

In re: J. WAYNE SHAFFER, AN INDIVIDUAL; MICHAEL LEIGH STANLEY, AN INDIVIDUAL; L'IL ARK EXOTICS, A/K/A L'IL ARK PETS, AND/OR THE L'IL ARK, AN UNINCORPORATED ASSOCIATION OR GENERAL PARTNERSHIP; AND THE ENCHANTED FOREST, A SOLE PROPRIETORSHIP, UNINCORPORATED ASSOCIATION, OR GENERAL PARTNERSHIP.

AWA Docket No. 01-0027.

Decision and Order.

Filed September 26, 2001.

Failure to file answer – Default – Animal welfare – Dealer – License – Ability to pay – Presumed to know law – Constructive notice – Sanction policy – Civil penalty – Cease and desist order.

The Judicial Officer (JO) affirmed the Default Decision issued by Chief Administrative Law Judge James W. Hunt (Chief ALJ) assessing the Respondents, jointly and severally, a \$20,150 civil penalty and ordering the Respondents to cease and desist from violating the Animal Welfare Act and the Regulations. The JO deemed Respondents' failure to file a timely answer to the Complaint an admission that Respondents operated as dealers, as defined by the Animal Welfare Act (7 U.S.C. § 2132(f)) and the Regulations (9 C.F.R. § 1.1) without obtaining an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a)(1). The JO rejected Respondents' arguments that J. Wayne Shaffer was not a dealer because he did not gain monetarily from the sale of any of the animals. The JO stated a person need not have actually profited from the sale of an animal to fall within the definition of the term "dealer" under the Animal Welfare Act and the Regulations; even if a person suffers a loss on the sale of an animal, that person could be a dealer under the Animal Welfare Act and the Regulations, as long as the sale was made for the purpose of compensation or profit. The JO also stated that Michael Leigh Stanley's purported inability to pay the civil penalty was not a basis for setting aside or reducing the civil penalty. The JO held that the advice Michael Leigh Stanley purportedly received from local government offices regarding the need for a license "to farm" animals was not relevant to the proceeding. The JO further held that Michael Leigh Stanley's purported disability and need for income do not constitute defenses to his violations of the Animal Welfare Act and the Regulations or mitigating circumstances to be considered when determining the amount of the civil penalty to be assessed for his violations of the Animal Welfare Act and the Regulations. The JO also held that Michael Leigh Stanley's purported lack of actual knowledge that he was required to obtain an Animal Welfare Act license before operating as a dealer was not a defense to Respondents' violations of the Animal Welfare Act and the Regulations. The JO stated the Animal Welfare Act is published in the United States Statutes at Large and the United States Code, and Michael Leigh Stanley is presumed to know the law. Moreover, the Regulations are published in the Federal Register; thereby constructively notifying Michael Leigh Stanley of the licensing requirements. Finally, the JO held that the assessment of a \$20,150 civil penalty and the issuance of a cease and desist order comport with the United States Department of Agriculture's sanction policy.

Colleen A. Carroll, for Complainant.

Respondents, Pro se.

Initial decision issued by James W. Hunt, Chief Administrative Law Judge.

Decision and Order issued by William G. Jenson, Judicial Officer.

PROCEDURAL HISTORY

The Administrator, Animal and Plant Health Inspection Service, United States

Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a “Complaint” on March 8, 2001. Complainant instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-2.133) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

Complainant alleges that, during 1998 and 1999, J. Wayne Shaffer, Michael Leigh Stanley, L’il Ark Exotics, and The Enchanted Forest [hereinafter Respondents] operated as dealers as defined in the Animal Welfare Act and the Regulations without being licensed, in willful violation of section 2.4 of the Animal Welfare Act (7 U.S.C. § 2.4)¹ and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(1)(1))² (Compl. ¶¶ 5-55).

The Hearing Clerk served each Respondent with the Complaint, the Rules of Practice, and a service letter on March 14, 2001.³ Respondents failed to answer the Complaint within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). On April 17, 2001, the Hearing Clerk sent a letter to Respondents informing them that their answer to the Complaint had not been received within the time required in the Rules of Practice.⁴

On May 11, 2001, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a “Motion for Adoption of Proposed Decision and Order” [hereinafter Motion for Default Decision] and a proposed “Decision and Order as to J. Wayne Shaffer, Michael Leigh Stanley, L’il Ark Exotics, and The Enchanted Forest Upon Admission of Facts by Reason of Default” [hereinafter Proposed Default Decision]. The Hearing Clerk served Michael Leigh Stanley, L’il Ark Exotics, and The Enchanted Forest with Complainant’s Motion for Default

¹Based on the record, I infer the references in the Complaint to “section 2.4” of the Animal Welfare Act and “7 U.S.C. § 2.4” are typographical errors and Complainant alleges rather that Respondents willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134), which requires dealers to obtain an Animal Welfare Act license from the Secretary of Agriculture.

²Based on the record, I infer the references in the Complaint to “9 C.F.R. § 2.1(1)(1)” are typographical errors and Complainant alleges rather that Respondents violated 9 C.F.R. § 2.1(a)(1), which requires each person operating as a dealer to have a valid Animal Welfare Act license.

³See United States Postal Service Domestic Return Receipts for Article Number 4579 3830, Article Number 4579 3854, Article Number 4579 3847, and Article Number 4579 3625.

⁴Letter dated April 17, 2001, from Joyce A. Dawson, Hearing Clerk, to L’il Ark Exotics, J. Wayne Shaffer, Michael Leigh Stanley, and The Enchanted Forest.

Decision and Complainant's Proposed Default Decision on May 17, 2001.⁵ The Hearing Clerk served J. Wayne Shaffer with Complainant's Motion for Default Decision and Complainant's Proposed Default Decision on July 17, 2001.⁶ Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) provides that objections to a proposed decision and a motion for adoption of the proposed decision must be filed within 20 days after service of the motion for the proposed decision and the proposed decision. Respondents failed to file objections to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision within 20 days after service of Complainant's Motion for Default Decision and Complainant's Proposed Default Decision.

On August 13, 2001, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Chief Administrative Law Judge James W. Hunt [hereinafter the Chief ALJ] issued a "Decision and Order as to J. Wayne Shaffer, Michael Leigh Stanley, L'il Ark Exotics, and The Enchanted Forest Upon Admission of Facts by Reason of Default" [hereinafter Initial Decision and Order]: (1) finding that, at all times material to this proceeding, Respondents were operating as dealers as defined in the Animal Welfare Act and the Regulations; (2) finding that, during 1998 and 1999, Respondents bought, sold, and transported animals in commerce without having obtained an Animal Welfare Act license from the Secretary of Agriculture; (3) concluding that Respondents willfully violated section 2.4 of the Animal Welfare Act (7 U.S.C. § 2.4)⁷ and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)); (4) directing Respondents to cease and desist from violating the Animal Welfare Act and the Regulations and Standards;⁸ and (5) assessing Respondents, jointly and severally, a \$20,150 civil penalty (Initial Decision and Order at 2-17).

⁵See United States Postal Service Domestic Return Receipts for Article Number 4578 8652, Article Number 4578 8676, and Article Number 4578 8683.

⁶See United States Postal Service Domestic Return Receipt for Article Number 7099 3400 0014 4579 4127.

⁷Based on the record, I infer the references in the Initial Decision and Order to "section 2.4" of the Animal Welfare Act and "7 U.S.C. § 2.4" are typographical errors and the Chief ALJ concluded that Respondents willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134), which requires dealers to obtain an Animal Welfare Act license from the Secretary of Agriculture.

⁸The Chief ALJ's reference to "Standards" is a reference to the standards issued under the Animal Welfare Act (9 C.F.R. §§ 3.1-.142) [hereinafter the Standards]. Complainant did not allege that Respondents violated the Standards and the Chief ALJ did not find or conclude that Respondents violated the Standards.

On August 27, 2001, J. Wayne Shaffer appealed to the Judicial Officer. On September 4, 2001, Michael Leigh Stanley, L'il Ark Exotics, and The Enchanted Forest appealed to the Judicial Officer. On September 13, 2001, Complainant filed "Complainant's Response to Appeals of Decision and Order Filed by Respondents J. Wayne Shaffer, Michael Leigh Stanley, L'il Ark Exotics, and The Enchanted Forest" [hereinafter Complainant's Response to Appeals]. On September 14, 2001, the Hearing Clerk transmitted the record of the proceeding to the Judicial Officer for consideration and decision.

Based upon a careful consideration of the record and pursuant to section 1.145(i) of the Rules of Practice (7 C.F.R. § 1.145(i)), I adopt, with only minor modifications, the Chief ALJ's Initial Decision and Order as the final Decision and Order. Additional conclusions by the Judicial Officer follow the Chief ALJ's Conclusions of Law, as restated.

APPLICABLE STATUTORY AND REGULATORY PROVISIONS

7 U.S.C.:

TITLE 7—AGRICULTURE

....

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

§ 2131. Congressional statement of policy

The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—

- (1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;
- (2) to assure the humane treatment of animals during transportation in commerce; and
- (3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

§ 2132. Definitions

When used in this chapter—

....

(f) The term “dealer” means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes, except that this term does not include—

(i) a retail pet store except such store which sells any animals to a research facility, an exhibitor, or a dealer; or

(ii) any person who does not sell, or negotiate the purchase or sale of any wild animal, dog, or cat, and who derives no more than \$500 gross income from the sale of other animals during any calendar year[.]

§ 2134. Valid license for dealers and exhibitors required

No dealer or exhibitor shall sell or offer to sell or transport or offer for transportation, in commerce, to any research facility or for exhibition or for use as a pet any animal, or buy, sell, offer to buy or sell, transport or offer for transportation, in commerce, to or from another dealer or exhibitor under this chapter any animals, unless and until such dealer or exhibitor shall have obtained a license from the Secretary and such license shall not have been suspended or revoked.

§ 2149. Violations by licensees

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(b) **Civil penalties for violation of any section, etc.; separate**

offenses; notice and hearing; appeal; considerations in assessing penalty; compromise of penalty; civil action by Attorney General for failure to pay penalty; district court jurisdiction; failure to obey cease and desist order

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

§ 2151. Rules and regulations

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

7 U.S.C. §§ 2131, 2132(f), 2134, 2149(b), 2151.

28 U.S.C.:

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

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PART VI—PARTICULAR PROCEEDINGS

....

CHAPTER 163—FINES, PENALTIES AND FORFEITURES

§ 2461. Mode of recovery

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FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT

SHORT TITLE

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

FINDINGS AND PURPOSE

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

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

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

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

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

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

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

(2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and

(3) improve the collection by the Federal Government of civil monetary penalties.

DEFINITIONS

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

(1) “agency” means an Executive agency as defined under section 105 of title 5, United States Code, and includes the United States Postal

Service;

(2) "civil monetary penalty" means any penalty, fine, or other sanction that—

(A)(i) is for a specific monetary amount as provided by Federal law; or

(ii) has a maximum amount provided for by Federal law; and

(B) is assessed or enforced by an agency pursuant to Federal law; and

(C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts; and

(3) "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

CIVIL MONETARY PENALTY INFLATION
ADJUSTMENT REPORTS

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

(1) by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency, except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986, the Tariff Act of 1930, the Occupational Safety and Health Act of 1970, or the Social Security Act, by the inflation adjustment described under section 5 of this Act; and

(2) publish each such regulation in the Federal Register.

COST-OF-LIVING ADJUSTMENTS OF CIVIL
MONETARY PENALTIES

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

(1) multiple of \$10 in the case of penalties less than or equal to \$100;

(2) multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;

(3) multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;

(4) multiple of \$5,000 in the case of penalties greater than \$10,000

but less than or equal to \$100,000;

(5) multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and

(6) multiple of \$25,000 in the case of penalties greater than \$200,000.

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

(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds

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

ANNUAL REPORT

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

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

28 U.S.C. § 2461 note (Supp. V 1999).

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

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PART 3—DEBT MANAGEMENT

....

Subpart E—Adjusted Civil Monetary Penalties

§ 3.91 Adjusted civil monetary penalties.

(a) *In general.* The Secretary will adjust the civil monetary penalties,

listed in paragraph (b), to take account of inflation at least once every 4 years as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. No. 104-134).

(b) *Penalties*—

. . . .

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

. . . .

(v) Civil penalty for a violation of Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of \$2,750[.]

7 C.F.R. § 3.91(a), (b)(2)(v).

9 C.F.R.:

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

**CHAPTER 1—ANIMAL AND PLANT HEALTH
INSPECTION SERVICE,
DEPARTMENT OF AGRICULTURE**

SUBCHAPTER A—ANIMAL WELFARE

PART 1—DEFINITION OF TERMS

§ 1.1 Definitions.

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

. . . .

Dealer means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog for hunting, security, or breeding purposes. This term

does not include: A retail pet store, as defined in this section, unless such store sells any animals to a research facility, an exhibitor, or a dealer (wholesale); or any person who does not sell, or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than \$500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats, during any calendar year.

PART 2—REGULATIONS

SUBPART A—LICENSING

§ 2.1 Requirements and application.

(a)(1) Any person operating or desiring to operate as a dealer, exhibitor, or operator of an auction sale, except persons who are exempted from the licensing requirements under paragraph (a)(3) of this section, must have a valid license. A person must be 18 years of age or older to obtain a license. A person seeking a license shall apply on a form which will be furnished by the APHIS, REAC Sector Supervisor in the State in which that person operates or intends to operate. The applicant shall provide the information requested on the application form, including a valid mailing address through which the licensee or applicant can be reached at all times, and a valid premises address where the animals, animal facilities, equipment, and records may be inspected for compliance. The applicant shall file the completed application form with the APHIS, REAC Sector Supervisor.

9 C.F.R. §§ 1.1, 2.1(a)(1) (1998).⁹

CHIEF ADMINISTRATIVE LAW JUDGE'S INITIAL DECISION AND ORDER (AS RESTATED)

Respondents have failed to file an answer within the time prescribed in section

⁹During the period material to this proceeding, section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1) (1998)) was amended by removing the term “APHIS, REAC Sector Supervisor” both times it appears and adding in its place the term “AC Regional Director” (63 Fed. Reg. 62,925-27(Nov. 10, 1998)). This November 10, 1998, amendment of section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1) (1998)) has no bearing on the disposition of this proceeding.

1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) shall be deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the failure to file an answer constitutes a waiver of hearing. Accordingly, the material allegations in the Complaint are adopted as Findings of Fact. This Decision and Order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent L'il Ark Exotics, a/k/a L'il Ark Pets and/or The L'il Ark [hereinafter L'il Ark Exotics], is an unincorporated association or general partnership whose business mailing address is 13626 Narrow Passage Road, Eagle Rock, Virginia 24085. Respondents J. Wayne Shaffer and Michael Leigh Stanley are the owners, partners, or principals of L'il Ark Exotics. At all times material to this proceeding, L'il Ark Exotics operated as a dealer, as that term is defined in the Animal Welfare Act and the Regulations.

2. Respondent J. Wayne Shaffer is an individual whose mailing address is 13626 Narrow Passage Road, Eagle Rock, Virginia 24085, and is an owner of or partner in L'il Ark Exotics and an owner of or partner in The Enchanted Forest. At all times material to this proceeding, J. Wayne Shaffer operated as a dealer, as that term is defined in the Animal Welfare Act and the Regulations.

3. Respondent Michael Leigh Stanley is an individual whose mailing address is 13626 Narrow Passage Road, Eagle Rock, Virginia 24085, and is an owner of or partner in L'il Ark Exotics and an owner of or partner in The Enchanted Forest. At all times material to this proceeding, Michael Leigh Stanley operated as a dealer, as that term is defined in the Animal Welfare Act and the Regulations.

4. Respondent The Enchanted Forest is a sole proprietorship, unincorporated association, or general partnership whose business mailing address is 13626 Narrow Passage Road, Eagle Rock, Virginia 24085. J. Wayne Shaffer and Michael Leigh Stanley are the owners, partners, or principals of The Enchanted Forest. At all times material to this proceeding, The Enchanted Forest operated as a dealer, as that term is defined in the Animal Welfare Act and the Regulations.

5. On or about November 24, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold 10 animals (sugar gliders), in commerce, to Southern Exotics, Raleigh, North Carolina, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

6. On or about November 19, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold 11 animals (sugar gliders), in commerce, to Southern Exotics, Raleigh, North Carolina, without having obtained an Animal Welfare Act

license from the Secretary of Agriculture.

7. On or about May 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley bought 20 animals (sugar gliders), in commerce, from Pygmy Pets, Winfield, British Columbia, Canada, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

8. On or about May 9, 1998, The Enchanted Forest, J. Wayne Shaffer, and Michael Leigh Stanley bought 12 animals (6 sugar gliders and 6 prairie dogs), in commerce, from Animals Exotique, Zebulon, North Carolina, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

9. On or about January 14, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold three animals (two guinea pigs and one chinchilla), in commerce, to Pet Forum, Charlottesville, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

10. On or about February 15, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold eight animals (seven cavy and one chinchilla), in commerce, to Pet Forum, Charlottesville, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

11. On or about February 27, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold five animals (sugar gliders), in commerce, to Pet Forum, Charlottesville, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

12. On or about June 29, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold six animals (two sugar gliders and four cavy), in commerce, to Pet Forum, Charlottesville, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

13. On or about August 2, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold four animals (sugar gliders), in commerce, to Pet Forum, Charlottesville, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

14. On or about August 2, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley transported one animal (a guinea pig), in commerce, to Pet Forum, Charlottesville, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

15. On or about September 12, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold 15 animals (2 sugar gliders, 1 chinchilla, and 12 rabbits), in commerce, to Pet Forum, Charlottesville, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

16. On or about January 14, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold 11 animals (4 sugar gliders, 1 chinchilla, 5 guinea pigs,

and 1 rabbit), in commerce, to Outrageous Pets, Inc., Charlottesville, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

17. On or about February 6, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold seven animals (two sugar gliders and five guinea pigs), in commerce, to Outrageous Pets, Inc., Charlottesville, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

18. On or about February 15, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold 11 animals (1 sugar glider and 10 cavies and guinea pigs), in commerce, to Outrageous Pets, Inc., Charlottesville, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

19. On or about February 27, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold five animals (four guinea pigs and one rabbit), in commerce, to Outrageous Pets, Inc., Charlottesville, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

20. On or about June 29, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold three animals (sugar gliders), in commerce, to Outrageous Pets, Inc., Charlottesville, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

21. On or about August 2, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold four animals (sugar gliders), in commerce, to Outrageous Pets, Inc., Charlottesville, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

22. On or about February 5, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold three animals (sugar gliders), in commerce, to Pet City, Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

23. On or about November 12, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold eight animals (one sugar glider and seven guinea pigs), in commerce, to Pet City, Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

24. On or about August 4, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold six animals (three sugar gliders and three guinea pigs), in commerce, to Pet City, Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

25. On or about September 5, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold three animals (sugar gliders), in commerce, to Pet City, Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

26. On or about September 21, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold six animals (one sugar glider and five guinea pigs), in commerce, to Pet City, Roanoke, Virginia, without having obtained an Animal

Welfare Act license from the Secretary of Agriculture.

27. On or about 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold five animals (rabbits), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

28. On or about March 25, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold five animals (guinea pigs), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

29. On or about April 22, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold six animals (guinea pigs), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

30. On or about May 5, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold 17 animals (5 guinea pigs, 2 gerbils, and 10 hamsters), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

31. On or about May 6, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold 29 animals (4 guinea pigs and 25 hamsters), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

32. On or about October 23, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold six animals (guinea pigs), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

33. On or about February 4, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold 13 animals (guinea pigs), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

34. On or about February 15, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold eight animals (cavies and guinea pigs), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

35. On or about March 12, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold five animals (cavies), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

36. On or about March 16, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold eight animals (cavies), in commerce, to Petland, Inc.,

Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

37. On or about April 1, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold 21 animals (6 cavies and 15 bunnies), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

38. On or about April 11, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold 10 animals (cavies), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

39. On or about May 7, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold 11 animals (4 cavies and 7 rabbits), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

40. On or about May 25, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold 17 animals (10 cavies and 7 rabbits), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

41. On or about June 22, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold 10 animals (4 cavies, 2 rabbits, 2 chinchillas, and 2 sugar gliders), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

42. On or about August 3, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold eight animals (six cavies and two rabbits), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

43. On or about August 10, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold one animal (a sugar glider), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

44. On or about August 11, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold eight animals (three rabbits and five guinea pigs), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

45. On or about August 17, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold two animals (one rabbit and one guinea pig), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

46. On or about August 18, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold three animals (two rabbits and one sugar glider), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

47. On or about September 3, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold 10 animals (guinea pigs), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

48. On or about September 8, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold seven animals (guinea pigs), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

49. On or about September 18, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold six animals (guinea pigs), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

50. On or about September 20, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold eight animals (guinea pigs), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

51. On or about September 24, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold two animals (sugar gliders), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

52. On or about September 29, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold eight animals (guinea pigs), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

53. On or about October 7, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold seven animals (guinea pigs), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

54. On or about November 11, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold one animal (a rabbit), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

55. On or about December 2, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley sold one animal (a sugar glider), in commerce, to Petland, Inc., Roanoke, Virginia, without having obtained an Animal Welfare Act license from the Secretary of Agriculture.

Conclusions of Law

1. In 10 instances, on or about November 24, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

2. In 11 instances, on or about November 19, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

3. In 20 instances, on or about May 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

4. In 12 instances, on or about May 9, 1998, The Enchanted Forest, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

5. In 3 instances, on or about January 14, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

6. In 8 instances, on or about February 15, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

7. In 5 instances, on or about February 27, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

8. In 6 instances, on or about June 29, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

9. In 4 instances, on or about August 2, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

10. In 1 instance, on or about August 2, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

11. In 15 instances, on or about September 12, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the

Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

12. In 11 instances, on or about January 14, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

13. In 7 instances, on or about February 6, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

14. In 11 instances, on or about February 15, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

15. In 5 instances, on or about February 27, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

16. In 3 instances, on or about June 29, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

17. In 4 instances, on or about August 2, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

18. In 3 instances, on or about February 5, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

19. In 8 instances, on or about November 12, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

20. In 6 instances, on or about August 4, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

21. In 3 instances, on or about September 5, 1998, L'il Ark Exotics,

J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

22. In 6 instances, on or about September 21, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

23. In 5 instances, in 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

24. In 5 instances, on or about March 25, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

25. In 6 instances, on or about April 22, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

26. In 17 instances, on or about May 5, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

27. In 29 instances, on or about May 6, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

28. In 6 instances, on or about October 23, 1998, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

29. In 13 instances, on or about February 4, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

30. In 8 instances, on or about February 15, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

31. In 5 instances, on or about March 12, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

32. In 8 instances, on or about March 16, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

33. In 21 instances, on or about April 1, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

34. In 10 instances, on or about April 11, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

35. In 11 instances, on or about May 7, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

36. In 17 instances, on or about May 25, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

37. In 10 instances, on or about June 22, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

38. In 8 instances, on or about August 3, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

39. In 1 instance, on or about August 10, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

40. In 8 instances, on or about August 11, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

41. In 2 instances, on or about August 17, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

§ 2.1(a)(1)).

42. In 3 instances, on or about August 18, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

43. In 10 instances, on or about September 3, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

44. In 7 instances, on or about September 8, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

45. In 6 instances, on or about September 18, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

46. In 8 instances, on or about September 20, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

47. In 2 instances, on or about September 24, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

48. In 8 instances, on or about September 29, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

49. In 7 instances, on or about October 7, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

50. In 1 instance, on or about November 11, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

51. In 1 instance, on or about December 2, 1999, L'il Ark Exotics, J. Wayne Shaffer, and Michael Leigh Stanley willfully violated section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER

Respondents raise seven issues in Michael Leigh Stanley's August 17, 2001, letter [hereinafter the Stanley Appeal Petition] and J. Wayne Shaffer's August 22, 2001, letter [hereinafter the Shaffer Appeal Petition]. Before addressing the issues raised by Respondents, I note that the Shaffer Appeal Petition does not clearly indicate that it is an appeal from the Chief ALJ's Initial Decision and Order. In a contradictory description of the purpose of his August 22, 2001, letter, J. Wayne Shaffer indicates: (1) the letter is both an appeal from the Chief ALJ's Initial Decision and Order and a response to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision; and (2) the letter is solely a response to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision, as follows:

This letter is in response to your letters dated 5/14/01 (which I received on 7/14/01, a full 2 months later [sic], and then another on 8/14/01. I am responding to the first letter not the second[.]

Shaffer Appeal Pet.

Based on the record, I infer that J. Wayne Shaffer's reference to "your letter[] dated 5/14/01" is a reference to the Hearing Clerk's letter dated May 14, 2001, transmitting Complainant's Motion for Default Decision and Complainant's Proposed Default Decision to Respondents and J. Wayne Shaffer's reference to "your letter[] dated . . . 08/14/01" is a reference to the Hearing Clerk's letter dated August 14, 2001, transmitting the Chief ALJ's Initial Decision and Order to Respondents. The Hearing Clerk served J. Wayne Shaffer with Complainant's Motion for Default Decision and Complainant's Proposed Default Decision on July 17, 2001.¹⁰ Therefore, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), J. Wayne Shaffer's objections to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision were required to be filed no later than August 6, 2001. If I were to treat J. Wayne Shaffer's letter dated August 22, 2001, as a response to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision, I would not consider the letter or remand the proceeding to the Chief ALJ for his consideration because the letter would be a late-filed response to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision. Therefore, to give J. Wayne Shaffer the

¹⁰See note 6.

benefit of my doubt about the purpose of his August 22, 2001, letter, I treat J. Wayne Shaffer's August 22, 2001, letter as a timely-filed appeal from the Chief ALJ's Initial Decision and Order.

I now turn to the issues raised by Respondents in the Stanley Appeal Petition and the Shaffer Appeal Petition. First, J. Wayne Shaffer denies he committed the violations of the Animal Welfare Act and the Regulations found by the Chief ALJ (Shaffer Appeal Pet.) and Michael Leigh Stanley, L'il Ark Exotics, and The Enchanted Forest deny they committed some of the violations found by the Chief ALJ (Stanley Appeal Pet. at first unnumbered page through fourth unnumbered page).

Respondents' denials come too late to be considered. Respondents are deemed, for purposes of this proceeding, to have admitted the allegations in the Complaint because Respondents failed to file an answer within 20 days after the Hearing Clerk served Respondents with the Complaint.

The Hearing Clerk served Respondents with the Complaint, the Rules of Practice, and the Hearing Clerk's March 9, 2001, service letter on March 14, 2001.¹¹ Sections 1.136(a), 1.136(c), 1.139, and 1.141(a) of the Rules of Practice clearly state the time within which an answer must be filed and the consequences of failing to file a timely answer, as follows:

§ 1.136 Answer.

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

. . . .

(c) *Default.* Failure to file an answer within the time provided under § 1.136(a) shall be deemed, for purposes of the proceeding, an admission of the allegations in the Complaint, and failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation, unless the parties have agreed to a consent decision pursuant to § 1.138.

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

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within

¹¹See note 3.

20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.

§ 1.141 Procedure for hearing.

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

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

Moreover, the Complaint clearly informs Respondents of the consequences of failing to file a timely answer, as follows:

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

Compl. at 13.

Similarly, the Hearing Clerk informed Respondents in the March 9, 2001, service letter that a timely answer must be filed pursuant to the Rules of Practice and that failure to file a timely answer to any allegation in the Complaint would constitute an admission of that allegation, as follows:

March 9, 2001

L'il Ark Exotics a.k.a.
L'il Ark Pets and/or The L'il Ark
Mr. J. Wayne Shaffer
Mr. Michael Leigh Stanley
The Enchanted Forest

13626 Narrow Passage Road
Eagle Rock, Virginia 24085

Dear Mr. [sic] Sir/Madam:

Subject: In re: J. Wayne Shaffer, an individual; Michael Leigh Stanley, an individual; L'il Ark Exotics, also known as L'il Ark Pets, and/or The L'il Ark, an unincorporated association or general partnership; and The Enchanted Forest, a sole proprietorship, unincorporated association, or general partnership

Respondents - AWA Docket No. 01-0027

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

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

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

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

You must notify us of any future address changes. Failure to do so may result in a judgment being entered against you without your knowledge. We4 [sic] also need your present and future telephone number.

Your answer, as well as any motions or requests that you may hereafter wish to file in this proceeding should be submitted in quadruplicate to the Hearing

Clerk, OALJ, Room 1081, South Building, United States Department of Agriculture, Washington, D.C. 20250-9200.

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

Sincerely,

/s/

Joyce A. Dawson
Hearing Clerk

On April 17, 2001, the Hearing Clerk sent a letter to Respondents informing them that their answer to the Complaint had not been received within the time required in the Rules of Practice.¹² Respondents did not respond to the Hearing Clerk's April 17, 2001, letter.

On May 11, 2001, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a Motion for Default Decision and a Proposed Default Decision based on Respondents' failure to file a timely answer. The Hearing Clerk served Michael Leigh Stanley, L'il Ark Exotics, and The Enchanted Forest with Complainant's Motion for Default Decision and Complainant's Proposed Default Decision on May 17, 2001.¹³ The Hearing Clerk served J. Wayne Shaffer with Complainant's Motion for Default Decision and Complainant's Proposed Default Decision on July 17, 2001.¹⁴ Respondents failed to file objections to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision within 20 days after service, as provided in 7 C.F.R. § 1.139.

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

¹²See note 4.

¹³See note 5.

¹⁴See note 6.

to setting aside the default decision,¹⁵ generally there is no basis for setting aside a default decision that is based upon a respondent's failure to file a timely answer.¹⁶

¹⁵See *In re H. Schnell & Co.*, 57 Agric. Dec. 1722 (1998) (Remand Order) (setting aside the default decision, which was based upon the respondent's statements during two telephone conference calls with the administrative law judge and the complainant's counsel, because the respondent's statements did not constitute a clear admission of the material allegations in the complaint and concluding that the default decision deprived the respondent of its right to due process under the Fifth Amendment to the Constitution of the United States); *In re Arizona Livestock Auction, Inc.*, 55 Agric. Dec. 1121 (1996) (setting aside the default decision because facts alleged in the complaint and deemed admitted by failure to answer were not sufficient to find a violation of the Packers and Stockyards Act or jurisdiction over the matter by the Secretary of Agriculture); *In re Veg-Pro Distributors*, 42 Agric. Dec. 273 (1983) (Remand Order) (setting aside the default decision because service of the complaint by registered and regular mail was returned as undeliverable, and the respondent's license under the PACA had lapsed before service was attempted), *final decision*, 42 Agric. Dec. 1173 (1983); *In re Vaughn Gallop*, 40 Agric. Dec. 217 (1981) (Order Vacating Default Decision and Remanding Proceeding) (vacating the default decision and remanding the case to the administrative law judge to determine whether just cause exists for permitting late answer), *final decision*, 40 Agric. Dec. 1254 (1981); *In re J. Fleishman & Co.*, 38 Agric. Dec. 789 (1978) (Remand Order) (remanding the proceeding to the administrative law judge for the purpose of receiving evidence because the complainant had no objection to the respondent's motion for remand), *final decision*, 37 Agric. Dec. 1175 (1978); *In re Richard Cain*, 17 Agric. Dec. 985 (1958) (Order Reopening After Default) (setting aside a default decision and accepting a late-filed answer because the complainant did not object to the respondent's motion to reopen after default).

¹⁶See generally *In re Beth Lutz*, 60 Agric. Dec. 53 (2001) (holding the default decision was properly issued where the respondent filed her answer 23 days after she was served with the complaint and 3 days after the respondent's answer was due and holding the respondent is deemed, by her failure to file a timely answer, to have admitted the violations of the Regulations alleged in the complaint); *In re Curtis G. Foley*, 59 Agric. Dec. 581 (2000) (holding the default decision was properly issued where the respondents filed their answer 6 months and 5 days after they were served with the complaint and 5 months and 16 days after the respondents' answer was due and holding the respondents are deemed, by their failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re Nancy M. Kutz* (Decision as to Nancy M. Kutz), 58 Agric. Dec. 744 (1999) (holding the default decision was properly issued where the respondent's first filing in the proceeding was 28 days after service of the complaint on the respondent and the filing did not respond to the allegations of the complaint and holding the respondent is deemed, by her failure to file a timely answer and by her failure to deny the allegations of the complaint, to have admitted the violations of the Animal Welfare Act and the Regulations alleged in the complaint); *In re Anna Mae Noell*, 58 Agric. Dec. 130 (1999) (holding the default decision was properly issued where the respondents filed an answer 49 days after service of the complaint on the respondents and holding the respondents are deemed, by their failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint), *appeal dismissed sub nom. The Chimp Farm, Inc. v. United States Dep't of Agric.*, No. 00-10608-A (11th Cir. July 20, 2000); *In re Jack D. Stowers*, 57 Agric. Dec. 944 (1998) (holding the default decision was properly issued where the respondent filed his answer 1 year and 12 days after service of the complaint on the respondent and holding the respondent is deemed, by his failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re James J. Everhart*, 56 Agric. Dec. 1400 (1997) (holding the default decision was properly issued where the respondent's first filing was more than 8 months after service of the complaint on the respondent and holding the respondent is deemed, by his failure to file a timely

The Rules of Practice provide that an answer must be filed within 20 days after service of the complaint (7 C.F.R. § 1.136(a)). Respondents failed to file a timely answer. Respondents' first filing in this proceeding was August 27, 2001, 5 months

answer, to have admitted the violations of the Animal Welfare Act and the Regulations alleged in the complaint); *In re John Walker*, 56 Agric. Dec. 350 (1997) (holding the default decision was properly issued where the respondent's first filing was 126 days after service of the complaint on the respondent and holding the respondent is deemed, by his failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re Mary Meyers*, 56 Agric. Dec. 322 (1997) (holding the default decision was properly issued where the respondent's first filing was 117 days after the respondent's answer was due and holding the respondent is deemed, by her failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re Dora Hampton*, 56 Agric. Dec. 301 (1997) (holding the default decision was properly issued where the respondent's first filing was 135 days after the respondent's answer was due and holding the respondent is deemed, by her failure to file a timely answer, to have admitted the violations of the Regulations and Standards alleged in the complaint); *In re City of Orange*, 55 Agric. Dec. 1081 (1996) (holding the default decision was properly issued where the respondent's first filing was 70 days after the respondent's answer was due and holding the respondent is deemed, by its failure to file a timely answer, to have admitted the violations of the Regulations and Standards alleged in the complaint); *In re Ronald DeBruin*, 54 Agric. Dec. 876 (1995) (holding the default decision was properly issued where the respondent failed to file an answer and holding the respondent is deemed, by his failure to file an answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re James Joseph Hickey, Jr.*, 53 Agric. Dec. 1087 (1994) (holding the default decision was properly issued where the respondent failed to file an answer and holding the respondent is deemed, by his failure to file an answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re Ron Morrow*, 53 Agric. Dec. 144 (1994) (holding the default decision was properly issued where the respondent was given an extension of time until March 22, 1994, to file an answer, but it was not received until March 25, 1994, and holding the respondent is deemed, by his failure to file a timely answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint), *aff'd per curiam*, 65 F.3d 168 (Table), 1995 WL 523336 (6th Cir. 1995); *In re Dean Daul*, 45 Agric. Dec. 556 (1986) (holding the default decision was properly issued where the respondent failed to file a timely answer and, in his late answer, did not deny the material allegations of the complaint and holding the respondent is deemed, by his failure to file a timely answer and by his failure to deny the allegations in the complaint in his late answer, to have admitted the violations of the Animal Welfare Act and the Regulations alleged in the complaint); *In re Ronald Jacobson*, 43 Agric. Dec. 780 (1984) (holding the default decision was properly issued where the respondents failed to file a timely answer and holding the respondents are deemed, by their failure to file a timely answer, to have admitted the violations of the Standards alleged in the complaint); *In re Willard Lambert*, 43 Agric. Dec. 46 (1984) (holding the default decision was properly issued where the respondent failed to file an answer and holding the respondent is deemed, by his failure to file an answer, to have admitted the violations of the Animal Welfare Act and the Regulations and Standards alleged in the complaint); *In re Randy & Mary Berhow*, 42 Agric. Dec. 764 (1983) (holding the default decision was properly issued where the respondents failed to file an answer and holding the respondents are deemed, by their failure to file an answer, to have admitted the violations of the Standards alleged in the complaint).

and 13 days after the Hearing Clerk served Respondents with the Complaint and 4 months and 24 days after Respondents' answer was due. Respondents' failure to file a timely answer is deemed, for purposes of this proceeding, an admission of the allegations in the Complaint and constitutes a waiver of hearing (7 C.F.R. §§ 1.136(c), .139, .141(a)).

Accordingly, there are no issues of fact on which a meaningful hearing could be held in this proceeding, and the Chief ALJ properly issued the Initial Decision and Order. Application of the default provisions of the Rules of Practice does not deprive Respondents of their rights under the due process clause of the Fifth Amendment to the Constitution of the United States.¹⁷

Second, J. Wayne Shaffer contends he never "gained monetarily from the sale of any animals" referenced in the Complaint (Shaffer Appeal Pet.).

A person who, in commerce, *for compensation or profit*, sells any animal for research, teaching, testing, experimentation, exhibition, or use as a pet is a dealer (7 U.S.C. § 2132(f); 9 C.F.R. § 1.1). Thus, a person need not have actually profited from the sale of an animal to fall within the definition of the term "dealer" under the Animal Welfare Act and the Regulations, as J. Wayne Shaffer suggests. All that is required to bring a person within the definition of the term "dealer" under the Animal Welfare Act and the Regulations is that the sale of an animal be *for compensation or profit*. Even if a person suffers a loss on the sale of an animal, that person could be a dealer under the Animal Welfare Act and the Regulations, as long as the sale was made for the purpose of compensation or profit. Therefore, even if I were to find that J. Wayne Shaffer did not actually profit from the sale of animals referenced in the Complaint, that finding would not cause me to conclude that J. Wayne Shaffer was not operating as a dealer required by section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)) to obtain an Animal Welfare Act license.

Moreover, Complainant alleges that, at all times material to the proceeding, J. Wayne Shaffer operated as a dealer, as that term is defined in the Animal Welfare Act and the Regulations (Compl. ¶ 2). Respondents failed to file a timely answer. As previously discussed in this Decision and Order, pursuant to section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)), Respondents' failure to file a timely

¹⁷See *United States v. Hulings*, 484 F. Supp. 562, 567-68 (D. Kan. 1980) (concluding that a hearing was not required under the Fifth Amendment to the United States Constitution where the respondent was notified that failure to deny the allegations of the complaint would constitute an admission of those allegations under the Rules of Practice and the respondent failed to specifically deny the allegations). See also *Father & Sons Lumber and Building Supplies, Inc. v. NLRB*, 931 F.2d 1093, 1096 (6th Cir. 1991) (stating that due process generally does not entitle parties to an evidentiary hearing where the National Labor Relations Board has properly determined that a default summary judgment is appropriate due to a party's failure to file a timely response); *Kirk v. INS*, 927 F.2d 1106, 1108 (9th Cir. 1991) (rejecting the contention that the administrative law judge erred by issuing a default judgment based on a party's failure to file a timely answer).

answer is deemed, for purposes of this proceeding, an admission of the allegations in the Complaint. Thus, J. Wayne Shaffer is deemed, for purposes of this proceeding, to have admitted that he operated as a dealer under the Animal Welfare Act and the Regulations. J. Wayne Shaffer's denial that he operated as a dealer under the Animal Welfare Act and the Regulations comes too late to be considered.

Third, Respondents contend that Michael Leigh Stanley is not able to pay the \$20,150 civil penalty assessed by the Chief ALJ (Shaffer Appeal Pet.; Stanley Appeal Pet. at fourth unnumbered page).

Section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) sets forth factors that must be considered when determining the amount of the civil penalty to be assessed against a respondent for violations of the Animal Welfare Act and the Regulations, and a respondent's ability to pay the civil penalty is not one of those factors. Therefore, Michael Leigh Stanley's inability to pay the \$20,150 civil penalty assessed by the Chief ALJ is not a basis for setting aside or reducing the \$20,150 civil penalty.¹⁸

¹⁸The Judicial Officer did give consideration to ability to pay when determining the amount of the civil penalty to assess under the Animal Welfare Act in *In re Gus White, III*, 49 Agric. Dec. 123, 152 (1990). The Judicial Officer subsequently held that consideration of ability to pay in *In re Gus White, III*, was inadvertent error and that ability to pay would not be considered in determining the amount of civil penalties assessed under the Animal Welfare Act in the future. See *In re Nancy M. Kutz* (Decision and Order as to Nancy M. Kutz), 58 Agric. Dec. 744, 757 (1999) (stating section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) sets forth factors that must be considered when determining the amount of the civil penalty to be assessed against a respondent for violations of the Animal Welfare Act and the Regulations and Standards, and a respondent's ability to pay the civil penalty is not one of those factors); *In re James E. Stephens*, 58 Agric. Dec. 149, 199 (1999) (stating the respondents' financial state is not relevant to the amount of the civil penalty assessed against the respondents for violations of the Animal Welfare Act and the Regulations and Standards); *In re Judie Hansen*, 57 Agric. Dec. 1072, 1143 (1998) (stating a respondent's ability to pay a civil penalty is not considered in determining the amount of the civil penalty to be assessed), *appeal dismissed*, 221 F.3d 1342 (Table), 2000 WL 1010575 (8th Cir. 2000) (per curiam); *In re David M. Zimmerman*, 57 Agric. Dec. 1038, 1050 n.1 (1998) (stating the Judicial Officer has pointed out that when determining the amount of a civil penalty to be assessed under the Animal Welfare Act, consideration need not be given to a respondent's ability to pay the civil penalty); *In re James J. Everhart*, 56 Agric. Dec. 1401, 1416 (1997) (stating a respondent's inability to pay the civil penalty is not a consideration in determining civil penalties assessed under the Animal Welfare Act); *In re Mr. & Mrs. Stan Kopunec*, 52 Agric. Dec. 1016, 1023 (1993) (stating the ability to pay a civil penalty is not a relevant consideration in Animal Welfare Act cases); *In re Micheal McCall*, 52 Agric. Dec. 986, 1008 (1993) (stating the ability or inability to pay is not a criterion in Animal Welfare Act cases); *In re Pet Paradise, Inc.*, 51 Agric. Dec. 1047, 1071 (1992) (stating the Judicial Officer once gave consideration to the ability of respondents to pay a civil penalty, but that the Judicial Officer has removed the ability to pay as a criterion, since the Animal Welfare Act does not require it), *aff'd*, 61 F.3d 907, 1995 WL 309637 (7th Cir. 1995) (not to be cited per 7th Circuit Rule 53(b)(2)); *In re Jerome A. Johnson*, 51 Agric. Dec. 209, 216 (1992) (stating the holding in *In re Gus White, III*, 49 Agric. Dec. 123 (1990), as to consideration of ability to pay, was an

Fourth, Michael Leigh Stanley, L'il Ark Exotics, and The Enchanted Forest contend Michael Leigh Stanley consulted "all local Government offices in Fincastle, Va. and was assured by the commissioner that no licenses were needed to farm these type of animals" (Stanley Appeal Pet. at first unnumbered page).

Complainant does not allege and the Chief ALJ did not find that Respondents failed to obtain a license for farming. Instead, Complainant alleged, and the Chief ALJ found, that J. Wayne Shaffer, Michael Leigh Stanley, and L'il Ark Exotics, operating as dealers under the Animal Welfare Act and the Regulations, bought, sold, and transported animals, in commerce, without having obtained an Animal Welfare Act license and that The Enchanted Forest, operating as a dealer under the Animal Welfare Act and the Regulations, bought animals, in commerce, without having obtained an Animal Welfare Act license. I find the advice that Michael Leigh Stanley received from "local Government offices in Fincastle, Va." regarding the need for a license "to farm . . . animals" irrelevant to this proceeding.

Fifth, Michael Leigh Stanley, L'il Ark Exotics, and The Enchanted Forest contend Michael Leigh Stanley is handicapped and needs income to support himself (Stanley Appeal Pet. at first and fourth unnumbered page).

Even if I were to find that Michael Leigh Stanley is disabled and needs income to support himself, Michael Leigh Stanley's disability and need for income would not constitute defenses to his violations of the Animal Welfare Act and the Regulations or mitigating circumstances to be considered when determining the amount of the civil penalty to be assessed for his violations of the Animal Welfare Act and the Regulations. There is no provision in the Animal Welfare Act or in the Regulations exempting disabled persons or persons who need income to support themselves from compliance with the Animal Welfare Act and the Regulations.¹⁹

Sixth, Michael Leigh Stanley, L'il Ark Exotics, and The Enchanted Forest contend The Enchanted Forest was owned solely by Lillian E. Stanley; The Enchanted Forest was not located in the Eagle Rock, Virginia, area; The Enchanted Forest was closed in December 1995; and J. Wayne Shaffer had nothing to do with The Enchanted Forest (Stanley Appeal Pet. at first unnumbered page).

Complainant alleges that: (1) the business mailing address of The Enchanted Forest is 13626 Narrow Passage Road, Eagle Rock, Virginia 24085; (2) J. Wayne Shaffer is one of the owners, partners, or principals of The Enchanted Forest; (3) at all times mentioned in the Complaint (1998 and 1999), The Enchanted Forest was

inadvertent error; ability to pay is not a factor specified in the Animal Welfare Act and it will not be considered in determining future civil penalties under the Animal Welfare Act).

¹⁹See *In re James J. Everhart*, 56 Agric. Dec. 1400, 1417 (1997) (stating the respondent's disability is not a mitigating factor and forms no basis for setting aside or modifying the Default Decision in which the respondent was found to have violated the Animal Welfare Act and the Regulations).

operating as a dealer, as that term is defined in the Animal Welfare Act and the Regulations; and (4) on or about May 9, 1998, The Enchanted Forest bought 12 animals (6 sugar gliders and 6 prairie dogs), in commerce, from Animals Exotique, Zebulon, North Carolina, without having obtained an Animal Welfare Act license from the Secretary of Agriculture (Compl. ¶¶ 4, 8). Respondents failed to file a timely answer. As previously discussed in this Decision and Order, pursuant to section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)), Respondents' failure to file a timely answer is deemed, for purposes of this proceeding, an admission of the allegations in the Complaint. Thus, Michael Leigh Stanley, L'il Ark Exotics, and The Enchanted Forest are deemed, for purposes of this proceeding, to have admitted the allegations in paragraphs 4 and 8 of the Complaint. Michael Leigh Stanley's, L'il Ark Exotics', and The Enchanted Forest's denial of these allegations come too late to be considered.

Seventh, Michael Leigh Stanley, L'il Ark Exotics, and The Enchanted Forest concede they bought and sold some animals without an Animal Welfare Act license, but state they did so before the United States Department of Agriculture informed Michael Leigh Stanley that an Animal Welfare Act license was required (Stanley Appeal Pet. at first through fourth unnumbered page).

The Animal Welfare Act is published in the United States Statutes at Large and the United States Code, and Michael Leigh Stanley is presumed to know the law.²⁰ Moreover, the Regulations are published in the Federal Register; thereby constructively notifying Michael Leigh Stanley of the licensing requirements.²¹ Therefore, Michael Leigh Stanley's purported lack of actual knowledge of the Animal Welfare Act and the Regulations is not a defense to Respondents' violations of section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

Section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) provides that

²⁰See *Atkins v. Parker*, 472 U.S. 115, 130 (1985); *North Laramie Land Co. v. Hoffman*, 268 U.S. 276, 283 (1925); *Johnston v. Iowa Dep't of Human Services*, 932 F.2d 1247, 1249-50 (8th Cir. 1991).

²¹See *FCIC v. Merrill*, 332 U.S. 380, 385 (1947); *United States v. Pitney Bowes, Inc.*, 25 F.3d 66, 71 (2d Cir. 1994); *United States v. Wilhoit*, 920 F.2d 9, 10 (9th Cir. 1990); *Jordan v. Director, Office of Workers' Comp. Programs*, 892 F.2d 482, 487 (6th Cir. 1989); *Kentucky ex rel. Cabinet for Human Resources v. Brock*, 845 F.2d 117, 122 n.4 (6th Cir. 1988); *Government of Guam v. United States*, 744 F.2d 699, 701 (9th Cir. 1984); *Bennett v. Director, Office of Workers' Comp. Programs*, 717 F.2d 1167, 1169 (7th Cir. 1983); *Diamond Ring Ranch, Inc. v. Morton*, 531 F.2d 1397, 1405 (10th Cir. 1976); *Wolfson v. United States*, 492 F.2d 1386, 1392 (Ct. Cl. 1974) (per curiam); *United States v. Tijerina*, 407 F.2d 349, 354 n.12 (10th Cir.), cert. denied, 396 U.S. 867, and cert. denied, 396 U.S. 843 (1969); *Ferry v. Udall*, 336 F.2d 706, 710 (9th Cir. 1964), cert. denied, 381 U.S. 904 (1965).

four factors must be considered when determining the civil penalty to be assessed for violations of the Animal Welfare Act and the Regulations and Standards: (1) the size of the business of the person involved; (2) the gravity of the violations; (3) the person's good faith; and (4) the history of previous violations.

Based on the number of animals Respondents bought, sold, and transported in 1998 and 1999, I find that Respondents have a large business. I also find that the failure to obtain an Animal Welfare Act license before operating as a dealer is a serious violation because enforcement of the Animal Welfare Act and the Regulations and Standards depends upon the identification of persons operating as dealers as defined by the Animal Welfare Act and the Regulations. During a 2-year period, Respondents operated as dealers, as defined by the Animal Welfare Act and the Regulations, without obtaining the required Animal Welfare Act license. Respondents' failure to obtain the required Animal Welfare Act license thwarted the Secretary of Agriculture's ability to carry out the purposes of the Animal Welfare Act. Respondents' conduct during this 2-year period reveals a consistent disregard for, and unwillingness to abide by, the requirements of the Animal Welfare Act and the Regulations. Thus, I conclude Respondents lacked good faith. Finally, an ongoing pattern of violations establishes a "history of previous violations" for the purposes of section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)). The record establishes that Respondents committed 1,215 violations of the Animal Welfare Act and the Regulations over a 2-year period.

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

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

The recommendations of administrative officials charged with the responsibility for achieving the congressional purpose of the regulatory statute are highly relevant to any sanction to be imposed and are entitled to great weight in view of the experience gained by administrative officials during their day-to-day supervision of the regulated industry. *In re S.S. Farms Linn County, Inc.*, 50 Agric. Dec. at 497.

Complainant, one of the officials charged with administering the Animal Welfare Act, requests that Respondents be ordered to cease and desist from violating the Animal Welfare Act and the Regulations and Standards and that Respondents be assessed a \$20,150 civil penalty (Complainant's Proposed Decision

and Order at 17; Complainant's Response to Appeals at 5-6).

Each animal which Respondents bought, sold, and transported without the required Animal Welfare Act license constitutes a separate violation of the Animal Welfare Act and the Regulations. Respondents committed 1,215 willful violations of the Animal Welfare Act and the Regulations. Specifically, J. Wayne Shaffer bought, transported, or sold 405 animals without an Animal Welfare Act license, in willful violation of section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)); Michael Leigh Stanley bought, transported, or sold 405 animals without an Animal Welfare Act license, in willful violation of section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)); L'il Ark Exotics bought, transported, or sold 405 animals without an Animal Welfare Act license, in willful violation of section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)); and The Enchanted Forest bought 12 animals without an Animal Welfare Act license, in willful violation of section 4 of the Animal Welfare Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)). Respondents could be assessed a maximum \$2,750 civil penalty for each of Respondents' 1,215 violations of the Animal Welfare Act and the Regulations.²² Thus, Respondents could be assessed a maximum civil penalty of \$3,341,250 for Respondents' 1,215 violations of the Animal Welfare Act and the Regulations. Complainant recommends and the Chief ALJ assessed Respondents a civil penalty of approximately \$16.58 for each of Respondents' 1,215 violations. After examining all the relevant circumstances, in light of the United States Department of Agriculture's sanction policy, and taking into account the factors required to be considered in 7 U.S.C. § 2149(b), the remedial purposes of the Animal Welfare Act, and Complainant's sanction

²²Section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) provides that the Secretary of Agriculture may assess a civil penalty of not more than \$2,500 for each violation of the Animal Welfare Act and the Regulations and Standards. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note (Supp. V 1999)) provides that the head of each agency shall, by regulation, adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency by increasing the maximum civil penalty for each civil monetary penalty by a cost-of-living adjustment. Effective September 2, 1997, the Secretary of Agriculture, by regulation, adjusted the civil monetary penalty that may be assessed under section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) for each violation of the Animal Welfare Act and the Regulations and Standards by increasing the maximum civil penalty from \$2,500 to \$2,750 (7 C.F.R. § 3.91(b)(2)(v)).

recommendation, I conclude that a cease and desist order²³ and a \$20,150 civil penalty are appropriate and necessary to ensure Respondents' compliance with the Animal Welfare Act and the Regulations in the future, to deter others from violating the Animal Welfare Act and the Regulations, and to thereby fulfill the remedial purposes of the Animal Welfare Act.

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

ORDER

1. Respondents, their agents, employees, successors, and assigns, directly or indirectly through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations. The cease and desist provisions of this Order shall become effective on the day after service of this Order on Respondents.

2. Respondents are jointly and severally assessed a \$20,150 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States and sent to:

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

Respondents' payment of the \$20,150 civil penalty shall be sent to, and received by, Colleen A. Carroll within 60 days after service of this Order on Respondents. Respondents shall state on the certified check or money order that payment is in reference to AWA Docket No. 01-0027.

3. Respondents have the right to seek judicial review of this Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341, 2343-2350. Such court has exclusive jurisdiction to enjoin, to set aside, to suspend (in whole or in part), or to determine the validity of this Order. Respondents must seek judicial review within 60 days after entry of this Order. 7 U.S.C. § 2149(c). The date of entry of this Order is September 26, 2001.

²³The Chief ALJ ordered Respondents to cease and desist from violating the Animal Welfare Act and the Regulations and Standards (Initial Decision and Order at 17). As Respondents have been found to have violated the Animal Welfare Act and the Regulations, but not the Standards, I order Respondents to cease and desist from violating the Animal Welfare Act and the Regulations.

