

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:

Greg Golliet, Petitioner (AWA-D Docket No. **19-J-0098**)

**Decision and Order on the Written Record (Ruling GRANTING
Respondent APHIS's Motion for Summary Judgment as to Greg Golliet)**

Appearances:

David L. Durkin, Esq., with Olsson Frank Weeda Terman Matz PC, 2000 Pennsylvania Avenue NW, Suite 3000, Washington, D.C. 20006, for the Petitioner Greg Golliet; and

John V. Rodriguez, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Ave SW, Washington D.C. 20250, for the Respondent, the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture ("APHIS" or Respondent).

Decision Summary

1. The Respondent APHIS's March 4, 2019 denial of the Petitioner Greg Golliet's application for a USDA Animal Welfare Act license is AFFIRMED. It was probable (more likely than not), that Greg Golliet would have used a USDA Animal Welfare Act Class C, Exhibitor license, had it been issued, to allow Kellie Caron (see AWA-D Docket No. 19-J-0090) to have circumvented the Animal Welfare Act licensing requirements, which was prohibited by the Animal Welfare Act and the Regulations, particularly 9 C.F.R. § 2.11(a)(5).

Procedural History

2. This docket (**19-J-0098**) was initiated by Greg Golliet's Petition timely filed with the USDA Hearing Clerk on June 6, 2019, by and through counsel, David L. Durkin, Esq., regarding "Request for Hearing on Denial of Exhibitor License Under the Animal Welfare

Act; Greg Golliet”. The Petition requests, at 1, “a hearing for showing why the application for license should not be denied” pursuant to 9 C.F.R. § 2.11(b).

3. Attached to the Golliet Petition was 1) a series of emails between Scott Milburn (former counsel to Petitioner Golliet) and Laquetta D. Jones Bigelow, Esq., National Enforcement Coordinator, Diversity Liaison, Animal Care Civil Rights and Diversity Committee, USDA, APHIS, Animal Care;¹ and 2) a letter (“APHIS Denial Letter”) to Mr. Golliet from the Assistant Deputy Administrator for Animal Care, under the Animal and Plant Health Inspection Service (“APHIS”), United States Department of Agriculture (“USDA”), dated March 4, 2019, denying Petitioner Golliet’s application for a Class C exhibitor’s license under the Animal Welfare Act (“AWA”), based on sections 2133 and 2151 (7 U.S.C. §§ 2133, 2151), and section 2.11(a)(5) of the AWA regulations (9 C.F.R. § 2.11(a)(5)) with the following reasoning, at 1:

It is our understanding that you intend to exhibit animals owned by Kellie Caron who does not have a USDA license. If you were to receive an AWA license under these circumstances, it would enable Ms. Caron to circumvent the licensing requirements, which is prohibited section by 2.11 (a)(5).

4. The Respondent, the Administrator of the USDA Animal and Plant Health Inspection Service (APHIS), filed “Government’s Motion for Summary Judgment” (“Motion for Summary Judgment”) on June 21, 2021, in the combined: AWA-D Docket No. 19-J-0090, regarding Petitioner Kellie Caron; and

¹ In the Golliet Petition at 1, Petitioner Golliet explains that Attachment 1, the series of emails, shows that the request for hearing was timely filed due to “certain issues surrounding delivery of the denial of Mr. Golliet's application for an Exhibitor License under the Animal Welfare Act (AWA).”

AWA-D Docket No. 19-J-0098, regarding Petitioner Greg Golliet; and

AWA Docket No. 20-J-0042, regarding Respondent Kellie Caron, an individual, doing business as The Sloth Center, Zoological Wildlife Conservation Center, and Sloth Captive Husbandry Center.

The Motion for Summary Judgment includes a Memorandum of Points and Authorities with several exhibits attached and is based on section 1.143(b) of the Rules of Practice (7 C.F.R. § 1.143(b)) and all pleadings, documents, and points and authorities filed as a part of the Motion for Summary Judgment.

5. Petitioner Golliet, by and through counsel and combined with AWA-D Docket No. 19-J-0090, regarding Petitioner Kellie Caron; and AWA Docket No. 20-J-0042, regarding Respondent Kellie Caron, an individual, doing business as The Sloth Center, Zoological Wildlife Conservation Center, and Sloth Captive Husbandry Center, filed “Opposition to Motion for Summary Judgment” (“Opposition”) on July 12, 2021.

6. On July 30, 2021, Respondent APHIS filed “Government’s Reply to Respondents’ [sic] Opposition to Motion for Summary Judgment (“Government’s Reply”), which might have referred to the Opposition more accurately as “Non-Government Parties’ Opposition”.

Authority

7. The Animal Welfare Act (AWA) was promulgated to ensure the humane care and treatment of animals intended for use in research facilities, exhibition, or as pets. 7 U.S.C. § 2131. Congress provided for enforcement of the AWA by the Secretary of Agriculture. 7 U.S.C. §§ 2131-59. Regulations promulgated under the AWA pertinent here are in the Code of Federal Regulations, Part 9, sections 1.1 through 3.142.

Summary of the Record

8. The following is a summary of the record, including pleadings and documents filed, relevant to the instant proceeding:

- a. Golliet Petition (Request for Hearing), including Attachment 1 (email series) and Attachment 2 (APHIS Denial Letter)
- b. Respondent APHIS's Response to Request for Hearing
- c. Government's Motion for Summary Judgment, including, as relevant only to AWA-D Docket No. 19-J-0098, Golliet:²
 - i. Government's Exhibit 1 (Respondent Caron's license expiration letter)
 - ii. Government's Exhibit 2 (www.chasing-tail.com/programs website captured December 4, 2018 and February 26, 2019.)
 - iii. Government's Exhibit 39 (Petitioner/Respondent Caron's Application for License)
 - iv. Government's Exhibit 40 (ZWCC Sloth Center business record filed October 30, 2018)
 - v. Government's Exhibit 41 (Petitioner Golliet's Application for License)
 - vi. Government's Exhibit 42 (ZWCC Sloth Center business records filed

² The following exhibits were deemed irrelevant to the instant docket: Government Exhibits 3-33 (Instagram posts); 34 (TripAdvisor documents obtained by Investigator Orham); 35 (Yelp documents obtained by Investigator Orham); 36 (TripAdvisor documents obtained by Investigator Orham); 38 (Julie Halter's Affidavit); 45 (Mary S. Orham Declaration); and 47 (Caron's denial letter).

October 2, 2018)

- vii. Government's Exhibit 43 (Sloth Captive Husbandry Center's business records)
- viii. Government's Exhibit 44 (Court Order and Disposition of Impounded Animals Case No. PS18-0002)
- ix. Government's Exhibit 46 (Petitioner Golliet's denial letter)
- d. Opposition to Motion for Summary Judgment, including
 - i. P/RPX 1 (Petitioner's Request for a Hearing; series of emails; APHIS Denial Letter)
- e. "Government's Reply to Respondents' [sic] Opposition to Motion for Summary Judgment"

Discussion

9. The USDA Judicial Officer has consistently ruled that "hearings are futile and summary judgment is appropriate where there is no factual dispute of substance."³ In the present case, Petitioner Golliet does not dispute any of the material facts put forward by APHIS in its Motion for Summary Judgment. There is no need for oral testimony. *See* Petitioner's Opposition at 5-10 (where Petitioner does not dispute the facts relevant to the instant proceeding but disputes the relevance/materiality of certain evidence).

³ *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).

10. The Secretary of Agriculture is authorized by the AWA to “issue licenses to dealers and exhibitors upon application therefor in such form and manner as he may prescribe.” 7 U.S.C. § 2133. Accordingly, the Secretary of Agriculture has promulgated regulations prescribing the form and manner of AWA licensing procedure. *See* 9 C.F.R. §§ 2.1-12. The Regulations provide, in relevant part to this proceeding, the following as to denial of an AWA license application (effective at the time these proceedings were initiated):

(a) A license will not be issued to any applicant who:

....

(4) Has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within 1 year of application, or after 1 year if the Administrator determines that the circumstances render the applicant unfit to be licensed;

(5) Is or would be operating in violation or circumvention of any Federal, State, or local laws; or

(6) Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

....

(c) No partnership, firm, corporation, or other legal entity in which a person whose license application has been denied has a substantial interest, financial or otherwise, will be licensed within 1 year of the license denial.

(d) No license will be issued under circumstances that the Administrator determines would circumvent any order suspending, revoking, terminating, or denying a license under the Act.

9 C.F.R. § 2.11(a)

(As referenced throughout the pleadings and documents filed, and as referenced in this Decision, 9 C.F.R. 2.11(a)(5) at the time the APHIS Denial Letter was issued read “Is or would be operating in violation or

circumvention of any Federal, State, or local laws.” That version of section 2.11(a) was effective through November 8, 2020 and an amended version was effective as of November 9, 2020).

11. Petitioner Golliet appealed denial of his application for a Class C AWA exhibitor’s license, denied due to APHIS finding that Petitioner Golliet intended to “exhibit animals owned by Kellie Caron who does not have a USDA license” and that if he were to receive such license, “it would enable Ms. Caron to circumvent the licensing requirements, which is prohibited section by 2.11(a)(5).” *See* APHIS Denial Letter.

12. Based on careful review of the record, I agree with Respondent APHIS that the preponderance of the evidence shows that to have issued Petitioner Golliet an AWA license “under these circumstances” (March 4, 2019) would have permitted Greg Golliet to exhibit animals owned by Kellie Caron who did not have a USDA Animal Welfare Act license, thereby enabling Kellie Caron to circumvent the licensing requirements, prohibited by 9 C.F.R. § 2.11(a)(5), and that Petitioner Golliet probably would have done so.

13. The record shows that:

- a. Kellie Caron, at the address of 74320 Larson Rd., Rainer, Oregon 97048, doing business as The Sloth Center (“TSC”), Zoological Wildlife Conservation Center (“ZWCC”), and Sloth Captive Husbandry Center (“SCHC”) was operating under AWA license 92-B-0256, which was canceled after March 26, 2018. *See* Government Exhibits 42-43 and 1.
- b. Ms. Caron and Petitioner Golliet were in business together. *See* Government Exhibit 48 at 4.

- c. On or about July 20, 2018, Ms. Caron and Petitioner Golliet were found to have violated State of Washington Administrative Code (WAC) 16-54-030(3)(h), WAC 16-54-180, WAC 16-54-030, and Revised Code of Washington (RCW) 16.36.050, which requires a valid permit issued by Washington State Department of Agriculture (WSDA) to enter or reenter the State of Washington with exotic animals. *See* Government Exhibits 44 and 48.
- d. Despite Ms. Caron's AWA license cancellation, Ms. Caron, assisted by Petitioner Golliet, continued to advertise to the public the services of viewing sloths at 74320 Larson Rd. in Rainier, OR 97048 and between April 15, 2018 and January 27, 2019, exhibiting sloths, without holding a valid AWA license at the same address. *Id.* 19-20 (citing Government Exhibit 2-38).

14. Petitioner Golliet does not deny that he does business with Ms. Caron and that the business he conducted with Ms. Caron, doing business as TSC, ZWCC, and SCHC, was at the same address of 74320 Larson Rd., Rainier, Oregon 97048, under the same business entities, and with the same animals owned and operated by Ms. Caron that were associated with the canceled AWA license 92-B-0256.

15. Rather, in his Opposition, at 11-14, Petitioner Golliet argues that "APHIS' March 4, 2019, License Application Denial Letter to Greg Golliet Relies on an arbitrary, undefined standard which could lead to rulings contrary to some of the Purposes of the Act."

Specifically, Petitioner Golliet argues that the Regulations, and the Final Rule found in the Federal Register, fail to provide any definition or examples of the term "circumvent" as used

in 9 C.F.R. § 2.11(a)(5).⁴ Petitioner Golliet goes on to explain that the “word is commonly used to indicate an obstacle by means that achieve the opposite of the purpose for which the obstacle was intended, and that there is often an air of unseemly craft or sneakiness involved” and contends that, in this case, Petitioner was forthright, honest, and fully disclosed all information required for his AWA license application, “including the existence of a prior license at the address of the facility under AWA License 92-B-0256.29.” *Id.* at 12 (citing Government Exhibit 41).

16. Petitioner Golliet contends that “APHIS use of the ‘circumvention’ provision of the Regulations poses a problem of lack of definition, which would lead to arbitrary and capricious application.” *Id.*⁵ Further, Petitioner Golliet contends that, according to the Denial Letter, APHIS based its decision to deny Petitioner Golliet’s application due to circumvention of the AWA by Ms. Caron, rather than Mr. Golliet.

17. The mere lack of a definition for a word used in regulation does not make enforcement of that regulation “arbitrary and capricious.”⁶ In the absence of a definition, words of a statute or regulation are to be given their ordinary or common meaning in the absence of a contrary intent or unless giving the words their ordinary or common meaning would defeat the purpose for which the statute was enacted.⁷

⁴ Citing Animal Welfare; Inspection, Licensing, and Procurement of Animals, 69 FED. REG. 42,089, 42,101, col. 2 (July 14, 2004); Animal Welfare; Amendments to Licensing Provisions and to Requirements for Dogs, 85 FED. REG. 28,772, 28,797, col. 1 (May 13, 2020).

⁵ Citing and quoting *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

⁶ See e.g. *United States v. Batson*, 706 F.2d 657, 680 (5th Cir. 1983).

⁷ *Sunland Packing House Co.*, 58 Agric. Dec. 543 (U.S.D.A. 1999) (citing *Walters v. Metropolitan Educational Enterprises, Inc.*, 117 S. Ct. 660, 664 (1997) (stating that in the absence of an indication to the contrary, words in a statute are assumed to bear

18. Petitioner Golliet is correct that 9 C.F.R. § 2.11(a)(5) does not define the word “circumvent.” However, the dictionary definition provided by Petitioner is sufficient in this instance: “to find a way around.”⁸ Further, AWA case law does provide examples of “circumvention”. *See Bloom*, 72 Agric. Dec. 243, 246, 2013 WL 796612 (U.S.D.A. 2013) (finding that the use of the same address associated with an order terminating an AWA license, and even the use of an address adjacent to the associated address, created the impression that Petitioner intended to circumvent that order); *Boynes*, 70 Agric. Dec. 813, 823 (U.S.D.A. 2011) (affirming AWA license denial to a partner and co-owner of property, based on the other partner’s history of animal care); *Hicken*, 2009 WL 1892585, at *4 (U.S.D.A. 2009) (upholding a license denial and Agency finding that the application of license for the same animals, equipment, and property still owned by the previous license holder whose license was terminated and finding that any future application would need to show a full transfer of ownership and separation of activities for consideration).

19. Petitioner Golliet was wise to fully disclose all details of the business and activities for which he submitted his license. However, contrary to his suggestion that these disclosures show he did not intend to “circumvent” any local, state, or federal laws, his full

their ordinary, contemporary, common meaning); *Smith v. United States*, 508 U.S. 223, 228 (1993) (stating that when a word is not defined by statute, we normally construe it in accord with its ordinary or natural meaning); *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 388 (1993) (stating that courts properly assume, absent sufficient indication to the contrary, that Congress intends the words in its enactments to carry their ordinary, contemporary, common meaning); [additional citations omitted]).

⁸ Petitioner’s Opposition at 12 (citing Oxford University Press, online dictionary, *accessed through Google.com*).

disclosure is a baseline requirement for an AWA license application and failure to have done so would have been cause for denial.

20. Petitioner Golliet's argument that "[s]uch unfettered authority would be contrary to the remedial purposes of the Act," resulting in an inability of applicants to remediate lapse in licensure due to non-renewal and "would effectively saddle [Ms. Caron] with animals but without the ability to transfer them to any other entity" is without merit. Opposition at 13. Nowhere in the record does Petitioner Golliet demonstrate or even claim that his plan was to fully relieve Ms. Caron of all ownership of the businesses, property, and animals, and operate as an exhibitor on his own without the involvement of Ms. Caron. The APHIS finding that Petitioner Golliet's application gave the impression of an attempt to assist Ms. Caron in circumvention of the licensing Regulations is logical and supported by the evidence. *See Hicken, supra.*

21. Petitioner Golliet notes that Respondent APHIS "has prosecuted the instant Motion for Summary Judgment additionally on the theory that Petitioners have both been found in violation of provisions the State of Washington Administrative Code regarding the possession and transportation of exotic animals," and that "[i]n so doing, APHIS is now relying on a separate provision of the AWA licensing Regulations as a basis for denial of Petitioner Golliet's matter, and not the provisions cited in the March 4, 2019 application denial letter." *Id.* at 13-14. Respondent APHIS noted in its Motion for Summary Judgment at 19, note 84, that APHIS does not rely upon this conviction for the denial, but "would have been justified in denying Petitioner Golliet's license application based solely on the states findings of fact and conclusions of law" pursuant to 9 C.F.R. § 2.11(a)(6) (citing Government's Exhibit 44). However, in its Reply, at 8, APHIS argues: "It is necessary that

both factors be considered in the context of the case, rather than focusing exclusively on the license denial letter.” (Emphasis in original).

22. I do not base my decision on the state disposition against Petitioner Golliet, though such disposition justifies a denial of AWA license application under 9 C.F.R. § 2.11(a)(6). *See Elrod*, 71 Agric. Dec. 441, 447 (U.S.D.A. 2012) (finding that “the evidence regarding Petitioner's guilty plea and conditional sentence would support the future denial of a license. However, since the plea was entered months after APHIS denied her license application, the plea cannot support the instant denial.”).

23. The written record is sufficiently developed to conclude that the entry of summary judgment in Respondent APHIS’s favor is appropriate, and no oral testimony is required to decide this case.

Findings Of Fact

- 1) Kellie Caron (“Caron”), d/b/a The Sloth Center (“TSC”), Zoological Wildlife Conservation Center (“ZWCC”), and Sloth Captivity Husbandry Center (“SCHC”), is an individual whose business address was 74320 Larson Rd., Rainer, OR 97048.
- 2) Prior to March 26, 2018, Caron possessed AWA License 92-B-0256.
- 3) On or about March 26, 2018, AWA License 92-B-0256 was canceled for failure to renew. Government’s Exhibit 1; Petitioner’s Opposition at 6, para. C. [Caron indicates she did not receive notice timely about her AWA license March 26, 2018 cancellation.]
- 4) On or about July 6, 2018, a “Reinstatement Amended” of the entity SCHC was electronically filed (“e-filed”) with the Oregon Secretary of State, Corporate Division, documenting, in part:
 - a. Registry Number: 130466394;

- b. Primary Place of Business: 5305 River Rd. N, Keizer, OR 97303; and
- c. Name of President and Secretary: Kellie Caron.

Government's Exhibit 43; Petitioner's Opposition at 6-7, para. D.

5) On or about July 20, 2018, Caron and Petitioner Greg Golliet ("Petitioner Golliet") were found to have violated State of Washington Administrative Code (WAC) 16-54-030(3)(h), WAC 16-54-180, WAC 16-54-030, and Revised Code of Washington (RCW) 16.36.050, which requires a valid permit issued by Washington State Department of Agriculture (WSDA) to enter or reenter the State of Washington with exotic animals. The court held that Caron and Petitioner Golliet caused 11 exotic animals to be brought into Washington State without valid WSDA entry permits and, as a result, affirmed the State's impoundment of the animals. Government's Exhibits 44, 48 at 13-15; Petitioner's Opposition at 7, para. E(a).

6) On or about July 30, 2018, Petitioner Golliet applied for an AWA license. Government's Exhibit. 41; Petitioner's Opposition at 7, para. F.

7) On or about October 2, 2018, an "Application for Registration" of the entity ZWCC Sloth Center was e-filed with the Oregon Secretary of State, Corporate Division, documenting, in part:

- a. Registry Number: 148202898;
- b. Principal Place of Business: 74320 Larson Rd., Rainier, OR 97048;
- c. Authorized Representative: Kellie Caron; and
- d. Registrant/Owner: Kellie Caron.

Government's Ex. 42; Petitioner's Opposition at 7, para. G.

8) On or about October 30, 2018, filed with the Oregon Secretary of State, Corporate

Division, was an “Assumed Business Name – Amendment” of the entity ZWCC Sloth Center documenting, in part:

- a. Registry Number: 1482028-98;
- b. Principal Place of Business: 74320 Larson Rd., Rainier, OR 97048;
- c. Authorized Representative: Greg Golliet; and
- d. Registrant/Owner: Greg Golliet.

Government’s Ex. 40. Petitioner’s Opposition at 8, para. H.

9) On or about December 4, 2018, Investigator Mary Suzanne Orham (“Investigator Orham”), Investigative and Enforcement Services (“IES”), APHIS, USDA, conducted an investigation into Caron and Petitioner Golliet and discovered their business webpage www.chasing-tail.com/programs which included dates, times, and prices to interact with sloths at www.-13e.bookeo.com . Government’s Exhibits 2 at 9-10; 45.

10) On or about February 17, 2019, Caron applied for an AWA license. Government’s Exhibit 39; Petitioner’s Opposition at 10, para. L.

11) On or about February 26, 2019, Investigator Orham conducted a follow-up investigation into Caron and Petitioner Golliet and discovered their business webpage www.chasing-tail.com/programs also included a sloth sleepover ad linked to www.-13e.bookeo.com . Government’s Exhibit 2 at 6-8. Petitioner’s Opposition at 10, para. M.

12) On or about March 4, 2019, Petitioner Golliet’s AWA license application was denied based on 9 C.F.R. § 2.11(a)(5), “[i]s or would be operating in violation or circumvention of any Federal, State, or local laws...” The Agency reasoned, “[i]t is our understanding that you intend to exhibit animals owned by Kellie Caron who does not have a USDA license. If you were to receive an AWA license under these circumstances, it would enable Ms. Caron

to circumvent the licensing requirements, which is prohibited section by 2.11(a)(5).”

Government’s Exhibit 46; Petitioner’s Opposition at 10, para. N.

Conclusions

- 1) The Secretary of Agriculture has jurisdiction over the parties and the subject matter.
- 2) APHIS’s denial by letter dated March 4, 2019 of Greg Golliet’s application for a USDA Animal Welfare Act license, in accordance with 7 U.S.C. §§ 2133, 2151; 9 C.F.R. § 2.11(a)(5); and the remedial nature of the Animal Welfare Act, is AFFIRMED.
- 3) It was probable (more likely than not), that Greg Golliet would have exhibited animals owned by Kellie Caron who did not have a USDA Animal Welfare Act license, thereby enabling Kellie Caron to circumvent the AWA licensing requirements. 9 C.F.R. § 2.11(a)(5). The material facts are not in dispute, so entry of summary judgment in favor of Respondent APHIS as to Petitioner Greg Golliet is appropriate. APHIS’s Motion for Summary Judgment as to Petitioner Greg Golliet is GRANTED.

Order

- 1) Greg Golliet, and his agents, employees, successors, and assigns, directly or indirectly, through any corporate or other device, are ordered to cease and desist from violations of the Animal Welfare Act and the Regulations.
- 2) Petitioner Greg Golliet may reapply for an Animal Welfare Act license one year from the date this Decision and Order becomes final and effective.

Finality

This Decision and Order becomes final and effective thirty-five (35) days after service of this Decision and Order upon Petitioner Greg Golliet, unless appealed to the Judicial Officer by a party to the proceeding by filing with the Hearing Clerk within thirty (30) days under section 1.145 of the Rules of Practice (7 C.F.R. § 1.145). See Appendix A.

Copies of this “Decision and Order on the Written Record (Ruling GRANTING Respondent APHIS’s Motion for Summary Judgment as to Greg Golliet)” shall be sent by the Hearing Clerk to each of the parties.

Issued this 30th day of August 2021, in Washington, D.C.

Digitally signed by
JILL CLIFTON
Date: 2021.08.30
08:40:58 -04'00'

Jill S. Clifton
Administrative Law Judge

Enclosed: Appendix A

Hearing Clerk’s Office
U.S. Department of Agriculture
Stop 9203 South Building Room 1031-S
1400 Independence Ave SW
Washington DC 20250-9203

1-202-720-4443

FAX 1-844-325-6940

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APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

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

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

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time

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

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

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

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

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

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

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

7 C.F.R. § 1.145