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United States
Department of
Agriculture

Office of
Administrative
Law Judges

Hearing Clerk

Room 1031
South Building

1400 Independence
Avenue SW

Washington, DC
20250-9200

(202) 720-4443
(202) 720-9776 fax

May 11, 2010

Jamie Michelle Palazzo
d/b/a Great Cats Adventures
5888 Echo Bluff Drive
Haltom City, TX 76137

James Lee Riggs
an individual
5888 Echo Bluff Drive
Haltom City, TX 76137

Dear Sir / Madam:

Subject: In re: Jamie Michelle Palazzo d/b/a Great Cats Adventures; and
James Lee Riggs, an individual, Respondents –
AWA Docket No. 07-0207

Enclosed is a date-stamped copy of the decision and order issued by the Judicial Officer on the Secretary's behalf in the above-captioned proceeding.

Judicial review of this decision is available in an appropriate court if an appeal is timely filed. This office does not provide information on how to appeal. Please refer to the governing statute. If you are not currently represented by an attorney, you may choose to seek legal advice regarding an appeal.

Prior to filing an appeal, you may file a petition for reconsideration of the Judicial Officer's decision within 10 days of service of the decision. An original and three copies of the petition for reconsideration must be filed with this office.

Sincerely,

L. Eugene Whitfield
Hearing Clerk

Enclosure(s)

Sent to: Colleen A. Carroll-OGC
Ruth Ann McDermott-APHIS
William Jenson-JO
Peter M. Davenport – Acting Chief Judge

caa: 5/11/2010

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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 07-0207
)
)
Jamie Michelle Palazzo, an)
individual, d/b/a Great Cat)
Adventures; and James Lee Riggs,)
)
)
Respondents) **Decision and Order**

PROCEDURAL HISTORY

On September 28, 2007, Kevin Shea, the Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this disciplinary proceeding against Jamie Michelle Palazzo, an individual, d/b/a Great Cat Adventures, by filing a Complaint alleging willful violations of the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; and the regulations and standards issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations]. On October 22, 2007, Ms. Palazzo filed an answer denying the material allegations of the Complaint.

On September 23, 2008, the Administrator filed an Amended Complaint adding James Lee Riggs¹ as a named respondent. On October 21, 2008, Ms. Palazzo and Mr. Riggs filed an answer² denying the material allegations of the Amended Complaint.

On August 24, 2009, through August 27, 2009, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] conducted an oral hearing in Fort Worth, Texas. Colleen A. Carroll, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Administrator. Ms. Palazzo and Mr. Riggs appeared pro se. Twenty-seven witnesses testified (26 witnesses testified for the Administrator and Ms. Palazzo testified for Mr. Riggs and herself).³ The Administrator, Ms. Palazzo, and Mr. Riggs introduced exhibits.⁴

On January 6, 2010, after the parties submitted post-hearing briefs, the ALJ filed a Decision and Order in which the ALJ: (1) found Ms. Palazzo and Mr. Riggs violated the

¹Mr. Riggs has been involved in two other disciplinary proceedings instituted under the Animal Welfare Act. Although not a named respondent in *In re Heidi Berry Riggs* (Consent Decision), 57 Agric. Dec. 1350 (1998), Mr. Riggs was married to Heidi Berry Riggs (now Heidi Berry) at the time the case was brought against Ms. Berry and Bridgeport Nature Center, Inc., and was engaged in Bridgeport Nature Center, Inc.'s touring operation that was the focus of the disciplinary action. Mr. Riggs is a named respondent in a second action, *In re Bridgeport Nature Center, Inc.*, 65 Agric. Dec. 1039 (2006), remanded, 67 Agric. Dec. 384 (2008).

²Ms. Palazzo and Mr. Riggs title all their filings as "Complaint."

³Transcript references are designated as "Tr. ____."

⁴The exhibits introduced by the Administrator are designated as "CX ____." The exhibits introduced by Ms. Palazzo and Mr. Riggs are designated as "RX ____."

Animal Welfare Act and the Regulations; (2) ordered Ms. Palazzo and Mr. Riggs to cease and desist from further violations of the Animal Welfare Act and the Regulations; (3) suspended Animal Welfare Act license number 74-C-0627 issued to Jamie Palazzo, d/b/a Great Cat Adventures, for a period of 3 years; and (4) assessed Mr. Riggs a \$10,000 civil penalty.

On February 12, 2010, Ms. Palazzo and Mr. Riggs appealed the ALJ's Decision and Order to the Judicial Officer. On March 12, 2010, the Administrator filed "Complainant's Response to Petition for Appeal." On March 16, 2010, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision. Based upon a careful review of the record, I affirm the ALJ's Decision and Order.

DECISION

Discussion

The Administrator alleged Ms. Palazzo and Mr. Riggs committed 23 willful violations of the Animal Welfare Act and the Regulations during the period August 2006 through August 2008 (Amended Compl. ¶¶ 5-12). During the oral hearing, the Administrator moved, and was granted leave, to withdraw eight of the violations alleged in the Amended Complaint (Tr. 905-09, 940). The ALJ found the Administrator failed to prove 10 of the violations alleged in the Amended Complaint. Ms. Palazzo and Mr. Riggs appealed each of the five violations alleged in the Amended Complaint that the ALJ found Ms. Palazzo and/or Mr. Riggs committed.

**Failure to Make, Keep, and Maintain Records That
Disclose Required Information, in Violation of
9 C.F.R. § 2.75(b) (Amended Complaint ¶ 9)**

The Regulations require exhibitors to make, keep, and maintain records, as follows:

§ 2.75 Records: Dealers and exhibitors.

-
- (b)(1) Every . . . exhibitor shall make, keep, and maintain records or forms which fully and correctly disclose the following information concerning animals . . . purchased or otherwise acquired, owned, held, leased, or otherwise in his or her possession or under his or her control, or which is transported, sold, euthanized, or otherwise disposed of by that . . . exhibitor. The records shall include any offspring born of any animal while in his or her possession or under his or her control.
- (i) The name and address of the person from whom the animals were purchased or otherwise acquired;
 - (ii) The USDA license or registration number of the person if he or she is licensed or registered under the Act;
 - (iii) The vehicle license number and State, and driver's license number (or photographic identification card for nondrivers issued by a State) and State of the person, if he or she is not licensed or registered under the Act;
 - (iv) The name and address of the person to whom an animal was sold or given;
 - (v) The date of purchase, acquisition, sale, or disposal of the animal(s);
 - (vi) The species of the animal(s); and
 - (vii) The number of animals in the shipment.

9 C.F.R. § 2.75(b)(1).

The ALJ concluded that, between October 2006 and November 2007, Ms. Palazzo and Mr. Riggs failed to make, keep, and maintain records or forms that fully and correctly

disclose the required information, in willful violation of 9 C.F.R. § 2.75(b) (ALJ's Decision and Order at 10-11, 20 ¶ 2).

On appeal, Ms. Palazzo and Mr. Riggs do not contend the ALJ's conclusion is error; however, they assert the ALJ found their violations of 9 C.F.R. § 2.75(b) "very minor" (Appeal Pet. at 2). Ms. Palazzo and Mr. Riggs do not cite, and I cannot locate, the portion of the ALJ's Decision and Order in which the ALJ characterizes their violations of 9 C.F.R. § 2.75(b) as "very minor." Therefore, I reject Ms. Palazzo and Mr. Riggs' assertion that the ALJ found their violations of 9 C.F.R. § 2.75(b) "very minor."

**Failure to Handle a Tiger as Carefully as Possible,
in Violation of 9 C.F.R. § 2.131(b)(1)
(Amended Complaint ¶ 10a)**

The Regulations require careful handling of animals, as follows:

§ 2.131 Handling of animals.

....
(b)(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.

9 C.F.R. § 2.131(b)(1).

On August 9, 2006, at the Boone County Fairgrounds, Belvedere, Illinois, Chad Moore, an Animal and Plant Health Inspection Service [hereinafter APHIS], Animal Care inspector, observed Ms. Palazzo spray an 11-month-old tiger with a "tight stream of water from a garden hose" in an attempt to encourage the tiger to enter an enclosure.

Mr. Moore states the tiger “reacted negatively” and, immediately upon being sprayed, the tiger moved into the tiger’s enclosure. Mr. Moore completed an inspection report citing Ms. Palazzo with failing to handle animals in manner so as to avoid trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort, in violation of 9 C.F.R. § 2.131(b)(1) (CX 8). In a letter dated August 29, 2006, to Dr. Robert M. Gibbens, Director, Western Region, Animal Care, APHIS, USDA, Ms. Palazzo appealed the violation report, admitting she sprayed the tiger, but claiming that, while the spraying “may have startled” the tiger, the spraying would not have been traumatic (CX 9). Ms. Palazzo (in her letter to Dr. Gibbens (CX 9)), Nancy Brown, and Joseph Schreibvogel all expressed the opinion that tigers enjoy water and playing in water (Tr. 772-73, 869-70).

The ALJ concluded Ms. Palazzo violated 9 C.F.R. § 2.131(b)(1) as alleged in the Amended Complaint ¶ 10a (ALJ’s Decision and Order at 20 ¶ 3).⁵ On appeal, Ms. Palazzo and Mr. Riggs assert the Administrator did not prove by a preponderance of the evidence that Ms. Palazzo violated 9 C.F.R. § 2.131(b)(1) on August 9, 2006; hence, the ALJ’s conclusion is error (Appeal Pet. at 2).

⁵The Administrator alleged both Ms. Palazzo and Mr. Riggs violated 9 C.F.R. § 2.131(b)(1) on August 9, 2006 (Amended Complaint ¶ 10a); however, the Administrator did not appeal the ALJ’s Decision and Order concluding that only Ms. Palazzo violated 9 C.F.R. § 2.131(b)(1) on August 9, 2006.

Ms. Palazzo and Mr. Riggs offer no support for their assertions. Based upon my review of the record, I agree with the ALJ's finding that the Administrator proved by a preponderance of the evidence that Ms. Palazzo willfully violated 9 C.F.R. § 2.131(b)(1) on August 9, 2006; therefore, I reject Ms. Palazzo and Mr. Riggs' unsupported assertion that the ALJ's conclusion is error.

**Three Allegations of Failure to Handle Animals so There Was
Minimal Risk of Harm to Animals and to the Public,
in Violation of 9 C.F.R. § 2.131(c)(1)
(Amended Complaint ¶¶ 12c-12e)**

In enacting the Animal Welfare Act, Congress found that regulation was necessary to ensure that animals intended for use for exhibition purposes are provided humane care and treatment (7 U.S.C. § 2131). The Regulations provide that, during public exhibition, animals must be handled so there is minimal risk of harm to the animals and to the public, as follows:

§ 2.131 Handling of animals.

....
(c)(1) During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public.

9 C.F.R. § 2.131(c)(1).

Ms. Palazzo and Mr. Riggs deny they handled their tigers in violation of 9 C.F.R. § 2.131(c)(1) claiming their public exhibition of tigers was within the parameters established in *In re Hedi Berry Riggs* (Consent Decision), 57 Agric. Dec. 1350 (1998), in

which the exhibition of tigers less than 6 months of age and less than 75 pounds in weight in photographic sessions with members of the public is allowed (RX 50 at 3-8).

Ms. Palazzo and Mr. Riggs' argument overlooks a number of significant factors. First, the language of the Consent Decision in *Riggs* is restrictive, limiting its application to the named respondents, Ms. Berry and Bridgeport Nature Center, Inc.⁶ Second, although Ms. Palazzo purchased equipment that may have previously been owned by Ms. Berry and/or Bridgeport Nature Center, Inc., no evidence was introduced that Ms. Palazzo acquired any interest in Bridgeport Nature Center, Inc., and the documents transferring ownership of the equipment to Ms. Palazzo make clear that her purchase of the equipment did not make her a successor in interest of either Ms. Berry or Bridgeport Nature Center, Inc.⁷ Last, even if the Consent Decision represents the Administrator's

⁶The cease and desist provision in the Order in *Riggs* includes agents, employees, successors, and assigns (RX 50 at 4-6); however, subsequent provisions of the Order are limited to the named respondents (RX 50 at 1-2).

⁷Ms. Palazzo consistently maintained *In re Hedi Berry Riggs* (Consent Decision), 57 Agric. Dec. 1350 (1998), applied to her (CX 19, CX 146, CX 168). Ms. Palazzo also repeatedly referenced the 6-month and 75-pound standard in correspondence with APHIS (CX 24, CX 40A, RX 32). While the equipment Ms. Palazzo purchased may have at one time been owned by either Ms. Berry or Bridgeport Nature Center, Inc., the bills of sale for the equipment were executed by Mr. Riggs as the seller (RX 45-RX 47). After establishing a new § 501(c)(3) entity named Center for Animal Research and Education (CARE), Bridgeport Nature Center, Inc., allowed its Animal Welfare Act license to lapse (Tr. 427-31). Ms. Berry testified that she and CARE requested that Ms. Palazzo and Mr. Riggs remove references to Bridgeport Nature Center, Inc., from Great Cat Adventures promotional material on the internet and that neither she nor Bridgeport Nature Center, Inc., transferred any equipment or other property to Ms. Palazzo (CX 170-CX 171; Tr. 428-30, 435-36).

settlement position in *Riggs*, the Administrator's view is that big cats⁸ become juveniles when they reach 12 weeks of age and that, if the public could come into direct contact with juvenile or adult big cats, there is more than minimal risk of harm to the big cats and to the public (CX 20 at 1).⁹

The Supreme Court made clear that enforcement policy can be changed from time to time. *FCC v. Fox Television Stations, Inc.*, ___ U.S. ___, 129 S. Ct. 1800 (2009). While an agency may be required to demonstrate good reasons for a new policy, the agency need not demonstrate that "the reasons for the new policy are *better* than the reasons for the old one. It suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change adequately indicates." *FCC v. Fox Television Stations, Inc.*, ___ U.S. ___, 129 S. Ct. at 1811 (emphasis in original). The Secretary of Agriculture has been delegated authority under 7 U.S.C. § 2151 to issue such rules, regulations, and orders as he deems necessary in order to effectuate the purposes of the Animal Welfare Act; the risk of harm to animals and to the public from direct contact between members of the public and juvenile and adult big cats justifies imposition of appropriate safeguards to

⁸The term "big cats" includes tigers.

⁹Dr. Gibbens testified that APHIS' policy precluding direct public contact with juvenile and adult big cats was in effect in 2004 (CX 2) and was placed on the USDA website in 2005 (RX 58).

protect the animals and the public; and the policy revision reflects the “belief” of APHIS that the revised standard is “better” designed to protect animals and the public.

Ms. Palazzo made repeated requests¹⁰ to Dr. Gibbens either to homologate the Riggs standards or to articulate what public contact with big cats is allowed under the Regulations. Ms. Palazzo’s requests were initially unanswered; however, the evidence establishes that beginning in April 2006 and continuing throughout 2007, APHIS repeatedly notified Ms. Palazzo and Mr. Riggs that big cats were considered to be juveniles upon reaching 12 weeks of age and that, after reaching 12 weeks of age, big cats were not suitable for direct public contact.¹¹

¹⁰Ms. Palazzo testified she wanted “clarification of some of the gray areas in the regulations, and I hoped to maybe come up with a magical age or weight limit to try to make sure everybody is under the same understanding.” (Tr. 1039-40.) In her letter of August 29, 2005, to Dr. Gibbens, Ms. Palazzo responded to an undated Dear Applicant letter (CX 2), which defined a juvenile cat as over 3 months of age and asked for a hearing if she was not in compliance (CX 7). In her letter of July 17, 2007, Ms. Palazzo noted she had not received a response to her August 29, 2005, letter (CX 19). Dr. Kay Carter-Corker, Assistant Regional Director, Eastern Region, Animal Care, APHIS, USDA, answered Ms. Palazzo’s July 2007 letter by reaffirming the 12-week standard (CX 20). In a letter dated August 16, 2007, Ms. Palazzo proposed using the 6-month standard, but indicated she wanted to follow the Regulations (CX 24). APHIS responded to Ms. Palazzo’s August 2007 letter by again informing Ms. Palazzo of the 12-week standard (CX 29). Ms. Palazzo again wrote on October 12, 2007, reaffirming her intention to use a 6-month standard, but again asking for a meeting “so I can operate in compliance.” (CX 40A.) Although APHIS answered Ms. Palazzo’s October 2007 letter, no meeting was arranged and she was advised that she would continue to be cited without reference to any standard (CX 40B). APHIS also denied Mr. Palazzo’s August 2008 request for an exact age and weight standard without referencing the 12-week standard (CX 145).

¹¹RX 37.

On appeal, Ms. Palazzo and Mr. Riggs assert the ALJ erroneously used the terms “public” and “general viewing public” interchangeably. Ms. Palazzo and Mr. Riggs argue the term “public,” as used in 9 C.F.R. § 2.131(c)(1), refers to “participating” members of the public (e.g., those persons who choose to have their pictures taken with a tiger) and the term “general viewing public,” as used in 9 C.F.R. § 2.131(c)(1), refers to members of the public who merely observe an animal exhibit and are not “participating” members of the public. Ms. Palazzo and Mr. Riggs contend the barrier and/or distance requirement only relates to that which must be between animals and the general viewing (non-participating) public. (Appeal Pet. at 5.)

Ms. Palazzo and Mr. Riggs provide no basis for their arguments that the term “public” refers to members of the public who participate in an event with an animal and that the term “general viewing public” refers to those members of the public who do not participate in an event with an animal, but only observe an animal exhibit. Moreover, Ms. Palazzo and Mr. Riggs’ construction of 9 C.F.R. § 2.131(c)(1) would render the regulation patently absurd for their construction would require sufficient distance and/or barriers between the animal and the viewing, non-participating members of the public (*general viewing public*) so as to assure the safety of animals and the participating members of the public (*public*). Ms. Palazzo and Mr. Riggs do not state how barriers and/or distance between animals and one group of persons (the general viewing public) will assure the safety of a completely different group of persons (the public). Therefore, I

reject Ms. Palazzo and Mr. Riggs' arguments regarding the meaning of the terms "public" and "general viewing public," as those terms are used in 9 C.F.R. § 2.131(c)(1).

Where different terms are used in a regulation, they are generally presumed to have different meanings;¹² however, I agree with the ALJ that the terms "public" and "general viewing public," as used in 9 C.F.R. § 2.131(c)(1), are interchangeable. In 1989, when APHIS proposed the current version of 9 C.F.R. § 2.131(c)(1), APHIS expressly stated that "exhibitors do not have a right to allow contact between the public and dangerous animals." (54 Fed. Reg. 10,835, 10,880 (Mar. 15, 1989).) Thus, the regulatory history establishes that APHIS treats the terms "public" and "general viewing public" synonymously for purposes of interpreting and enforcement of 9 C.F.R. § 2.131(c)(1). Moreover, USDA decisions have consistently treated the terms "public" and "general viewing public," as used in 9 C.F.R. § 2.131(c)(1), as synonymous.¹³ Further still, the

¹²See *Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004); *DirecTV Group, Inc. v. United States*, 89 Fed. Cl. 302, 310 (Fed. Cl. 2009). See also *In re Beef Nebraska, Inc.*, 44 Agric. Dec. 2786, 2811 (1985) (stating, where the legislature in the same sentence uses different words, we must presume that they were used to express different ideas), *aff'd*, 807 F.2d 712 (8th Cir. 1986).

¹³*In re Sam Mazzola*, __ Agric. Dec. ___, slip op. at 33-34 (Nov. 24, 2009) (holding the terms "public" and "general viewing public, as used in 9 C.F.R. § 2.131(c)(1), are synonymous). See also *In re The International Siberian Tiger Foundation*, 61 Agric. Dec. 53, 78 (2002) (stating the respondents should have known that some distance or barrier between the respondents' animals and the general viewing public is necessary so as to assure the safety of the respondents' animals and the public); *In re William Joseph Vergis*, 55 Agric. Dec. 148, 154 (1996) (stating the respondent failed to handle his tiger so that there was minimal risk of harm to the tiger and to members of the public).

United States Court of Appeals for the Fourth Circuit has upheld APHIS' interpretation of 9 C.F.R. § 2.131(c)(1) to require distance and/or barriers between juvenile and adult big cats and the public (including members of the public involved in photographic sessions). *Antle v. Johanns*, 264 F. App'x 271, 2008 WL 398864 (4th Cir. Feb. 12, 2008) (per curiam) (CX 151). The Fourth Circuit affirmed the United States District Court for the District of South Carolina's decision which held:

In light of the text of 9 C.F.R. § 2.131, specifically the requirement in subsection (c)(1) of "sufficient distance and/or barriers between the [photographed] animal and the general viewing public," the Court is not prepared to conclude the Department of Agriculture's interpretation is unreasonable.

Antle v. Johanns, No. 4:06-1008, 2007 WL 5209982 at **8-9 (D.S.C. June 5, 2007).

August 16, 2007, Violation of 9 C.F.R. § 2.131(c)(1)
(Amended Complaint ¶ 12c)

Melissa Kay Radel, an APHIS Animal Care inspector, testified that she and Debra Sime, an APHIS veterinary medical officer, were present at the Steele County Fair, Owatonna, Minnesota, and observed Ms. Palazzo and Mr. Riggs' animal exhibit on August 16, 2007 (Tr. 221-22). Ms. Radel identified a number of photographs she took during the inspection, including two which show Ms. Palazzo carrying a juvenile tiger through a public area without a barrier between the tiger and members of the public (CX 22 at 21-22). Other photographs show members of the public feeding juvenile tigers (CX 20, CX 22 at 10-18). Ms. Palazzo and Mr. Riggs' records, examined by APHIS inspectors, indicated the youngest tiger to be approximately 8 weeks old and the tigers

represented to be 14 weeks old on the health certificates were in fact 24 weeks old (CX 28). The ALJ found the Administrator introduced ample evidence that there was more than minimal risk of harm to the animals and to the public without sufficient distance and/or barriers between the animals and the public so as to assure the safety of the animals and the public (ALJ's Decision and Order at 14-15, 20-21 ¶ 4a).

On appeal, Ms. Palazzo and Mr. Riggs assert the ALJ erroneously relied on only two photographs of their animal exhibition as evidence to support the conclusion that Ms. Palazzo and Mr. Riggs violated 9 C.F.R. § 2.131(c)(1) on August 16, 2007 (Appeal Pet. at 3).

As an initial matter, Ms. Palazzo and Mr. Riggs cite no support for their argument that two photographs of their animal exhibition are not sufficient evidence to conclude that they violated 9 C.F.R. § 2.131(c)(1). Moreover, I find the ALJ did not only rely on two photographs as the basis for his conclusion that Ms. Palazzo and Mr. Riggs violated 9 C.F.R. § 2.131(c)(1) at the Steele County Fair, Owatonna, Minnesota, on August 16, 2007. Instead, the ALJ's Decision and Order makes clear that he relied on Ms. Radel's testimony; Ms. Radel's affidavit (CX 28); and 11 photographs (CX 22 at 10-18, 21-22). In addition, the ALJ refers to the "inspectors' examination," and I infer from the use of the plural that the ALJ also relied on the testimony, affidavit, and statement of Dr. Debra

Sime, who accompanied Ms. Radel during the August 16, 2007, inspection of Ms. Palazzo and Mr. Riggs' animal exhibit (Tr. 269-78; CX 25-CX 26). (ALJ's Decision and Order at 14-15.) Therefore, I reject Ms. Palazzo and Mr. Riggs' assertion that the ALJ only relied on two photographs as the basis for the conclusion that Ms. Palazzo and Mr. Riggs violated 9 C.F.R. § 2.131(c)(1) on August 16, 2007.

September 7, 2007, Violation of 9 C.F.R. § 2.131(c)(1)
(Amended Complaint ¶ 12d)

Dr. Susan Kingston, an APHIS veterinary medical officer, testified that she and Dr. Ken Kirsten, another APHIS veterinary medical officer, were present at the Shoppes at College Hill, Bloomington, Illinois, on September 7, 2007, for the purpose of inspecting Ms. Palazzo and Mr. Riggs' animal exhibit (Tr. 290-92). During the photograph sessions, the two veterinary medical officers observed, and Dr. Kingston photographed, a number of instances in which juvenile tigers were photographed with members of the public, including small children, having direct contact with the tigers (Tr. 291-93; CX 32). Several photographs show members of the public touching the tigers without the presence of any barrier. The ALJ found the Administrator introduced ample evidence that there was more than minimal risk of harm to the animals and to the public without sufficient distance and/or barriers between the animals and the public, in violation of 9 C.F.R. § 2.131(c)(1) (ALJ's Decision and Order at 15-16, 20-21 ¶ 4b).

On appeal, Ms. Palazzo and Mr. Riggs assert the ALJ erred by relying on the testimony of Dr. Gibbens as evidence to support the conclusion that Ms. Palazzo and

Mr. Riggs violated 9 C.F.R. § 2.131(c)(1) on September 7, 2007. Ms. Palazzo and Mr. Riggs assert Dr. Gibbens testified that their animal exhibition violated the Regulations "solely due to the age of the [p]atron" and that this new interpretation by Dr. Gibbens has never been shared with Ms. Palazzo, Mr. Riggs, any exhibitor, or any Animal Welfare Act licensee. (Appeal Pet. at 3-4.)

The ALJ does not rely on, or even mention, Dr. Gibbens' testimony in connection with the ALJ's conclusion that Ms. Palazzo and Mr. Riggs violated 9 C.F.R. § 2.131(c)(1) while exhibiting animals at the Shoppes at College Hill, Bloomington, Illinois, on September 7, 2007 (ALJ's Decision and Order at 15-16, 19-20 ¶ 9). Therefore, I reject Ms. Palazzo and Mr. Riggs' contention that the ALJ erroneously relied on Dr. Gibbens' testimony.

**October 5, 2007, Violation of 9 C.F.R. § 2.131(c)(1)
(Amended Complaint ¶ 12e)**

On October 5, 2007, APHIS Animal Care inspectors Cathy Niebruegge and Karl Thornton observed Ms. Palazzo and Mr. Riggs' animal exhibit at the Oklahoma State Fair, Tulsa, Oklahoma. Mr. Thornton photographed Ms. Palazzo exhibiting a juvenile tiger on a platform where members of the public were photographed in close proximity to the tiger (Tr. 373-80; CX 37). The photographs corroborate the information contained on the inspection report prepared by Ms. Niebruegge and Mr. Thornton (CX 37) and reflect Ms. Palazzo holding the tiger with a leash and bottle-feeding the tiger with members of the public being photographed only 3 to 5 feet from the tiger without any barrier between

the tiger and the photographed members of the public (CX 39), in violation of 9 C.F.R. § 2.131(c)(1). The ALJ concluded that Ms. Palazzo and Mr. Riggs violated 9 C.F.R. § 2.131(c)(1) as alleged in the Amended Complaint ¶ 12e (ALJ's Decision and Order at 16-17, 20-21 ¶ 4c).

On appeal, Ms. Palazzo and Mr. Riggs assert the ALJ's conclusion is error because: (1) they did not permit their tigers to have contact with the public; (2) they had a minimum of 6 feet between the public and their 50-pound tiger that was tethered to Ms. Palazzo; and (3) Ms. Palazzo and Mr. Riggs were not cited for an identical animal exhibition that occurred 2 weeks prior to October 5, 2007.

The ALJ concluded that on October 5, 2007, Ms. Palazzo and Mr. Riggs violated 9 C.F.R. § 2.131(c)(1) based on evidence that Ms. Palazzo and Mr. Riggs photographed members of the public in close proximity to a tiger with no barriers between members of the public and the tiger (ALJ's Decision and Order at 16). The ALJ did not find any contact between the tiger and members of the public, but contact is not a necessary prerequisite to finding a violation of 9 C.F.R. § 2.131(c)(1), as Ms. Palazzo and Mr. Riggs appear to assert.

The ALJ did not find that Ms. Palazzo and Mr. Riggs maintained a minimum of 6 feet between their tiger and members of the public being photographed, as Ms. Palazzo and Mr. Riggs assert. Instead the ALJ found, as follows:

The photographs corroborate the information contained on the Inspection Report [CX 37] and reflect Ms. Palazzo holding the tiger with a leash and

feeding it a bottle with the members of the general public being photographed only 3-5 feet away without any barrier being present between them. CX 39.

ALJ's Decision and Order at 16-17. I find the record supports the ALJ's finding of 3 to 5 feet between the tiger and members of the public, and I find no evidence supporting Ms. Palazzo and Mr. Riggs' contention that they maintained a minimum of 6 feet between the tiger and members of the public.

Ms. Palazzo and Mr. Riggs cite no evidence, and I can find no evidence, to support their assertion that they were inspected 2 weeks prior to October 5, 2007, and were not cited for a violation of 9 C.F.R. § 2.131(c)(1), even though they exhibited tigers in the same manner as they exhibited tigers on October 5, 2007. Moreover, even if I were to find that such an inspection occurred, I would find that inspection and the results of that inspection irrelevant.

The Sanction

The Administrator requested revocation of Ms. Palazzo's Animal Welfare Act license, the issuance of a cease and desist order, and assessment of a \$35,750 civil penalty against Mr. Riggs (Amended Compl. at 7; Complainant's Post-Hearing Brief at 32-37). The ALJ found the remedial purposes of the Animal Welfare Act served by issuance of an order that Ms. Palazzo and Mr. Riggs cease and desist violations of the Animal Welfare Act and the Regulations, a 3-year suspension of Ms. Palazzo's Animal Welfare Act license, and assessment of a \$10,000 civil penalty against Mr. Riggs (ALJ's Decision

and Order at 17-18, 21). The Administrator did not appeal the sanction imposed by the ALJ.

On appeal, Ms. Palazzo and Mr. Riggs contend the ALJ's statements that Ms. Palazzo rejected the Secretary of Agriculture's interpretation of the handling regulations and that Ms. Palazzo and Mr. Riggs repeatedly fulfilled their pledge not to comply with the handling regulations, which statements the ALJ made in connection with his discussion of sanction, are error (Appeal Pet. at 2-3).

Ms. Palazzo and Mr. Riggs' assignment of error is misplaced. The statements Ms. Palazzo and Mr. Riggs attribute to the ALJ are arguments advanced by the Administrator in support of the Administrator's request that the ALJ revoke Ms. Palazzo's Animal Welfare Act license, which the ALJ quotes as follows:

In seeking revocation of Ms. Palazzo's license, the Complainant argues that "Palazzo has rejected the Secretary's interpretation of the handling Regulations" and "respondents have repeatedly fulfilled their pledge not to comply with the regulations." Complainant's Brief at 33.

ALJ's Decision and Order at 17. The ALJ's quotation of the Administrator's arguments is not error; therefore, I reject Ms. Palazzo and Mr. Riggs' contention that the ALJ's statements are error.

The remainder of Ms. Palazzo and Mr. Riggs' appeal of the sanction imposed by the ALJ is focused on the ALJ's assessment of a civil penalty against Mr. Riggs. Ms. Palazzo and Mr. Riggs assert the ALJ assessment of a \$10,000 civil penalty against Mr. Riggs, is error because: (1) Mr. Riggs does not make any of the decisions regarding

the business and has no control over the daily operations of the business; (2) assessment of a civil penalty against Mr. Riggs is directed personally at Mr. Riggs; (3) assessment of a civil penalty against Mr. Riggs is severe and unfair; and (4) assessment of a civil penalty against Mr. Riggs is not consistent with the civil penalties assessed against others who have violated the Animal Welfare Act and the Regulations (Appeal Pet. at 5-6).

Ms. Palazzo and Mr. Riggs' assertion that Mr. Riggs does not make any of the decisions regarding the business and has no control over the daily operations of the business appears to be an argument that Mr. Riggs is not an "exhibitor," as that term is defined under the Animal Welfare Act, and, thus, may not be assessed a civil penalty. The Animal Welfare Act authorizes the Secretary of Agriculture to assess a civil penalty against any exhibitor who violates the Animal Welfare Act or the Regulations, as follows:

§ 2149. Violations by licensees

- ...
(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 . . . exhibitor . . . 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 \$2,500¹⁴⁾ for each such violation[.]

7 U.S.C. § 2149(b). The Animal Welfare Act defines the term “exhibitor,” as follows:

§ 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[.]

7 U.S.C. § 2132(h). Based on the record to which he cites extensively, the ALJ found that Mr. Riggs participated in the operation of Great Cat Adventures on a daily basis and operated as an exhibitor during the period material to the instant proceeding (ALJ’s Decision and Order at 6-8, 18). Ms. Palazzo and Mr. Riggs provide no support for their assertions that Mr. Riggs does not make any of the decisions regarding the business and has no control over the daily operations of the business. Therefore, I affirm the ALJ’s finding that Mr. Riggs, along with Ms. Palazzo, was an exhibitor; hence, the Secretary of

¹⁴⁾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 7 U.S.C. § 2149(b) for each violation of the Animal Welfare Act and the Regulations occurring after June 23, 2005, by increasing the maximum civil penalty from \$2,500 to \$3,750 (7 C.F.R. § 3.91(b)(2)(ii)).

Agriculture is authorized to assess Mr. Riggs a civil penalty for violations of the Animal Welfare Act and the Regulations.¹⁵

As for Ms. Palazzo and Mr. Riggs' assertion that the ALJ's assessment of a civil penalty was "directed personally" against Mr. Riggs, I agree; however, I find no error. The Animal Welfare Act authorizes the Secretary of Agriculture to assess a civil penalty against "any" exhibitor who violates the Animal Welfare Act or the Regulations (7 U.S.C. § 2149(b)). The ALJ was not required by the Animal Welfare Act, the Regulations, or the rules of practice applicable to the instant proceeding¹⁶ to assess both Ms. Palazzo and Mr. Riggs a civil penalty for their violations of the Animal Welfare Act and the Regulations.

Ms. Palazzo and Mr. Riggs provide no support for their assertion that the \$10,000 civil penalty assessed against Mr. Riggs is severe and unfair. A sanction by an

¹⁵Multiple individuals may be liable for violations of the Animal Welfare Act if they all operate a business, even if only one of those individuals holds an Animal Welfare Act license. See *In re Micheal McCall*, 52 Agric. Dec. 986, 998 (1993) (finding spouses operating a kennel together jointly and severally liable for violations of the Animal Welfare Act, even though the Animal Welfare Act license is held by only one spouse); *In re Gus White III*, 49 Agric. Dec. 123, 154 (1990) (stating it is of no particular consequence that the Animal Welfare Act license was held in the name of Gus White III, alone; the business was operated by both respondents who are both exhibitors jointly and severally liable for the Animal Welfare Act violations); *In re Hank Post*, 47 Agric. Dec. 542, 547 (1988) (holding three respondents were exhibitors and responsible under the Animal Welfare Act because each exercised control and authority over the treatment and handling of the animal in question when it was exhibited).

¹⁶The rules of practice applicable to the instant proceeding are the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-151).

administrative agency must be warranted in law and justified in fact.¹⁷ The Secretary of Agriculture has authority to assess an exhibitor a civil penalty of \$3,750 for each violation of the Animal Welfare Act or the Regulations.¹⁸ Mr. Riggs committed numerous violations of 9 C.F.R. § 2.75(b) and three violations of 9 C.F.R. § 2.131(c)(1). Therefore, the ALJ's assessment of a \$10,000 civil penalty against Mr. Riggs is warranted in law. Moreover, I find the ALJ's assessment of a \$10,000 civil penalty against Mr. Riggs justified in fact.

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.¹⁹

Ms. Palazzo and Mr. Riggs operate a medium-sized business, the gravity of Mr. Riggs' violations of the Regulations is great, and Mr. Riggs has not demonstrated good faith.²⁰

¹⁷*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); *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).

¹⁸7 U.S.C. § 2149(b); 28 U.S.C. § 2461 (note); 7 C.F.R. § 3.91(b)(2)(ii).

¹⁹7 U.S.C. § 2149(b).

²⁰Specifically, the ALJ found that Mr. Riggs has a documented history of both flaunting the Secretary of Agriculture's Regulations and attempting to shield himself from responsibility by corporate artifice, manipulation of others, and by working under the Animal Welfare Act licenses of others (ALJ's Decision and Order at 17).

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. The Administrator recommended assessment of a \$35,750 civil penalty against Mr. Riggs, but did not appeal the ALJ's Decision and Order assessing Mr. Riggs a \$10,000 civil penalty.

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 7 U.S.C. § 2149(b), the remedial purposes of the Animal Welfare Act, and the recommendations of the administrative officials, I conclude the ALJ's assessment of a \$10,000 civil penalty against Mr. Riggs is not severe or unfair, as Ms. Palazzo and Mr. Riggs assert.

Finally, Ms. Palazzo and Mr. Riggs cite no support for their assertion that the assessment of \$10,000 civil penalty against Mr. Riggs is harsher than the civil penalties assessed against others who have violated the Animal Welfare Act and the Regulations. A review of recent Animal Welfare Act disciplinary proceedings in which the Secretary of Agriculture has assessed civil penalties for violations of the Animal Welfare Act and the Regulations belies Ms. Palazzo and Mr. Riggs' assertion.²¹ Moreover, even if I were to find the civil penalty assessed against Mr. Riggs was more severe than civil penalties assessed against violators in other similar cases (which I do not so find), the \$10,000 civil penalty assessed against Mr. Riggs would not be rendered invalid. A sanction by an administrative agency is not rendered invalid in a particular case merely because it is more severe than sanctions imposed in other cases. The Secretary of Agriculture has broad authority to fashion appropriate sanctions under the Animal Welfare Act, and the Animal Welfare Act has no requirement that there be uniformity in sanctions among violators.²²

²¹See, e.g., *In re Sam Mazzola*, ___ Agric. Dec. ___ (Nov. 24, 2009) (assessing the respondent a \$21,000 civil penalty); *In re D&H Pet Farms, Inc.*, ___ Agric. Dec. ___ (Oct. 19, 2009) (assessing the respondent a \$10,000 civil penalty); *In re Lorenza Pearson*, ___ Agric. Dec. ___ (July 13, 2009) (assessing the respondent a \$93,975 civil penalty), *appeal docketed*, No. 09-4114 (6th Cir. Sept. 10, 2009); *In re Octagon Sequence of Eight, Inc.* (Decision as to Lancelot Kollman Ramos), 66 Agric. Dec. 1093 (2007) (assessing the respondent a \$13,750 civil penalty), *aff'd sub nom. Ramos v. U.S. Dep't of Agric.*, 332 F. App'x 814 (11th Cir. 2009).

²²*In re Cheryl Morgan*, 65 Agric. Dec. 849, 874-75 (2006).

Findings of Fact

1. Jamie Michelle Palazzo is an individual residing in Haltom City, Texas.
2. Jamie Palazzo, d/b/a Great Cat Adventures, is licensed under the Animal Welfare Act as a Class C Exhibitor, holding Animal Welfare Act license number 74-C-0627.
3. James Lee Riggs is an individual residing in Haltom City, Texas.
4. At all times material to the instant proceeding, Mr. Riggs operated as an "exhibitor," as that term is defined in the Animal Welfare Act and the Regulations.
5. Ms. Palazzo and Mr. Riggs operate a moderate-sized business, exhibiting big cats for profit.²³
6. Although Ms. Palazzo previously was an employee of Bridgeport Nature Center, Inc., and purchased equipment from Mr. Riggs, which equipment was previously used by Bridgeport Nature Center, Inc., Ms. Palazzo did not purchase any interest in Bridgeport Nature Center, Inc., or in any other way become a "successor in interest" to Bridgeport Nature Center, Inc.
7. APHIS, at least since 2004, has consistently maintained that there is more than minimal risk of harm to big cats and to the public if the public could come into direct

²³Promotional literature indicates Great Cat Adventures has more than 35 big cats and feeds 3,000 pounds of meat per week (CX 156). The 2007 records of Bridgeport Animal Hospital, P.L.L.C., listed 39 animals owned by Great Cat Adventures (CX 106).

contact with juvenile or adult big cats and considered big cats to become juveniles when they reach 12 weeks of age.

8. On August 9, 2006, at the Boone County Fairgrounds, Belvedere, Illinois, Ms. Palazzo used a stream of water from a hose to encourage a tiger to enter its enclosure, causing the tiger behavioral stress.

9. From October 2006 to November 2007, Ms. Palazzo and Mr. Riggs failed to make, keep, and maintain records that fully and correctly disclosed required information. The records on multiple occasions reflected numerous inconsistent entries as to birth dates of the animals with the inference that Ms. Palazzo and Mr. Riggs' intent was that the animals might continue to be exhibited for longer periods of time and also reflected inaccurate information as to the means of acquisition of certain animals.

10. On August 16, 2007, at the Steele County Fair, Owatonna, Minnesota, Ms. Palazzo carried a juvenile tiger through a public area without a barrier between the tiger and members of the public, and Ms. Palazzo and Mr. Riggs allowed members of the public to feed juvenile tigers without sufficient distance and/or barriers between the tigers and the public.

11. On September 7, 2007, at the Shoppes at College Hill, Bloomington, Illinois, Ms. Palazzo and Mr. Riggs allowed juvenile tigers to be photographed with members of the public, including small children, having direct contact with the tigers without distance and/or barriers between the public and the tigers.

12. On October 5, 2007, at the Oklahoma State Fair, Tulsa, Oklahoma, Ms. Palazzo and Mr. Riggs allowed juvenile tigers to be photographed with members of the public, including small children, without sufficient distance and/or barriers between the tigers and the public.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Between October 2006 and November 2007, Ms. Palazzo and Mr. Riggs failed to make, keep, and maintain records or forms that fully and correctly disclosed the required information, in willful violation of 9 C.F.R. § 2.75(b).
3. On August 9, 2006, at Boone County Fairgrounds, Belvedere, Illinois, Ms. Palazzo failed to handle a tiger as carefully as possible in a manner that did not cause the tiger behavioral stress, in willful violation of 9 C.F.R. § 2.131(b)(1).
4. Ms. Palazzo and Mr. Riggs failed to handle animals during public exhibition in such a manner as to allow only minimal risk of harm to the animals and to the public with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of the animals and the public, in willful violation of 9 C.F.R. § 2.131(c)(1) on the following dates and places:

- a. August 16, 2007, at the Steele County Fair, Owatonna, Minnesota;
- b. September 7, 2007, at the Shoppes at College Hill, Bloomington, Illinois;

and

c. October 5, 2007, at the Oklahoma State Fair, Tulsa, Oklahoma.

For the foregoing reasons, the following Order is issued.

ORDER

1. Jamie Michelle Palazzo and James Lee Riggs, their agents, employees, successors and assigns, directly or indirectly, through any corporate or other device are ordered to cease and desist from further violations of the Animal Welfare Act and the Regulations, including:

- a. failing to make, keep, and maintain records or forms that fully and correctly disclose the required information;
- b. failing to handle animals as carefully as possible in a manner that does not cause animals behavioral stress; and
- c. failing to handle animals during public exhibition in such a manner as to allow only minimal risk of harm to the animals and to the public with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of the animals and the public.

Paragraph 1 of this Order shall be effective immediately upon service of this Decision and Order on Ms. Palazzo and Mr. Riggs.

2. Animal Welfare Act license number 74-C-0627 issued to Jamie Palazzo, d/b/a Great Cat Adventures, as a Class C exhibitor, is suspended for a period of 3 years.

Paragraph 2 of this Order shall be effective 60 days after service of this Decision and Order on Ms. Palazzo.

3. James Lee Riggs is assessed a \$10,000 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
1400 Independence Avenue SW
Room 2343 South Building
Washington, DC 20250-1417

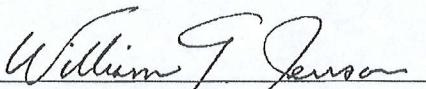
Payment of the civil penalty shall be sent to, and received by, Colleen A. Carroll within 60 days after service of this Order on Mr. Riggs. Mr. Riggs shall state on the certified check or money order that payment is in reference to AWA Docket No. 07-0207.

RIGHT TO JUDICIAL REVIEW

Ms. Palazzo and Mr. Riggs have 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. Ms. Palazzo and Mr. Riggs must seek judicial review within 60 days after entry of the Order in this Decision and Order.²⁴ The date of entry of the Order in this Decision and Order is May 10, 2010.

Done at Washington, DC

May 10, 2010



William G. Jenson
Judicial Officer

²⁴7 U.S.C. § 2149(c).