UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	AWA Docket No. 03-0035
	)	
ZooCats, Inc., a Texas corporation; Marcus Cook, a/k/a Marcus Cline-Hines Cook, an individual; and Melissa Coody, a/k/a Misty Coody, an individual, jointly doing business as Zoo Dynamics and ZooCats Zoological Systems; Six Flags Over Texas, Inc., a Delaware corporation; and Marian Buehler, an individual,	)	**Order Denying Respondents' Petition To Reconsider And Administrator's Petition To Reconsider**
Respondents	)	

PROCEDURAL HISTORY

I issued *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), __ Agric. Dec. ___ (July 27, 2009), in which I concluded ZooCats, Inc., Marcus Cook, and Melissa Coody [hereinafter Respondents] violated the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act] and the regulations and standards issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations]; ordered Respondents to cease and desist from violating the Animal Welfare Act and the Regulations; and revoked ZooCats, Inc.'s Animal Welfare

Act license. On September 8, 2009, Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], filed a petition to reconsider *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), __ Agric. Dec. ___ (July 27, 2009). On November 6, 2009, Respondents filed a petition to reconsider *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), __ Agric. Dec. ___ (July 27, 2009), and a reply to the Administrator's petition to reconsider. On November 27, 2009, the Administrator filed a reply to Respondents' petition to reconsider, and on December 3, 2009, the Hearing Clerk transmitted the record to me to consider and rule on the petitions to reconsider.

CONCLUSIONS BY THE JUDICIAL OFFICER ON RECONSIDERATION

Respondents' Petition to Reconsider

Respondents raise nine issues in "Respondent's [sic] Petition for Reconsideration and Response to Complainant's Motion for Reconsideration" [hereinafter Respondents' Petition to Reconsider]. First, Respondents contend I erroneously rejected Respondents' argument that the Administrator's Amended Complaint was not timely filed (Respondents' Pet. to Reconsider at 4-5).

I rejected Respondents' argument regarding timeliness of the Administrator's Amended Complaint because Respondents' argument was raised for the first time on

appeal to the Judicial Officer[1] and Respondents were not prejudiced by the timing of the Administrator's filing the Amended Complaint. *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), __ Agric. Dec. ___, slip op. at 24-25 (July 27, 2009). Respondents assert they first raised the issue of the timeliness of the Amended Complaint before Administrative Law Judge Victor W. Palmer [hereinafter the ALJ], who entertained and denied Respondents' motion to strike the Amended Complaint (Respondents' Pet. to Reconsider at 4-5). Respondents do not cite and I cannot locate Respondents' motion to strike the Amended Complaint or the ALJ's denial of Respondents' motion to strike the Amended Complaint. Therefore, I reject Respondents' contention that I erroneously concluded Respondents' argument regarding the timeliness of the Amended Complaint was raised for the first time on appeal to the Judicial Officer.

Second, Respondents contend I erroneously rejected Respondents' argument regarding the timeliness of the Administrator's witness list and exhibit list based on my conclusion that Respondents' argument was raised for the first time on appeal to the

---

[1]New arguments cannot be raised for the first time on appeal to the Judicial Officer. *In re Jerome Schmidt* (Order Denying Pet. to Reconsider), 66 Agric. Dec. 596, 599 (2007); *In re Bodie S. Knapp*, 64 Agric. Dec. 253, 289 (2005); *In re William J. Reinhart* (Order Denying William J. Reinhart's Pet. for Recons.), 60 Agric. Dec. 241, 257 (2001); *In re Marysville Enterprises, Inc.* (Decision as to Marysville Enterprises, Inc., and James L. Breeding), 59 Agric. Dec. 299, 329 (2000); *In re Mary Meyers* (Order Denying Pet. for Recons.), 58 Agric. Dec. 861, 866 (1999); *In re Anna Mae Noell* (Order Denying the Chimp Farm, Inc.'s Motion to Vacate), 58 Agric. Dec. 855, 859-60 (1999).

Judicial Officer. Respondents assert they raised the argument before the ALJ. (Respondents' Pet. to Reconsider at 4-5.)

I found the Administrator's witness list and exhibit list were timely filed. I did not reject Respondents' argument regarding the timeliness of the Administrator's witness list or exhibit list based upon a conclusion that Respondents raised the argument for the first time on appeal to the Judicial Officer. *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), __ Agric. Dec. ___, slip op. at 25-27 (July 27, 2009). Therefore, I reject Respondents' contention that I based my decision not to strike the testimony of the Administrator's witnesses and the Administrator's exhibits on the ground that Respondents' argument regarding the timeliness of the Administrator's witness list and exhibit list was raised for the first time on appeal to the Judicial Officer.

Third, Respondents contend I erroneously found ZooCats, Inc., is not a "research facility," as that term is defined in the Animal Welfare Act and the Regulations. Respondents argue, since ZooCats, Inc., has expressed an intent to conduct research on live animals, ZooCats, Inc., is a "research facility." (Respondents' Pet. to Reconsider at 5-13.)

The term "research facility" is defined in section 2(e) of the Animal Welfare Act, as follows:

§ 2132 Definitions.

> . . . .
>
> (e) The term "research facility" means any school (except an elementary or secondary school), institution, or organization, or person that uses or intends to use live animals in research, tests, or experiments, and that (1) purchases or transports such animals in commerce, or (2) receives funds under a grant, award, loan, or contract from a department, agency, or instrumentality of the United States for the purpose of carrying out research, tests, or experiments: *Provided*, That the Secretary may exempt, by regulation, any such school, institution, organization, or person that does not use or intend to use live dogs or cats, except those schools, institutions, organizations, or persons, which use substantial numbers (as determined by the Secretary) of live animals the principal function of which schools, institutions, organizations, or persons, is biomedical research or testing, when in the judgment of the Secretary, any such exemption does not vitiate the purpose of this chapter.

7 U.S.C. § 2132(e). See also 9 C.F.R. § 1.1. Thus, an intent to use live animals in research, tests, or experiments may be sufficient for a person to meet the definition of the term "research facility." However, a claim that a person intends to conduct research on live animals is not sufficient to meet the definition of the term "research facility," unless that claim is an accurate reflection of that person's actual intent. As fully discussed in *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), __ Agric. Dec. ___, slip op. at 27-31 (July 27, 2009), the record before me refutes Respondents' claim that ZooCats, Inc., intends to conduct research on live animals. Therefore, I reject Respondents' contention that my finding that ZooCats, Inc., is not a "research facility," as that term is defined in the Animal Welfare Act and the Regulations, is error.

Fourth, Respondents contend revocation of ZooCats, Inc.'s Animal Welfare Act license is not justified by the facts (Respondents' Pet. to Reconsider at 13-24).

Respondents' violations of the Animal Welfare Act and the Regulations are enumerated in conclusions of law numbers 4 through 28 in *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), __ Agric. Dec. ___, slip op. at 11-19 (July 27, 2009). Many of Respondents' violations affected the health and well-being of Respondents' animals and some of Respondents' violations resulted in harm to members of the public. Respondents' violations were not isolated incidents, but extended over a significant period of time, December 5, 2000, through February 23, 2007, indicating a pattern of conduct. Therefore, based upon the number of violations, the seriousness of the violations, and the extended period of time over which the violations occurred, I reject Respondents' contention that revocation of ZooCats, Inc.'s Animal Welfare Act license is not justified by the facts.

Fifth, Respondents contend I erroneously concluded that on February 9, 2006, Respondents failed to "obtain veterinary care for a tiger cub that had re-injured a leg a couple of days earlier." Respondents cite the testimony of Dr. Laurie Gage, an Animal and Plant Health Inspection Service [hereinafter APHIS] veterinary medical officer, as support for their contention that I erred. (Respondents' Pet. to Reconsider at 24-28.)

I concluded that, on February 9, 2006, Respondents failed to provide veterinary care for a tiger that had re-injured a leg, in willful violation of 9 C.F.R. § 2.40(b)(2).

In re ZooCats, Inc. (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), __ Agric. Dec. ___, slip op. at 18-19 (July 27, 2009). I have reviewed the record and find the record supports the conclusion that, on February 9, 2006, Respondents willfully violated 9 C.F.R. § 2.40(b)(2). (See CX 36 at 6-7; R 6 at 35; Tr. 95-99.[2]) Moreover, Dr. Gage's testimony does not support Respondents' contention that I erred. To the contrary, Dr. Gage's testimony lends further support to my conclusion that Respondents violated 9 C.F.R. § 2.40(b)(2) on February 9, 2006. (See Tr. 95-96.)

Sixth, Respondents contend I erroneously concluded that on February 23, 2007, Respondents did not provide veterinary care for a tiger with hair loss. Respondents assert no evidence was introduced supporting this conclusion. (Respondents' Pet. to Reconsider at 25-28.)

I concluded that, on February 23, 2007, Respondents failed to provide veterinary care for a tiger suffering from excessive hair loss and weight loss, in willful violation of 9 C.F.R. § 2.40(b)(2). *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), __ Agric. Dec. ___, slip op. at 19 (July 27, 2009). The record establishes that, on February 23, 2007, an APHIS inspector, Donnovan Fox, inspected ZooCats, Inc.'s Kaufman, Texas, facility and prepared a report of his observations during the inspection. Inspector Fox reported observing a tiger named Apollo which had a great

[2]The Administrator's exhibits are referred to as "CX _." Respondents' exhibits are referred to as "R _." The transcript is referred to as "Tr. _."

amount of hair coat loss, skin irritation, and weight loss. Inspector Fox stated in his report that Apollo needed to be seen for evaluation and treatment of these conditions, but, according to Respondents' records, Apollo had not been seen by a veterinarian since July 6, 2006. (CX 38 at 1; R 6 at 6.) My finding that Respondents failed to provide veterinary care to Apollo, on February 23, 2007, is consistent with Inspector Fox's report of his observations (CX 38 at 1; R 6 at 6); therefore, I reject Respondents' contention that my conclusion that Respondents violated 9 C.F.R. § 2.40(b)(2) on February 23, 2007, is not supported by any evidence.

Seventh, Respondents contend the recording of two telephone conversations between Marcus Cook and Dr. Daniel Jones in March 2007, which are contained on a compact disc (R 13), should not have been excluded (Respondents' Pet. to Reconsider at 28-31).

I did not exclude the recording of the March 2007 telephone conversations but, instead, found the ALJ's exclusion harmless error. *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), __ Agric. Dec. ___, slip op. at 35-36 (July 27, 2009).

Eighth, Respondents assert "there are no set standards for the public to be able to touch tiger and lion cubs, etc."[;] therefore, my findings that Respondents violated

9 C.F.R. § 2.131(b)(1) (2004) and 9 C.F.R. 2.131(c)(1)[3] are error (Respondents' Pet. to Reconsider at 31-38).

The Regulations (9 C.F.R. § 2.131(b)(1) (2004) and 9 C.F.R. § 2.131(c)(1) (2005)) require Respondents to handle any animal, during public exhibition, so there is minimal risk of harm to the animal and to the public, with sufficient distance or barriers or distance and barriers between the animal and the general viewing public so as to assure the safety of the animal and the public. I have long held that 9 C.F.R. § 2.131(b)(1) (2004) and 9 C.F.R. § 2.131(c)(1) (2005) provide adequate notice of the manner in which an Animal Welfare Act licensee is required to handle animals during public exhibition.[4] Moreover, given the facts of the instant proceeding, Respondents should have known, even without specific engineering standards setting forth exact distance and barrier requirements, that they were in violation of 9 C.F.R. § 2.131(b)(1) (2004) or 9 C.F.R. § 2.131(c)(1) (2005) on six occasions. On three of these six occasions, Respondents exhibited tigers with no distance or barriers between the tigers and the general viewing public (CX 19, CX 19F at 7-19, CX 24 at 1-47, CX 35; Tr. 137-48, 723-29, 1569) and on one occasion, Respondents exhibited a lion with no distance or barriers between the lion

---

[3]Effective August 13, 2004, 9 C.F.R. § 2.131(a), (b), (c), and (d) were redesignated 9 C.F.R. § 2.131(b), (c), (d), and (e) respectively. (See 69 Fed. Reg. 42,089-42,102 (July 14, 2004).) Therefore, prior to August 13, 2004, "9 C.F.R. § 2.131(c)" was designated as "9 C.F.R. § 2.131(b)."

[4]See *In re The International Siberian Tiger Foundation* (Decision as to The International Siberian Tiger Foundation, Diana Cziraky, The Siberian Tiger Foundation, and Tiger Lady), 61 Agric. Dec. 53, 77-78 (2002).

and the general viewing public (CX 27; Tr. 48-54). Given the size, quickness, strength, and nature of lions and tigers, Respondents should have known that some distance or barrier between Respondents' tigers and lion and the general viewing public was necessary to assure the safety of Respondents' animals and the public.

On each of the other two occasions in which Respondents violated 9 C.F.R. § 2.131(b)(1) (2004), Respondents did provide a barrier between their animals and the general viewing public; namely, Respondents exhibited tigers that were caged. However, in one of these instances, Respondents photographed spectators while the spectators hand-fed meat to a tiger through the bars of the tiger's cage (CX 24 at 1, 47-56). In the other instance, Respondents photographed spectators while the spectators fed a tiger meat on a short stick that the spectators pressed through the bars of the tiger's cage (CX 28, CX 28A; Tr. 918-20). While a cage constitutes a barrier between Respondents' tigers and the general viewing public, given the size, quickness, strength, and nature of tigers, Respondents should have known that allowing the general viewing public to feed his tigers by hand and by use of a short stick almost completely negated the protective effect of the barrier and, under the circumstances, the cage was not sufficient to assure the safety of Respondents' animals and the public.

Ninth, Respondents contend revocation of ZooCats, Inc.'s Animal Welfare Act license is not consistent with sanctions imposed on other licensees after incidents resulting in animal and human death or injury. Respondents assert the Secretary of

Agriculture's imposition of disparate sanctions demonstrates "a selective enforcement practice." (Respondents' Pet. to Reconsider at 38-54.)

Even if revocation of ZooCats, Inc.'s Animal Welfare Act license were a more severe sanction than the sanctions imposed in other similar cases, the revocation of ZooCats, Inc.'s Animal Welfare Act license would not be rendered invalid. A sanction by an administrative agency is not rendered invalid in a particular case merely because it is more severe than sanctions imposed in other cases. The Secretary of Agriculture has broad authority to fashion appropriate sanctions under the Animal Welfare Act.[5]

As for Respondents' contention that the Secretary of Agriculture engages in "a selective enforcement practice," Respondents bear the burden of proving they are the target of selective enforcement. One claiming selective enforcement must demonstrate that the enforcement policy had a discriminatory effect and that it was motivated by a discriminatory purpose.[6] In order to prove a selective enforcement claim, Respondents must show one of two sets of circumstances. Respondents must show: (1) membership in a protected group; (2) prosecution; (3) that others in a similar situation, not members of the protected group, would not be prosecuted; and (4) that the prosecution was initiated

---

[5]*In re Cheryl Morgan*, 65 Agric. Dec. 849, 874-75 (2006); *In re Volpe Vito, Inc.*, 56 Agric. Dec. 166, 257 (1997), *aff'd*, 172 F.3d 51 (Table), 1999 WL 16562 (6th Cir. 1999) (not to be cited as precedent under 6th Circuit Rule 206), *printed in* 58 Agric Dec. 85 (1999).

[6]*United States v. Armstrong*, 517 U.S. 456, 465 (1996); *Wayte v. United States*, 470 U.S. 598, 608 (1985).

with discriminatory intent.[7] Respondents have not shown that they are members of a protected group, that no disciplinary proceeding would be instituted against others in a similar situation that are not members of the protected group, or that the instant proceeding was initiated with discriminatory intent. In the alternative, Respondents must show: (1) they exercised a protected right; (2) the Administrator's stake in the exercise of that protected right; (3) the unreasonableness of the Administrator's conduct; and (4) that this disciplinary proceeding was initiated with intent to punish Respondents for exercise of the protected right.[8] Respondents have not shown any of these circumstances.

Administrator's Petition to Reconsider

The Administrator raises three issues in "Complainant's Petition for Reconsideration" [hereinafter Administrator's Petition to Reconsider]. First, the Administrator contends I erroneously found the ALJ's exclusion of the recording of two March 2007 telephone conversations between Marcus Cook and Dr. Daniel Jones, which are contained on a compact disc (R 13), was harmless error. The Administrator asserts the recording should have been excluded because the recording is not the sort of evidence

---

[7]*See Futernick v. Sumpter Twp.*, 78 F.3d 1051, 1056 n.7 (6th Cir.), *cert. denied sub nom. Futernick v. Caterino*, 519 U.S. 928 (1996); *United States v. Anderson*, 923 F.2d 450, 453 (6th Cir.), *cert. denied*, 499 U.S. 980 (1991) and *cert. denied sub nom. McNeil v. United States*, 500 U.S. 936 (1991).

[8]*See Futernick v. Sumpter Twp.*, 78 F.3d 1051, 1056 n.7 (6th Cir.), *cert. denied sub nom. Futernick v. Caterino*, 519 U.S. 928 (1996); *United States v. Anderson*, 923 F.2d 450, 453-54 (6th Cir.), *cert. denied*, 499 U.S. 980 (1991) and *cert. denied sub nom. McNeil v. United States*, 500 U.S. 936 (1991).

upon which responsible persons are accustomed to rely. (Administrator's Pet. to Reconsider at 4-6.)

The Administrative Procedure Act imposes few restrictions on the admissibility of evidence in administrative proceedings. "Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence." (5 U.S.C. § 556(d).) The Rules of Practice equally favor admitting evidence. "Evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely, shall be excluded insofar as practicable." (7 C.F.R. § 1.141(h)(1)(iv).) The courts have long held that administrative fora are not bound by the strict evidentiary limitations found in judicial proceedings.[9] Over 60 years ago, the United States Court of Appeals for the Second Circuit discussed the preference for admitting evidence in administrative proceedings.

> Even in criminal trials to a jury it is better, nine times out of ten, to admit, than to exclude, evidence and in such proceedings as these the only conceivable interest that can suffer by admitting any evidence is the time lost, which is seldom as much as that inevitably lost by idle bickering about irrelevancy or incompetence. In the case at bar it chances that no injustice was done, but we take this occasion to point out the danger always involved in conducting such a proceeding in such a spirit, and the absence of any

---

[9] *Consolidated Edison Co. v. NLRB,* 305 U.S. 197, 229-30 (1938); *Tagg Bros. & Moorehead v. United States*, 280 U.S. 420, 442 (1930); *United States v. Abilene & Southern Ry. Co.*, 265 U.S. 274, 288 (1924); *ICC v. Louisville & Nashville R. Co.*, 227 U.S. 88, 93 (1913); *ICC v. Baird*, 194 U.S. 25, 44 (1904).

> advantage in depriving either the Commission or ourselves of all evidence which can conceivably throw any light upon the controversy.

Samuel H. Moss, Inc. v. FTC, 148 F.2d 378, 380 (2d Cir.) (per curiam), *cert. denied*, 326 U.S. 734 (1945). Still today, the preference in administrative proceedings is for admitting all evidence that is not irrelevant, immaterial, or unduly repetitious.

Considering the few restrictions on admissibility imposed by the Administrative Procedure Act and the Rules of Practice, as well as the recognition by the judiciary that admissibility of evidence in administrative proceedings is favored over exclusion, I conclude the recording should have been admitted. However, even though I found the exclusion of the recording erroneous, I found the exclusion harmless error.

Second, the Administrator asserts I erroneously failed to include the ALJ's discussion of Mr. Cook's background in *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), __ Agric. Dec. ___ (July 27, 2009) (Administrator's Pet. to Reconsider at 6-11).

Even if I were to make findings regarding Mr. Cook's background, those findings would not affect the disposition of the instant proceeding. Therefore, I reject the Administrator's contention that my failure to adopt the ALJ's discussion of Mr. Cook's background, is error.

Third, the Administrator contends I erroneously failed to adopt a portion of the cease and desist order issued by the ALJ, which provides, as follows:

> It is also specifically ORDERED that the above-named respondents shall cease and desist from publicly exhibiting any lion or tiger, including a cub or a juvenile, unless the animal is contained inside a suitable primary enclosure with any needed secondary barrier such as a perimeter fence sufficiently distanced from the primary enclosure in conformity with the requirements of 7 C.F.R. § 3.127(d) that may be varied only when appropriate alternative security measures are approved in writing by the Administrator of APHIS, so as to completely preclude any member of the public from touching or coming into contact with any part of the animal. To fully effectuate this provision, special attention shall be given to the safety of children to eliminate any contact between them and the animals, their teeth, claws, fur or feces. (ALJ's Decision and Order at 16.)

Administrator's Pet. to Reconsider at 11-25.

A cease and desist order must bear a reasonable relation to the unlawful practice found to exist.[10] I did not conclude that Respondents violated 9 C.F.R. § 3.127(d);[11] therefore, I did not adopt the ALJ's order requiring Respondents to conform to the requirements of 9 C.F.R. § 3.127(d). Moreover, as stated in *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), __ Agric. Dec. ___, slip op. at 37-39 (July 27, 2009), the record does not support my adoption of this provision of the ALJ's cease and desist order.

---

[10]*FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 394-95 (1965); *FTC v. National Lead Co.*, 352 U.S. 419, 429 (1957); *Jacob Siegel Co. v. FTC*, 327 U.S. 608, 613 (1946); *Excel Corp. v. U.S. Dep't of Agric.*, 397 F.3d 1285, 1298 (10th Cir. 2005); *Standard Oil Co. v. FTC*, 577 F.2d 653, 662 (9th Cir. 1978); *Spiegel, Inc. v. FTC*, 411 F.2d 481, 484-85 (7th Cir. 1969); *Swift & Co. v. United States*, 317 F.2d 53, 56 (7th Cir. 1963); *Gellman v. FTC*, 290 F.2d 666, 670-71 (8th Cir. 1961).

[11]The ALJ orders Respondents to conform to the requirements of "7 C.F.R. § 3.127(d)." Based on the record before me, I infer the ALJ's citation is error and the ALJ intended to order Respondents to conform to the requirements of "9 C.F.R. § 3.127(d)."

For the foregoing reasons and the reasons set forth in *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), __ Agric. Dec. ___ (July 27, 2009), Respondents' Petition to Reconsider and the Administrator's Petition to Reconsider are denied.

Section 1.146(b) of the Rules of Practice (7 C.F.R. § 1.146(b)) provides that the decision of the Judicial Officer shall automatically be stayed pending the determination to grant or deny a timely-filed petition to reconsider. Respondents' Petition to Reconsider and the Administrator's Petition to Reconsider were timely filed and automatically stayed *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), __ Agric. Dec. ___ (July 27, 2009). Therefore, since Respondents' Petition to Reconsider and the Administrator's Petition to Reconsider are denied, I hereby lift the automatic stay, and the Order in *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), __ Agric. Dec. ___ (July 27, 2009), is reinstated; except that the effective date of the Order is the date indicated in the Order in this Order Denying Respondents' Petition to Reconsider and Administrator's Petition to Reconsider.

For the foregoing reasons, the following Order is issued.

ORDER

1. ZooCats, Inc., Marcus Cook, and Melissa Coody, 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 and, in particular, shall cease and desist from:

(a) failing to handle animals as expeditiously and carefully as possible in a manner that does not cause the animals trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort;

(b) using physical abuse to train, work, or otherwise handle animals;

(c) failing, during public exhibition, to handle animals so there is minimal risk of harm to the animals and the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of the animals and the public;

(d) failing to remove excreta from primary enclosures as often as necessary to prevent the contamination of animals contained in the enclosures;

(e) utilizing an insufficient number of adequately-trained employees to maintain a professionally acceptable level of husbandry practices;

(f) failing to provide a suitable method to rapidly eliminate excess water from enclosures housing animals;

(g) failing to provide food that is wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain the good health of animals;

(h) failing to feed animals at least once a day, except as dictated by hibernation, veterinary treatment, normal fasts, or other professionally accepted practices;

(i) failing to have an attending veterinarian evaluate the diet plan for each animal, the amount of food necessary for each animal, and the food supplements necessary for each animal;

(j) failing to follow the prescribed dietary recommendations of Respondents' attending veterinarian;

(k) failing to establish and maintain a program of adequate veterinary care that includes the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries; and

(l) failing to have formal arrangements for regularly scheduled veterinary visits to Respondents' premises.

Paragraph 1 of this Order shall become effective 1 day after service of this Order on Respondents.

2. Animal Welfare Act license number 74-C-0426 issued to ZooCats, Inc., is permanently revoked.

Paragraph 2 of this Order shall become effective 60 days after service of this Order on ZooCats, Inc.

RIGHT TO JUDICIAL REVIEW

ZooCats, Inc., Marcus Cook, and Melissa Coody have the right to seek judicial review of the Order in this Order Denying Respondents' Petition to Reconsider and Administrator's Petition to Reconsider in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. ZooCats, Inc., Marcus Cook, and Melissa Coody must seek judicial review within 60 days after entry of the Order in this Order Denying Respondents' Petition to Reconsider and Administrator's Petition to Reconsider.[12] The date of entry of the Order in this Order Denying Respondents' Petition to Reconsider and Administrator's Petition to Reconsider is December 14, 2009.

Done at Washington, DC

December 14, 2009

_____

William G. Jenson
Judicial Officer

[12] 7 U.S.C. § 2149(c).