S.S. Farms Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), *aff’d*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3):

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

The recommendations of administrative officials charged with the responsibility for achieving the congressional purpose of the regulatory statute are highly relevant to any sanction to be imposed and are entitled to great weight in view of the experience gained by administrative officials during their day-to-day supervision of the regulated industry. *In re S.S. Farms Linn County, Inc.*, 50 Agric. Dec. at 497. However, the recommendation of administrative officials as to the sanction is not controlling, and in appropriate circumstances, the sanction imposed may be considerably less, or different, than that recommended by administrative officials.¹⁰

¹⁰*In re Dennis Hill*, 63 Agric. Dec., slip op. at 74 (Oct. 8, 2004), *appeal docketed*, No. 05-1154 (7th Cir. Jan. 24, 2005); *In re Geo. A. Heimos Produce Co.*, 62 Agric. Dec. 763, 787 (2003), *appeal dismissed*, No. 03-4008 (8th Cir. Aug. 31, 2004); *In re Excel* (continued...)

Complainant seeks revocation of Respondent Deborah Ann Milette's Animal Welfare Act license and an order that Respondent Deborah Ann Milette cease and desist from violating the Animal Welfare Act and the Regulations (Complainant's Motion for Default Decision at 6). In support of his sanction recommendation, Complainant contends Respondent Deborah Ann Milette handled a tiger in a manner that allowed the tiger to escape in a restaurant parking lot, where the tiger represented a grave danger to the public (Complainant's Motion for Default at 6). While Complainant alleges an

¹⁰(...continued)

Corp., 62 Agric. Dec. 196, 234 (2003), *enforced as modified*, 397 F.3d 1285 (10th Cir. 2005); *In re Steven Bourk* (Decision as to Steven Bourk and Carmella Bourk), 61 Agric. Dec. 25, 49 (2002); *In re H.C. MacClaren, Inc.*, 60 Agric. Dec. 733, 762-63 (2001), *aff'd*, 342 F.3d 584 (6th Cir. 2003); *In re Karl Mitchell*, 60 Agric. Dec. 91, 130 (2001), *aff'd*, 42 Fed. Appx. 991, 2002 WL 1941189 (9th Cir. 2002); *In re American Raisin Packers, Inc.*, 60 Agric. Dec. 165, 190 n.8 (2001), *aff'd*, 221 F. Supp.2d 1209 (E.D. Cal. 2002), *aff'd*, 66 Fed. Appx. 706, 2003 WL 21259771 (9th Cir. 2003); *In re Fred Hodgins*, 60 Agric. Dec. 73, 88 (2001) (Decision and Order on Remand), *aff'd*, 33 Fed. Appx. 784, 2002 WL 649102 (6th Cir. 2002) (unpublished); *In re Reginald Dwight Parr*, 59 Agric. Dec. 601, 626 (2000), *aff'd per curiam*, 273 F.3d 1095 (5th Cir. 2001) (Table); *In re Greenville Packing Co.*, 59 Agric. Dec. 194, 226-27 (2000), *aff'd in part and transferred in part*, No. 00-CV-1054 (N.D.N.Y. Sept. 4, 2001), *appeal withdrawn*, No. 01-6214 (2d Cir. Apr. 30, 2002); *In re James E. Stephens*, 58 Agric. Dec. 149, 182 (1999); *In re Western Sierra Packers, Inc.*, 57 Agric. Dec. 1578, 1604 (1998); *In re Colonial Produce Enterprises, Inc.*, 57 Agric. Dec. 1498, 1514 (1998); *In re Judie Hansen*, 57 Agric. Dec. 1072, 1141 (1998), *appeal dismissed*, 221 F.3d 1342 (Table), 2000 WL 1010575 (8th Cir. 2000) (*per curiam*); *In re Richard Lawson*, 57 Agric. Dec. 980, 1031-32 (1998), *appeal dismissed*, No. 99-1476 (4th Cir. June 18, 1999); *In re Scamcorp, Inc.*, 57 Agric. Dec. 527, 574 (1998); *In re Marilyn Shepherd*, 57 Agric. Dec. 242, 283 (1998); *In re Allred's Produce*, 56 Agric. Dec. 1884, 1918-19 (1997), *aff'd*, 178 F.3d 743 (5th Cir.), *cert. denied*, 528 U.S. 1021 (1999); *In re Kanowitz Fruit & Produce, Co.*, 56 Agric. Dec. 942, 953 (1997) (Order Denying Pet. for Recons.); *In re William E. Hatcher*, 41 Agric. Dec. 662, 669 (1982); *In re Sol Salins, Inc.*, 37 Agric. Dec. 1699, 1735 (1978); *In re Braxton McLinden Worsley*, 33 Agric. Dec. 1547, 1568 (1974).

incident in which a tiger escaped in a restaurant parking lot, Complainant only alleges involvement by John Bryan Williams, Mary Jean Williams, and unnamed local authorities, as follows:

11. On September 28, 2002, respondents John Bryan Williams and Mary Jean Williams failed to handle animals as expeditiously and carefully as possible in a manner that would not cause trauma, unnecessary discomfort, behavioral stress, or physical harm, and specifically, said respondents allowed a young tiger to exit its transport enclosure and escape in the parking lot of a restaurant, whereupon local authorities eventually shot and killed the animal, in willful violation of the handling regulations. 9 C.F.R. § 2.131(a)(1).

Compl. ¶ 11.

Moreover, while Complainant alleges, and Respondent Deborah Ann Milette is deemed to have admitted, that the violations alleged in the Complaint resulted in the death of a young tiger (Compl. ¶ 4), only paragraph 11 of the Complaint, which does not implicate Respondent Deborah Ann Milette, specifically references the death of a young tiger. Therefore, I am uncertain whether Respondent Deborah Ann Milette is deemed to have admitted that *her* violations resulted in the death of a young tiger. I give Respondent Deborah Ann Milette the benefit of my doubt and decline to find that Respondent Deborah Ann Milette's violations resulted in the death of a young tiger.

I find Respondent Deborah Ann Milette committed three violations of the Regulations. Respondent Deborah Ann Milette could be assessed a maximum civil

penalty of \$2,750 for each of her violations of the Regulations.¹¹ After examining all the relevant circumstances, in light of the United States Department of Agriculture's sanction policy, and taking into account the requirements of section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)), the remedial purposes of the Animal Welfare Act, and the recommendations of the administrative officials, I conclude a cease and desist order and assessment of a \$2,500 civil penalty against Respondent Deborah Ann Milette are appropriate and necessary to ensure Respondent Deborah Ann Milette's compliance with the Animal Welfare Act and the Regulations in the future, to deter others from violating the Animal Welfare Act and the Regulations, and to fulfill the remedial purposes of the Animal Welfare Act.

Third, Respondent Deborah Ann Milette contends she did not violate the Animal Welfare Act or the Regulations because the tiger, which is the subject of the allegations in the Complaint, was not moved interstate.

I do not agree with Respondent Deborah Ann Milette's position that interstate movement of an animal is a necessary prerequisite for my finding a violation of the

¹¹Section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) provides that the Secretary of Agriculture may assess a civil penalty of not more than \$2,500 for each violation of the Animal Welfare Act, the Regulations, or the Standards. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), the Secretary of Agriculture adjusted the civil penalty that may be assessed under section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) for each violation of the Animal Welfare Act, the Regulations, or the Standards by increasing the maximum civil penalty from \$2,500 to \$2,750 (7 C.F.R. § 3.91(b)(2)(v)). Therefore, Respondent Deborah Ann Milette could be assessed a maximum civil penalty of \$2,750.

Animal Welfare Act or the Regulations. The Animal Welfare Act and the Regulations apply to activities that take place entirely within one state, as well as to those that involve traffic across state lines.¹²

Fourth, Respondent Deborah Ann Milette contends she did not violate the Regulations because she did not violate the “Lacy Act.”

Respondent Deborah Ann Milette does not provide a citation to the “Lacy Act,” and I cannot locate any federal statute referred to as the “Lacy Act”; however, I surmise Respondent Deborah Ann Milette’s reference to the “Lacy Act” is a typographical error and Respondent Deborah Ann Milette intends to reference the Lacey Act Amendments of 1981. In any event, a violation of the Lacey Act Amendments of 1981 is not a necessary prerequisite for my finding a violation of the Animal Welfare Act or the Regulations.

For the foregoing reasons, the following Order should be issued.

ORDER

1. Respondent Deborah Ann Milette, her 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.

Paragraph 1 of this Order shall become effective on the day after service of this Order on Respondent Deborah Ann Milette.

¹²3 Op. Off. Legal Counsel 326 (1979).

2. Respondent Deborah Ann Milette is assessed a \$2,500 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the

Treasurer of the United States and sent to:

Colleen A. Carroll
United States Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Room 2343-South Building
Washington, DC 20250-1417

Payment of the civil penalty shall be sent to, and received by, Colleen A. Carroll within 60 days after service of this Order on Respondent Deborah Ann Milette.

Respondent Deborah Ann Milette shall state on the certified check or money order that payment is in reference to AWA Docket No. 04-0023.

RIGHT TO JUDICIAL REVIEW

Respondent Deborah Ann Milette has the right to seek judicial review of this Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341, 2343-2350. Such court has exclusive jurisdiction to enjoin, to set aside, to suspend

(in whole or in part), or to determine the validity of this Order. Respondent Deborah Ann Milete must seek judicial review within 60 days after entry of this Order.¹³ The date of entry of this Order is June 29, 2005.

Done at Washington, DC

June 29, 2005

William G. Jenson
Judicial Officer

¹³7 U.S.C. § 2149(c).