

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:

Joyce Cairns, an individual,  
  
Respondent.

AWA Docket No. 24-J-0027

REC'D - USDA/OALJ/HCO  
2024 AUG 22 10:29 AM

**DECISION AND ORDER GRANTING  
COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT**

Appearances:

*John Rodriguez, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Administrator for the Animal and Plant Health Inspection Service ("APHIS"); and*

*Joyce Cairns, Respondent, appearing on behalf of herself (appearing pro se).*

**Case Background and Summary of Decision**

This proceeding, AWA Docket No. 24-J-0027, regarding Respondent Joyce Cairns, was initiated via Complaint filed on January 12, 2024 by Complainant, the Administrator, Animal and Plant Health Inspection Service ("APHIS"), alleging that Respondent violated the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*) ("AWA"), the regulations (9 C.F.R. pts. 2 and 3) ("Regulations"), and the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary, 7 C.F.R. pt. 1, subpt. H (7 C.F.R. §§ 1.130-.151) ("The Rules of Practice").

On February 2, 2024 Respondent timely responded to the Complaint with an email stating:

I Received [sic] a letter from you i [sic] dont [sic] understand it all these dogs were took care of i [sic] have written papers and your inspector saw them besides this was 2 years ago that i [sic] quit usda Why are you sending me a letter ? just doesnt make sence [sic]

The USDA Hearing Clerk responded to Respondent on the same day requesting additional information including information about the letter to which Respondent referred and the docket number on the letter received. Respondent responded on the same day stating:

My Name is Joyce Cairns i [sic] was a dog breeder 48-A-1027 the letter in question were inspections that they said was not in compliance [sic] the docket number 24-j-0027 like i said i [sic] havnt been lic [sic] with usda for 2 years and the dogs in question were taken care of by vet and the inspector knew that

The Hearing Clerk's Office deemed the email correspondence from Respondent an Answer to the Complaint.

On February 13, 2024, Chief Administrative Law Judge Channing Strother assigned this case to me, Administrative Law Judge Tierney Carlos. On the same day I issued an Order Setting Deadlines for Submissions ("Submissions Order"), directing the parties to file lists of potential exhibits and witnesses and to exchange such lists and copies of potential exhibits – the deadlines were March 13, 2024, for Complainant and April 15, 2024, for Respondent.

On March 8, 2024, Complainant timely filed lists of potential exhibits and witnesses. To date, Respondent has not complied with the Submissions Order. On May 23, 2024, Complainant filed a Motion for Summary Judgment ("Complainant's MSJ").<sup>1</sup>

On June 6, 2024, due to an inability of the Office of Administrative Law Judges ("OALJ") to contact or obtain any response from Respondent, I issued an Order for Respondent

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<sup>1</sup> United States Postal Service records reflect that Complainant's MSJ was sent to Respondent via certified mail and arrived on June 15, 2024, but was returned to sender as "refused." Complainant's MSJ was remailed in accordance with the Rules, 7 C.F.R. § 1.147(c)(1), on July 8, 2024, and therefore deemed served on that date. Respondent had 20 days from the date of service to file a response. 7 C.F.R. § 1.143(d). *See* July 12, 2024 Second [sic] Memorandum to the File. *See also* 7 C.F.R. § 1.147(h). In this case, Respondent's response was due on or before July 29, 2024.

to File Contact Information by June 21, 2024. To date, Respondent has not responded or provided any contact information.

On August 1, 2024, Complainant filed a Motion to Amend Complainant's Requested Sanctions in Complainant's Motion for Summary Judgment ("Complainant's Motion to Amend Requested Sanctions"), which was served on the parties that day. Respondent had 20 days to respond, making the deadline to respond August 21, 2024.<sup>2</sup> To date, Respondent has neither responded to Complainant's MSJ nor Complainant's Motion to Amend Requested Sanctions.

Based on a careful review of the record before me, most importantly the lack of issues of material fact upon which to hold a hearing, Complainant's motions for summary judgment and to amend the requested sanction in the original motion for summary judgment are GRANTED. As further explained below, I find that Respondent has violated the AWA, shall be ordered to cease and desist from violating the AWA, and Respondent's AWA License 48-A-1027 shall be revoked.

### **Discussion**

The Secretary of Agriculture is authorized by the AWA "to insure that animals intended for . . . exhibition purposes or for use as pets are provided humane care and treatment." 7 U.S.C. § 2131(1). Accordingly, the Secretary of Agriculture has promulgated the regulations (9 C.F.R. pt. 2) ("Regulations"), and standards (9 C.F.R. pt. 3) ("Standards") thereunder. This case was initiated by Complaint filed on January 12, 2024, alleging that Respondent violated the AWA, Regulations, and Standards on nine (9) occasions.

Complainant seeks summary judgment of this matter, contending that there are no issues

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<sup>2</sup> See 7 C.F.R. § 1.143(d).

of material fact upon which to hold a hearing.<sup>3</sup> Complainant points out that the jurisdictional allegations are not disputed.<sup>4</sup> Complainant states that, in her Answer, Respondent “denied five (5) allegations (Paragraphs 5, 6, 7a, 7b, and 7c) and admitted to four (4) allegations (Paragraphs 8a, 8b, 8c, and 9) by failing to clearly admit, deny, or explain each of the allegations of the Complaint or clearly set forth any defense asserted.”<sup>5</sup> Complainant contends, however, that Respondent’s failure to file a list of proposed exhibits and witnesses with the Hearing Clerk’s Office, and to exchange such list as well as copies of exhibits with Complainant on which Respondent will rely to support her case, demonstrate that there is no factual dispute for which a hearing is needed.<sup>6</sup>

Complainant states that Respondent answered the Complaint by stating that “the dogs in question were taken care of by vet and the inspector knew that,” but contends that “it is well-settled that a respondent’s subsequent correction of a violation of the Act does not eliminate the fact that the violation occurred.”<sup>7</sup> Complainant is correct.

As mentioned, since answering the Complaint via email, Respondent has not responded to any order issued in this case, to Complainant’s MSJ, to Complainant’s Motion to Amend Sanctions, or to any attempts by the OALJ to reach Respondent. Respondent has not filed any additional evidence in support of her defense.

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<sup>3</sup> Complainant’s MSJ at 11-13.

<sup>4</sup> *Id.* at 11 (citing Respondent’s Answer).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 11-12.

<sup>7</sup> *Id.* at 12 (citing *Tri-State Zoological Park of W. Maryland, Inc.*, 72 Agric. Dec. 754, 759 (U.S.D.A. July 2013) (additional citations omitted); also quoting *Stearns Zoological Rescue & Rehab Ctr., Inc., A Fla. Corp., d/b/a Dade City Wild Things*, 79 Agric. Dec. 203, 228 (U.S.D.A. 2020) (citing *Hodgins*, 56 Agric. Dec. 1242, 1275-76 (U.S.D.A. 1997)) (additional citations omitted)).

As Complainant states, Respondent has had ample time to respond to the allegations set forth in the Complaint. Further, Complainant has provided information as to attempts made to communicate with Respondent to discuss resolution of this matter,<sup>8</sup> and the OALJ has made multiple attempts to communicate with Respondent to determine the case status without success.

Although summary judgment is not expressly provided for nor excluded by The Rules of Practice, the Department has “consistently ruled that hearings are futile and summary judgment is appropriate where there is no factual dispute of substance.”<sup>9</sup> Here, summary judgment is appropriate.

As the movant for summary judgment, the initial burden is on Complainant to demonstrate an “absence of evidence to support the nonmoving party’s case.”<sup>10</sup> Complainant has met its burden. Complainant has proved by a preponderance of the evidence,<sup>11</sup> through documentary, photographic, and video evidence cited below, that Respondent violated the AWA and the Regulations and Standards promulgated thereunder. Complainant has also demonstrated an absence of evidence to support Respondent’s case.

Respondent has failed to rebut Complainant’s evidence of the alleged violations or to raise any issue of material fact for which a hearing would be needed. Respondent has admitted to

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<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Agri-Sales, Inc.*, 73 Agric. Dec. 327, 328-30 (U.S.D.A. 2014), *aff’d* by the Judicial Officer and adopted as the final order in the proceeding, 73 Agric. Dec. 612 (U.S.D.A. 2014) (citing *Animals of Montana, Inc.*, 68 Agric. Dec. 92, 104 (U.S.D.A. 2009); *Bauck*, 868 Agric. Dec. 853, 858-59 (U.S.D.A. 2009); *Veg-Mix, Inc. v. U.S. Dep’t of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987)).

<sup>10</sup> Complainant’s MSJ at 10 (internal quotations omitted) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, (1986)).

<sup>11</sup> *See Herman & Maclean v. Huddleston*, 459 U.S. 375, 387-91 (1983) (holding the standard of proof in administrative proceedings is the preponderance of the evidence); *see also Davenport*, 57 Agric. Dec. 189, 223 (U.S.D.A. 1998) (“The burden of proof in disciplinary proceedings under the Animal Welfare Act is preponderance of the evidence[.]”).

four (4) of the nine (9) alleged violations in the Complaint (Complaint at 2-3, paras. 8a, 8b, 8c, and 9) by failing to clearly admit, deny, or explain each of the allegations of the Complaint or clearly set forth any defense asserted.<sup>12</sup> Respondent has failed to support her denial of five (5) of the (9) alleged violations (Complaint at 2, paras. 5, 6, 7a, 7b, and 7c) by providing any evidence on which she would rely upon to establish her case. Lastly Respondent has failed to respond to any filings or orders in this case, aside from her response to the Complaint, and has failed to respond to any attempts to contact her. Therefore, because the facts in this case are not in dispute, a hearing is not necessary.

Based upon the foregoing, I find that the record is sufficiently developed to conclude that entry of summary judgment in Complainant's favor is appropriate. Accordingly, the below undisputed facts<sup>13</sup> are accepted and the below Order is issued.

### **Penalties**

In the MSJ at 13, Complainant contends that civil penalties are warranted, providing analysis and the Declaration of the Assistant Director for Animal Welfare Operations, Animal Care, APHIS.<sup>14</sup> In the MSJ, Complainant requested a civil penalty of \$10,900.<sup>15</sup>

Complainant also requested revocation of Respondent's AWA license, arguing that revocation of Respondent's license fulfills the remedial purposes of the AWA as the violations alleged in the Complaint are "serious" ranging from "Direct [sic] violations affecting the welfare of the animals at the time of inspection, to Non-critical [sic] violations indirectly affecting the

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<sup>12</sup> Respondent's Answer.

<sup>13</sup> See Complainant's MSJ at 5-9.

<sup>14</sup> See GX 54.

<sup>15</sup> Complainant's MSJ at 15.

welfare of the animals.”<sup>16</sup> Complainant also contends that Respondent’s refusal to participate in this enforcement proceeding show “complete and utter disregard for the AWA and the Regulations “ and “thwart the Secretary’s ability to enforce the AWA.”<sup>17</sup>

Complainant’s Motion to Amend Requested Sanctions explains that Complainant has attempted to communicate with Respondent regarding settlement and, “[a]s a result of additional information learned through those attempts,” Complainant has decided to request an amendment to the proposed sanctions requested in Complainant’s MSJ.<sup>18</sup> Complainant requests that the civil penalty be removed and that a cease and desist order and revocation of Respondent’s license be instituted.<sup>19</sup>

I agree with Complainant that both a cease and desist order and revocation of Respondent’s license are appropriate here. The AWA provides that:<sup>20</sup>

If the Secretary has reason to believe that any person licensed as a dealer, exhibitor, or operator of an auction sale subject to section 2142 of this title, has violated or is violating any provision of this chapter, or any of the rules or regulations or standards promulgated by the Secretary hereunder . . . after notice and opportunity for hearing, [the Secretary] may . . . revoke such license, if such violation is determined to have occurred.

As previously explained, I have determined that Respondent has violated the AWA and Regulations and Standards promulgated thereunder. Further, as Complainant points out,<sup>21</sup> the requirements under the APA for license revocation<sup>22</sup> have been met as Respondent

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<sup>16</sup> *Id.* at 16.

<sup>17</sup> *Id.*; *see also ibid* reciting and explaining fulfilment of the due process requirements for revocation of a license under the Administrative Procedure Act (5 U.S.C. § 558(c)).

<sup>18</sup> Complainant’s Motion to Amend Requested Sanctions at 2-3.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> 7 U.S.C. § 2149(a).

<sup>21</sup> Complainant’s MSJ at 16.

<sup>22</sup> *See* 5 U.S.C. § 558(c).

has both been provided with “notice” and “the opportunity to demonstrate or achieve compliance.”<sup>23</sup> Further, revocation of Respondent’s license fulfills the remedial purposes of the AWA to “to insure that animals intended for . . . exhibition purposes or for use as pets are provided humane care and treatment.” 7 U.S.C. § 2131(1).

### **Statement of Facts**

1. Respondent Joyce Cairns is an individual whose address is in the State of Kansas.<sup>24</sup>
2. At all times mentioned herein, the Respondent acted as a Breeder, as that term is defined in the AWA and Regulations.
3. At all times material herein, the Respondent possessed AWA Breeder License 48-A-1027.
4. On or about January 15, 2020, an investigation revealed that a dog (“Jack”) in Respondent’s care had dental disease and a matted, dirty coat. *See* GX 38.
5. On or about July 19, 2021, an investigation revealed that a dog (“Cookie”) in Respondent’s care had excessively long toenails that caused the toes to shift to the side. *See* GX 13 and 14.
6. On or about January 5, 2022, an investigation revealed that: a) a dog Akita (“Dusty”) in Respondent’s care had limited movement while in the enclosure and an altered gait, *see* GX 17, and 18; b) A dog (“Arrow”) in Respondent’s care had no body fat with visible

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<sup>23</sup> *See* Complainant’s MSJ at 16-17 (stating that Respondent received citations for violations on January 5, 2022, was provided an opportunity to achieve compliance but, after subsequent inspection, was cited again for the same violation on January 12, 2022).

<sup>24</sup> Respondent’s address was not provided in the Complaint to protect Respondent’s personal privacy but was provided to the Hearing Clerk’s Office, USDA, for the purpose of service of the Complaint and documents.

spine, hips and ribs, *see* GX 17, 19, and 20; and c) a dog (“Dinky”) in Respondent’s care had no body fat with visible spine, hips and ribs, and had generalized fur loss on its body and tail and staining around her vulva, *see* GX 17, 21, 22, and 28.

7. On or about January 5, 2022, an investigation revealed that: a) Multiple dog enclosures at Respondent’s facility inadequately protected the dogs from the cold, *see* GX 17, 23, 24, and 25; b) Multiple dog enclosures at Respondent’s facility contained frozen water in its receptacles, *see* GX 17, 23, 24, and 25; and c) a dog enclosure at Respondent’s facility contained loose fecal waste on the floor *see* GX 17, 19, and 20.
8. On or about January 12, 2022, an investigation revealed that multiple dog enclosures at Respondent’s facility contained frozen water in its receptacles, *see* GX 29 and 52.

### **Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent has failed to raise any issue of material fact upon which to hold a hearing.
3. Respondent violated the AWA, Regulations, and Standards as follows:
  - a. On or about January 15, 2020, the Respondent violated the Regulations (9 C.F.R. § 2.40) by failing to provide adequate veterinary care to animals and/or failing to establish and maintain programs of adequate veterinary care that included appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and/or daily observation of animals, as follows: A dog (“Jack”) had dental disease and a matted, dirty coat. 9 C.F.R. § 2.40(b)(2).
  - b. On or about July 19, 2021, the Respondent violated the Regulations (9 C.F.R. § 2.40) by failing to provide adequate veterinary care to animals and/or failing to

establish and maintain programs of adequate veterinary care that included appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and/or daily observation of animals, as follows: A dog (“Cookie”) had excessively long toenails that caused the toes to shift to the side. 9 C.F.R. § 2.40(b)(2).

- c. On or about January 5, 2022, the Respondent violated the Regulations (9 C.F.R. § 2.40) by failing to provide adequate veterinary care to animals and/or failing to establish and maintain programs of adequate veterinary care that included appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and/or daily observation of animals, as follows:
  - i. A dog Akita (“Dusty”) had limited movement while in the enclosure and an altered gait. 9 C.F.R. § 2.40(b)(2).
  - ii. A dog (“Arrow”) had no body fat with visible spine, hips and ribs. 9 C.F.R. § 2.40(b)(2).
  - iii. A dog (“Dinky”) had no body fat with visible spine, hips and ribs. The dog also had generalized fur loss on its body and tail and staining around her vulva. 9 C.F.R. § 2.40(b)(2).
- d. On or about January 5, 2022, the Respondent violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the Standards, as follows:
  - i. Multiple dog enclosures inadequately protected the dogs from the cold. 9 C.F.R. § 3.4(b)(1).
  - ii. Multiple dog enclosures contained frozen water in its receptacles. 9 C.F.R. § 3.10(a).

iii. A dog enclosure contained loose fecal waste on the floor. 9 C.F.R. § 3.11(a).

e. On or about January 12, 2022, the Respondent violated the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the Standards, as follows: Multiple dog enclosures contained frozen water in its receptacles. 9 C.F.R. § 3.10(a).

4. The following Order is authorized by the AWA and warranted under the circumstances.

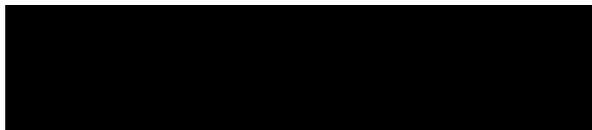
### **Order**

1. Complainant's Motion for Summary Judgment and Motion to Amend Sanctions are hereby GRANTED.
2. Respondent Joyce Cairns, either individually or through her agents and employees, successor and assigns, directly or through any corporate or other device, must cease and desist from violating the AWA, the Regulations, and the Standards.
3. Respondent Joyce Cairns' AWA License 48-A-1027 is hereby REVOKED.

This Order shall have the same force and effect as if entered after a full hearing. The provisions of this Order shall be final and effective thirty-five (35) days after service of this Decision and Order upon the Respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

Copies of his Decision and Order shall be served by the Hearing Clerk to each of the parties with courtesy copies provided by email where provided.

Issued this 22nd day of August in Washington, D.C.



Tierney Carlos  
Administrative Law Judge

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