SUMMARY OF MAJOR DECISIONS BY THE JUDICIAL OFFICER

Fiscal Year 2008

In *In re Octagon Sequence of Eight, Inc.* (Decision as to Lancelot Kollman Ramos), AWA Docket No. 05-0016, decided by the Judicial Officer on October 2, 2007, the Judicial Officer affirmed Administrative Law Judge Peter M. Davenport's (ALJ) decision concluding Lancelot Kollman Ramos violated the regulations and standards issued under the Animal Welfare Act. The Judicial Officer found Mr. Ramos failed to file an answer denying or otherwise responding to the allegations of the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), Mr. Ramos was deemed to have admitted the allegations of the Complaint and waived the opportunity for hearing. The Judicial Officer rejected Mr. Ramos' assertion that the ALJ should be reversed based on Mr. Ramos' hard work to change "things" "for the better" stating, while Mr. Ramos' hard work was commendable, it does not eliminate the fact that the violations occurred. The Judicial Officer also held Mr. Ramos' inability to pursue his chosen occupation without an Animal Welfare Act license is not a basis for reversing the ALJ's revocation of Mr. Ramos' Animal Welfare Act license stating, the Secretary of Agriculture is not compelled to allow individuals to retain Animal Welfare Act licenses merely because they desire to pursue an occupation for which an Animal Welfare Act license is necessary. The Judicial Officer further held the hardship revocation of Mr. Ramos' Animal Welfare Act license may cause Mr. Ramos and his family is not a basis for reversing the ALJ's revocation of Mr. Ramos' Animal Welfare Act license stating, collateral effects of revocation of an Animal Welfare Act license on a respondent or a respondent's family are not relevant to the revocation of an Animal Welfare Act license. The Judicial Officer also rejected Mr. Ramos' assertion that his love of animals should operate as a defense to his violations of the Animal Welfare Act and the Regulations and Standards. The Judicial Officer declined to address issues raised in Mr. Ramos' second appeal petition stating, the Rules of Practice (7 C.F.R. § 1.145(a)) provide only for a single appeal petition and Mr. Ramos had not requested an opportunity to supplement or amend his first appeal petition. The Judicial Officer issued a cease and desist order, assessed Mr. Ramos a $13,750 civil penalty, and revoked Mr. Ramos' Animal Welfare Act license.

In *In re Michael Claude Edwards* (Order Denying Late Appeal), P. & S. Docket No. D-06-0020, decided by the Judicial Officer on October 30, 2007, the Judicial Officer denied Michael Claude Edwards' appeal petition stating the Judicial Officer has no jurisdiction to hear Michael Claude Edwards' appeal petition filed 6 days after Administrative Law Judge Peter M. Davenport's decision had become final

In *In re Dane Fine*, P. & S. Docket No. D-07-0042, decided by the Judicial Officer on October 30, 2007, the Judicial Officer affirmed Administrative Law Judge Peter M. Davenport's (ALJ) decision concluding Dane Fine violated the Packers and Stockyards Act by purchasing livestock and failing to pay, when due, the full purchase price of the livestock. The Judicial Officer found Mr. Fine failed to file a timely answer to the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), Mr. Fine was deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. Mr. Fine asserted he was not served with the Complaint. The Judicial Officer rejected Mr. Fine's assertion stating the record contains a

United States Postal Service Domestic Return Receipt, which was attached to the envelope containing the Complaint, signed by Mr. Fine and indicating the United States Postal Service delivered the Complaint to Mr. Fine's mailing address. The Judicial Officer concluded Mr. Fine was served with the Complaint. The Judicial Officer ordered Mr. Fine to cease and desist from failing to pay, when due, the full purchase price of livestock and assessed Mr. Fine a $1,500 civil penalty.

In *In re Marilyn Shepherd*, AWA Docket No. 05-0005, decided by the Judicial Officer on November 29, 2007, the Judicial Officer affirmed Chief Administrative Law Judge Marc R. Hillson's decision concluding Marilyn Shepherd operated as a dealer without an Animal Welfare Act license in violation of the Animal Welfare Act (7 U.S.C. § 2134) and the Regulations (9 C.F.R. § 2.1). The Judicial Officer rejected Ms. Shepherd's contentions that she did not sell dogs in commerce and that the Animal Welfare Act is unconstitutional. The Judicial Officer ordered Ms. Shepherd to cease and desist from violating the Animal Welfare Act and the Regulations, assessed Ms. Shepherd a $52,000 civil penalty, and permanently disqualified Ms. Shepherd from becoming licensed under the Animal Welfare Act.

In *In re Octagon Sequence of Eight, Inc.* (Order Denying Petition for Rehearing as to Lancelot Kollman Ramos), AWA Docket No. 05-0016, decided by the Judicial Officer on December 13, 2007, the Judicial Officer denied a Petition for Rehearing filed by Lancelot Kollman Ramos. The Judicial Officer found no reasonable basis for Lancelot Kollman Ramos' ignorance of the provision in the Rules of Practice (7 C.F.R. § 1.136(c)) that a failure to deny or otherwise respond to an allegation in a complaint is deemed an admission of that allegation. The Judicial Officer rejected Lancelot Kollman Ramos' suggestion that his status as a pro se litigant operates as an excuse for his failure to deny or otherwise respond to the allegations in the Complaint. The Judicial Officer found that the record belied Lancelot Kollman Ramos' contention that he denied the allegations in the Complaint and raised meritorious defenses. Finally, the Judicial Officer rejected Lancelot Kollman Ramos' contentions that his July 30, 2007, filing was not a supernumerary, late-filed appeal petition and that he had been denied due process.

In *In re Suncoast Primate Sanctuary Foundation, Inc.* (Remand Order), AWA Docket No. D-05-0002, decided by the Judicial Officer on January 8, 2008, the Judicial Officer held that Suncoast Primate Sanctuary Foundation, Inc. (Suncoast), and The Chimp Farm, Inc., were not so intertwined that issuance of an Animal Welfare Act license to Suncoast would be tantamount to issuing an Animal Welfare Act license to The Chimp Farm, Inc., in contravention of the Order in *In re Anna Mae Noell*, 58 Agric. Dec. 130 (1999). The Judicial Officer remanded the matter to the Administrator of APHIS to review Suncoast's application for an Animal Welfare Act license and to determine if Suncoast meets the requirements of 7 U.S.C. § 2133 and 9 C.F.R. § 2.1(c).

In *In re Berry & Sons, Rababeh Islamic Slaughterhouse, Inc.*, P & S Docket No. D-07-0100, decided by the Judicial Officer on January 15, 2008, the Judicial Officer affirmed the Administrative Law Judge's Initial Decision concluding Berry & Sons, Rababeh Islamic Slaughterhouse, Inc. (Berry & Sons), willfully violated the Packers and Stockyards Act

(7 U.S.C. § 192(a)) and the Regulations (9 C.F.R. §§ 201.29 and 201.30) by engaging in business as a packer under the Packers and Stockyards Act without maintaining an adequate bond or bond equivalent. The Judicial Officer found Berry & Sons failed to file a timely answer to the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), 1.139), Berry & Sons was deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. Berry & Sons stated that during its 30 years in business it was not required to obtain a bond and, after being contacted by the Packers and Stockyards Program regarding the need to obtain a bond, Berry & Sons was under the belief that a bond was optional, not mandatory. The Judicial Officer found Berry & Sons' appeal petition merely explained its violation of the Packers and Stockyards Act and the Regulations and the explanation did not constitute a basis for setting aside or modifying the ALJ's decision.

In *In re Bridgeport Nature Center, Inc.* (Remand Order), AWA Docket No. 00-0032, decided by the Judicial Officer on January 18, 2008, the Judicial Officer remanded the case to the Administrative Law Judge to issue a complete decision addressing all of the issues in the proceeding. The Judicial Officer stated that, with exception of certified questions as provided for under the Rules of Practice (7 C.F.R. § 1.143(e)), he would only review cases that can result in a final appealable order.

In *In re Coastal Bend Zoological Association* (Decision as to Robert Brock and Michelle Brock), AWA Docket No. 04-0015, decided by the Judicial Officer on January 24, 2008, the Judicial Officer concluded the respondents acted as "dealers" as that term is defined in 7 U.S.C. § 2132 and 9 C.F.R. § 1.1, without an Animal Welfare Act license. The Judicial Officer, citing six factors to be examined before a corporate form can be ignored, which are listed in *In re Marysville Enterprises, Inc.*, 59 Agric. Dec. 299, 315 (2000), concluded that the Administrator failed to show that the respondents were the alter ego of Corpus Christi Zoological Association. However, the Judicial Officer held that the evidence supported a finding that the respondents were Corpus Christi Zoological Association's agents. The Judicial Officer ordered the respondents to cease and desist their violations of the Animal Welfare Act and the Regulations and Standards, assessed each of the respondents a $2,750 civil penalty, and disqualified the respondents from obtaining an Animal Welfare Act license for 10 years.

In *In re Marvin and Laura Horne* (Ruling Granting Administrator's Motion to Dismiss), 2007 AMA Docket No. F&V 989-0069, decided by the Judicial Officer on February 4, 2008, the Judicial Officer dismissed the petitioners' petition in which they sought a declaration that they are not subject to the Raisin Order (7 C.F.R. pt. 989) because they are raisin producers, not raisin handlers. The Judicial Officer, distinguishing the petitioners' circumstances from the facts in *Midway Farms v. U.S. Dep't of Agric.*, 188 F.3d 1136 (9th Cir. 1999), concluded the petitioners did not have standing to file a petition under 7 U.S.C. § 608c(15)(A).

In *In re Frank Craig and Jean Craig* (Order Denying Second Pet. to Reconsider), FMIA Docket No. 05-0002 and PPIA Docket No. 05-0003, decided by the Judicial Officer on April 2, 2008, the Judicial Officer stated, under the Rules of Practice (7 C.F.R. § 1.146(a)(3)), a petition to reconsider a decision of the Judicial Officer must be filed within 10 days after service of the

decision. The respondents filed a second petition to reconsider the Judicial Officer's decision in *In re Frank Craig and Jean Craig*, 66 Agric. Dec. 353 (2007), approximately 1 year after they were served with the decision. Accordingly, the respondents' second petition to reconsider must be denied.

In *In re Marvin and Laura Horne*, AMAA Docket No. 04-0002, decided by the Judicial Officer on April 11, 2008, the Judicial Officer concluded that the respondents violated the Raisin Order by: (1) submitting inaccurate forms to the Raisin Administrative Committee (7 C.F.R. § 989.73(b), (d)); (2) failing to obtain incoming inspections of California raisins (7 C.F.R. § 989.58(d)); (3) failing to hold raisins in reserve (7 C.F.R. §§ 989.6, 989.166); (4) failing to pay assessments to the Raisin Administrative Committee (7 C.F.R. § 989.80); and (5) failing to provide the United States Department of Agriculture with access to records (7 C.F.R. § 989.77). The Judicial Officer assessed the respondents a $202,600 civil penalty and ordered the respondents to pay the Raisin Administrative Committee $6,042.33 for owed assessments and $183,006.51 for the dollar equivalent of the California raisins that the respondents failed to hold in reserve.

In *In re David McCauley*, AWA Docket No. 06-0009, decided by the Judicial Officer on April 16, 2008, the Judicial Officer affirmed the Chief Administrative Law Judge's decision concluding that the respondent's transportation of a wallaby to the Guatemala National Zoo, when he did not possess an Animal Welfare Act license, was a willful violation of 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a)(1). The Judicial Officer found the Administrator's failure to provided a list of anticipated witnesses, a brief summary of anticipated witness testimony, and copies of exhibits intended to be introduced at the hearing, as he was ordered to do by the Chief ALJ, did not warrant dismissal of the case because the Chief ALJ had ensured that the respondent was provided ample opportunity to present his case. The Judicial Officer ordered the respondent to cease and desist from engaging in any activity for which an Animal Welfare Act license is required without being licensed and assessed the respondent a $2,000 civil penalty.

In *In re Frank Craig and Jean Craig* (Order Denying Third Pet. to Reconsider), FMIA Docket No. 05-0002 and PPIA Docket No. 05-0003, decided by the Judicial Officer on April 16, 2008, the Judicial Officer stated, under the Rules of Practice (7 C.F.R. § 1.146(a)(3)), a petition to reconsider a decision of the Judicial Officer must be filed within 10 days after service of the decision. The respondents filed a third petition to reconsider the Judicial Officer's decision in *In re Frank Craig and Jean Craig*, 66 Agric. Dec. 353 (2007), approximately 1 year 1 month after they were served with the decision. Accordingly, the respondents' third petition to reconsider must be denied.

In *In re Gerawan Farming, Inc.*, 01 AMA Docket No. F&V 916-1 and 917-1 and AMAA Docket No. 02-0008, decided by the Judicial Officer on May 9, 2008, the Judicial Officer, based upon *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457 (1997), and *Johanns v. Livestock Marketing Ass'n*, 544 U.S. 550 (2005), concluded: (1) the requirement that Gerawan finance generic advertising under the Nectarine Order (7 C.F.R. pt. 916) and the Peach Order (7 C.F.R. pt. 917) does not implicate Gerawan's First Amendment right to freedom of speech; (2) generic

advertising under the Nectarine Order and the Peach Order is government speech not susceptible to First Amendment compelled-subsidy challenge; and (3) Gerawan's failure to pay assessments violates the Nectarine Order and the Peach Order. Consequently, the Judicial Officer: (1) dismissed Gerawan's Petition, filed August 13, 2001, in which Gerawan sought exemption from assessments imposed under the Nectarine Order and the Peach Order and used for generic advertising; (2) ordered Gerawan to comply with the Agricultural Marketing Agreement Act of 1937 (AMAA), the Nectarine Order, and the Peach Order; (3) ordered Gerawan to pay all of its past due assessments under the Nectarine Order and the Peach Order; and (5) assessed Gerawan a $100,000 civil penalty for its violations of the AMAA, the Nectarine Order, and the Peach Order.

In *In re Daniel J. Hill*, AWA Docket No. 06-0006, decided by the Judicial Officer on May 16, 2008, the Judicial Officer concluded that Montrose Orchards, Inc., was an "exhibitor" as that term is defined in the Animal Welfare Act and was required to obtain an Animal Welfare Act license. The Judicial Officer found that, while the animals on display at Montrose Orchards were ultimately raised for food, the fact that they were also exhibited requires an Animal Welfare Act license. The Judicial Officer rejected Montrose Orchards' argument that it did not exhibit animals to the public for compensation because it did not charge a fee to view the animals. The Judicial Officer, citing *In re Lloyd A. Good, Jr.*, 49 Agric. Dec. 156 (1990), stated that the use of displayed animals to attract customers to a facility is sufficient to meet the compensation requirement in the definition of the term "exhibitor." The Judicial Officer ordered Montrose Orchards to cease and desist from exhibiting animals until such time as it obtained an Animal Welfare Act license. The Judicial Officer dismissed the Complaint against Mr. Hill stating he was not required to obtain an Animal Welfare Act license merely because he was the president of Montrose Orchards.

In *In re Todd Syverson*, P&S Docket No. D-05-0005, decided by the Judicial Officer on August 27, 2008, the Judicial Officer found that Mr. Syverson was acting as a "market agency," as defined by the Packers and Stockyards Act, in his transactions with Mr. Quam. The Judicial Officer, citing *In re Harry Vealey, Jr.*, 39 Agric. Dec. 8, 13 (1979), stated, when a market agency, such as Mr. Syverson, sells cattle to a principal, such as Mr. Quam, from his own inventory without disclosing the source of cattle, the market agency violates 7 U.S.C. § 213(a) and, citing *Spencer Livestock Comm'n Co. v. U.S. Dep't of Agric.*, 841 F.2d 1451, 1458 (1988), found Mr. Syverson's deception regarding the cost of cattle to be a violation of 7 U.S.C. § 213(a). The Judicial Officer ordered Mr. Syverson to cease and desist from his violations of 7 U.S.C. § 213(a) and from failing to produce for examination by GIPSA all records required by 7 U.S.C. § 221 to be kept. The Judicial Officer also suspended Mr. Syverson as a registrant under the Packers and Stockyards Act for a period of 5 years.

In *In re Marvin and Laura Horne* (Order Granting Pet. to Reconsider), AMAA Docket No. 04-0002, decided by the Judicial Officer on September 18, 2008, the Judicial Officer concluded that his Order in *In re Marvin and Laura Horne*, 67 Agric. Dec. 18 (2008), that the respondents pay the Raisin Administrative Committee $6,042.33 for owed assessments and $183,006.51 for the dollar equivalent of the California raisins that the respondents failed to hold in reserve, was error. On reconsideration the Judicial Officer ordered the respondents to pay the

Raisin Administrative Committee $8,783.39 for owed assessments and $483,843.53 for the dollar equivalent of the California raisins that the respondents failed to hold in reserve. The Judicial Officer rejected the respondents' contention that the Administrator's Petition to Reconsider failed to meet the requirements of 7 C.F.R. § 1.146(a)(3), stating the Rules of Practice do not require a specific format for petitions to reconsider. The Judicial Officer, citing *Califano v. Sanders*, 430 U.S. 99, 109 (1977), and *Robinson v. United States*, 718 F.2d 336, 338 (10th Cir. 1983), also rejected the respondents' challenge to the constitutionality of the Raisin Order, stating he had no authority to determine the constitutionality of statutes administered by the United States Department of Agriculture. The Judicial Officer rejected the respondents' argument that the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. §§ 3001-3006) exempts them from handler obligations under the Raisin Order. Based upon the definition of the word "acquire" in the Raisin Order (7 C.F.R. § 989.17), the Judicial Officer rejected the respondents' contention that they never acquired raisins.