

JAMES BRANDON GARRETSON
d/b/a JUNGLE PARADISE ZOO
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**In re: JAMES BRANDON GARRETSON, d/b/a JUNGLE
PARADISE ZOO and GARRETSON FAMILY TIGERS; and
NICOLE LYNETTE AMMON, d/b/a INTERNATIONAL
WILDLIFE CENTER.**

AWA Docket No. 04-A032 (formerly AWA 04-0032)

Decision and Order

Filed March 22, 2007.

**AWA – Feeding pattern interrupted – Minimal risk of harm, failure to – Maintain
sufficient distance, failure to – Handle as careful as possible, failure to.**

Coleen A. Carroll for APHIS.

Respondents, Pro se.

Decision and Order by Administrative Law Judge Jill S. Clifton.

Decision and Order

Decision Summary

1. I decide that both Respondents committed numerous violations of the Animal Welfare Act, as amended, 7 U.S.C. § 2131 *et seq.* (frequently herein the “AWA” or the “Act”). Respondent Nicole Lynette Ammon (frequently herein “Respondent Ammon”) failed to handle seven tigers as carefully as possible and caused the tigers behavioral stress and unnecessary discomfort in late March through April 2, 2003, north of Adair, Oklahoma, placing the tigers in a position where on April 2, 2003, the tigers were extraordinarily hungry and were able from inside their enclosure to grab a young woman who was standing just outside their enclosure, to tear off and carry away within their enclosure the arm of the young woman, causing her death, in willful¹ violation of sections

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2.100(a) and 2.131(a)(1) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(a)(1)). [9 C.F.R. § 2.131(a)(1) is currently renumbered as 2.131(b)(1).] This handling violation of Respondent Ammon's was alone so serious as to require AWA license revocation, revocation of the privilege to engage in activities that require an AWA license, and permanent disqualification from obtaining, holding, or using any AWA license. As Respondent Ammon's agent who was responsible for or participated in violations upon which the revocation of Respondent Ammon's license is based, Respondent James Brandon Garretson (frequently herein "Respondent Garretson") will not be licensed during the period in which Respondent Ammon's revocation is in effect, in accordance with section 2.9 of the Regulations (9 C.F.R. § 2.9). Further, I decide that Respondent Garretson, while an applicant for an initial AWA license, threatened, verbally abused, and harassed Dr. Gaj, an official of the Animal and Plant Health Inspection Service (APHIS official) in the course of carrying out his duties, on June 25, 2004, at Lake City, Florida, in willful² violation of section 2.4 of the Regulations (9 C.F.R. § 2.4). This violation of Respondent Garretson's concerning an APHIS official was alone so serious, particularly in light of Respondent Garretson's pattern of threatening, verbally abusing, and harassing APHIS officials in the course of carrying out their duties, as to require revocation of the privilege to engage in activities that require an AWA license, and permanent disqualification from obtaining, holding, or using any AWA license. These revocations and permanent disqualifications of both Respondents, and, in addition, civil penalties for both Respondents, are appropriate, justified, and necessary.

Introduction

¹ The term "willful" used here includes such gross neglect of a known duty as to be the equivalent of an intentional misdeed.

² The term "willful" used here includes such gross neglect of a known duty as to be the equivalent of an intentional misdeed.

2. The Complainant is the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (frequently herein “APHIS” or the “Complainant”). The Complaint, filed on August 31, 2004, alleged violations of the AWA; the regulations, 9 C.F.R. § 1.1 *et seq.* (frequently herein the “Regulations”); and the standards, 9 C.F.R. § 3.1 *et seq.* (frequently herein the “Standards”). Small portions of the Complaint were amended during the hearing and by my Order filed March 7, 2006. Tr. 736, 1362, 1363.

3. Each of the two Respondents is an individual, and each represents herself or himself (appears *pro se*). The two Respondents are Nicole Lynette Ammon, an individual doing business as International Wildlife Center; and James Brandon Garretson, an individual doing business as Jungle Paradise Zoo and Garretson Family Tigers. The “Respondents” refers to the two Respondents, collectively. Respondent Ammon’s Answer (timely filed on January 3, 2005), and Respondent Garretson’s Answer (timely filed on November 1, 2004), denied the allegations of the Complaint.³

4. The hearing is summarized by my “Rulings,” issued March 3, 2006, attached as Appendix 3. “Complainant’s Motion Re Admitted Exhibits.” filed March 16, 2006, is granted; “Complainant’s Motion to Correct Transcript,” filed April 12, 2006, is granted. The “Declaration of Dr. Elizabeth Goldentyer” (CX 43), filed March 16, 2006, is admitted into evidence. The “Declaration of Nicole Lynette Ammon,” filed May 31, 2006, is admitted into evidence. Respondent Ammon’s “List of questions” for Dr. Elizabeth Goldentyer, filed May 31, 2006, has been carefully considered, together with the evidence and briefs.

³ The record file begins with Vols. I and II of AWA 04-0032, and continues with Vols. I and II of AWA 04-A032.

5. Respondent Ammon had had her Animal Welfare Act license for less than two years when, in the spring of 2003, her handling violations led to catastrophe. Ms. Ammon's license application had initially been denied. The following excerpt is from a letter on USDA⁴ stationery:

June 20, 2001
Nicole L. Ammon
4778 FM 639 North
Frost, TX 76641

Dear Ms. Ammon:

Your application for a license under the Animal Welfare Act is hereby denied. This action is taken because Mr. James Garretson is involved in the operation and the issuance of a license would circumvent an Order disqualifying him from being licensed.

You may request a hearing regarding the denial of this license. You must notify this office, in writing, by certified mail, within 20 days from the receipt of this letter, if you desire a hearing, and a hearing will be held in due course. Failure to request a hearing within 20 days from receipt of this letter will be deemed a waiver of such hearing.

You are reminded that buying and selling, transporting, or exhibiting regulated animals without a valid license is an illegal activity under the Animal Welfare Act.

⁴ United States Department of Agriculture, Marketing and Regulatory Programs, Animal and Plant Health Inspection Service, Animal Care, Western Region.

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Sincerely,

W. A. Christensen, D.V.M.
Asst. Director - Animal Care
Western Region

CX 3, p. 6.

A compromise was reached (CX 3, p. 9), and Respondent Ammon was issued a license. Respondent Ammon relied on Respondent Garretson; the actions of the two Respondents were intertwined during Respondent Ammon's licensure under the Animal Welfare Act. In many ways Respondent Ammon was doing Respondent Garretson's bidding; yet, because Respondent Ammon is the licensee, she is responsible not only for what she herself did or failed to do in violation of the Animal Welfare Act, but also for what Respondent Garretson did or failed to do "on her behalf," as her agent, in violation of the Animal Welfare Act. 7 U.S.C. § 2139.

Findings of Fact and Conclusions

6. Paragraphs 7 through 70 contain intertwined Findings of Fact and Conclusions.

7. The Secretary of Agriculture has jurisdiction.

8. Respondent Nicole Lynette Ammon, also known as Nicole Ammon, an individual, was licensed as and operated as a "Class C Exhibitor" from July 10, 2001, through June 8, 2004 (Tr. 736, 1345-46), under Animal Welfare Act license number 74-C-0521. The AWA license was issued to "Nicole Ammon DBA: International Wildlife CTR" (CX 3, p. 16). [The term "exhibitor" is defined in the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*, particularly 7 U.S.C. § 2132(h)), and the Regulations (9 C.F.R. § 1.1 *et seq.*, particularly the Definitions in 9 C.F.R. § 1.1).]

9. Respondent James Brandon Garretson, also known as James Garretson, an individual, was operating either as the agent of an exhibitor, or as an exhibitor, as that term is defined in the Act and the Regulations, at all times material herein, except as otherwise specified.

10. Respondent Nicole Lynette Ammon's current address is 225 NE 1st Street, High Spring, Florida 32643; her mailing address at the time of the hearing was 2109 W. U.S. Hwy 90, #170-152, Lake City, Florida 32055; and her former addresses include 2525 Preston Road, No. 821, Plano, Texas 75093.

11. Respondent Nicole Lynette Ammon has done business variously as International Wildlife Center, International Wildlife Center, Inc. (although International Wildlife Center was never a corporation, Tr. 1384), and Garretson Family Tigers.

12. Respondent James Brandon Garretson is an individual whose current address is 763 SW Churchill Way, Lake City, Florida 32025; whose former addresses included the mailing address 2109 U.S. Highway 90, Suite 170-107, Lake City, Florida 32055; and whose addresses at the time of the hearing included both 763 SW Churchill Way, Lake City, Florida 32025, and 818 SW Churchill Way, Lake City, Florida 32025.

13. Respondent James Brandon Garretson has done business, does business, or purports to do business variously as Jungle Paradise Zoo, Garretson Family Tigers, International Wildlife Center, International Wildlife Center, Inc. (although International Wildlife Center was never a corporation, Tr. 1384), International Wildlife Refuge, GFT, GFT, Inc., GFT Zoo, Inc., and James Garretson Trucking.

14. The name International Wildlife Center was used by the Respondents to describe not only Respondent Ammon's business enterprise (which Respondent Ammon at times considered her own, "a sole proprietorship," Tr. 407, 1386, CX 11), but also a business enterprise jointly owned by Respondent Ammon and Respondent Garretson (CX 5, p. 12; CX 19e, Tr. 646; CX 19c, p. 1; Tr. 648), and also a business enterprise owned primarily by Respondent Garretson (CX 18a, pp. 2, 5).

15. Respondent Ammon is the licensee and is responsible not only for what she herself did or failed to do in violation of the Animal Welfare Act, but also for what Respondent Garretson did or failed to do "on her

behalf,” as her agent, in violation of the Animal Welfare Act. 7 U.S.C. § 2139.

16. My remaining Findings of Fact and Conclusions are organized by topic.⁵ The first of these topics is the Respondents’ leaving their animals in Oklahoma. APHIS argues that the Respondents “abandoned” their animals in Oklahoma; I believe “warehoused” to be more accurate.

Topic One: the Respondents’ leaving their animals in Oklahoma in 2003 (February into April).

17. Respondent Ammon and her agent Respondent Garretson “wintered” some of their animals, including dangerous animals such as tigers,⁶ north of Adair, Oklahoma. Simultaneously the Respondents took their traveling exhibit of other animals to other places, including Laredo, Texas (February 13-21, 2003); Brownsville, Texas (February 24 - March 2, 2003); Sarasota, Florida (March 2003); and Green Cove Springs, Florida (arriving about April 2, 2003). Tr. 1185-1194. The multiple locations stretched the Respondents’ already thin resources very thin, concerning personnel, and nutrition, housing and medical care for the animals. The Respondents allowed the feeding pattern of the tigers (Neko, Charm, Copper, Jade, Tommy, Splash, and Kojac) housed north of Adair, Oklahoma to be interrupted; instead of being fed at least every other day the legs of calves that had died (which were available at no charge), the tigers were being fed about every four days chicken that had to be paid for. On April 2, 2003, the tigers north of Adair, Oklahoma had not been fed for approximately four days and were extraordinarily

⁵ The arrangement is neither in chronological order nor in sequence by regulation number.

⁶ Tigers are an example of “dangerous animals” in 9 C.F.R. § 2.131(c)(3), currently renumbered as § 2.131(d)(3).

hungry. The Respondents were not present because they were in Florida tending to the exhibition of other animals. The Respondents, present or not, are responsible for what occurred: the Respondents allowed their tigers to reach through the openings in the tigers' enclosure made of cattle fence and to grab by her jeans a young woman named Lynda Brackett who was standing too close to their enclosure. The tigers grabbed at Ms. Brackett in a feeding-like frenzy with their upper paws, which could fit through the 8" high openings. CX 19a, p. 15. During the struggle by Ms. Brackett and Ms. Amanda Sternke to free Ms. Brackett from the tigers' grasp, Ms. Brackett's arm slipped through one of the 8" high openings in the cattle fence into the tigers' enclosure; and the tigers ripped off and carried away Ms. Brackett's arm. Ms. Brackett died from the trauma within about two hours. CX 18, CX 19a, CX 19b, CX 19c, CX 19d, CX 19e. Tr. 651-57, 692, 701, 1395.

18. Handling Violation Proved, involving human fatality: When the Respondents allowed the feeding pattern of their tigers to be interrupted, and the hungry tigers were able to reach through the openings in their cattle fence enclosure and to grab a human who stood too close, Respondent Ammon and her agent Respondent Garretson failed to handle tigers as carefully as possible and caused the tigers behavioral stress and unnecessary discomfort in or about late March 2003 through April 2, 2003, north of Adair, Oklahoma, in willful⁷ violation of sections 2.100(a) and 2.131(a)(1) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(a)(1)).

[9 C.F.R. § 2.131(a)(1) is currently renumbered as 2.131(b)(1).] CX 18, CX 19. Tr. 651-57, 692, 701, 1395.

19. Amanda Sternke's Affidavit (CX 19d), incorporated into her testimony (Tr. 690-92), is credible and includes in part the following, which I adopt as Findings of Fact:

⁷ The term "willful" used here includes such gross neglect of a known duty as to be the equivalent of an intentional misdeed.

When James and Nicole first arrived at Safari Joe's around December of 2002, they were providing adequate amount of meat for their tigers. They normally feed every other day and cleaned every two to three days. By the time that James and Nicole had left they were gone around a month or longer and Nicole had came (*sic*) back for one day to care for the animals, we had been going to a ranch to cut off legs of calves to feed the cats with. After they had left I had been going to the ranch to cut legs, haul them back, and feed them out by myself. After a period of time there were not enough calf legs to adequately feed the cats with. I had brought this to Joe's attention that there was a shortage of meat and that we need to purchase meat in the near future, but nothing was done about it.

On April 2, 2003 Lynda and I went to the barn to water the cats around 1:50 p.m. I had noticed that the tigers were pacing the way that they do when they are hungry. We were watering for approximately 10 minutes before the attack occurred. She was standing in approximately the same spot that I as well as James and Nicole normally stood on numerous occasions. The cats were hungry because they had not been fed in four days due to the shortage of meat. Then while we were watering we were also talking and I had turned around to pick up the water bucket and as I looked back out of the corner of my eye I saw that the white tiger "Splash" was reaching out as far as he could and grabbed Lynda by her jeans with his claws and pulled her to the cage, the second that this had occurred they were all grabbing at her in a feeding-like frenzy. It had recently occurred to me that before the attack had happened they were not cuffing (a sound of contentment) as they normally do. We were both screaming and I tried banging the cage telling them to get back and was trying to pull her away but

it was no good. At one point I almost had her around the waist and she had me around the neck, but because the tigers had claws they pulled us both back against the cage, this is when she reached out with her hand to stop herself and her arm slipped through the holes in the cage . . .

CX 19d.

20. Feeding Violation Proved: The Respondents failed to meet the minimum standards for feeding in or about late March 2003 through April 2, 2003, north of Adair, Oklahoma, by feeding their tigers an insufficient quantity of food, in willful⁸ violation of sections 2.100(a) and 3.129(a) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.129(a)). CX 19.

Topic Two: the Respondents' placing a 230-235 pound tiger on a human's lap, in El Paso, Texas on April 3, 2002.

21. The photograph created during this April 3, 2002, handling by the Respondents of the 230-235 pound tiger is duplicated from CX 15, p. 2 and attached as Appendix 1. Appendix 1 and CX 15 show Senior Investigator J. David Neal somewhat dwarfed by the tiger.

22. Handling Violation Proved (involving no physical harm): the Respondents failed to maintain minimal risk of harm to the 230-235 pound tiger and to the public (Mr. Neal) on whose lap the tiger was placed. Respondent Ammon, through her agent Respondent Garretson, failed to handle a 230-235 pound tiger during public exhibition so there was minimal risk of harm to the tiger and to the public, when the Respondents placed the 230-235 pound tiger on the lap of a human for a photograph, on April 3, 2002, in El Paso, Texas (at the 21st Century Midway, a fair/carnival-type attraction located in the parking lot at the Cielo Vista Mall), in violation of sections 2.100(a) and 2.131(b)(1) of the

⁸ The term "willful" used here includes such gross neglect of a known duty as to be the equivalent of an intentional misdeed.

Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(b)(1)). CX 15, 16. [9 C.F.R. § 2.131(b)(1) is currently renumbered as 2.131(c)(1).]

23. The Regulations and Standards require sufficient distance and/or barriers between the animals and the general viewing public, which is not the same as the public, as the terms are used in 9 C.F.R. § 2.131(b)(1). I have determined that the two different terms (general viewing public and public) convey two different meanings. Furthermore, APHIS, historically, construed the two different terms differently, as discussed in my decision *Bridgeport Nature Center, Inc., Heidi M. Berry Riggs, and James Lee Riggs, d/b/a Great Cats of the World*,⁹ 65 Agric. Dec. 1039, (2006).

24. **Alleged Handling Violation Not Proved: failing to maintain sufficient distance and/or barriers between the tiger and the general viewing public, regarding the 230-235 pound tiger placed on a human's lap.** When Respondent Ammon, through her agent Respondent Garretson, placed the 230-235 pound tiger on the lap of a human (Mr. Neal) for a photograph, on April 3, 2002, in El Paso, Texas (at the 21st Century Midway, a fair/carnival-type attraction located in the parking lot at the Cielo Vista Mall), there is no evidence that the Respondents violated that portion of sections 2.100(a) and 2.131(b)(1) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(b)(1)) that requires the Respondents to maintain sufficient distance and/or barriers between their animals and the general viewing public. I conclude that the individual who entered the exhibit to have a close encounter with the tiger (Mr. Neal) was a member of the public while inside the exhibit but

⁹ AWA Docket No. 00-0032: my decision is on appeal to the Judicial Officer. See Complainant's Appeal Petition, filed March 15, 2007. My decision is reviewable on the USDA website:
http://www.usda.gov/da/oaljdecisions/initdecisions-archive_pre2007.htm

See AWA Docket No. 00-0032, 65 Agric. Dec. 1039, 1041-43, 1054-57, 1065-68, 1073-77, 1083-84, 1089-95 (2006).

was no longer a member of the general viewing public. Consequently, I conclude that the allegation that the Respondents, by placing the 230-235 pound tiger on the lap of a human for a photograph, violated sections 2.100(a) and 2.131(b)(1) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(b)(1)) by failing to maintain sufficient distance and/or barriers between the tiger and the general viewing public, was **not proved**. CX 15, CX 16. [9 C.F.R. § 2.131(b)(1) is currently renumbered as 2.131(c)(1).]

Topic Three: the Respondents' additional violations in El Paso, Texas on April 3, 2002.

25. On April 3, 2002, Respondent Ammon, through her agent Respondent Garretson, failed to handle two five-month old tigers and two juvenile bears during public exhibition so there was minimal risk of harm to the tigers, the bears, and to the public (including children and infants), in El Paso, Texas (at the 21st Century Midway, a fair/carnival-type attraction located in the parking lot at the Cielo Vista Mall), in violation of 9 C.F.R. § 2.131(b)(1) (currently renumbered as 2.131(c)(1)). Tr. 307-64, CX 16.

26. On April 3, 2002, Respondent Ammon, through her agent Respondent Garretson, failed to maintain sufficient distance and/or barriers between five adult tigers that they housed in El Paso, Texas (at the 21st Century Midway, a fair/carnival-type attraction located in the parking lot at the Cielo Vista Mall) and the general viewing public, in violation of 9 C.F.R. § 2.131(b)(1) (currently renumbered as 2.131(c)(1)). Tr. 307-64, CX 16.

Topic Four: Respondent Garretson's behavior toward APHIS officials in the course of carrying out their duties.

27. Lt. Kenneth Avinon, Investigation Supervisor, Florida Fish and Wildlife Conservation Commission, testified about his observations of Mr. Garretson's behavior on June 25, 2004. Tr. 82-83.

Lt. Avinon: Dr. Gaj then told Mr. Garretson the reason for the visit, which was he'd give him a cancellation of his USDA permit. At that time Mr. Garretson became very agitated, wadded the notice up and threw it over the fence and began to, cursing Dr. Gaj and the USDA and everybody else he could think of for taking his livelihood away from him and things like that.

Ms. Carroll: And, anything else you remember about what Mr. Garretson did upon receiving the letter from Dr. Gaj?

Lt. Avinon: Well, besides the verbal abuse that he was giving to Dr. Gaj, he broke down and cried numerous times. There were several times during this whole incident that tempers were right on the edge, and it was my opinion, from my experience in law enforcement, that there was a possibility that Mr. Garretson may take some kind of action against Dr. Gaj; some kind of physical action.

And I, at least twice I can remember stepping between Dr. Gaj and Mr. Garretson to prevent anything from happening to Dr. Gaj. Mr. Garretson never did do anything, but he was to a point that in my opinion I felt that he could.

Ms. Carroll: Was his voice raised?

Lt. Avinon: Extremely.

Ms. Carroll: And was he using profanity?

Lt. Avinon: Absolutely.

Tr. 82-83.

28. Respondent Garretson invested years and money in his animal exhibitions, so it is understandable that he would respond emotionally when confronted with adverse determinations by APHIS. Respondent Garretson's behavior was totally unacceptable, however, on several occasions. Elizabeth Goldentyer, Doctor of Veterinary Medicine (Tr. 1404), the Eastern Regional Director for USDA, APHIS, Animal Care, described Respondent Garretson's behavior on some of those occasions. Tr. 1423-26.

Ms. Carroll: What information did you have or have you had, Dr. Goldentyer, concerning this type of activity by Mr. Garretson?

Dr. Goldentyer: There have been several occasions when Mr. Garretson behaved inappropriately, aggressively, toward the inspectors. It came out in the inspection reports that Mr. Ramsey and Dr. Sabala were asked to leave the premises. Dr. Gaj felt threatened by Mr. Garretson.

.....

In addition, Mr. Garretson on more than occasion called our office, both the Western Regional Office and the Eastern Regional Office, and made

abusive statements to our staff in the offices. Mr. Garretson has called the Headquarters of APHIS and has also made threatening statements.

Mr. Garretson has made threatening statements to me personally that he would take some action to get what he wanted. He's made abusive statements to me and threatened to stay on the phone all day long, threatened to have my job type of thing. Mr. Garretson also threatened to bring his animals up here and set them loose on the National Mall if he was not given his license.

Judge Clifton: Dr. Goldentyer, to whom did he make the statement that he would set his animals loose on the National Mall if he were not given his license?

Dr. Goldentyer: I believe that was to our Headquarters staff. I had a phone message from Dr. Jodie Kulpa-Eddy who I believe was the Acting Staff Director of Animal Care for that day and I have a message from her to that effect that he had threatened to bring the animals here.

....

Judge Clifton: And as far as statements that Mr. Garretson made to you personally, recall as carefully as you can and as closely as you can, what was said?

Dr. Goldentyer: Mr. Garretson, he repeated over and over again that he was being discriminated against by us, that we had no right to not give him his license, that this was inappropriate, discriminating and I remember telling him that he should file a complaint if he was not happy with our actions, that what he needed to do was write that down and send it in and file a complaint. That was not what Mr. Garretson wanted to hear. He hung up on me. I remember that.

He called back, called repeatedly to our office, demanding to speak to me again. I did speak to him and he said he was going to just stay on that telephone all day long, whatever it would take. If he couldn't have that license, he would have my job, that I would be sorry that I discriminated against him and treated him in this way. And I know it went on a lot longer than that but I don't remember any more details.

Judge Clifton: Now you called it abusive. What about those words was abusive or the repetition or the length of time? What about it did you consider to be abusive?

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Dr. Goldentyer: The tone. The lying. The language and the demanding, constant phone calls to where it was very disruptive to our office, upsetting our staff

Tr. 1423-26.

29. During May 2002 telephone calls, Respondent Garretson complained of years of “problems” with APHIS, accused APHIS of discriminating against him, announced that he would travel to Fort Collins to “get satisfaction,” and predicted: “Today it will come to an end.” Dr. Raymond Michael Flynn (D.V.M.) testified about the actions that APHIS took in response, including conducting a threat assessment, upgrading security arrangements at the office, and sending out a cautionary message to other office employees. Dr. Flynn thought that Mr. Garretson’s statement “might mean that Mr. Garretson might be contemplating some sort of action against the agency” . . . “Physical threat.” CX 17. Tr. 737-49.

30. Interference Violation Proved: On June 25, 2004, Respondent Garretson, while an applicant for an initial AWA license, threatened, verbally abused, and harassed an APHIS official, Dr. Gaj, in the course of carrying out his duties, at Lake City, Florida, in willful¹⁰ violation of section 2.4 of the Regulations (9 C.F.R. § 2.4). CX 29, Tr. 82-93, 95-96.

31. Interference Violation Proved: On April 10, 2003, Respondent Ammon, through her agent Respondent Garretson, threatened, verbally abused, and harassed APHIS officials (APHIS Animal Care Inspector Roy Ramsey; and Mr. Ramsey’s supervisor, APHIS Supervisory Animal Care Specialist Dr. David Sabala), in the course of carrying out their duties, by loudly arguing and instructing them “not to write this violation up” and abruptly and rudely asking them to leave the premises, north of

¹⁰ The term “willful” used here includes such gross neglect of a known duty as to be the equivalent of an intentional misdeed.

Adair, Oklahoma, in willful¹¹ violation of section 2.4 of the Regulations (9 C.F.R. § 2.4). CX 19a, Tr. 606. [APHIS Investigator¹² Lewis Robert (“Bob”) Stiles, Jr., accompanied Inspectors Ramsey and Sabala, carrying out duties on behalf of APHIS.]

32. Interference Violation Proved: During May 2002, and particularly on May 20, 2002, Respondent Ammon, through her agent Respondent Garretson, threatened, verbally abused, and harassed APHIS officials in APHIS’s Western Region office in Fort Collins, Colorado, in the course of carrying out their duties, in a series of telephone calls, in willful¹³ violation of section 2.4 of the Regulations (9 C.F.R. § 2.4). Tr. 738-49, CX 17a, CX 17b.

Topic Five: the Respondents’ allowing a tiger cub which appeared to weigh less than 50 pounds to have direct contact with the Respondents’ customers, in Fort Smith, Arkansas, on September 25, 2002.

33. Alleged Handling Violation (involving no physical harm) Not Proved: the evidence fails to prove more than a minimal risk of harm to the tiger cub and to the public, when the Respondents used a tiger cub which appeared to weigh less than 50 pounds in photographs with the public. Respondent Ammon and her agent Respondent Garretson handled a tiger cub which “appeared to weigh less than 50 pounds” in photographs with the public on September 25, 2002, at the Arkansas/Oklahoma Fair in Fort Smith, Arkansas. Although the tiger cub was exhibited to the public by placing it in a position to have direct contact with the Respondents’ customers, the evidence fails to

¹¹ The term “willful” used here includes such gross neglect of a known duty as to be the equivalent of an intentional misdeed.

¹² APHIS Investigative and Enforcement Services

¹³ The term “willful” used here includes such gross neglect of a known duty as to be the equivalent of an intentional misdeed.

prove more than a minimal risk of harm to the tiger cub and to the public; consequently, no violation was proved of sections 2.100(a) and 2.131(b)(1) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(b)(1)). CX 16, p. 11. [9 C.F.R. § 2.131(b)(1) is currently renumbered as 2.131(c)(1).]

34. Alleged Handling Violation (involving no physical harm) Not Proved: the evidence fails to prove that the Respondents failed to handle as carefully as possible, so that the tiger cub would not suffer trauma, behavioral stress, physical harm or unnecessary discomfort, the tiger cub which appeared to weigh less than 50 pounds. When Respondent Ammon and her agent Respondent Garretson handled a tiger cub which “appeared to weigh less than 50 pounds” in photographs with the public on September 25, 2002, at the Arkansas/Oklahoma Fair in Fort Smith, Arkansas, the evidence fails to prove that the Respondents failed to handle the tiger cub as carefully as possible, so that the tiger cub would not suffer trauma, behavioral stress, physical harm or unnecessary discomfort; consequently, no violation was proved of sections 2.100(a) and 2.131(a)(1) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(a)(1)). CX 16, p. 11. [9 C.F.R. § 2.131(a)(1) is currently renumbered as 2.131(b)(1).]

Topic Six: Respondent Garretson’s exhibiting animals without holding a license, and without being authorized by a licensee.

35. Respondent Garretson, while anticipating a license being issued to Respondent Ammon, but before that license had been issued, violated 7 U.S.C. § 2149(b) at two events in 2001, failing to obey the cease and desist order issued by the Secretary (*In re James B. Garretson*, CX 1), by exhibiting animals without holding a license, and without being authorized by a licensee.

36. Respondent Ammon was licensed beginning July 10, 2001. Thus, Respondent Garretson was not the agent of licensee Respondent Ammon when he was operating as an exhibitor in 2001 before Respondent Ammon was licensed (on June 9; and on June 30 and July 1).

37. On June 9, 2001, in Dublin, Texas, with Eric Drogosch, Respondent Garretson operated as an exhibitor without a license, doing business as

International Wildlife Refuge, at the Dr. Pepper Bottling Company, in willful¹⁴ violation of 9 C.F.R. § 2.1(a)(1). CX 4. Tr. 713-727.

38. On June 30 - July 1, 2001, in Texas (Cedar Hill area), Respondent Garretson operated as an exhibitor without a license, doing business as International Wildlife Center and as International Wildlife Center Inc., at PETCO, Cedar Hill, in willful¹⁵ violation of 9 C.F.R. § 2.1(a)(1). [Even more alarming to me, Respondent Garretson represented International Wildlife Center Inc. to be a 501(c)(3) non-profit organization, for which contributions would be tax deductible, which was not true; also, International Wildlife Center Inc. was never incorporated.]

CX 5, Tr. 706-711, 392-407.

39. Respondent Ammon was licensed until June 8, 2004. I find that Respondent Garretson operated as Respondent Ammon's agent and consequently did not operate as an exhibitor without a license on April 3, 2002, during exhibition in El Paso, Texas, at Cielo Vista Mall; on September 25, 2002, during exhibition at Fort Smith, Arkansas; and on or about May 3, 2004, during transport of animals for use in exhibition at Attalla, Alabama. Consequently, I find that violations of 9 C.F.R. § 2.1(a)(1) on those occasions were not proved.

Topic Seven: the 2001 inspections, Respondent Ammon's facility (Frost, Texas).

40. When Respondent Ammon's exhibitor license was issued (July 10, 2001), her business (in Frost, Texas) was inspected or investigated four times during the remaining half of 2001:

August 21, 2001 (CX 7, CX 12),

October 2, 2001 (CX 8, CX 12, CX 14),

October 31, 2001 (CX 10-11, Tr. 405-452), and

¹⁴ The term "willful" used here includes such gross neglect of a known duty as to be the equivalent of an intentional misdeed.

¹⁵ The term "willful" used here includes such gross neglect of a known duty as to be the equivalent of an intentional misdeed.

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December 19, 2001 (CX 13, CX 14, Tr. 506).

Jeanne M. Kjos, D.V.M. (Tr. 455-560) inspected on August 21, October 2, and December 19. Senior Investigator¹⁶ David Green investigated and took photographs on October 31. Dr. Kjos is, and was during the 2001 inspections, a Veterinary Medical Officer with the United States Department of Agriculture, APHIS, Animal Care. Tr. 457. Dr. Kjos had 15 years experience with Animal Care at the time of the hearing. Tr. 457. Dr. Kjos' testimony that I include hereafter, I adopt as Findings of Fact.

41. The Respondents' lions' small water bucket was dry on October 2, 2001. CX 12, p. 9. Dr. Kjos, the APHIS inspector, who noted the deficiency, is a veterinarian whose opinions are worthy of respect. Dr. Kjos wrote:

The sixth noncompliant item noted on the October 2, 2001, inspection report was Section 3.130 watering. I observed the three adult lions in the north pen having only one small bucket to provide water. This bucket was empty at the time of this inspection. A better system needed to be provided to assure potable water for the three adult lions housed in the north pen. The correction date given for this noncompliant item was October 5, 2001.

CX 12, p. 9.

On October 2, 2001, the Respondents failed to meet the minimum standards for watering animals (three adult lions), in violation of sections 2.100(a) and 3.130 of the Regulations and Standards. 9 C.F.R. §§ 2.100(a) and 3.130.

¹⁶ United States Department of Agriculture, Animal and Plant Health Inspection Service, Investigative and Enforcement Services, Senior Investigator. Tr. 378.

42. Dr. Kjos described weather conditions that necessitated shelter for the animals in Ms. Ammon's Frost location. Tr. 498-99.

Dr. Kjos: In North Texas we can get very cold temperatures, also, and freezing ice. Icy conditions. So they'd also need to get in a box, you know, if the weather turns very inclement. Which it can all in one day go from being a nice beautiful sunny day to very cold, very icy. So it could happen very suddenly.

Judge Clifton: Can you give me an estimate as to how the range of temperatures might be throughout the year or what the range of conditions might be throughout the year?

Dr. Kjos: Are you asking me specifically in December?

Judge Clifton: No, throughout the year. You know, what might you be concerned about in the Fall. What might you be concerned about in the Winter, in the Spring, and so forth.

Dr. Kjos: Well, in the summer quite often we get over 100 degrees. And that's not even, that can be in the shade it can be over 100 degrees. So in the direct sunlight, you know, that's way over 100 degrees in the direct sunlight.

And then in the Winter months we can get down to the single digits. Like I said, and then you add on to that a lot of wind or ice or rain or snow. And then we've got snow. So they can get very inclement, too.

And typically a season of heavy rains in the Spring months, and then another season of heavy rains in the Fall months. Not this year, but typically we do.

Tr. 498-99.

43. The Respondents argue that the animals shared the available shelter, that each animal did not need its own den. I respect Dr. Kjos' judgment and find that the shelter space was inadequate. Tr. 500-01.

Ms. Carroll: Dr. Kjos, do animals also need sufficient space to be able to get away from the other animals if they want to?

Dr. Kjos: Yes. Especially in a breeding situation with, you know, a male and females. Intact animals. I don't remember if these were intact animals.

Ms. Carroll: And --

Dr. Kjos: But the lion might get very possessive of one of the two lionesses or at any one particular time. So there can be an inner aggression even among these animals, depending on the breeding season.

Ms. Carroll: So where the regulation in Section 3.128 refers to normal postural and social adjustments, does the postural mean just the physical ability to stretch out and have space to move around?

Dr. Kjos: Yes.

Ms. Carroll: And the social adjustments, is that what you're referring to about the ability to escape from other animals, if you will?

Dr. Kjos: Yes.

Ms. Carroll: Okay. Let me ask you about the last item on the first page of your inspection report, which is CX-13, page two, about the additional gate to facilitate routine cleaning in the north lion pen. You documented that as not having been corrected since the last inspection?

Dr. Kjos: That's correct.

Ms. Carroll: The next item, outdoor facilities, which is I guess what Judge Clifton was asking you about, the shelter from sunlight?

Dr. Kjos: Yes.

Ms. Carroll: Is that referenced also to the same six tigers that you took the pictures of in the exercise pen, with no shelters or shade?

Dr. Kjos: Yes. Yes, it is.

Tr. 500-01. [See also Tr. 494-95.]

44. The property in Frost, Texas used by Respondent Ammon and her agent Respondent Garretson, was purchased by Respondent Ammon's parents in January or February 2001, and remained in her parents' names. Tr. 1025-26. The property, 12 acres, had been an emu farm, and six acres were fenced with chain link. Tr. 1025. There were runs and shelters already there. Tr. 1025-26. Respondent Ammon had a rescue center in mind, intending to take in animals that needed a place to stay. Tr. 1026. There was no electricity at the property when Respondent Ammon moved her trailer house onto the property. Tr. 1027.

45. Respondent Ammon and her agent Respondent Garretson failed to meet the minimum standards for space, in violation of sections 2.100(a)

and 3.128 of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.128), in Frost, Texas, on or about the following dates in 2001:

- a. August 21, 2001: Inadequate space for an adult lioness.
- b. October 2, 2001: Inadequate space for six adult lions and three juvenile tigers.
- c. October 31, 2001: Inadequate space for six adult lions and three juvenile tigers.
- d. December 19, 2001: Inadequate space for six adult lions and three juvenile tigers.

46. On August 21, 2001, Respondent Ammon and her agent Respondent Garretson failed to meet the minimum standards for housing for llama and blackbuck antelope, in Frost, Texas, in violation of 9 C.F.R. §§ 2.100(a), 3.125(a)). CX 7, CX 12.

47. Respondent Ammon and her agent Respondent Garretson failed to meet the minimum standards for outdoor housing facilities for felids and hoofstock, in violation of sections 2.100(a) and 3.127 of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.127), in Frost, Texas, on or about the following dates in 2001:

- a. August 21, 2001: Inadequate shelter for three adult lions (9 C.F.R. § 3.127(b)).
- b. August 21, 2001: Inadequate protection from sunlight for three adult lions (9 C.F.R. § 3.127(a)).
- c. August 21, 2001: Inadequate perimeter fence for three lions (9 C.F.R. § 3.127(d)).
- d. October 2, 2001: Inadequate shelter for six adult lions and three juvenile tigers (9 C.F.R. § 3.127(b)).
- e. October 2, 2001: Inadequate protection from sunlight for three adult lions and three juvenile tigers (9 C.F.R. § 3.127(a)).
- f. October 31, 2001: Inadequate shelter for six adult lions, three juvenile tigers and a llama and a sheep (9 C.F.R. § 3.127(b)).
- g. October 31, 2001: Inadequate protection from sunlight for three adult lions and a llama and a sheep (9 C.F.R. § 3.127(a)).
- h. December 19, 2001: Inadequate perimeter fence for six tigers and one cougar (9 C.F.R. § 3.127(d)).
- i. December 19, 2001: Inadequate protection from sunlight for six adult tigers and three juvenile tigers (9 C.F.R. § 3.127(a)).

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j. December 19, 2001: Inadequate shelter for six adult lions and three juvenile tigers (9 C.F.R. § 3.127(b)).

Tr. 456-560, CX 7, CX 12.

48. The perimeter fence is required to be an eight foot perimeter fence. Tr. 501-02, 504. The Respondents had a six foot perimeter fence.

49. Respondent Ammon took in a variety of animals, including some that were not in good condition. Respondent Ammon thereby assumed the burden to improve their condition, a burden that could be difficult and expensive, requiring intensive nutrition and veterinary care. At times Respondent Ammon and her agent Respondent Garretson failed to carry the burden.

50. Respondent Ammon and her agent Respondent Garretson failed to establish and maintain a program of adequate veterinary care, in violation of section 2.40(b) of the Regulations (9 C.F.R. § 2.40(b)) in Frost, Texas, on or about the following dates:

- a. October 2, 2001 9 C.F.R. § 2.40(b)(2) (inadequate methods to prevent injuries - 1 bear)
- 9 C.F.R. § 2.40(b)(4) (inadequate guidance to personnel regarding handling and care - 1 bear)

51. Respondent Ammon and her agent Respondent Garretson failed to provide adequate veterinary care to animals, in violation of section 2.40(a) of the Regulations (9 C.F.R. § 2.40(a)) in Frost, Texas, on or about the following dates in 2001:

- a. August 21, 2001 (three tigers and one lion);
- b. October 2, 2001 (one lion); and
- c. December 19, 2001 (one tiger, one lion, one cougar).

52. **Not proved:** From the facts before me (CX 12, p. 7, CX 8, p. 11, Tr. 555-56), I do not find a violation on October 2, 2001, of failing to meet the minimum standards for feeding. Respondent Ammon intended, on or about October 2, 2001, to feed the tiger cubs in Frost, Texas, with the chicken in two packages that she was thawing directly on the dirt (instead of thawing in a water bath or refrigerator); one of the packages had a hole in it where one of the dogs had gotten hold of the package. The improper thawing and the hole in the package raise the concern that

the chicken was not “wholesome, palatable, and free from contamination,” as required by sections 2.100(a) and 3.129(a) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.129(a)). The evidence falls short, however, of proving (by a preponderance) that the chicken was not “wholesome, palatable, and free from contamination.” CX 12, p. 7, CX 8, p. 11, Tr. 555-56.

53. On October 31, 2001, the Respondents failed to meet the minimum standards for dogs, in violation of 9 C.F.R. §§ 3.4(a), 3.4(b), 3.4(b)(3), 3.8.

54. On December 19, 2001, Respondent Ammon and her agent Respondent Garretson failed to meet the minimum standards for housekeeping at Frost, Texas, because they cluttered the food storage area with non-food paraphernalia (Tr. 502, CX 13, p. 24); and they used the shelter structure for a llama, pig, cow, and sheep to store unused building supplies, equipment, and other paraphernalia (Tr. 503, CX 13, p. 23); in violation of 9 C.F.R. § 2.100(a) 9 C.F.R. § 3.131(c).

55. Not Proved: alleged handling violation on December 19, 2001, involving no physical harm; six tigers in exercise pen at home facility in Frost, Texas. Respondent Ammon and her agent Respondent Garretson kept six tigers in an enclosure made of cattle fencing (with 8” high openings) without a perimeter fence on December 19, 2001, at the home facility in Frost, Texas. [The Respondents did have a six foot high perimeter fence, but an eight foot high perimeter fence is required.] December 19, 2001 was a day that Veterinary Medical Officer Jeanne Kjos inspected Respondent Ammon’s facility, after Respondent Ammon permitted her access through a locked gate;¹⁷ the evidence fails to show any exhibiting to the public or presence of others on December 19, 2001. Alleged handling violations assert that the six tigers were exhibited to the public; that exhibiting six juvenile tigers in enclosures constructed of cattle fencing, with insufficient distance and/or barriers between the animals and the public, would permit the animals to have direct contact

¹⁷ Dr. Kjos wrote facilities violations, not handling violations.

with people (and vice versa). While I agree that close proximity of any human to the tigers' enclosure would likely have been dangerous, presenting more than a minimal risk of harm to the tigers and to the public, I conclude that no violation of section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) on December 19, 2001 was proved; the missing element is the close proximity of any human. CX 13. [9 C.F.R. § 2.131(b)(1) is currently renumbered as 2.131(c)(1).]

Topic Eight: Respondent Ammon's failure to readily disclose three tiger cubs, on August 21, 2001, during inspection at Respondent Ammon's facility (Frost, Texas).

56. On August 21, 2001, Respondent Ammon failed to show three tiger cubs to Dr. Kjos and Dr. Sabala while they were inspecting Respondent Ammon's facility in Frost, Texas, having denied at least twice that they (she and her agent Respondent Garretson) had any other animals, until asked directly where the tiger cubs were located. The three tiger cubs were in outdoor pens outside Respondent Ammon's trailer house on the back of the property. The three tiger cubs appeared thin, especially Kojac, and in need of being seen by a veterinarian. Respondent Ammon's failure to readily disclose the tiger cubs is a form of untruthfulness to the APHIS inspectors. Tr. 477-479. CX 7, CX 12, p. 5.

Topic Nine: Respondent Garretson's additional violations on June 30 - July 1, 2001, at PETCO Cedar Hill, Texas.

57. On June 30 - July 1, 2001, Respondent Garretson allowed the public to have direct contact with very young (six-week old) tigers, allowing customers to play with the tigers, and exhibiting the tigers in a manner and for periods of time inconsistent with their good health and well-being, in violation of 9 C.F.R. § 2.131(a)(1) (currently renumbered as 2.131(b)(1)); and in violation of 9 C.F.R. § 2.131(b)(1) (currently renumbered as 2.131(c)(1)); and in violation of 9 C.F.R. § 2.131(b)(3) (currently renumbered as 2.131(d)(3)). CX 5, Tr. 706-711, 392-407.

Topic Ten: the April 10, 2003 inspection, north of Adair, Oklahoma.

58. On April 10, 2003, Respondent Ammon and her agent Respondent Garretson failed to meet the minimum standards for housing for tigers,

north of Adair, Oklahoma, because the perimeter fence they provided for their tigers was inadequate, in violation of sections 2.100(a) and 3.127(d) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.127(d)). Tr. 601-627, CX 19a.

59. On April 10, 2003, Respondent Ammon and her agent Respondent Garretson failed to meet the minimum standards for housing for lions, north of Adair, Oklahoma, because they housed two juvenile lions in a travel crate that measured 4 feet by 7 feet which did not allow the lions adequate space or freedom of movement, in violation of sections 2.100(a) and 3.128 of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.128). Tr. 601-627, CX 19a.

60. On April 10, 2003, Respondent Ammon and her agent Respondent Garretson failed to make, keep and maintain records, in violation of sections 2.100(a) and 2.75(b)(1) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.75(b)(1)). Tr. 601-627, CX 19a.

Topic Eleven: additional alleged violations in 2003 and 2004.

61. On or about the following dates, the Respondents failed to provide adequate veterinary care to animals, in violation of 9 C.F.R. § 2.40(a):

- a. April 10, 2003 (two lions);
- b. January 5, 2004 (one tiger); and
- c. March 7, 2004 (one bear, one wolf-hybrid, one tiger).

62. On March 7, 2004, respondents failing to employ an attending veterinarian, as required, in violation of 9 C.F.R. § 2.40(a)(1).

63. On the following dates, the Respondents failed to establish and maintain a program of adequate veterinary care, in violation of 9 C.F.R. § 2.40(b), by :

- a. March 1 - April 2, 2003 9 C.F.R. § 2.40(b)(1) (inadequate personnel, facilities and equipment - 2 lions and 9 tigers)
9 C.F.R. § 2.40(b)(4) (inadequate guidance to personnel regarding handling and care - 2 lions and 9 tigers)
- b. March 7, 2004 9 C.F.R. § 2.40(b)(1) (inadequate facilities and equipment - 11 tigers, 1 bear, 1 lion, 1 wolf-dog hybrid)

64. On or about March 3, 2004, the Respondents failed to meet the minimum standards for transportation because the lion being transported in a trailer was exposed to holes in the wall; and the bears being

transported in a trailer were exposed to holes in the door, in violation of 9 C.F.R. §§ 2.100(a), 3.138(a). CX 27.

65. The Respondents failed to meet the minimum standards for feeding on or about March 7, 2004, in Florida, at the Volusia County Fairgrounds, by feeding their tigers an unbalanced diet of only chicken and beef, with no dietary or vitamin-mineral supplement to prevent the occurrence of metabolic disease, in violation of sections 2.100(a) and 3.129(a) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.129(a)). CX 27

Topic Twelve: Respondent Garretson's Truthfulness June 8, 2004, in Attalla, Alabama

66. APHIS has indicated that Respondent Garretson was not truthful in response to APHIS inquiries on June 8, 2004, in Attalla, Alabama, at Ty Harris's property, during a prelicense inspection by APHIS. APHIS believes that Respondent Garretson did not reveal 3 of his tigers, which were in poor condition. *See* CX 39, admitted into evidence in part (all, except for the first 2 paragraphs under Comments) and rejected in part (the first 2 paragraphs under Comments) Tr. 1434-1439. On cross-examination (Tr. 1228), Ms. Carroll questioned Respondent Garretson: Ms. Carroll: And you said you had no other animals, but in fact you had tigers that you had placed in another area at Mr. -- at Mr. Harris'. Isn't that correct?

Tr. 1228.

67. In response, Respondent Garretson testified that he "had given Ty Harris those tigers." Tr. 1228. Mr. Garretson had also stated in a July 12, 2004 interview that he gave the tigers to Ty Harris "(t)he first of May, before the inspection." CX 28b, p. 11. Ty Harris did not testify, but his Affidavit is in evidence, although he was not available for cross-examination. As Mr. Harris's Affidavit states (CX 28a), Respondent Garretson had given Mr. Harris the four young tigers. The four young tigers were in terrible condition (CX 28a) when Respondent Garretson brought them to Ty Harris's property, and Ty Harris's intervention was of great benefit to the four young tigers.

68. I conclude that Respondent Garretson was truthful, that the young tigers were not in Respondent Garretson's inventory during the June 8, 2004 inspection; that he had previously given the four young tigers to Ty Harris. Thus, during the prelicense inspection on June 8, 2004, Respondent Garretson was not required to disclose the three young tigers that remained on Ty Harris's property (one of the four, Emma, was at Central Valley Animal Hospital).

Topic Thirteen: Respondent Garretson's Prior Enforcement Action

69. This is the second enforcement action brought against Respondent Garretson for failing to comply with the Act, the Regulations and the Standards. CX 1.

Topic Fourteen: Respondent Garretson's "Alter Ego"?

70. APHIS asks me to find that Jungle Paradise Zoo, Inc., an Animal Welfare Act licensee beginning about September 20, 2005, is an alter ego of Respondent Garretson. I do not so find. Respondent Garretson was the moving force behind Jungle Paradise Zoo, Inc., and Respondent Garretson's method of operating with Ms. Nicole H. Demers appeared to me to be similar to his method of operating with Respondent Ammon. I find that Ms. Nicole H. Demers was a significant participant in the activities of Jungle Paradise Zoo, Inc., and in providing the real estate occupied by the animals, so significant as to preclude my finding that Jungle Paradise Zoo, Inc., is an alter ego of Respondent Garretson. Whether Sandra J. Garretson (Respondent Garretson's mother) participated significantly in Jungle Paradise Zoo, Inc., is unknown to me. What the corporate records would reveal is unknown to me. The evidence before me is inadequate to find that Jungle Paradise Zoo, Inc., is an alter ego of Respondent Garretson.

Discussion

71. Elizabeth Goldentyer, Doctor of Veterinary Medicine (Tr. 1404), having heard the testimony from the outset of the hearing (Tr. 1406), provided APHIS's rebuttal testimony. Tr. 1404-1507. Dr. Goldentyer is

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the Eastern Regional Director for USDA, APHIS, Animal Care. Dr. Goldentyer explained, in general terms, the impact of behavior such as that in evidence of Respondent Ammon and Respondent Garretson. Tr. 1431-34.

Ms. Carroll: Is it a problem as far as enforcement of the Animal Welfare Act when a dealer or exhibitor is verbally abusive to inspectors?

Dr. Goldentyer: Yes, it is a problem.

Ms. Carroll: Why?

Dr. Goldentyer: Well, it's a problem because we have to be concerned about the safety of our inspectors. So we have to send more than one person which takes some coordination since the inspectors are spread out throughout the country. So we have to get people together so that no one is going by themselves which means it's harder to get these inspections done.

It's also very difficult to be able to look at the facilities and calmly evaluate what's going on, ask questions so that you understand what the circumstances are and get answers so that you can make a decision about compliance. If you are having to be subject to this kind of verbal abuse and kind of behavior, it really makes it very difficult to do a good inspection.

Ms. Carroll: And you heard testimony from Dr. Kjos and I should, I'll just mention that Dr. Kjos specifically, about the inquiry she made about the bear that had apparently died and also notation that she made regarding tiger cubs that were not presented for inspection until she pressed Ms. Ammon and Mr. Garretson about their whereabouts. Is it a problem as far as enforcement of the Animal Welfare Act for the Agency when there is apparently, when licensees or exhibitors or dealers are not forthcoming and forthright with the Agency?

Dr. Goldentyer: Yes. When an inspector is out there, they're really seeing a snapshot of the facility. They are going through and trying to make decisions about the care and use of the animals that they're seeing in one moment in time. They have to be able to get good information about what's going on with these animals and if it's conflicting information, if it's just whatever is a convenient answer, if they are not

shown all the animals or they're not shown all the facilities, all the places where food is stored or something, it's virtually impossible for the inspector to be able to do a good inspection, evaluate the facility and make sure that the animals are getting good care.

Ms. Carroll: And what about the Agency's ability to trust what exhibitors and dealers are telling them about their facility and their animals and their records and their set-up, is it a problem when it appears that a dealer and an exhibitor is not truthful?

Dr. Goldentyer: Well, it brings into question all of the information that you're getting about the animals and their care if you're not getting accurate information about what's going on. Particularly if on top of not getting accurate information verbally during the inspection, you don't have good medical records that make sense to help you validate the fact that there is care given. You really have no way of knowing whether there's any care or not. And if you add that to seeing animals that need care, it really brings into question the whole management of the facility and it's clearly a violation not to give the inspector accurate information about what's going on.

Tr. 1431-34.

72. Dr. Goldentyer has expressed precisely why being responsible and trustworthy are essential attributes of an Animal Welfare Act licensee who will perform the duties that are required. The following excerpt from Ms. Ammon's testimony reveals to me a lack of being responsible and trustworthy. This testimony is found at Tr. 1200-09.

73. ALJ: I'd like you to respond to one of the sentences in Ms. Sternke's affidavit, if you will, that's on --

Ms. Ammon: Okay.

ALJ: RX 16, page seven. When you come down in the first full paragraph to about the fourth line, and it says the cats were hungry, because they had not been fed in four days due to shortage of meat, were you aware of any shortage of meat at about that time?

Ms. Ammon: No. I was also not aware that Lynda Brackett was going to be anywhere near my cats. I did not know she was hired. We wouldn't -- we did not hire her. I did not say let's have Lynda Brackett come and help Amanda with my cats. I did not instruct Lynda Brackett to be anywhere near my cats. I didn't show her how to water my cats. I

didn't show her how to feed my cats. Four days is not that long of a time for a tiger -- normally you would fast -- one to two days a week is normal. Four days I know is longer than two days or a -- a day, but that's not enough for them to -- health wise, they were not written up for being thin or malnourished. They didn't write up in any report that I saw that they were too skinny or thin. We had been feeding them meat -- red meat from cow legs that were at least 20 to 40 pounds. And then they'd go to -- once that dropped off, they would go back to chicken legs. And we would normally feed them 10 pounds, 10 to 15 pounds. Some of the males got a little bit more. So they were basically just gorging out. We were feeding them a lot of meat, and then all of a sudden, they had to go back to eating about 10 or 15 pounds apiece. So -- I mean they're going to -- it's going to be a little harder to, you know, if you start -- like Thanksgiving and Christmas when people eat a lot, and then they have to go back to oh, we got to not eat as much. So when anybody came into that barn, it was either to feed or to water or to clean. So, of course, they're going to think every time somebody comes, they're going to think it's time to eat. Every time Amanda would back her truck up into that barn, they would start pacing, because they knew it was about time to eat. So anytime they saw us, they were basically getting fed, or getting water, or getting something, because -- you know, normally in our exhibits that we would do all year, they would just lay there, and they'd see millions of people all day long, and they won't care. but when in this situation, they didn't see anybody else but us, and most of the time when they saw us, we were either feeding or cleaning or giving them water. So they're going to start pacing, and they're going to think something's going to happen because there's -- there's people. I was not aware there was a shortage of meat. There was 26 cats, so I'm not sure who was getting the majority of the meat or whatnot.

ALJ: Was the money you sent from Brownsville the last money you sent for food?

Ms. Ammon: Yes. As far as I know, yes.

ALJ: And was that about a month before the incident? A month or more?

Ms. Ammon: February -- somewhere in between February -- it would have been either the first, after the first or second weekend.

ALJ: Do you recall how much money you sent?

Ms. Ammon: It was a thousand dollars cash, Western Union. And I believe I showed Mr. -- or Bob Stiles the receipt. I don't have it now, but I believe when I did my affidavits, I showed him the Western Union receipts.

ALJ: And how long did you expect that to last?

Ms. Ammon: I don't know. I don't remember. He was getting -- I don't remember how much -- how many cents a pound, but he had a pretty good supplier of chicken leg quarters out of Tulsa, and I'm not really sure. I had not gone there. I know Mr. Garretson had picked up meat there before, but I had not typically gone to pick up the meat, so I'm not sure about how much it was.

ALJ: Did you have any conversation with Mr. Estes as to how far -- how long that thousand dollars was expected to last?

Ms. Ammon: No. I didn't actually speak with Mr. Estes that much. Most of it was -- he would talk to Mr. Garretson directly unless I was there because -- except the whole time I was there at his facility, because we would talk to him every day until when we left. Most of the time it was Mr. Garretson that called him, not me so.

ALJ: Do you have any evidence that Mr. Garretson called him during the month of absence?

Ms. Ammon: Oh, when he called me and I would talk to Safari Joe -- I'm just saying when we had both gone together, Mr. Estes would usually talk to Mr. Garretson. I'm not sure if he called him -- I'm -- I'm sure he called him. I don't have evidence that he called him, but I mean I would talk to Joe every day when I was on the property, and I would stay in contact with James by phone every time he was gone.

ALJ: And when you were also gone, did you have any conversation with Mr. Estes?

Ms. Ammon: Not -- that's what I'm saying. Not as much. It would be through James or, you know, like I -- I wouldn't call him usually up myself. James would talk to him or I would talk to them while he was on the phone.

ALJ: What were your instructions to Amanda Sternke as to how often to feed the big cats?

Ms. Ammon: It really just depended on the meat and what they were going to feed. We mostly -- when we did the cow legs, it was Monday through Friday, we would go and get them. So being fed that much, they wouldn't have to be fed every day, and that's why some of the days we missed, because we couldn't go out there, because it took too long to do it. It was just whenever they had -- I don't recall actually saying, you know, feed on this particular day or these particular days.

ALJ: When you heard that your cats had not been fed in four days, were you upset?

Ms. Ammon: Yes. I -- I mean I don't even think I actually ever was told that until, I believe, I think -- I don't know if I read it from Amanda. I'd-- I'd not -- had not talked to Amanda myself directly after the accident. I know she had spoken with Mr. Estes and Mr. Garretson and had heard stuff through them. So I never heard it directly from her how they were being fed or what they were being fed or how often.

ALJ: Did you have any way to call her when you were away?

Ms. Ammon: I'm talking about after the accident when she had left.

ALJ: And I'm talking about --

Ms. Ammon: Yes.

ALJ: -- before the --

Ms. Ammon: Yes.

ALJ: accident. Did you have

Ms. Ammon: -- Yes.

ALJ: -- any way to get a hold of her

Ms. Ammon: Yes.

ALJ: What was that? How would you reach her?

Ms. Ammon: The direct line that went to the trailer that we were staying in. I don't remember the phone number, but it's different than Safari Joe's cell phone number.

ALJ: And -- and she stayed there, too?

Ms. Ammon: Yes. There's a trailer that she was staying in that was separate from Safari Joe's house, and then when we stayed there, we stayed in the trailer with -- where Amanda was -- we're living.

ALJ: How often did you communicate with her, for example, while you were in Brownsville, Texas?

Ms. Ammon: I don't think -- I don't think I had called her directly. We spoke mostly through Mr. Estes.

ALJ: All right.

Ms. Ammon: When I came back, you know, we would -- I helped her with a bunch of things, and she helped me clean the cats and whatnot.

ALJ: And in -- while you were in Sarasota, Florida, how often did you contact Amanda Sternke, if you recall?

Ms. Ammon: I don't recall. I think most of it was through Mr. Estes. We talked to him, maybe not on a daily basis, but I know we talked to him often. I don't think I specifically called Amanda herself.

ALJ: When you say often, how often do you think you are aware of you or Mr. Garretson talking with Mr. Estes about your cats during the time you were in Sarasota?

Ms. Ammon: I don't know. That's hard to say. Because we -- Mr. Garretson and myself both had different cell phones, so I don't know exactly --

Tr. 1200-09.

74.Dr. Goldentyer's testimony that the Respondents' provisions for their animals in Adair, Oklahoma were deficient is found at Tr. 1411-14:

Ms. Carroll: Let me ask you . . . the issue of careful handling of dangerous animals like tigers. Why is that important?

Dr. Goldentyer: Tigers as we've heard are incredibly dangerous and they can even just in an instant cause tremendous damage to each other, to people, any other animal that comes in contact with them. Often times when a large cat is involved in some kind of an incident that results in injury to a person, there is consequences to the animal. Either some of them have to be euthanized. Some of them have to be housed separately or they don't get adequate care after that kind of thing happens. So really to assure the humane care and use of the animal, you have to protect both the animal and any people that are going to come in contact with the animal.

Ms. Carroll: Not just customers?

Dr. Goldentyer: Anyone that would come in contact with the animal.

Ms. Carroll: Do you have an opinion about whether the Respondents' decisions in connection with the housing and care of the animals in Adair, Oklahoma met the regulation requirements as far as care and prevention of injury?

Dr. Goldentyer: Yes.

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

Dr. Goldentyer: Well, based on my understanding of these animals and the testimony that I've heard and my understanding of the regulations.

Ms. Carroll: And what is your opinion?

Dr. Goldentyer: These animals were not handled appropriately.

Ms. Carroll: Why not?

Dr. Goldentyer: There was insufficient personnel there to adequately get them fed, get them handled so as to avoid any injury, insufficient barriers and distance to keep people safe.

Ms. Carroll: Even people who worked there?

Dr. Goldentyer: Yes.

Ms. Carroll: What about the ability of the barn itself to prevent people from coming in? Does that play a part?

Dr. Goldentyer: In my opinion, the barn was not adequately secured to protect both the people and the animals.

Ms. Carroll: What kinds of things could Respondents have done to handle the animals more carefully in that circumstance in Adair?

Dr. Goldentyer: There are a lot of things that they could have done. There is fencing and other types of security, securing the door. There are locks, attendants. There are a lot of things you can do to make an area secure so that there is no chance of someone getting in there or getting in there inappropriately.

Ms. Carroll: Do you have an opinion whether leaving one's animals to the care of persons not under your control constitutes careful handling?

Dr. Goldentyer: Yes.

Ms. Carroll: And the basis for your opinion?

Dr. Goldentyer: Well, my understanding of the regulations and the care that's required for these animals, it's not careful handling to leave these animals like that. A lot of things can happen. You have to be able to respond to assure that nothing bad happens to them. You can't just depend on someone else to take the responsibility. These animals are a huge responsibility and as an owner and exhibitor of these animals, you're responsible for them and you need to provide for them. It's inappropriate and inadequate handling to go off and do something else and leave those animals behind without adequate care.

Tr. 1411-14.

75. Respondent Ammon's behavior showed, at times, a failure to appreciate the needs of the animals and a failure to accept correction from APHIS officials. Respondent Ammon's failures resulted not only from inadequate funds, a contributing factor, but also from her failure to take charge of the business that she operated under the license issued to her. Respondent Ammon was responsible for the activities undertaken under her Animal Welfare Act license, but Respondent Ammon's testimony reveals her dependence and her failure to take responsibility as required to manage the magnificent but very expensive and time consuming animals. Respondent Ammon relied heavily on Respondent Garretson and his contacts among exhibitors, including, for example, Mr. Joseph M. ("Joe") Estes, also known as "Safari Joe" (CX 2, CX 19, CX 24), Mr. Eric John Drogosch (CX 4); and Mr. Marcus Cook (Tr. 929-933).

76. The Respondents did correct many mistaken practices but nevertheless repeatedly failed to accept and exercise the responsibility that must be exercised to remain in compliance with the Animal Welfare Act. It is striking that Respondent Ammon, in her Declaration filed May 31, 2006, so frequently refers to the alleged violations as minuscule. I conclude that Animal Welfare Act license revocation and the other remedies found in my Order (paragraphs 77 through 89) are necessary, and that lesser remedies would not be adequate

Order

77. Animal Welfare Act license number 74-C-0521, issued to Respondent “Nicole Ammon dba: International Wildlife Ctr.,” is **revoked**, effective on the day after this Decision becomes final.¹⁸ [Respondent Ammon’s Animal Welfare Act license has not been valid since June 8, 2004; license revocation is nevertheless the appropriate remedy.¹⁹] Further, Respondent Ammon’s privilege to engage in activities that require an Animal Welfare Act license is **revoked**, effective on the day after this Decision becomes final. [See footnote 18.]

78. Further, Respondent Ammon is permanently disqualified from becoming licensed under the Animal Welfare Act or from otherwise obtaining, holding, or using an Animal Welfare Act license, directly or indirectly, or through any corporate or other device or person, effective on the day after this Decision becomes final. [See footnote 18.]

79. Under the Animal Welfare Act, revocations and permanent disqualifications are equally permanent. If the revocations and permanent disqualifications specified in paragraphs 77 through 78 are vacated on appeal or for any other reason, no Animal Welfare Act license shall be issued to Respondent Ammon until she has met all requirements of the Animal Welfare Act, the Regulations (including but not limited to 9 C.F.R. §§ 2.1 through 2.12), and the Standards; until she has fully met her obligation to pay civil penalties imposed under the Animal Welfare Act; until she has established a pattern of

¹⁸ See paragraph 90. to determine the day on which this Decision becomes final.

¹⁹ See *Eric John Drogosch, et al.*, 63 Agric. Dec. 623, 648-49 (2004), in which the Judicial Officer concluded that if a person holds a valid Animal Welfare Act license at the time he or she violates the Animal Welfare Act or the Regulations and Standards, the Secretary of Agriculture is authorized by section 19(a) of the Animal Welfare Act (7 U.S.C. § 2149(a)) to revoke that violator’s Animal Welfare Act license even if the violator’s Animal Welfare Act license is cancelled prior to revocation.

trustworthiness in meeting obligations similar to those imposed upon Animal Welfare Act licensees; and until she has established a pattern of cooperation with authorities who have functions similar to those of APHIS officials.

80. Respondent James Brandon Garretson will not be licensed during the revocation described in paragraph 77 because Respondent Garretson was Respondent Ammon's agent who was responsible for or participated in the violations upon which Respondent Ammon's license revocation is based. *See* section 2.9 of the Regulations (9 C.F.R. § 2.9). [On January 10, 2006, I entered a "failure to appear" Decision and Order, filed January 12, 2006, which contained no provisions such as those contained in this paragraph. If it is found on appeal that I erred on January 11, 2006, when I set aside the "failure to appear" Decision and Order (Tr. 253), then the remedies entered on January 10, 2006 regarding Respondent Garretson will control; the provisions contained in this paragraph will be stricken from the within Order.]

81. Further, Respondent Garretson's privilege to engage in activities that require an Animal Welfare Act license is **revoked**, effective on the day after this Decision becomes final. [See footnote 18.] [On January 10, 2006, I entered a "failure to appear" Decision and Order, filed January 12, 2006, which contained no provisions such as those contained in this paragraph. If it is found on appeal that I erred on January 11, 2006, when I set aside the "failure to appear" Decision and Order (Tr. 253), then the remedies entered on January 10, 2006 regarding Respondent Garretson will control; the provisions contained in this paragraph will be stricken from the within Order.]

82. Further, Respondent Garretson is permanently disqualified from becoming licensed under the Animal Welfare Act or from otherwise obtaining, holding, or using an Animal Welfare Act license, directly or indirectly, or through any corporate or other device or person, effective on the day after this Decision becomes final. [See footnote 18.]

83. Under the Animal Welfare Act, revocations and permanent disqualifications are equally permanent. If the revocations and permanent disqualifications specified in paragraphs 80 through 82 are vacated on appeal or for any other reason, no Animal Welfare Act license shall be issued to Respondent Garretson until he has met all

requirements of the Animal Welfare Act, the Regulations (including but not limited to 9 C.F.R. §§ 2.1 through 2.12), and the Standards; until he has fully met his obligation to pay civil penalties imposed under the Animal Welfare Act; until he has established a pattern of trustworthiness in meeting obligations similar to those imposed upon Animal Welfare Act licensees; and until he has established a pattern of cooperation with authorities who have functions similar to those of APHIS officials. [On January 10, 2006, I entered a “failure to appear” Decision and Order, filed January 12, 2006, which contained no provisions such as those contained in this paragraph. If it is found on appeal that I erred on January 11, 2006, when I set aside the “failure to appear” Decision and Order (Tr. 253), then the remedies entered on January 10, 2006 regarding Respondent Garretson will control; the provisions contained in this paragraph will be stricken from the within Order.]

84. The following **cease and desist** provisions of this Order (paragraphs 85 and 86) shall be effective on the day after this Decision becomes final. [See footnote 18.]

85. Respondent Nicole Lynette Ammon, Respondent James Brandon Garretson, and her/his 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.

86. Respondent Nicole Lynette Ammon, Respondent James Brandon Garretson, and her/his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from engaging in any activity for which a license is required under the Act or Regulations without being licensed as required.

87. Respondent Nicole Lynette Ammon is assessed a civil penalty of **\$20,940**, 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 60 days after this Decision becomes final. [See footnote 18.]

88. Respondent James Brandon Garretson is assessed a civil penalty of **\$32,560**, to be paid by certified check(s), cashier’s check(s), or money

order(s) made payable to the order of “**Treasurer of the United States**,” within 60 days after this Decision becomes final. [See footnote 18.] [On January 10, 2006, I entered a “failure to appear” Decision and Order, filed January 12, 2006, which assessed Respondent Garretson a civil penalty of \$15,000. If it is found on appeal that I erred when I set aside the “failure to appear” Decision and Order, on January 11, 2006 (Tr. 253), then the remedies entered on January 10, 2006 regarding Respondent Garretson will control; the provisions contained in this paragraph will be stricken from the within Order.]

89. Respondents shall reference **AWA Docket No. 04-A032** on their 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, S.W.
Washington, D.C. 20250-1417.

Finality

90. This Decision and Order shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix 3).

91. Respondent Garretson sent me email, several times, without copying Ms. Ammon or Ms. Carroll or the Legal Secretary who works with me, while I was working on this Decision and Order. Respondent Garretson’s emails that failed to copy the other parties and the Legal Secretary are *ex parte* communications with the judge, forbidden by section 1.151 of the Rules of Practice (7 C.F.R. § 1.151). I had previously instructed Respondent Garretson to copy the other parties and the Legal Secretary on any email to me. *Ex parte* emails from Respondent Garretson came so frequently beginning in mid-November

JEROME SCHMIDT, d/b/a
TOP OF THE OZARK AUCTION
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2006, that I chose not to take the time to forward them to the other parties; I have ignored them for the purpose of my Decision and Order. Copies of those *ex parte* emails from Respondent Garretson are attached as Appendix 2, so that the parties are aware of them, and so that, if any party wishes to address the *ex parte* emails in an appeal to the Judicial Officer, that party may do so.

Copies of this Decision and Order, including the 4 appendices, shall be served by the Hearing Clerk upon each of the parties. Attention, Hearing Clerk: Nicole Lynette Ammon's current record address is 225 NE 1st Street, High Springs, Florida 32643 (the zip code is mistaken in Respondent Ammon's filed email, dated April 26, 2006); James Brandon Garretson's current record address is 763 SW Churchill Way, Lake City, Florida 32025. The appendices shall be omitted by the *Agriculture Decisions* Editor, from *Agriculture Decisions* (books and CDs), and from the USDA website.

In re: JEROME SCHMIDT, d/b/a TOP OF THE OZARK AUCTION.

AWA Docket No. 05-0019.

Decision and Order.

Filed March 26, 2007.

AWA – Animal Welfare Act – Burden of proof – Preponderance of the evidence – Selective enforcement – Frequency of inspections – Inspections unaccompanied by licensees – Post-inspection exit briefings – Public officers presumed to properly discharge duties – Authority of administrative law judge.

The Judicial Officer reversed Administrative Law Judge Peter M. Davenport's (ALJ) decision dismissing the Complaint. The Judicial Officer concluded the Administrator proved by a preponderance of the evidence that Dr. Schmidt committed 30 violations of the regulations and standards issued under the Animal Welfare Act (Regulations and Standards), assessed a \$6,800 civil penalty against Dr. Schmidt, and ordered Dr. Schmidt to cease and desist from violations of the Regulations and Standards. The Judicial Officer concluded Dr. Schmidt was not the subject of selective enforcement; held there were no limits under the Animal Welfare Act on the frequency with which the Secretary of Agriculture could inspect an Animal Welfare Act dealer's place of business, facilities,