

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

REC'D- USDA/OALJ/HCO  
2024 FEB 6 2:28 PM

In re:

Daniel B. Kauffman, an individual,  
  
Respondent.

AWA Docket No. 23-J-0072

**AMENDED DECISION AND ORDER GRANTING  
COMPLAINANT'S MOTION FOR DEFAULT**

Appearance:

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

This is a proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131 *et seq.*) ("AWA"); the regulations promulgated thereunder (9 C.F.R. Part 3) ("Regulations"); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) ("Rules of Practice").

The Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture ("Complainant"), initiated this proceeding by filing a complaint against Daniel B. Kauffman, an individual ("Respondent"), on July 11, 2023. The Complaint alleged that Respondent violated the AWA and Regulations and requested

that this matter proceed in accordance with the Rules of Practice governing proceedings under the [AWA], and that such order or orders be issued as are authorized by the [AWA] (7 U.S.C. § 2149) and warranted under the circumstances, including revocation of AWA License 23-A-0723, and civil penalties as warranted under the circumstances.

Complaint at 3.

Respondent was duly served with a copy of the Complaint and did not file an answer

within the twenty-day period as prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).<sup>1</sup>

On August 18, 2023, Complainant filed a proposed decision and order by reason of default (“Proposed Decision”) and motion for adoption thereof (“Motion for Default”) pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Complainant requested an order “finding that Respondent violated the [AWA] and its Regulations, revoking AWA License 23-A-0723, and assessing Respondent a total of twenty-nine thousand and nine hundred dollars (\$29,900) in civil penalties.”<sup>2</sup>

Respondent did not file any objections to Complainant’s Motion for Default or Proposed Decision.<sup>3</sup>

On September 27, 2023, Administrative Law Judge Tierney Carlos filed on my behalf<sup>4</sup> a Decision and Order Granting in Part and Denying in Part Complainant’s Motion for Default (“Decision and Order”). The Decision and Order granted summary judgment against Respondent but denied Complainant’s sanctions request on the basis that Complainant provided no evidence

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<sup>1</sup> United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on July 28, 2023. Respondent had twenty days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent’s answer was due on or before August 17, 2023. Respondent has not filed an answer.

<sup>2</sup> Motion for Default at 4-5.

<sup>3</sup> United States Postal Service records reflect that Complainant’s Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on August 21, 2023. Respondent had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent’s objections were due on or before September 11, 2023. Respondent has not filed any objections.

<sup>4</sup> Judge Carlos was Acting Chief Administrative Law Judge on September 27, 2023.

regarding the requested civil-penalty amount or explanation why license revocation was warranted.<sup>5</sup> It also directed Complainant to file with the Hearing Clerk a written brief in support of Complainant’s proposed sanctions by October 17, 2023 and gave Respondent “twenty days from the date Respondent is served with Complainant’s brief” to file a response.<sup>6</sup>

On October 17, 2023, Complainant filed a brief in support of proposed sanctions (“Complainant’s Brief”), including a declaration by the Assistant Director for Animal Welfare Operations for Animal Care at APHIS (“Exhibit A”). Respondent has not filed any response or objections to Complainant’s Brief.<sup>7</sup>

### Sanctions

Complainant requests an order revoking Respondent’s AWA license and assessing Respondent \$29,000 in civil penalties for his violations of the AWA.<sup>8</sup> The details of those violations are set forth in the September 27, 2023 Decision and Order.<sup>9</sup> In short, Respondent was found to have violated the AWA and Regulations on multiple occasions in 2022 by failing to provide adequate veterinary care for animals and/or failing to establish and maintain programs of adequate veterinary care, including the availability of appropriate services and adequate guidance to personnel involved in the euthanasia of guinea pigs; failing to meet minimum standards of

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<sup>5</sup> See Decision and Order at 4-5.

<sup>6</sup> *Id.* at 8.

<sup>7</sup> United States Postal Service records reflect that Complainant’s Brief was sent to Respondent via certified mail and delivered on November 7, 2023. As provided in the Decision and Order, Respondent had twenty days from the date of service to respond thereto. In this case, Respondent’s response was due on or before November 27, 2023. Respondent has not filed a response.

<sup>8</sup> See Motion for Default at 4-5; Complainant’s Brief at 8.

<sup>9</sup> The Findings of Fact and Conclusions set forth in the September 27, 2023 Decision and Order are adopted in full. For ease of reference, they are restated at the end of this Amended Decision and Order.

care related to the heating and sanitation of guinea-pig enclosures; and failing to provide APHIS officials with access for inspection and/or to have a responsible adult available to accompany APHIS officials during inspection.<sup>10</sup>

1. *Civil Penalties*

The AWA authorizes the Secretary to assess a civil penalty of up to \$10,000 for each violation, or \$12,771 per violation when adjusted for inflation.<sup>11</sup> When determining civil penalties, the Secretary is required to “give due consideration to the appropriateness of the civil 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.”<sup>12</sup> Complainant states its civil-penalty recommendation is based on these statutory factors<sup>13</sup> and submits a supporting declaration by Gustavo Soberano, Assistant Director for Animal Welfare Operations for Animal Care at APHIS.<sup>14</sup>

Dr. Soberano stated that, based on annual gross sales, APHIS considers the size of Respondent’s business to be small.<sup>15</sup>

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<sup>10</sup> See Decision and Order at 6-7.

<sup>11</sup> See 7 U.S.C. § 2149(b). In February 2022, the Secretary adjusted the maximum civil penalty to \$12,771 for each AWA violation occurring after February 15, 2022, in accordance with the Federal Civil Penalties Adjustment Act of 1990, as amended (Pub. L. No. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. No. 104-134). See 28 U.S.C. § 2461 note and 7 C.F.R. § 3.91(a)(2), (b)(2)(viii) (“Civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of \$12,771[.]”), as published in 87 Fed. Reg. 8395-01 (Feb. 15, 2022).

<sup>12</sup> 7 U.S.C. § 2149(b).

<sup>13</sup> Complainant’s Brief at 1.

<sup>14</sup> Exhibit A. Gustavo Soberano is a Doctor in Veterinary Medicine; he also has a master’s degree in preventive veterinary medicine and is a diplomate of the American College of Veterinary Preventive Medicine. *Id.* ¶ 1. Dr. Soberano is responsible for AWA enforcement in multiple states and U.S. territories.

<sup>15</sup> Exhibit A ¶ 6.

With regard to the gravity of violations, Dr. Soberano stated:

APHIS' review of the alleged violations by Respondent assessed the gravity of the violations and their impact on animal welfare, including failure to provide adequate veterinary care for animals, failure to utilize a method of euthanasia consistent with the attending veterinarian's guidance and according to the requirements of the AWA, failure to provide adequate heating for guinea pigs in freezing temperatures, and on multiple occasions failure to make a responsible adult available to accompany APHIS officials for inspection. . . . The gravity of the violations ranged from Direct violations (two) affecting the welfare of the animals at the time of inspection, to Critical violations (one) which affected the welfare of the animals prior to the inspections, and Non-critical violations (four) indirectly affecting the welfare of the animals, including three attempted inspections in which APHIS was not able to assess the health and welfare of the animals because a responsible adult was not available to accompany APHIS officials during an inspection. A cornerstone of AWA enforcement is the unannounced inspection conducted by USDA-APHIS, which allows APHIS Officials to accurately assess a licensee's compliance with the AWA, its regulations, and its standards, and ensure the wellbeing of AWA-regulated animals.

Exhibit A ¶ 7. Based on the foregoing, I find Respondent's violations to be grave.

Further, Dr. Soberano opined that Respondent's "apparent and continued disregard of the AWA, regulations and standards incurred over the course of six inspections and attempted inspections" from March through December 2022 demonstrates a lack of good faith.<sup>16</sup> At the conclusion of each inspection, Respondent was provided a copy of the inspection report and given the opportunity to correct the cited violations and appeal the findings; however, Respondent did not appeal any of those findings.<sup>17</sup> I agree that Respondent has not shown good faith.

Finally, Mr. Soberano states that Respondent has no history of prior violations, which

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<sup>16</sup> *Id.* ¶ 8.

<sup>17</sup> *Id.* Dr. Soberano also notes that Respondent has a "sustained pattern of unavailability for inspection." *Id.* ¶ 10.

APHIS considered that when making its penalty recommendation.<sup>18</sup>

Although Respondent's business is small and he has no history of previous violations, I find the recommended civil penalty is warranted. Dr. Soberano stated:

The purpose of the Animal Welfare Act as enumerated in § 2131(1) is "to insure that animals intended . . . for use as pets are provided humane care and treatment." The violations . . . allege that Respondent utilized blunt force trauma to euthanize animals on at least two occasions. This method of euthanasia . . . does not qualify as humane care and treatment. Further, Respondent has a sustained pattern of unavailability for inspection. Without regular access to Respondent's facility, APHIS cannot ensure the humane treatment of animals in Respondent's possession. As such, . . . civil money penalties in the amount of \$29,900 are appropriate in this case.

Exhibit A ¶ 10. These are the kinds of violations that warrant considerable civil penalties—especially the access violations. As the Judicial Officer has held,

failure to allow Animal and Plant Health Inspection officials to enter the [breeder's] place of business to conduct inspections . . . is a serious violation because it thwarts the Secretary of Agriculture's ability to monitor . . . compliance with the Animal Welfare Act and the Regulations and severely undermines the Secretary of Agriculture's ability to enforce the Animal Welfare Act and the Regulations.

*Mitchell*, AWA Docket No. 09-0084, 69 Agric. Dec. 2010 WL 5295429, at \*13 (U.S.D.A. Dec. 21, 2010). I note that that while Complainant could have sought up to \$89,397 for Respondent's violations, it has requested less than half that amount.<sup>19</sup>

Having considered the statutory factors as described above, and in accordance with the Department's sanction policy,<sup>20</sup> I find Complainant's sanction recommendation to be reasonable

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<sup>18</sup> *Id.* ¶ 9.

<sup>19</sup> See *supra* note 11 and accompanying text.

<sup>20</sup> See *S.S. Farms Linn Cnty., Inc.*, 50 Agric. Dec. 476, 497 (U.S.D.A. 1991) (Decision as to James Joseph Hickey & Shannon Hansen), *aff'd*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under the 9th Circuit Rule 36-3)) ("[T]he 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*

and warranted under the facts and circumstances of this case.

## 2. License Revocation

The AWA authorizes the Secretary to revoke an AWA license after notice and opportunity for hearing if the licensee is determined to have violated any provision of the AWA or the Regulations and Standards.<sup>21</sup> Unlike with civil-penalty sanctions, license revocation does not require consideration of statutory factors. “The AWA authorizes the Secretary to revoke an exhibitor’s license following a single, willful violation of the Act.”<sup>22</sup> So long as a respondent is found to have committed more than one willful violation of the AWA, the respondent may have his or her license revoked.<sup>23</sup>

I find that license revocation is warranted under 7 U.S.C. § 2149(a). As detailed in the September 27, 2023 Decision and Order, Respondent was properly served with a copy of the Complaint and thereby provided notice and an opportunity for hearing, which Respondent waived when he failed to answer the Complaint.<sup>24</sup> In that Decision and Order, seven “violation[s] [were] determined to have occurred.”<sup>25</sup> Three of these violations involved Respondent’s failure to provide access to APHIS officials for inspection and/or have a

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*weight to the recommendations of administrative officials charged with the responsibility for achieving the congressional purpose.”)* (emphasis added)).

<sup>21</sup> 7 U.S.C. § 2149(a).

<sup>22</sup> *Terranova v. U.S. Dep’t of Agric.*, 820 F. App’x 279, 282 (5th Cir. 2020) (citing 7 U.S.C. § 2149; *Cox v. U.S. Dep’t of Agric.*, 925 F.2d 1102, 1105 (8th Cir. 1991); and *Pearson v. U.S. Dep’t of Agric.*, 411 F. App’x 866, 872 (6th Cir. 2011)).

<sup>23</sup> *See Terranova*, 820 F. App’x at 282-83; *Volpe Vito, Inc. v. U.S. Dep’t of Agric.*, 172 F.3d 51 (Table), 1999 WL 16562, at \*2 (6th Cir. 1999) (“‘Willful’ means action knowingly taken by one subject to the statutory provisions in disregard of the action’s legality; no showing of malicious intent is necessary.”) (citing *Donovan v. Cap. City Excavating Co.*, 712 F.2d 1008, 1010 (6th Cir. 1988)).

<sup>24</sup> *See supra* note 1 and accompanying text; Decision and Order at 1-3.

<sup>25</sup> 7 U.S.C. § 2149(a); *see* Decision and Order at 6-7.

responsible adult available to accompany APHIS officials during inspection, all on separate occasions within a period of six months.<sup>26</sup> I am persuaded by Complainant’s observation that “if APHIS officials are unable to access Respondent’s facility to conduct inspections on a regular basis, APHIS cannot ensure the humane treatment of animals in Respondent’s possession. This thwarts the Secretary’s ability to enforce the AWA. Therefore, license revocation would fulfill the remedial purposes of the Act.”<sup>27</sup>

I also find that that two of Respondent’s access violations—those set forth in Findings of Fact Nos. 6 and 8 of the Decision and Order—were willful. For purposes of the AWA, “willful” means “action knowingly taken by one subject to the statutory provision in disregard of the action’s legality.”<sup>28</sup> Respondent knew the Regulations required him to provide APHIS officials access for inspection and/or have a responsible adult available to accompany them; he was provided written reports citing his violations after each inspection.<sup>29</sup> Although he was given opportunities to demonstrate compliance thereafter, Respondent did not do so.<sup>30</sup> As Complainant correctly notes, “[c]ase law makes clear that a failure to demonstrate compliance after repeated warnings is proof of willfulness.”<sup>31</sup> Here, Respondent was repeatedly given written notice of his AWA violations that could warrant revocation yet committed the same violation twice more.<sup>32</sup> I

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<sup>26</sup> 7 U.S.C. § 2146(a); 9 C.F.R. § 2.126. *See* Complainant’s Brief at 6.

<sup>27</sup> *Id.* at 5.

<sup>28</sup> *Volpe Vito, Inc. v. U.S. Dep’t of Agric.*, 172 F.3d 51 (Table), 1999 WL 16562, at \*2 (6th Cir. 1999) (citing *Donovan v. Cap. City Excavating Co.*, 712 F.2d 1008, 1010 (6th Cir. 1988)); *Person v. U.S. Dep’t of Agric.*, 411 F. App’x 866, 872 (6th Cir. 2011) (citing *Hodgins v. U.S. Dep’t of Agric.*, 238 F. 3d 421 (Table), at \*9 (6th Cir. Nov. 20, 2000)).

<sup>29</sup> *See* Exhibit A ¶ 8; Complainant’s Brief at 6.

<sup>30</sup> *See* Exhibit A ¶ 8; Complainant’s Brief at 6.

<sup>31</sup> Complainant’s Brief at 7.

<sup>32</sup> *See id.* at 6.

agree with Complainant that this repeated pattern demonstrates willfulness, and license revocation is warranted.<sup>33</sup>

Accordingly, Complainant's Motion for Default shall be GRANTED IN FULL. Respondent's AWA license shall be revoked, and he shall be assessed a \$29,900 civil penalty as ordered below.

### **Findings of Fact**

1. Respondent Daniel B. Kauffman is an individual whose address is in the Commonwealth of Pennsylvania. Respondent's address was not provided in the Complaint to protect Respondent's personal privacy but was provided to the Hearing Clerk, U.S. Department of Agriculture, for purposes of service.
2. At all times material herein, Respondent operated as a "breeder" as that term is defined in the AWA and Regulations and held AWA Class A "Breeder" license number 23-A-0723.
3. On or about November 25, 2022, Respondent requested that his Class A "Breeder" license be voluntarily cancelled, and on December 29, 2022, Animal Care cancelled AWA license number 23-A-0723.
4. On or about March 8, 2022, Respondent violated the Regulations (9 C.F.R. § 2.40(b)) by failing to provide adequate veterinary care for 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, and that included the availability of appropriate services and adequate guidance to personnel involved in the care and use of animals regarding euthanasia, as follows:

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<sup>33</sup> See *id.* at 7-8.

- a. A black and white guinea pig in Pen #40 had a firm, movable mass that was approximately one inch in size under the chin. 9 C.F.R. § 2.40(b)(2).
  - b. Respondents represented to an APHIS investigator that on at least two occasions he had “euthanized” guinea pigs by blunt force trauma, and in a manner contrary to Respondent’s program of veterinary care, which provided that euthanasia is to be performed by a veterinarian. 9 C.F.R. § 2.40(b)(4).
5. On or about June 1, 2022, Respondent failed to provide APHIS officials with access for inspection and/or to have a responsible adult available to accompany APHIS officials during inspection, in violation of the AWA and Regulations. 7 U.S.C. § 2146(a); 9 C.F.R. § 2.126.
6. On or about October 19, 2022, Respondent failed to provide APHIS officials with access for inspection and/or to have a responsible adult available to accompany APHIS officials during inspection, in violation of the AWA and Regulations. 7 C.F.R. § 2146(a); 9 C.F.R. § 2.126.
7. On or about November 23, 2022, Respondent violated the Regulations (9 C.F.R. § 2.100(a)) in failing to meet the Standards, as follows:
  - a. Respondent failed to provide adequate heating for the guinea pigs in freezing temperatures. The temperature in the guinea pig housing facility was 47 degrees Fahrenheit. Guinea pigs were huddling together and gathering under piles of hay in the enclosure. 9 C.F.R. § 3.26(a).
  - b. Respondent failed to clean and sanitize the guinea pig enclosures. There was a thick build-up of soiled bedding that was two to three inches deep in most of the pens. In Pen #33, there was no bedding and only fecal material present. 9 C.F.R. § 3.31(a)(1).

8. On or about December 2, 2022, Respondent failed to provide APHIS officials with access for inspection and/or to have a responsible adult available to accompany APHIS officials during inspection, in violation of the AWA and Regulations. 7 U.S.C. § 2146(a); 9 C.F.R. § 2.126.

### **Conclusions**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. By reason of the Findings of Fact set forth above, Respondent Daniel B. Kauffman violated section 2.126 of the Regulations (9 C.F.R. § 2.126) on three occasions, section 2.40 of the Regulations (9 C.F.R. § 2.40(b)(2)) on two occasions, and section 2.100 of the Regulations (9 C.F.R. § 2.100) on two occasions by failing to meet Standards 3.26(a) and 3.31(a)(1) of the Regulations (9 C.F.R. §§ 3.26(a) and 3.31(a)(1)).

### **ORDER**

1. Complainant's Motion for Default is GRANTED.
2. Respondent Daniel B. Kauffman is assessed a total of twenty-nine thousand and nine-hundred dollars (\$29,900), made payable to the U.S. Department of Agriculture, to USDA APHIS, P.O. Box 979043, St. Louis, Missouri 63197-9000 within thirty (30) days of the effective date of this Order. Respondent shall indicate on the certified check or money order that this payment is in reference to AWA Docket No. 23-J-0072.
3. Respondent's AWA license number 23-A-0723 is REVOKED.

This Decision and Order shall be final and effective without further proceedings thirty-five (35) days after service, unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (30) days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145). Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk.

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

Done at Washington, D.C.,  
this 6<sup>th</sup> day of February 2024

**CHANNING  
STROTHER**

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Date: 2024.02.06 14:18:11 -05'00'

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Channing D. Strother  
Chief Administrative Law Judge

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