SUMMARY OF MAJOR DECISION BY THE JUDICIAL OFFICER

Fiscal Year 2010

In *In re Meadowbrook Farms Cooperative* (Order Denying Appeal Petition), P&S Docket No. D-09-0097, decided by the Judicial Officer on October 5, 2009, the Judicial Officer denied an appeal petition filed by the Trustee of the Chapter 7 Bankruptcy Estate of Meadowbrook Farms Cooperative on the ground that the Trustee was not a party in the proceeding. The Rules of Practice provide that only a party in a proceeding may appeal the administrative law judge's decision (7 C.F.R. § 1.145(a)). The Judicial Officer rejected the Trustee's argument that 7 U.S.C. § 193 allows intervention, stating the Rules of Practice make no provision for intervention in a disciplinary proceeding, which is a matter solely between the respondent (Meadowbrook Farms Cooperative) and the complainant (the Deputy Administrator).

In *In re Sam Mazzola* (Ruling Regarding Transcript Request), AWA Docket No. 06-0010 and AWA Docket No. D-07-0064, decided by the Judicial Officer on October 7, 2009, the Judicial Officer denied Mr. Mazzola's request for a copy of the transcript of the hearing conducted in the proceeding at no cost to him. The Judicial Officer found that providing a copy of the transcript to Mr. Mazzola at no cost would be a breach of the contract between the Office of the Hearing Clerk and Neal R. Gross Court Reporters and Transcribers. Mr. Mazzola could, however, obtain a copy of the transcript at a cost of 20 cents per page or $5.85 per CD.

In *In re D&H Pet Farms, Inc.*, AWA Docket No. 07-0083, decided by the Judicial Officer on October 19, 2009, the Judicial Officer concluded that the respondent repeatedly violated the Animal Welfare Act and the Regulations during the period October 12, 2005, through January 25, 2007. The Judicial Officer rejected the respondent's contention that its violations were not willful, stating that a willful violation is a violation in which the violator does an act intentionally or acts with careless disregard of statutory requirements. The Judicial Officer issued a cease and desist order against the respondent, suspended the respondent's Animal Welfare Act license for 3 years, and assessed the respondent a $10,000 civil penalty.

In *In re Sam Mazzola*, AWA Docket No. 06-0010 and AWA Docket No. D-07-0064, decided by the Judicial Officer on November 24, 2009, the Judicial Officer concluded that Mr. Mazzola willfully violated the Animal Welfare Act and the Regulations. The Judicial Officer ordered Mr. Mazzola to cease and desist his violations of the Animal Welfare Act and the Regulations, revoked Mr. Mazzola's Animal Welfare Act license, permanently disqualified Mr. Mazzola from obtaining an Animal Welfare Act license, and assessed Mr. Mazzola a $21,000 civil penalty. The Judicial Officer rejected Mr. Mazzola's contention that he did not operate as an "exhibitor" in those situations in which he was not compensated. The Judicial Officer, citing *In re James Petersen*, 53 Agric. Dec. 80, 90-91 (1994), stated compensation was irrelevant because Mr. Mazzola's exhibition also met the definition of the term "zoo" in 7 U.S.C. § 2132(h) and 9 C.F.R. § 1.1. The Judicial Officer also rejected Mr. Mazzola's defense that his violations of the Animal Welfare Act and the Regulations were caused by erroneous advice from a federal employee, stating a respondent acts at his peril if he relies on erroneous advice from a federal employee. The Judicial Officer rejected Mr. Mazzola's contention that he did not refuse

inspection, in violation of 9 C.F.R. § 2.126(a), because he was willing to allow inspection by an inspector, other than the APHIS inspector who attempted to inspect his facility.

In *In re Kathy Jo Bauck*, AWA Docket No. D-09-0139, decided by the Judicial Officer on December 2, 2009, the Judicial Officer terminated Ms. Bauck's Animal Welfare Act license and disqualified Ms. Bauck from becoming licensed for a period of 2 years based upon Ms. Bauck's having been found guilty of practicing veterinary medicine without a veterinary license and animal torture in violation of Minnesota Statutes §§ 156.10 and 343.21. The Judicial Officer rejected Ms. Bauck's contention that she was entitled to a hearing, stating summary judgment is appropriate in cases involving the termination of an Animal Welfare Act license based upon prior criminal conviction. The Judicial Officer rejected Ms. Bauck's contention that the Administrator must conduct an investigation, as required by 7 C.F.R. § 1.133(a)(3), before instituting the proceeding. The Judicial Officer held the proceeding was instituted pursuant to 7 C.F.R. § 1.133(b), which does not require a prior investigation. The Judicial Officer held that, as Ms. Bauck's violations were willful, the Administrator was not required to provide her with prior written notice of the facts and an opportunity to demonstrate or achieve compliance, as provided in 5 U.S.C. § 558(c) and 7 C.F.R. § 1.133(b)(3). The Judicial Officer rejected Ms. Bauck's contention that the Administrator violated her Sixth Amendment right to a speedy and public trial, stating the proceeding is not a criminal prosecution and the Sixth Amendment is only applicable to criminal proceedings. The Judicial Officer also rejected Ms. Bauck's contention that the Administrator violated the due process clause of the Fourteenth Amendment, stating the Fourteenth Amendment is applicable to the states, not the federal government. The Judicial Officer rejected Ms. Bauck's contention that 9 C.F.R. § 2.11(a)(6) is an unlawful delegation of authority to the states and local governments because it provides that an Animal Welfare Act license can be terminated if a licensee violates state and local laws. The Judicial Officer held that 9 C.F.R. § 2.11(a)(6) is consistent with 7 U.S.C. § 2145(b), which authorizes the Secretary of Agriculture to cooperate with state and local governments in carrying out the Animal Welfare Act. The Judicial Officer also rejected Ms. Bauck's contention that 9 C.F.R. § 2.11(a)(6) is unconstitutionally void for vagueness.

In *In re ZooCats, Inc.* (Order Denying Respondents' Pet. to Reconsider and Administrator's Pet. to Reconsider), AWA Docket No. 03-0035, decided by the Judicial Officer on December 14, 2009, the Judicial Officer held that arguments raised for the first time on appeal would not be considered. The Judicial Officer rejected the respondents' argument that they operated a "research facility," as that term is defined in 7 U.S.C. § 2132(e) and 9 C.F.R. § 1.1. The Judicial Officer held that revocation of ZooCats' Animal Welfare Act license was justified by the facts and the respondents failed to prove that the Secretary of Agriculture engaged in selective enforcement. The Judicial Officer, citing *Samuel H. Moss, Inc. v. FTC*, 148 F.2d 378, 380 (2d Cir.) (per curiam), *cert. denied*, 326 U.S. 734 (1945), found that the Administrative Law Judge's exclusion of the recording of two telephone conversations, was error. The Judicial Officer rejected the Administrator's contention that the failure to make findings regarding the background of one of the respondents, was error. The Judicial Officer also rejected the Administrator's contention that the failure to include an order that the respondents conform to

9 C.F.R. § 3.127(d), was error. The Judicial Officer stated he did not conclude that the respondents violated 9 C.F.R. § 3.127(d) and a cease and desist order must bear a reasonable relation to the unlawful practice found to exist.

In *In re David L. Noble* (Order Denying Late Appeal), A.Q. Docket No. 09-0033, decided by the Judicial Officer on December 17, 2009, the Judicial Officer denied Mr. Noble's appeal petition filed 1 day after the Administrative Law Judge's decision became final. The Judicial Officer held that, under the Rules of Practice, the Judicial Officer has no jurisdiction to hear an appeal that is filed after an administrative law judge's decision becomes final.

In *In re Lion Raisins, Inc.* (Order Denying Pet. to Reconsider as to Lion Raisins, Inc.; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion), I & G Docket No. 04-0001, decided by the Judicial Officer on January 6, 2010, the Judicial Officer rejected the respondents' contention that the Secretary of Agriculture lacks authority to debar the respondents from raisin inspections. The Judicial Officer stated the Secretary of Agriculture's debarment regulations (7 C.F.R. § 52.54) establish a means to maintain public confidence in the integrity and reliability of the processed products inspection service the Secretary is directed and authorized by the Agricultural Marketing Act to administer and the Secretary of Agriculture's debarment authority has been upheld in *American Raisin Packers, Inc. v. U.S. Dep't of Agric.*, 66 F. App'x 706 (9th Cir. 2003), and *West v. Bergland*, 611 F.2d 710 (8th Cir. 1979), *cert. denied*, 449 U.S. 821 (1980). The Judicial Officer also rejected the respondents' contention that debarment from inspection services under the Agricultural Marketing Act constitutes withdrawal of a license and the Administrative Procedure Act (5 U.S.C. § 558(c)) requires the Administrator to provide the respondents with notice of the conduct which may warrant withdrawal of the license and an opportunity to demonstrate or achieve compliance. The Judicial Officer stated inspection and grading services are not "licenses" as defined in the Administrative Procedure Act (5 U.S.C. § 551(8)), but rather services performed by the United States Department of Agriculture. The Judicial Officer rejected the respondents' contention that nonprocurement debarment and suspension regulations (7 C.F.R. pt. 3017) repealed the debarment authority in 7 C.F. R. § 52.54. Citing 7 C.F.R. § 3017.215(m), the Judicial Officer stated the nonprocurement debarment and suspension regulations cited by the respondents do not apply to 16 types of nonprocurement transactions, including the inspection services from which the respondents are debarred.

In *In re Ronald Walker*, A.Q. Docket No. 07-0131, decided by the Judicial Officer on January 13, 2010, the Judicial Officer found that the respondents' introduction of reindeer onto the respondents' elk breeding premises violated the respondents' agreement with APHIS and the Control of Chronic Wasting Disease regulations (9 C.F.R. pt. 55). The Judicial Officer assessed the respondents an $80,000 civil penalty.

In *In re David L. Noble* (Order Denying Motion for Reconsideration), A.Q. Docket No. 09-0033, decided by the Judicial Officer on January 20, 2010, the Judicial Officer denied Mr. Noble's Motion for Reconsideration, as it was not filed within the time required by 7 C.F.R. § 1.146(a)(3).

In *In re Timothy Mays* (Order Denying Late Appeal), FCIA Docket No. 08-0153, decided by the Judicial Officer on February 5, 2010, the Judicial Officer denied Mr. Mays' appeal petition filed 7 days after the Administrative Law Judge's decision became final. The Judicial Officer held that, under the Rules of Practice, the Judicial Officer has no jurisdiction to hear an appeal that is filed after an administrative law judge's decision becomes final.

In *In re Lion Raisins, Inc.* (Rulings Denying the Lions' July 27, 2009, Motion for Consolidation and Petition to Reopen or, in the Alternative, Petition for Rehearing), I&G Docket No. 01-0001, decided by the Judicial Officer on March 5, 2010, the Judicial Officer denied the respondents' request to consolidate the proceeding with *In re Bruce Lion*, I&G Docket No. 03-0001, and *In re Lion Raisins, Inc.*, I&G Docket No. 04-0001, stating *In re Lion Raisins, Inc.*, I&G Docket No. 04-0001, had been appealed to the United States District Court for the Eastern District of California and the Judicial Officer had no jurisdiction to consolidate *In re Lion Raisins, Inc.*, I&G Docket No. 04-0001, with the proceeding. As for *In re Bruce Lion*, I&G Docket No. 03-0001, the Judicial Officer declined to consolidate it with the proceeding because consolidation would delay the proceeding. The Judicial Officer also declined to reopen the proceeding to take further evidence because the purpose of the respondents' petition to reopen appeared to be to present evidence that was merely cumulative. The Judicial Officer denied the respondents' motion to rehear because it was filed before the issuance of the Judicial Officer's decision and, therefore, pursuant to 7 C.F.R. § 1.146(a)(3), premature.

In *In re Kimberly Copher Back*, HPA Docket No. 08-0007, decided by the Judicial Officer on March 17, 2010, the Judicial concluded that Ms. Back showed a horse, while the horse was sore, in violation of 15 U.S.C. § 1824(2)(A), and Mr. Evans entered a horse for the purpose of showing the horse, while the horse was sore, in violation of 15 U.S.C. § 1824(2)(B). The Judicial Officer assessed Ms. Back and Mr. Evans each a $2,000 civil penalty and disqualified them from showing, exhibiting, or entering any horse in a horse show, horse exhibition, horse sale, or horse auction for a period of 1 year. The Judicial Officer, citing *United States v. Summerlin*, 310 U.S. 414, 416 (1940), rejected the respondents' contention that the United States was bound by any state statute of limitations. Similarly, the Judicial Officer held the respondents' federal statute of limitations argument was without merit, as the complaint was brought well within the 5 years set forth in 28 U.S.C. § 2462. The Judicial Officer, citing *In re Jackie McConnell*, 64 Agric. Dec. 436 (2005), *aff'd*, 198 F. App'x 417 (6th Cir. 2006), rejected the respondents' contention that the Administrator was estopped from bringing the case against the respondents. The Judicial Officer also rejected the respondents' contention that the Administrator had to prove intent to sore, stating, in 1976, Congress significantly strengthened the Horse Protection Act by amending it to make clear that intent to sore a horse is not a necessary element of a violation. The Judicial Officer held that the USDA veterinarians' expertise to determine whether a horse is "sore" was not negatively impacted by their failure to maintain licenses to practice veterinary medicine. The Judicial Officer also stated the challenge to the use of digital palpation for detecting sore horses was unavailing, as various United States Courts of Appeals had upheld his findings that digital palpation is an appropriate method for determining whether a horse is "sore" under the Horse Protection Act.

In *In re Sam Mazzola* (Order Denying Petition for Reconsideration and Ruling Denying Motion for Oral Argument), AWA Docket No. 06-0010 and AWA Docket No. D-07-0064, decided by the Judicial Officer on March 29, 2010, the Judicial Officer, citing evidence in the record, rejected Mr. Mazzola's contention that APHIS had not notified him that his application for an Animal Welfare Act license had been rejected. The Judicial Officer held that, pursuant to 9 C.F.R. § 2.5(d), Mr. Mazzola could not transfer his Animal Welfare Act license from one person, a corporation, to another person, an individual. The Judicial Officer, citing *In re Eric Drogosch*, 63 Agric. Dec. 623, 648-49 (2004), rejected Mr. Mazzola's argument that an Animal Welfare Act license cannot be revoked if a valid license does not already exist.

In *In re Mildred Porter*, FCIA Docket No. 09-0120, decided by the Judicial Officer on April 7, 2010, the Judicial Officer affirmed the Administrative Law Judge's decision. The Judicial Officer rejected Ms. Porter's contention that the ALJ's decision was not based upon the facts presented at hearing and was not based upon the law and procedures applicable to proceedings conducted under 7 U.S.C. § 1515(h) and 7 C.F.R. §§ 400.451-.458.

In *In re Brian Karl Turner* (Remand Order), AWA Docket No. 09-0128, decided by the Judicial Officer on April 7, 2010, the Judicial Officer found that the Administrative Law Judge's decision concluding that Mr. Turner had failed to file a timely response to the Administrator's motion for summary judgment was error; therefore, the Judicial Officer vacated the ALJ's decision and remanded the proceeding to the ALJ for consideration of Mr. Turner's timely response to the Administrator's motion for summary judgment.

In *In re Pine Lake Enterprises, Inc.*, AWA Docket No. D-10-0014, decided by the Judicial Officer on April 8, 2010, the Judicial Officer affirmed APHIS' denial of Pine Lake Enterprises, Inc.'s application for an Animal Welfare Act license. The Judicial Officer concluded that Pine Lake Enterprises, Inc., was a successor entity of entities operated by Kathy Jo Bauck, who had previously been found unfit to be licensed under the Animal Welfare Act. The Judicial Officer concluded, therefore, that issuance of an Animal Welfare Act license to Pine Lake Enterprises, Inc., would circumvent the Judicial Officer's previous order as to Kathy Jo Bauck. The Judicial Officer rejected Pine Lake Enterprises, Inc.'s contention that summary judgment was not appropriate, stating oral hearings are unnecessary in proceedings in which there is no factual dispute of substance.

In *In re Jamie Michelle Palazzo*, AWA Docket No. 07-0207, decided by the Judicial Officer on May 10, 2010, the Judicial Officer concluded that Ms. Palazzo and James Lee Riggs willfully violated the Animal Welfare Act by failing to make, keep, and maintain records, in violation of 9 C.F.R. § 2.75(b), failing to handle a tiger as carefully as possible, in violation of 9 C.F.R. § 2.131(b)(1), and failing to have sufficient barriers and/or distance between the public and the animals, in violation of 9 C.F.R. § 2.131(c)(1). The Judicial Officer ordered Ms. Palazzo and Mr. Riggs to cease and desist violations of the Animal Welfare Act and the Regulations, suspended Ms. Palazzo's Animal Welfare Act license for 3 years, and assessed Mr. Riggs a $10,000 civil penalty.

In *In re Roy Joseph Simon* (Order Denying Late Appeal), A.Q. Docket No. 07-0103, decided by the Judicial Officer on June 23, 2010, the Judicial Officer denied Administrator's appeal petition filed with the Hearing Clerk 32 days after the Administrator received service of the Chief Administrative Law Judge's written decision. The Judicial Officer held that, under the Rules of Practice (7 C.F.R. § 1.145(a)), the Administrator was required to file his appeal petition with the Hearing Clerk no later than 30 days after the Administrator received service of the Chief ALJ's written decision.

In *In re Susan Biery Sergojan* (Order Denying Late Appeal), AWA Docket No. 07-0119, decided by the Judicial Officer on June 30, 2010, the Judicial Officer denied Ms. Sergojan's appeal petition filed with the Hearing Clerk 1 day after the time for filing her appeal petition had expired.

In *In re Pets Calvert Co.*, PACA Docket No. D-09-0045, decided by the Judicial Officer on July 9, 2010, the Judicial Officer, based upon admissions, concluded that Pets Calvert Co. failed to make full payment promptly of the agreed purchase prices for perishable agricultural commodities that Pets Calvert Co. purchased, received, and accepted in interstate commerce, in willful violation of 7 U.S.C. § 499b(4). The Judicial Officer revoked Pets Calvert Co.'s PACA license. The Judicial Officer rejected Pets Calvert Co.'s arguments that economic conditions and the detrimental effects on creditors should be taken into account when determining the sanction to be imposed for violations of the PACA.

In *In re Martine Colette* (Order Denying Administrator's Petition to Reconsider), AWA Docket No. 03-0034, decided by the Judicial Officer on July 9, 2010, the Judicial Officer held the Administrator failed to prove, except on two occasions, that Ms. Colette exhibited animals while her Animal Welfare Act license was suspended, in violation of 9 C.F.R. § 2.10(c). The Judicial Officer also found that the Administrator failed to prove that Ms. Colette interfered with, threatened, abused, or harassed APHIS officials, in violation of 9 C.F.R. § 2.4.

In *In re Susan Biery Sergojan* (Order Denying Petition to Reconsider), AWA Docket No. 07-0119, decided by the Judicial Officer on August 3, 2010, the Judicial Officer denied Ms. Sergojan's petition to reconsider because it was not filed within 10 days after the date of service of the Judicial Officer's decision, as required by 7 C.F.R. § 1.146(a)(3).

In *In re American Dried Fruit Co.*, AMA Docket No. FV-10-0170, decided by the Judicial Officer on August 20, 2010, the Judicial Officer concluded that USDA's interpretation of the Raisin Order as requiring that only a handler may apply for, and obtain, inspection and certification of raisins pursuant to 7 C.F.R. §§ 989.58(d)(1) and 989.59(d) is lawful. The Judicial Officer held that American Dried Fruit Co. had not met its burden of proof that USDA's construction of 7 C.F.R. §§ 989.58(d)(1) and 989.59(d) is unlawful.

In *In re Nichinghsiang Fish Farm*, P.Q. Docket No. 09-0141, decided by the Judicial Officer on August 24, 2010, the Judicial Officer held Nichinghsiang Fish Farm's failure to file a timely answer to the complaint is deemed an admission of the allegations in the complaint and a

waiver of hearing. The Judicial Officer concluded that Nichinghsiang Fish Farm imported 13 2-kg bags of *Ipomoea aquatica* seeds into the United States without a permit, in violation of 7 C.F.R. § 360.300(a)(1) and assessed Nichinghsiang Fish Farm a $20,000 civil penalty. The Judicial Officer rejected Nichinghsiang Fish Farm's contention that it was not properly served with the complaint and held that the disruption to the operation of Nichinghsiang Fish Farm caused by the death of Nichinghsiang Fish Farm's founder and key manager 1 year 2 months prior to the date Nichinghsiang Fish Farm was required to answer the complaint, was not a basis for setting aside the Chief Administrative Law Judge's Default Decision and Order.

In *In re Bridgeport Nature Center, Inc.* (Order Denying Late Appeal Regarding James Lee Riggs), AWA Docket No. 00-0032, decided by the Judicial Officer on September 14, 2010, the Judicial Officer denied the Administrator's appeal petition filed with the Hearing Clerk 2 days after the time for filing his appeal petition had expired.