



NVD800L-AC

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

CERTIFIED RECEIPT REQUESTED

November 12, 2010

Brian Karl Turner
an individual
2221 West Cordova Place
Pahrump, Nevada 89048

Dear Mr. Turner:

Subject: In re: Brian Karl Turner, an individual, – Respondent
AWA Docket No. 09-0128

Enclosed is a copy of the Decision and Order issued in this proceeding by Administrative Law Judge Victor W. Palmer on November 10, 2010.

Each party has thirty (30) days from the service of this decision and order in which to file an appeal to the Department's Judicial Officer.

If no appeal is filed, the Decision and Order shall become binding and effective as to each party thirty-five (35) days after its service. However, no decision or order is final for purposes of judicial review except a final order issued by the Secretary or the Judicial Officer pursuant to an appeal.

In the event you elect to file an appeal, an original and three (3) copies are required. You are also instructed to consult § 1.145 of the Uniform Rules of Practice (7 C.F.R. § 1.145) for the procedure for filing an appeal.

Sincerely,

L. EUGENE WHITFIELD
Hearing Clerk

By Carla M. Andrews
CARLA M. ANDREWS
Assistant Hearing Clerk

Enclosure(s)

Sent to: Colleen A. Carroll, OGC
Ruth Ann McDermott, APHIS

caa: 11/12/2010

2010 NOV 10 PM 1:12

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:

AWA Docket No. 09-0128

BRIAN KARL TURNER, an individual,

)

Respondent.

)

DECISION AND ORDER

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.) (the "Act"), by an order to show cause why the respondent's Animal Welfare Act license should not be terminated, which order to show cause was filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture ("APHIS"), on June 4, 2009. This initial decision and order is entered pursuant to section 1.141(e) of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.141(e)).

On October 6, 2010, Administrative Law Judge Victor W. Palmer filed a Hearing Notice, setting the hearing for November 9 and 10, 2010, by audio-visual telecommunication, with locations in Washington, D.C., and Las Vegas, Nevada. The notice was served on respondent.

Respondent was duly notified of the time, place and location of the scheduled hearing.

and 10/9 VWP

On November 9, 2010, I presided over the oral hearing in this matter, at the Washington, D.C., location. Complainant was represented by Colleen Carroll, Office of the General Counsel, U.S. Department of Agriculture. Respondent failed to appear at the hearing without good cause.

Nov 10, 2010, VWP

Pursuant to the Rules of Practice, respondent is deemed to have waived the right to an oral hearing and to have admitted all of the material allegations of fact contained in the amended complaint. 7 C.F.R. § 1.141(e). Complainant elected to follow the procedure set forth in section 1.141(e) of the Rules of Practice. Therefore, I issue this initial decision and order on November 9, 2010.

10/9 VWP

////

FINDINGS OF FACT

1. Respondent Brian Karl Turner is an individual doing business as "Runnin' Wild," also known as "Running Wild, and also known as "Runnin' Wild Exotic Animal Sanctuary," whose mailing address is 2221 West Cordova Place, Pahrump, Nevada 89048. At all times mentioned herein, said respondent operated as an exhibitor, as that term is used in the Act and the Regulations, and, as an individual, held license number 88-C-0158. Said respondent previously held license number 48-C-0127. On or about March 5, 2009, respondent Turner submitted to complainant an APHIS Form 7003 (Application for License - License Renewal) for license number 88-C-0158.

2. The AWA is a remedial statute enacted to "insure that animals . . . are provided humane care and treatment." Section 2.12 of the Regulations, through section 2.11, authorizes the Department to terminate any license issued to a person who:

"Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act." 9 C.F.R. § 2.11(a)(6).

The final version of sections 2.11 and 2.12 of the Regulations was published in the Federal Register on July 14, 2004 (69 Fed. Reg. 42,089 (July 14, 2004)). Sections 2.11 and 2.12 of the Regulations became effective on August 14, 2004 (69 Fed. Reg. 42,089 (July 14, 2004)).

3. Beginning on approximately October 15, 2007, and continuing through the date of the filing of this order to show cause, respondent Turner has, in person, in writing, and by telephone, repeatedly interfered with, threatened, verbally abused, and/or harassed USDA Animal Care Inspector Jeanne Lorang, and Investigative and Enforcement Services personnel, in the course of carrying out their duties, to such an extent that complainant is unable to conduct normal routine

inspections of respondents' facilities, animals and records, without having complainant's inspectors and investigators accompanied by armed law enforcement officers.

4. The AWA gives the Secretary of Agriculture broad authority to conduct inspections and investigations of exhibitors, and requires exhibitors to allow access for those purposes:

"The Secretary shall make such investigations or inspections as he deems necessary to determine whether any dealer, exhibitor, intermediate handler, carrier, research facility, 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 regulation or standard issued thereunder, and for such purposes, the Secretary shall, at all reasonable times, have access to the places of business and the facilities, animals, and those records required to be kept pursuant to section 2140 of this title of any such dealer, exhibitor, intermediate handler, carrier, research facility, or operator of an auction sale. The Secretary shall inspect each research facility at least once a year and, in the case of deficiencies or deviations from the standards promulgated under this chapter, shall conduct such follow-up inspections as may be necessary until all deficiencies or deviations from such standards are corrected. . . ." 7 U.S.C. § 2146(a).¹

Section 2.126 of the Regulations requires all exhibitors to provide access to inspection:

- (a) Each dealer, exhibitor, intermediate handler, or carrier, shall, during business hours, allow APHIS officials:
 - (1) To enter its place of business;
 - (2) To examine records required to be kept by the Act and the regulations in this part;
 - (3) To make copies of the records;
 - (4) To inspect and photograph the facilities, property and animals, as the APHIS officials consider necessary to enforce the provisions of the Act, the regulations and the standards in this subchapter; and
 - (5) To document, by the taking of photographs and other means, conditions and areas of noncompliance.
- (b) The use of a room, table, or other facilities necessary for the proper examination of the records and inspection of the property or animals must be extended to APHIS officials by the dealer, exhibitor, intermediate handler or carrier, and a responsible adult shall be made available to accompany APHIS officials during the inspection process. 9 C.F.R. § 2.126.

¹The term "Secretary" means "the Secretary of Agriculture of the United States or his representative who shall be an employee of the United States Department of Agriculture" 7 U.S.C. § 2132(b); 9 C.F.R. § 1.1 (definition of "Secretary"). See also 7 C.F.R. § 2.22(a)(2)(vi)(delegation of authority to Under Secretary for Marketing and Regulatory Programs).

5. On or about January 16, 2008, respondent Turner advised complainant in writing that he will not allow Animal Care Inspector Lorang access to his facility unless another USDA official is also present:

“If you appear on the property unaccompanied, you will simply be escorted off the property. If you think that your position will be bolstered by appearing with Sheriff’s deputies or Animal Control Officials, it won’t; they will be admitted to the compound, while you will be denied access unless accompanied by other USDA personnel.”²

On or about January 12, 2008, respondent Turner’s associate, Leigh Messinides, wrote to Animal Care Inspector Lorang, and stated

“If you attempt to appear by yourself to perform an inspection or follow-up on the previous inspection, you will be escorted off our property.”³

6. Complainant last conducted an inspection of respondent Turner’s facility on January 16, 2008, and documented repeat non-compliant items. On that occasion, Animal Care Inspector Lorang was, for her own protection, accompanied by an agent from USDA’s Office of the Inspector General, Anna Casas, as well as two other APHIS officials, including Dr. Laurie J. Gage. On that occasion, Dr. Gage observed that respondent Turner “stated initially that he would only speak to Anna and myself,” “made some verbal threats towards Jeanne about suing her,” made “some accusations towards both Jeanne and Joe [Bauman],” “told Jeanne there would be ‘something waiting in her mailbox tomorrow’, and suggested it had to do with his lawsuit,” and, during the exit interview, “continued to make verbal attacks towards Jeanne, mostly threats about an impending lawsuit.”⁴ In her report, Dr. Gage wrote:

²Letter to Jeanne Lorang at 2 (January 16, 2008)(Attachment A to Order to Show Cause).

³Letter to Jeanne Lorang at 1-2 (January 12, 2008)(Attachment B to Order to Show Cause).

⁴Report of Site Visit (January 22, 2008)(Attachment C to Order to Show Cause).

I was grateful to have OIG agent Anna Casas accompany us, as she added another layer of safety for us and I felt more secure with the situation having her there.”⁵

The need to have additional personnel (including an armed agent) accompany complainant’s inspector on a routine inspection is an unwarranted strain on complainant’s (and the Department’s) resources and diverts those resources from other enforcement activities.

7. Respondent Turner has repeatedly threatened Animal Care Inspector Lorang with legal action, in person, through his surrogate, Ms. Messinides,⁶ and in writing, to wit.

“This mailing is intended to make you aware of the complaints already filed against you, and to notify you of future legal action to be filed against you. Our next step in the process will be to establish an Inspector General’s investigation of your conduct, but this action probably cannot be initiated until our FOIA request concerning the ‘complaint’ to which you responded has been satisfied. After that, we will bring civil litigation for your wholly unprofessional conduct on 10 and 11 OCT 07 which prefaced your hopelessly biased inspection report. And finally, information gleaned from the FOIA request, as well as more detailed interview to pursue criminal charges for subornation of perjurious statements from a witness in the furtherance of a false federal complaint.”⁷

8. Respondent Turner has acted to impede the complainant from carrying out its mandate to enforce the Animal Welfare Act, in contravention of the AWA and the Regulations. Respondent Turner’s acts create obstacles to inspections, with the apparent goal of effectuating assignment of a different inspector.

“I have made it known to Ms. Lorang since 11 Oct 07 that this complaint was pending, and

⁵Attachment C.

⁶See Attachment B at 1 (“[W]e are pursuing a complaint with the Inspector General’s office of APHIS. We are awaiting results from a FOIA request regarding the person and nature of the complaint filed against us. We are also pursuing legal channels regarding the filing of a civil lawsuit, which is sure to follow, and considering possible criminal charges as well, if a case can be substantiated for suborning perjurious statements from a witness in the furtherance of a federal complaint.”)

⁷Attachment A at 1.

that she may in fact be held liable for potential legal action. Given her awareness of this it is obvious that, her current unexplainable bias notwithstanding, she would be in a position of clear conflict of interest to appear at Runnin' Wild for any subsequent inspection. I hereby request that a more qualified and fair-minded ACI be deployed for future inspections, and that the infractions cited by Ms. Lorang be expunged from my record following the review of satisfactory evidence furnished in this report (particularly in reference to the veterinary care infraction), once proven to be either erroneous or maliciously assessed.”⁸

Respondent Turner’s actions also appear designed to intimidate Animal Care Inspector Lorang, and/or to cause her to be reluctant to document noncompliance for fear of retaliation by respondent in the form of harassment, interference and/or threats of litigation.

“I can’t help but noticing that it has been almost seven months since your last appearance, even though you had cited several phony infractions which procedurally should have dictated your follow-up. . . . So anyway, feel free to show up and write some more fictional nonsense in the form of an inspection report; whatever unsupportable nonsense you add on to the established record just permits me increased latitude to expand on the level of damages I will be seeking.”⁹

“In short, for most of my adult life, I’ve been involved in conflict and confrontation on a professional level, and I’m very good at it.”¹⁰

9. Allowing respondent Turner to continue to hold an AWA license would be contrary to the Act’s purpose of ensuring humane treatment of animals because respondent Turner willfully and knowingly has refused to make his facilities, animals and records available for inspection by the Animal Care Inspector assigned to conduct such inspections, as determined by the Secretary. Respondent Turner’s actions constitute an abuse of the licensure privileges of the AWA, and render him unfit to be licensed. For these reasons, the Administrator has determined that the renewal of a

⁸Letter (Complaint against ACI Jeanne Lorang and Notice of Pending Legal Action) at 7-8 (October 31, 2007)(Attachment F to Order to Show Cause); Complainant’s Response (December 7, 2007)(Attachment G to Order to Show Cause).

⁹Letter to Jeanne Lorang at 3 (August 27, 2008)(Attachment H to order to Show Cause).

¹⁰Attachment H at 4.

license to respondent Turner would be contrary to the purposes of the Act, and that said respondent's license should be terminated.

ORDER

1. Animal Welfare Act license number 88-C-0158 is hereby terminated.
2. The provisions of this order shall become effective immediately. Copies of this decision shall be served upon the parties.

Done at Washington, D.C.
this 21st day of November 2010

100



Victor W. Palmer
Administrative Law Judge