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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
SUSAN BIERY SERGOJAN,) AWA Docket No. 07-0119
an individual,)
)
Respondent) Decision and Order

Decision Summary

1. I decide that Akela the wolf, in captivity at Wolf Haven International, needed euthanasia to end his suffering as he was dying in 2005 at the age of 15 years. I decide that Susan Biery Sergiojan, the Respondent ("Respondent Sergiojan" or "Respondent"), who was Wolf Haven's Executive Director at that time, failed to provide adequate care to Akela; in so failing, Respondent Sergiojan violated provisions of the Animal Welfare Act, as amended, 7 U.S.C. § 2131 *et seq.* (frequently herein the "AWA" or the "Act") and Regulations issued thereunder, specifically 9 C.F.R. § 2.40(a), 9 C.F.R. § 2.40(a)(2), 9 C.F.R. § 2.40(b)(1), 9 C.F.R. § 2.131(b)(1), and 9 C.F.R. § 2.131(e). I decide further that the appropriate remedy for Respondent Sergiojan's violations includes civil penalties totaling \$10,000.

Introduction

2. Certainly there can be disagreement as to when euthanasia, especially for an animal dying of natural causes at an advanced age, is necessary; but Respondent Sergiojan missed critical information by choosing to shut out the treating veterinarian from her decision-making process. Akela the wolf was dignified and majestic while dying, even though

emaciated and weak; even though shivering on damp, cold ground (during January 5 through 10, 2005, the evening temperatures were as low as 19 degrees Fahrenheit.¹); even though his internal organs had been shutting down, causing pain; even though he had not eaten for three weeks; even though he was suffering. Akela's brave front masked his pain and suffering; nevertheless, Akela's pain and suffering would have been apparent to Respondent Sergiojan had she consulted with the treating veterinarian; even had she been more attuned to the observations and concerns voiced at the time by Wolf Haven's animal curator and other support staff, including volunteers. Had Respondent Sergiojan just not injected herself into the decision-making process, by overruling the animal curator, by overruling the treating veterinarian, and by involving Wolf Haven's Board while failing to obtain and provide for the Board information from the treating veterinarian, Akela would have been spared the additional pain and suffering when euthanasia was overdue. USDA veterinarian Randall Ridenour, D.V.M., testified that he had not seen other animals during the course of his career that he believed were in greater need of euthanasia than Akela. This included Akela's condition as shown in the first videotaped evidence (taken January 5, 2005). Tr. 1308-09, 1310-13. CX 10. Respondent Sergiojan's Animal Welfare Act violations began January 5, 2005, and persisted into January 10, 2005, when Dr. Ridenour and another USDA Veterinarian, Dr. Ruth Hanscom, arrived at Wolf Haven to investigate Akela's reported suffering. Akela's treating veterinarian met them there; Wolf Haven's

¹ Tr. 113-14:6, CX 5 (weather reports from The Olympian "from forecasts and data supplied by the National Weather Service, Accu-Weather, Inc. and The Associated Press," showing lows of 19 degrees (January 5), 23 degrees (January 6), 37 degrees (January 7), 32 degrees (January 8), and 33 degrees (January 9)).

curator met them there. The decision among the four of them was unanimous that Akela required immediate euthanasia, indeed had required euthanasia for some time; and the treating veterinarian humanely euthanized Akela, there in his home at Wolf Haven.

3. Akela was a wolf in captivity. A wolf dying in captivity cannot be treated in similar fashion to what would happen if he were in the wild. To "let nature take its course" when the wolf has been removed from his "natural" environment, can be inhumane and was, here.

4. Only by listening to the veterinarians did I understand Akela's pain and suffering.

Parties and Counsel

5. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture ("APHIS" or "Complainant"), is represented by Colleen A. Carroll, Esq., United States Department of Agriculture, Office of the General Counsel, Marketing Division, South Building Room 2343 Stop 1417, 1400 Independence Avenue, S.W., Washington, D.C. 20250-1417.

6. Susan Biery Sergojan is represented by Steven R. Meeks, Esq., 1235 Fourth Avenue, Suite 204, Olympia, Washington 98506.

Procedural History

7. The Complaint, filed on May 23, 2007, named three respondents: (1) Wolf Haven International, a Washington corporation ("Wolf Haven"); (2) Susan Biery Sergojan, an individual; and (3) Michael Peters, an individual.

8. Respondent Wolf Haven settled the case through a Consent Decision filed April 7, 2008. (See http://www.da.usda.gov/oajdecisions/aljcondecisions Archived_2008.htm.)

Wolf Haven is a licensed exhibitor under the Animal Welfare Act and the Regulations; Wolf Haven was the employer of Respondent Sergiojan.

9. Respondent Michael Peters settled the case through a Consent Decision filed April 10, 2008. (*See* http://www.da.usda.gov/oajdecisions/aljcondecisions-archived_2008.htm.) Michael Peters was the President of Wolf Haven and a member of Wolf Haven's Board of Directors.

10. Respondent Sergiojan's case was heard April 15-18, 2008, in Olympia, Washington, before me, Jill S. Clifton, U.S. Administrative Law Judge. Witnesses testified and exhibits were admitted into evidence. The transcript, in four volumes, is referred to as "Tr." Identification of the exhibits admitted into evidence and those rejected, and identification of the transcript, were included in a filing May 16, 2008, an excerpt of which is included as Appendix A to this Decision.

11. APHIS's proposed transcript corrections were filed February 4, 2009. Respondent Sergiojan filed no proposed transcript corrections. The transcript was excellently prepared; I thank Neal R. Gross and Co., Inc., Court Reporters, and specifically Pamela Hollinger, who had to move with us and set up equipment quickly more than a few times and whose work was impeccable. My Order regarding transcript corrections will be filed separately.

12. APHIS called ten witnesses. Volume I: (1) Kirk B. Miller, Tr. 62-67; (2) Michael K. McCann, Tr. 68-202; (3) Brenda Thornhill, Tr. 203-293; (4) Michelle Murphy, formerly known as Michelle Margolis, Tr. 294-379; Volume II: (5) William Waddell, Tr. 446-553; (6) Jerry William Brown, D.V.M., Tr. 556-690; (7) Shawndra Lynette Michell, Tr. 692-763;

Volume III: (8) Wendy Spencer-Armestar, Tr. 807-1103; (9) Michele Beal-Erwin, Tr. 1104-1141; and Volume IV: (10) Randall Carl Ridenour, D.V.M., Tr. 1190-1279, Tr. 1291-1387.

13. Respondent Sergiojan called two witnesses: Volume IV: (1) Trudy Cadman, Tr. 1279-1291; and (2) Susan Biery Sergiojan, Tr. 1390-1540.

14. APHIS's exhibits are designated by "CX" or "Govt X". APHIS submitted the exhibits shown on Appendix A enclosed. Respondent Sergiojan submitted no exhibits.

15. APHIS's Brief was timely filed on February 19, 2009. Respondent Sergiojan filed no Brief; thus the record was closed and forwarded to me for Decision.

Discussion

16. The videotape in evidence of some moments of Akela's last days (CX 10) shows a knowledgeable viewer how bad Akela's condition had become. Akela's brave front obscured, to someone not knowledgeable, the extent of the pain and suffering Akela was enduring. I benefitted greatly from observations by Dr. Ridenour, who not only saw and palpated Akela on his last day, January 10, 2005,² but who also watched the videotaped segments (January 5, January 8 and January 10, 2005) and testified about what he saw there, and about what he knew from Akela's treating veterinarian's treatment notes and laboratory results.

² Dr. Hanscom and Dr. Ridenour went into Akela's enclosure, accompanied by the treating veterinarian and the animal curator, to get a closer look at Akela and actually palpate Akela, on January 10, 2005. Tr. 1244-49.

17. Dr. Ridenour testified that in his opinion Akela was not handled in a manner that would not cause him unnecessary discomfort. Tr. 1292-94.

Ms. Carroll: Dr. Ridenour, do you have an opinion whether Akela during the period January 5 through 10, 2005 was handled in a manner that would not cause him unnecessary discomfort? . . .

Dr. Ridenour: Yes. I do have an opinion.

Ms. Carroll: And what is that opinion?

Dr. Ridenour: That he was not properly handled.

Ms. Carroll: And what is the basis for that opinion?

Dr. Ridenour: Well, that because he was suffering and should have been euthanized, he was just kind of left to lay out there in those cold conditions, in a body condition that was not conducive to protecting himself from the effects of those environmental conditions but also just his continuing body -- the pain and distress associated with his continuing physical decline.

Ms. Carroll: And do you have an opinion as to whether - - let me ask you - - do you have an opinion whether Akela's well-being was threatened or affected in a detrimental way by his being housed outdoors in the climatic conditions that were present in January 5 through 10, 2005?

Dr. Ridenour: Yes, I do.

Ms. Carroll: What is that opinion?

Dr. Ridenour: That he was negatively affected by being housed outdoors in those conditions.

Ms. Carroll: What is that based on?

Dr. Ridenour: Given his health status and serious decline in the overall health and failing condition. It is -- it was not appropriate that he continue to live out there like that.

Ms. Carroll: Would euthanasia, had it been performed earlier than January 10, 2005, have been a measure in your mind that would have alleviated the impact of those climatic conditions on his well-being?

Dr. Ridenour: Absolutely it would have. Yes.

Ms. Carroll: And what's the basis for your opinion?

Dr. Ridenour: Once the euthanasia is performed, then the animal is no longer suffering. That terminates the suffering. That's why the veterinary profession has that option available as part of a treatment plan, is that when it's deemed necessary, that is the appropriate way to stop the suffering of an animal.

Tr. 1292-94.

18. Dr. Ridenour described what he had gleaned from Akela's laboratory results from November 18, 2004. Tr. 1224-26.

Dr. Ridenour: Those two pages, those serum chemistries indicate to me that Akela was clearly in renal failure, probably also experiencing liver failure, and a good possibility, looking at the entire package of Akela, that the pancreas was failing as well.

Judge Clifton: Thank you.

Ms. Carroll: Is that a painful process?

Dr. Ridenour: Yes. Yeah.

Ms. Carroll: Why do you say so?

Dr. Ridenour: Because with organ failure like that, significant organ failure -- and we're talking kidney, liver, and pancreas, in my opinion, there's also a great deal of inflammation that occurs, especially in the abdominal cavity where those three organs are located. As the -- as organs in the abdominal cavity become inflamed or deteriorate, degenerate, the inflammatory process releases chemicals that cause a lot of pain in the abdominal lining.

The other component that goes along with pain associated with this type of syndrome is as the BUN elevates, that circulating -- those circulating urine toxins that are not being eliminated by the kidneys properly accumulate in a lot of other tissues, including joint tissues, so there's a good chance that the joints would become very painful as well.

Elevated BUN and toxic products associated with liver failure as well can cause a lot of central nervous system deterioration and discomfort in the central nervous system.

Tr. 1224-26.

19. Dr. Ridenour described what he saw on the videotape (CX 10). Tr. 1228-41.

Ms. Carroll: I'd ask to have the video that is Complainant's Exhibit 10 played for Dr. Ridenour and, again, I want to ask him to comment on what he sees.

Before we play this video, could I ask a question?

Judge Clifton: You may.

Ms. Carroll: Dr. Ridenour, were you present in the room earlier in the hearing when we watched the video previously?

Dr. Ridenour: Yes.

Ms. Carroll: And would you - -

Dr. Ridenour: Twice.

Ms. Carroll: - - did you make observations at that time?

Dr. Ridenour: Yes, I did.

Ms. Carroll: Okay. Do - - are you prepared to present observations again?

Dr. Ridenour: Sure.

* * *

Dr. Ridenour: This is just a shot from a distance, and basically all you - - all I see here is that the animal is in sternal recumbency. His head is actually lower than I would expect for an animal resting - - a healthy animal resting normally in sternal recumbency, indicating to me that he is uncomfortable.

Just a closer-up shot. Again, he's in sternal recumbency for the most part. His hindquarters are kind of in lateral recumbency. His head again is lowered and extended forward, and that - - I'll point out why that's significant farther down on the videotape.

There's a good shot of his pen mate, Aurora, and you can notice the difference in her facial features, her attitude in general, and her hair coat especially.

Ms. Carroll: What are the differences that you see?

Dr. Ridenour: Akela's look is very depressed look. He's not -- not -- he's not bright-eyed as you would expect a normal animal to be. His hair coat is significantly rougher and more unkempt. This is a good shot. You can look at the tail there and his hindquarters behind his shoulder cape. His hair just is not a normal, well-groomed and naturally cared-for hair coat that I would expect in any dog, including a wolf like this. It's an unkempt hair coat, the clumping of the hairs like that. He's just not -- he's just not healthy and that's reflected in his -- this also shows actually his head again lowered and his neck extended and that is a reflection of the fact that he was having some discomfort in breathing.

Ms. Carroll: And when you say "unkempt," what would a normal canid do with respect to his or her coat?

Dr. Ridenour: Well, there's lots of licking and scratching and rubbing against things, rolling on the ground, just anything they can do to kind of move their hair around and keep it well-groomed and fluffed up, especially in the wintertime when they need that fluffing in order to maintain dead air space against their skin for warmth. This shows a closeup of his face. His muscle is definitely thin. Notice also that when he blinks his eyes, his eyes are sunken, there is an ocular discharge. When he blinks his eyes, he's only moving this very medial dorsal part of his upper eyelid so

his whole eyelid isn't functioning properly. That's a reflection of the severe muscle atrophy in the muscles of his face and skull.

And you can see -- there -- right there, I don't know if you saw it, but it was a very slight twitching of his head. That in my opinion is probably more a result of the fact that he's trying to hold his head up above his forelimbs and he's just -- his neck and shoulder muscles are just so weak that he can't really hold his head up well.

Right there, you can see he's trying to arch his eye and just the -- the dorsal part of the eyelid by the medial canthus is all he can actually move.

Notice here how he's got his ears back. They're not up and alert. He is clearly distressed by the fact that the videographer is so close to him and actually touched him then. It's a very distressful facial and head posture.

This is a really good shot of his flanks behind his shoulder cage and you can see that he's extremely thin in the flanks. Another shot from the side, basically showing most of what we saw a few seconds ago. A little more indication of some labored breathing there.

Notice also in the -- the side of his thigh that we're looking at, that's -- you can almost see a bony prominence rather than just a nice rounded fleshy leg. Severely emaciated musculature in his hind legs there.

And, again, you can kind of see the blinking. And, again, he's got his head extended forward trying to ease passage of air into his lungs.

Also, it's hard to describe without having some experience, but the way he wasn't at that point looking at the camera is significant. He is distressed by the fact that somebody is so close to him and he can't get away.

This is a similar posture here. He's not looking directly at the camera because he doesn't want to. He is just -- he's distressed by the fact that the videographer is so close to him. This is not normal behavior for a wolf.

There, you see the arching of the eyebrow, and it was just that one part of the upper lid.

Ms. Carroll: You mean the part closest to the center of the face?

Dr. Ridenour: Yes, the -- yes. You can also see that there is slight head bobbing. Again, in my opinion, that's more a reflection of his weakness. There it is again, the bobbing of the head.

You can also see on that thigh, on his left thigh, there's almost like a gray line, a shadowing effect. That is because the musculature is so emaciated that the skin is actually dipping down behind the thigh bone.

Ms. Carroll: You mean a little bit to the right of the actual separation of the thigh or where the thigh is in front of the rest of the body?

Dr. Ridenour: Yes. Yes, kind of in the middle of his thigh area there.

Here he's laying on his left side in lateral recumbency. Again, his head is fully extended, trying to ease his breathing. You can see labored breathing in the part that is happening there. He's also at a very abnormal posture with his legs. His front legs

are -- are not only extended to the side because of his lateral recumbency, but they're crossed and pulled back a little bit. His rear legs are -- which is completely abnormal in that they're again extended and crossed and pulled forward a little bit, almost like he's tucking -- trying to tuck his forelegs together as he hunches his abdomen.

And you notice there, there was a bit of a -- a little bit of a withdrawal of the -- almost a spasming of the musculature there. There, there it is again. And that's all a reflection of pain. He is in extreme discomfort there.

Here he's in actually a little better position. He's up again in sternal recumbency.

He's got his head held a little bit higher.

Ms. Carroll: And this is in the second portion?

Dr. Ridenour: Yes. I'm sorry. The second -- there was a gap there and then this is the second portion of the video. Still clearly a sick, weak, unhealthy animal but holding his -- there's a much better picture of his thigh and a shadowing in the middle part of the thigh where the thigh bones are to the front and then the skin dips down because there's no musculature behind the thigh bones. You can also see that eyelid pulling up above the medial canthus of the eye.

And you can see his head -- the hair on his head, the guard hairs are spaced apart rather than being very tightly close together and not a normal or healthy looking hair coat at all.

This also shows that -- you notice his forearms. His forearms are significantly larger in diameter, the musculature, than his back leg is, the thigh is, okay?

And --

Ms. Carroll: Why is that?

Dr. Ridenour: The reason for that is because four-legged animals -- normal four-legged animals, unlike a walking horse -- sorry -- a normal four-legged animal carries the vast majority of his body weight on the front limbs, so those tend to be the strongest muscles and likely be the last muscles to atrophy severely.

Here again he's averting his gaze and holding his ears back, again just -- he's just very bothered by the fact that he is threatened by the close proximity of the videographer and the fact that he just -- he physically cannot get away. He's too weak to get up and move.

Ms. Carroll: There's been some observation that his tail is fluffy. Do you agree?

Dr. Ridenour: Well, not in what I would consider a -- "fluffy" to me implies a positive attribute or a healthy type of a look to the tail, and I disagree with that. He's got long guard hairs in his tail, but he wouldn't have the normal fluffiness of a tail with a good healthy winter undercoat, of the underfur. He certainly does not have the bright-eyed, bushy-tailed look that that term comes from. He -- he is not bright-eyed and bushy-tailed at all.

This is just continuing the segment of his facial attitude and averting his gaze from the videographer as best he can, as well as this shows significantly the ocular

discharge. There's a slight hint right there if you look closely at the black line of his mouth, he's actually opened his mouth a little more than what we saw in some previous -- earlier in the video and that -- and this is a little more noticeable here.

Ms. Carroll: And now we're in the third section?

Dr. Ridenour: The third section -- I'm sorry. He's in lateral recumbency. He's lifted his head to look at the videographer. Now he's probably gonna aver[t] his gaze. Notice there that his mouth is slightly open and there again. That's an attempt on his part, in addition to having his head extended as much as he can, to try and enhance air passage and -- air passage into his lungs because he's having difficulty breathing. And there's his -- you can see his chest rising and falling as he's in labored breathing. And, again, another -- just another view of that just kind of generally unkempt hair coat.

His face looking straight on is actually thinner than I would expect it to be. He just - - he looks very frail. A good closeup of his eyes, very sunken, inflamed, significant amounts of ocular discharge. Another -- that staining of the ocular discharge down the side of his muzzle is another clear indication that he can't normally groom himself.

Ms. Carroll: Would there be normally licking and --

Dr. Ridenour: Yes. And rubbing himself with his forepaws. You can see the look there.

He -- that countenance that he has, he is -- he's very distressed by the proximity of the videographer. He just cannot maintain that -- that comfortable flight distance

that was referred to in earlier testimony, very distressful for an animal like that to not be able to do that.

Ms. Carroll: So are you speaking that there's psychological issues that are involved then in the condition of Akela?

Dr. Ridenour: Oh, absolutely. He was not only suffering physically. He was suffering psychologically as well. Very -- it's very distressful for an animal to not be able to maintain their normal behaviors, including the ability to get away from a potential threat.

(end of videotape playing)

Tr.1228-41.

20. Respondent Sergojan apparently decided, without input from the treating veterinarian, that Akela was not suffering and should be allowed to die "naturally". In contrast, the attending veterinarian and the animal curator had decided jointly that euthanasia was necessary, and they agreed that euthanasia would occur January 5, 2005. Respondent Sergojan's overruling of the joint decision of the attending veterinarian and the animal curator (that euthanasia was necessary) contravened the established program of veterinary care.

21. I am persuaded that during January 5, 2005 through January 10, 2005, Akela, while he was dying, experienced distress, discomfort, pain, and suffering that were unnecessary. Euthanasia as scheduled on January 5, 2005 would have put an end to Akela's distress, discomfort, pain, and suffering, but Respondent Sergogan forbade the treating veterinarian

to perform the euthanasia, not only on January 5, 2005, but also when euthanasia had again been scheduled by the treating veterinarian with the animal curator, for January 7, 2005.

Findings of Fact

22. Respondent Susan Biery Sergiojan is an individual whose business mailing address is Law Offices of Sergiojan & Sergiojan, Post Office Box 11578, Olympia, Washington 98508-1578. Respondent Sergiojan was Executive Director of respondent Wolf Haven International ("Wolf Haven"), from April 12, 2004, to February 9, 2005. In that capacity Respondent Sergiojan was acting for and employed by Wolf Haven, pursuant to section 2139 of the Act (7 U.S.C. § 2139).

23. In 2005, Dr. Jerry W. Brown, Yelm Veterinary Hospital, was the treating veterinarian and had been Wolf Haven's attending veterinarian for over 20 years. CX 2.

24. Wendy Spencer-Armestar began volunteering at Wolf Haven in June 1998, and became Acting Curator of Wolf Haven in June 2003. CX 9 at 1.

25. It had historically been the practice at Wolf Haven that the decision to euthanize an animal was made by the attending veterinarian and the curator.³

26. In late 2004, Akela was a 15-year-old captive male gray wolf housed at Wolf Haven,⁴ and was in declining health. On November 18, 2004, Dr. Brown drew blood from

³ CX 2 at 1.

Q And -- but generally speaking, was it the case that it was the course of treatment or action to be taken was a decision made between you and Dr. Brown?

A It was a decision that was made between the two of us. I just let other people know what was happening. Tr. 813.

⁴ CX 3, CX 4 at 1.

Akela, and had diagnostic tests performed, the results of which indicated elevated renal values.⁵ Dr. Brown diagnosed kidney failure. On December 6, 2004, Dr. Brown prescribed a trial program of Lasix,⁶ and noted that Akela was “[c]oughing at night and at activity,” and was possibly suffering from congestive heart failure. CX 3 at 3.

27. On December 23, 2004, Dr. Brown examined Akela at Wolf Haven. In his declaration made on February 22, 2005, Dr. Brown stated:

I noted purulent ocular and nasal debris, deep respiration with some abdominal breathing, rapid but normal heart sounds and rhythm, and some coughing when he was moving around. It was reported that the wolf had been increasingly listless and anorectic. My tentative diagnosis was a pulmonary problem, infection, or cancer. A CBC was done, and he was treated with antibiotics and cortisone.⁷

⁵ CX 2 at 1 (“On November 18, 2004, an adult male wolf names Akela, 15+ years of age, which had been reported by Wolf Haven staff as lethargic and exhibiting abnormal behavior, had blood drawn for testing. The results showed significantly elevated renal values (BUN - 84 mg/dl and Creatinine - 3.7 mg/dl.”); CX 3.

⁶ CX 2 at 1 (“On December 6, 2004, treatment of the animal with Lasix was initiated due to excessive coughing.”).

⁷ CX 3 at 2. Dr. Brown noted:

“Exam: Purulent ocular/nasal debris
Deep resp. w/some abdominal breathing
Heart: Rapid but normal heart sounds. Rhythm OK
Abdominal palpation: _____
Coughing noted when wolf moving around. Lately has been more listless and anorectic.
Tent. Dx: Pulmonary problem infection or cancer
Plan: 1. Idex CBC
2. Baytril 170 mg

28. On December 29, 2004, in response to a report from Ms. Spencer-Armestar that there was "no change from injection" and Akela "continues to lie around, anorectic. Drinking some," Dr. Brown noted: "I am concerned about previous BUN - creat. Levels. Euth may be close."⁸

29. Dr. Brown and Ms. Spencer-Armestar communicated regarding Akela's condition. Ultimately, Ms. Spenser-Armestar made an appointment for Dr. Brown to euthanize Akela on January 5, 2005. CX 2 at 3.

30. Dr. Brown wrote in his treatment notes: "On January 5, 2005, after back and forth communications with Wendy, she called me out to euthanize Akela. He had reportedly been down for two days, but was now up and slowly moving around the compound, still anorectic. Costly intensive care at the clinic appeared to be the only alternative, and I felt this would only prolong the inevitable." CX 2. *See also* CX 3, Tr. 561-578.

31. Ms. Spenser-Armestar advised Respondent Sergiojan of the euthanasia appointment. Tr. 1440-43.

32. Ms. Spenser-Armestar took videotape footage of Akela on January 5, January 8 and January 10, 2005. CX 10.

-
- 3. Dexasone 5ml
 - 4. PenG 5 ml"

⁸ CX 3 at 2; CX 2 at 1 ("On December 29, 2004, I spoke with Wendy, the acting Curator, and Erin from Wolf Haven, and they reported no improvement from the injection on December 23. They said Akela was drinking some water, but he was continuing to lie around and was anorectic. I was concerned about the previous BUN and Creatinine levels, indicating he problem was renal in nature, and I concluded that euthanasia might be close."); *see* Tr. 1217-18.

33. Ms. Spenser-Armestar stated in her Affidavit that on January 5, 2005, "Akela had not eaten in three weeks, and he was extremely emaciated." CX 9 at 2, Tr. 891.

34. Dr. Brown arrived on January 5, 2005, to perform the scheduled euthanasia. Respondent Sergiojan advised Dr. Brown that the euthanasia would not take place.

35. Ms. Spenser-Armestar and Dr. Brown rescheduled the euthanasia for January 7, 2005. Respondent Sergiojan canceled the euthanasia.

36. In response to a public complaint, two USDA veterinarians, Drs. Ruth Hanscom and Randy Ridenour,⁹ inspected Akela and records relating to Akela's care on January 10, 2005. Drs. Hanscom and Ridenour found that Akela was suffering as a result of the failure of respondents Wolf Haven and Sergiojan to provide needed veterinary care to him. Drs. Hanscom and Ridenour notified Wolf Haven's curator that the Secretary would confiscate Akela unless he was provided with adequate care, in the form of euthanasia, immediately. Tr. 1201-03, 1208-09, 1215-17, 1244-49, 1258-59, CX 13, Tr. 1295-98, CX 12, Tr. 1299-1301, CX 14, Tr. 1301-05.

37. Akela, when examined on January 10, 2005, was so emaciated that, according to Dr. Ridenour, he had virtually no musculature left at all and hardly any underfur. Akela did not have enough protein to produce a hair coat (not only was he not eating, his digestive organs were failing); and he could not effectively maintain body temperature, not only because he

⁹ Dr. Ridenour was assigned to inspect respondent Wolf Haven's facilities and animals for thirteen years. Tr. 1196. Dr. Ridenour identified his educational and professional background, and specifically described his experience with wolves, and the resources he draws on in connection with wolves and wolf behavior. Tr. 1191-98.

did not have a good undercoat of fur, but also because his metabolism was failing. His body was consuming itself. Tr. 1249-53.

38. With Ms. Spenser-Armestar's concurrence, Dr. Brown euthanized Akela on January 10, 2005.

39. Respondent Sergiojan does not have a history of violations. Respondent Sergiojan does not have a sizable business.

40. Respondent Sergiojan did not intend to harm Akela; she loved Akela; nevertheless, the gravity of Respondent Sergiojan's violations is great, in that, among other things, Respondent Sergiojan failed to ensure, impeded or prevented the provision of veterinary care to a dying wolf, Akela, thereby prolonging his suffering.

41. Respondent Sergiojan's violations go directly to the heart of the Animal Welfare Act, the purpose of which, among other things, is to ensure the humane treatment of animals used for exhibition. Respondent Sergiojan's actions, in consigning a dying, weakened animal to remain outdoors in freezing temperatures for five days rather than to permit the attending veterinarian to perform euthanasia, were contrary to the Regulations and, as Dr. Ridenour observed, inhumane. Tr. 1257.

42. I do not find any lack of good faith on Respondent Sergiojan's part. I do find that, for some reason other than a lack of good faith, Respondent Sergiojan avoided providing Akela with the euthanasia he needed; Respondent Sergiojan avoided discussing Akela's condition with the treating veterinarian; Respondent Sergiojan avoided obtaining facts from the treating veterinarian to inform Wolf Haven's President and Directors of what they would

need to know in decision-making; Respondent Sergiojan specifically directed the treating veterinarian Dr. Brown NOT to euthanize Akela on January 5, 2005, after Dr. Brown had already arrived at Wolf Haven and driven into the parking lot with the intent of euthanizing Akela; Respondent Sergiojan specifically directed that the treating veterinarian Dr. Brown NOT come to Wolf Haven to euthanize Akela on January 7, 2005, after Dr. Brown had conferred with the animal curator and cleared his calendar with the intent of euthanizing Akela; Respondent Sergiojan avoided meeting with the USDA Veterinary Medical Officers, who arrived at Wolf Haven at about 4:30 pm on January 10, 2005, even though she had been notified that they were coming to Wolf Haven (Tr. 1265, 1473-76); Respondent Sergiojan avoided completing paperwork with APHIS Investigator Michael McCann; and Respondent Sergiojan avoided the realization that she had done anything wrong in connection with Akela's care and treatment during the final days of his life, January 5 through 10, 2005.

Conclusions

43. From January 5, 2005, through January 10, 2005, Respondent Susan Biery Sergiojan was acting for and employed by respondent Wolf Haven, and Respondent Sergiojan is liable under the Act for her acts, omissions and failures within the scope of her employment or office, pursuant to section 2139 of the Animal Welfare Act. 7 U.S.C. § 2139.

44. Beginning January 5, 2005, and persisting into January 10, 2005, Respondent Sergiojan failed to have an attending veterinarian provide adequate veterinary care to a wolf (Akela), by canceling the attending veterinarian's scheduled appointments to euthanize

Akela, and requiring the animal to remain outdoors in extremely cold conditions, in willful violation of section 2.40(a) of the Regulations. 9 C.F.R. § 2.40(a).

45. Beginning January 5, 2005, and persisting into January 10, 2005, Respondent Sergojan failed to ensure that respondent Wolf Haven's attending veterinarian had adequate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use, and specifically, refused to adhere to the veterinary medical recommendations of respondent Wolf Haven's attending veterinarian (that Akela was dying, that further measures to prolong Akela's life would be futile and unduly stressful for Akela, and that Akela should be euthanized), and instead repeatedly undermined the attending veterinarian's authority by countermanaging his veterinary medical recommendations and his decisions regarding animal care, made in conjunction with respondent Wolf Haven's animal curator, in willful violation of section 2.40(a)(2) of the Regulations. 9 C.F.R. § 2.40(a)(2).

46. Beginning January 5, 2005, and persisting into January 10, 2005, Respondent Sergojan failed to establish and maintain adequate programs of veterinary care that included the availability of appropriate services to comply with the Regulations, and specifically, failed to establish a program whereby euthanasia would be available for suffering animals, specifically Akela, in willful violation of section 2.40(b)(1) of the Regulations. 9 C.F.R. § 2.40(b)(1).

47. Beginning January 5, 2005, and persisting into January 10, 2005, Respondent Sergojan failed to handle an adult wolf as carefully and expeditiously as possible in a

manner that does not cause unnecessary discomfort, and, specifically, acted to impede the timely euthanasia of Akela, and which resulted in Akela's remaining outdoors in extremely cold conditions, in willful violation of section 2.131(b)(1) of the Regulations. 9 C.F.R. § 2.131(b)(1).

48. Beginning January 5, 2005, and persisting into January 10, 2005, Respondent Sergiojan failed to take measures to alleviate the impact of climatic conditions that threaten an animal's well-being, and specifically refused to allow a dying adult wolf housed outdoors in extremely cold conditions to be euthanized, as recommended by respondent Wolf Haven's attending veterinarian, willful violation of section 2.131(e) of the Regulations. 9 C.F.R. § 2.131(e).

Order

49. The following **cease and desist** provisions of this Order (paragraph 50) shall be effective on the day after this Decision becomes final. [See paragraph 54.]

50. Respondent Susan Biery Sergiojan, and her agents and employees, successors and assigns, directly or indirectly, or through any corporate or other device or person, shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards issued thereunder.

51. Respondent Susan Biery Sergiojan is assessed a civil penalties totaling \$10,000, which she shall pay by certified check(s), cashier's check(s), or money order(s), made payable to the order of "Treasurer of the United States," within 90 days after this Decision becomes final. [See paragraph 54.]

52. Respondent Sergojan shall reference AWA Docket No. 07-0119 on her certified check(s), cashier's check(s), or money order(s). Payments of the civil penalties shall be sent by a commercial delivery service, such as FedEx or UPS, to, and received by, Colleen A. Carroll, Esq., at the following address:

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

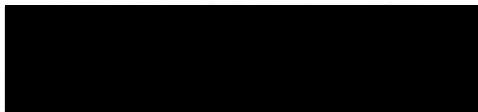
53. No Animal Welfare Act license shall be issued to Respondent Susan Biery Sergojan until she has met all requirements of the Animal Welfare Act, the Regulations, and the Standards; and until she has fully met her obligation to pay civil penalties imposed under the Animal Welfare Act.

Finality

54. This Decision shall be final and effective thirty five (35) days after service, unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (30) days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix B

to this Decision). Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 18th day of March 2010



Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue, SW
Room 1031, South Building
Washington, D.C. 20250-9203
202-720-4443
Fax: 202-720-9776

APPENDIX A

In re:)
)
)
 SUSAN BIERY SERGOJAN,) **AWA Docket No. 07-0119**
 an individual,)
)
)
 Respondent)

The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (“APHIS” or “Complainant”), is represented by Colleen A. Carroll, Esq. Susan Biery Sergiojan, Respondent (“Respondent Sergiojan” or “Respondent”) is represented by Steven R. Meeks, Esq.

The hearing was held April 15-18, 2008, in Olympia, Washington. The following exhibits were admitted into evidence (or rejected, as indicated).

APHIS's Exhibits:

Admitted: CX 1 through CX 5, CX 7 (Tr. 343) through CX 14 [note, CX 10 is a videotape], CX 15 (Tr. 110), CX 15A & CX 15B (Tr. 359), CX 16, CX 20 through 25, CX 29, CX 34 through CX 37 (Tr. 348-49), only portions of CX 38, CX 40, CX 42 through CX 43 (Tr. 348), and RWHX2.

Rejected: CX 19 was rejected; portions of CX 38 were rejected; CX 44 was rejected.

Respondent Sergiojan's Exhibits:

None offered; none admitted or rejected.

Transcript:

Volumes	2008	Pages	rec'd by Hearing Clerk
I	April 15	1 - 435	May 13, 2008
II	April 16	436 - 800	May 13, 2008
III	April 17	801 - 1182	May 13, 2008
IV	April 18	1183 - 1586	May 13, 2008

APPENDIX B

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in

§ 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of

objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145