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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	AWA Dockets 15-0005 & 15-0006
	)	
PHYLLIS BRITZ, an individual, doing business as WINDY RIDGE KENNELS; and BRUCE BRITZ, an individual,	)	
	)	DECISION AND ORDER AS TO BRUCE BRITZ BY REASON OF DEFAULT
Respondents.	)	

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(AWA or Act), by a complaint filed on October 9, 2014, by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (APHIS), alleging that the respondents violated the regulations promulgated under the Act, 9 C.F.R. §§ 1.1, *et seq.*)(Regulations).

On December 10, 2015, I issued a decision and order as to Phyllis J. Britz by reason of default, finding that respondent Phyllis J. Britz, by failing to file an answer to the complaint, had admitted all of the material facts of the complaint, which I adopted as findings of fact and conclusions of law. Among other sanctions, I ordered that the AWA license that had been held by respondent Phyllis J. Britz (43-A-4935) be revoked. Respondent Phyllis J. Britz did not appeal the decision and order, and it became final on January 19, 2016.

The Office of the Hearing Clerk (OHC) effected service of the complaint and a copy of the Rules of Practice governing proceedings under the Act (7 C.F.R. §§ 1.130-1.151), on respondent Bruce Britz on October 16, 2014, by certified mail (Receipt No. 70123460000338334399).

Pursuant to section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)), respondent Bruce Britz was required to file an answer within 20 days after service of the complaint. The 20th day after service of the complaint on respondent Bruce Britz was November 5, 2014.

Respondent Bruce Britz failed to file an answer by that date, as prescribed in section 1.136 of the Rules of Practice, or at all. Consequently, the material facts alleged in the complaint are all admitted by respondent Bruce Britz's failure to file an answer, and are adopted and set forth herein as Findings of Fact and Conclusions of Law. This decision and order is issued pursuant to section 1.139 of the Rules of Practice.

FINDINGS OF FACT

1. Respondent Bruce Britz is an individual whose mailing address is (b) (6) [redacted] (b) (6) [redacted]. At all times mentioned herein, respondent Bruce Britz, together with respondent Phyllis J. Britz, operated as a dealer as that term is defined in the Act and the Regulations, and did business as Windy Ridge Kennels, or was an agent of respondent Phyllis J. Britz.

2. On or about the following dates, respondent Bruce Britz failed to establish, maintain, and follow programs of adequate veterinary care that included the use of appropriate methods to prevent, control, and treat diseases and injuries and regular observation and assessment of dogs, and/or by failing to have an attending veterinarian provide adequate veterinary medical care to dogs in her custody, as follows:

a. March 31, 2010. A female beagle (#38) was squinting and her left eye had visible discharge, and the dog had not been seen by a veterinarian.

b. July 22, 2010. A female brindle and white boxer, without identification, was thin, with prominent hip bones and vertebrae, very prominent ribs, and a tucked abdomen, and had not been seen by a veterinarian.

c. July 22, 2010. A female fawn and white boxer, without identification, was thin, with prominent hip bones and vertebrae, very prominent ribs, and a tucked

abdomen, and had not been seen by a veterinarian.

d. July 22, 2010. A female Shih Tzu (#131) had generalized hair loss and red bumps over large areas of her body, and had not been seen by a veterinarian.

e. July 22, 2010. A female beagle (#150) had a reddened and inflamed mass in the corner of her left eye, and had not been seen by a veterinarian.

f. July 22, 2010. A female American Bulldog, without identification, had excessive tearing from and staining around both eyes, and what appeared to be an untreated injury on the side of her muzzle, and had not been seen by a veterinarian.

g. July 22, 2010. Three dogs (a Basset Hound without identification, and two smaller dogs) had excessively long toenails that had not been trimmed, and which can cause discomfort and injury to the dogs, and these dogs had not been seen by a veterinarian (or a groomer).

h. July 22, 2010. Two dogs had multiple embedded ticks.

3. On or about March 31, 2010, and July 22, 2010, respondent Bruce Britz failed to establish programs of adequate veterinary care that included the use of appropriate methods to prevent, control, and treat diseases and injuries, and specifically, said respondent maintained unlabeled and/or expired medications for use in dogs (March 31, 2010: Ivermectin), and maintained medications (March 31, 2010: Fish Pen, Zeasorb AF, Parents Choice; and on July 22, 2010: Fish Mox and Fish Cycline) that were not manufactured for use in dogs, and the use of which had not been recommended by respondent's veterinarian.

4. On July 22, 2010, respondent Bruce Britz failed to identify twenty-five dogs as required.

5. On or about March 31, 2010, respondent Bruce Britz failed to handle dogs as carefully as possible in a manner that would not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, and specifically, said respondent housed approximately fifteen Chihuahua dogs in respondents' residence, but not contained in any enclosure in a manner that would protect them from injury, and housed a nursing Chihuahua in an unsecured enclosure, from which the nursing female escaped, whereupon she had access to, and attacked, one of the free-roaming dogs.

6. On July 22, 2010, respondent Bruce Britz failed to handle dogs as carefully as possible in a manner that would not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, and specifically, said respondent did not house eight dogs in any enclosure but were free-roaming on the premises, and were not contained securely in a manner that would protect them from injury.

7. On July 22, 2010, respondent Bruce Britz failed to handle dogs as carefully as possible in a manner that would not cause trauma, behavioral stress, physical harm, or unnecessary discomfort, and specifically, said respondent did not house a Basset Hound and her four puppies in a primary enclosure that would contain them securely and protect them from injury.

8. On or about the following dates, respondent Bruce Britz failed to comply with the Standards, as set forth below.

a. March 31, 2010. The enclosure housing a female Chihuahua was not structurally sound and maintained in a manner that contained the dog, and the dog was able to and did escape its enclosure.

b. July 22, 2010. The primary enclosure housing a Miniature Doberman

Pinscher and her puppies contained a standard household heating pad, the cord of which was accessible to the animals, and could cause them injury.

c. July 22, 2010. Dogs were housed in an outdoor enclosure with a metal shade structure that was in disrepair and could injure the dogs.

d. July 22, 2010. Three outdoor enclosures housing dogs had fences that were in disrepair and had lost their structural integrity.

e. July 22, 2010. The sheltered facilities housing dogs contained an accumulation of clutter, tools, and miscellaneous material.

f. July 22, 2010. The metal support pipes of outdoor enclosures housing dogs were rusted and unable to be cleaned and sanitized as required.

g. July 22, 2010. Four self feeders in sheltered facilities housing dogs were rusted and unable to be cleaned and sanitized as required.

h. July 22, 2010. Wire side panels in three enclosures housing dogs were rusted and unable to be cleaned and sanitized as required.

i. March 31, 2010. The metal support pipes of several outdoor enclosures were rusted and unable to be cleaned and sanitized as required.

j. March 31, 2010. An enclosure housing a female beagle (with an eye injury) contained several broken wires with sharp points that extended into the enclosure and were accessible to the dog.

k. July 22, 2010. Enclosures housing dogs contained broken, cut, or bent wires with sharp points that extended into the enclosures and were accessible to the dog.

l. March 31, 2010. Enclosures housing dogs had surfaces that had been

chewed and splintered surfaces that could not be cleaned and sanitized as required.

m. March 31, 2010. The outdoor shelters for dogs were not cleaned and sanitized as required, and the bedding in the shelters had become compacted with dirt and rock chat.

n. July 22, 2010. There was grime on the access doors of the outdoor shelters for dogs and the interior and exterior surfaces of the shelters were not cleaned as required.

o. July 22, 2010. Said respondent failed to store supplies of food for dogs in a manner that protected them from spoilage, contamination, and vermin infestation as required, and maintained an uncovered barrel containing food for dogs.

p. July 22, 2010. An outdoor enclosure housing two Coonhounds and one Golden Retriever had holes containing standing water.

q. July 22, 2010. The drainage system for sheltered facilities housing dogs was non-functioning, and waste material washed directly onto the ground and flowed downhill through the enclosure.

r. July 22, 2010. The outside wash-downs for sheltered facilities were constructed and maintained in a manner that permitted animal waste from upper enclosures to fall directly onto dogs housed in lower enclosures.

s. July 22, 2010. Enclosures housing three dogs had wooden floors that were not impervious to moisture.

t. March 31, 2010. There was inadequate shelter from the elements for ten dogs housed outdoors.

u. March 31, 2010. There was inadequate shade provided to ten dogs housed

outdoors.

v. July 22, 2010. There was inadequate shelter from the elements for eleven dogs housed outdoors.

w. July 22, 2010. There was inadequate shade provided to eleven dogs housed outdoors.

x. March 31, 2010. Respondent housed dogs in enclosures with floors that sagged and bounced under the weight of the dogs, and did not support the dogs as required.

y. July 22, 2010. Respondent housed dogs in three enclosures with floors constructed of uncoated, bare wire under 1/8" in diameter, which wire could injure the dogs' feet.

z. July 22, 2010. Feeding receptacles for dogs housed in four enclosures were not located so as to minimize contamination, were not protected from rain and snow, and were not cleaned and sanitized as required.

aa. July 22, 2010. Respondent failed to remove a female Shih-Tzu and her four puppies from their enclosure before cleaning the enclosure with water by hosing, flushing or other methods, and the enclosure was not large enough to permit the dogs to avoid being wetted.

bb. March 31, 2010. Respondent stored frayed and discarded carpet remnants on top of an enclosure housing dogs, and one of the dogs had become entangled in the strands of the carpet remnants.

cc. July 22, 2010. Respondent failed to keep the premises clean and free of accumulations of trash and discarded material.

CONCLUSIONS OF LAW

1. On or about the following dates, respondent Bruce Britz willfully violated the Regulations by failing to establish, maintain, and follow programs of adequate veterinary care that included the use of appropriate methods to prevent, control, and treat diseases and injuries and regular observation and assessment of dogs, and/or by failing to have an attending veterinarian provide adequate veterinary medical care to dogs in their custody, 9 C.F.R. §§ 2.40(a), 2.40(b)(2), 2.40(b)(3), as follows:

a. March 31, 2010. A female beagle (#38).

b. July 22, 2010. A female brindle and white boxer, without identification.

c. July 22, 2010. A female fawn and white boxer, without identification.

d. July 22, 2010. A female Shih Tzu (#131).

e. July 22, 2010. A female beagle (#150).

f. July 22, 2010. A female American Bulldog, without identification.

g. July 22, 2010. Three dogs (a Basset Hound without identification, and two smaller dogs).

h. July 22, 2010. Two dogs.

2. On or about March 31, 2010, and July 22, 2010, respondent Bruce Britz willfully violated the Regulations by failing to establish programs of adequate veterinary care that included the use of appropriate methods to prevent, control, and treat diseases and injuries. 9 C.F.R. § 2.40(b)(2).

3. On July 22, 2010, respondent Bruce Britz willfully violated the Regulations, 9 C.F.R. § 2.50(a), by failing to identify twenty-five dogs, as required.

4. On or about March 31, 2010, respondent Bruce Britz willfully violated the Regulations, 9 C.F.R. § 2.131(b)(1), by failing to handle dogs as carefully as possible in a manner that would not cause trauma, behavioral stress, physical harm, or unnecessary discomfort.

5. On July 22, 2010, respondent Bruce Britz willfully violated the Regulations, 9 C.F.R. § 2.131(b)(1), by failing to handle dogs as carefully as possible in a manner that would not cause trauma, behavioral stress, physical harm, or unnecessary discomfort.

6. On July 22, 2010, respondent Bruce Britz willfully violated the Regulations, 9 C.F.R. § 2.131(b)(1), by failing to handle dogs as carefully as possible in a manner that would not cause trauma, behavioral stress, physical harm, or unnecessary discomfort.

7. On or about the following dates, respondent Bruce Britz willfully violated the Regulations (9 C.F.R. § 2.100(a)), by failing to comply with the Standards, as set forth below.

a. March 31, 2010. The enclosure housing a female Chihuahua was not structurally sound and maintained in a manner that contained the dog, and the dog was able to and did escape its enclosure. 9 C.F.R. § 3.1(a).

b. July 22, 2010. Respondent housed a Miniature Doberman Pinscher and her puppies in a primary enclosure containing a standard household heating pad, the cord of which was accessible to the animals, and could cause them injury. 9 C.F.R. § 3.1(a).

c. July 22, 2010. Respondent housed dogs in an outdoor enclosure with a metal shade structure that was in disrepair and could injure the dogs. 9 C.F.R. § 3.1(a).

d. July 22, 2010. Respondent housed dogs in three outdoor enclosures with fences that were in disrepair, and had lost their structural integrity. 9 C.F.R. § 3.1(a).

e. July 22, 2010. The sheltered facilities housing dogs contained an

accumulation of clutter, tools, and miscellaneous material. 9 C.F.R. § 3.1(b).

f. July 22, 2010. The metal support pipes of outdoor enclosures housing dogs were rusted and unable to be cleaned and sanitized as required. 9 C.F.R. § 3.1(c)(1)(i).

g. July 22, 2010. Four self-feeders in sheltered facilities housing dogs were rusted and unable to be cleaned and sanitized as required. 9 C.F.R. § 3.1(c)(1)(i).

h. July 22, 2010. Wire side panels in three enclosures housing dogs were rusted and unable to be cleaned and sanitized as required. 9 C.F.R. § 3.1(c)(1)(i).

i. March 31, 2010. The metal support pipes of several outdoor enclosures were rusted and unable to be cleaned and sanitized as required. 9 C.F.R. § 3.1(c)(1)(i).

j. March 31, 2010. An enclosure housing a female beagle (with an eye injury) contained several broken wires with sharp points that extended into the enclosure and were accessible to the dog. 9 C.F.R. § 3.1(c)(1)(ii).

k. July 22, 2010. Enclosures housing dogs contained several broken, cut, or bent wires with sharp points that extended into the enclosures and were accessible to the dog. 9 C.F.R. § 3.1(c)(1)(ii).

l. March 31, 2010. Respondent housed dogs in enclosures with surfaces that had been chewed and had splintered surfaces that could not be cleaned and sanitized as required. 9 C.F.R. § 3.1(c)(2).

m. March 31, 2010. Respondent failed to clean and sanitize outdoor shelters for dogs, and the bedding in the shelters had become compacted with dirt and rock chat. 9 C.F.R. § 3.1(c)(3).

n. July 22, 2010. Respondent failed to clean and sanitize outdoor shelters for

dogs, and there was grime on the access doors of the shelters and the interior and exterior surfaces of the shelters were not cleaned as required. 9 C.F.R. § 3.1(c)(3).

o. July 22, 2010. Respondent failed to store supplies of food for dogs in a manner that protected them from spoilage, contamination, and vermin infestation as required, and maintained an uncovered barrel containing food for dogs. 9 C.F.R. § 3.1(e).

p. July 22, 2010. An outdoor enclosure housing two Coonhounds and one Golden Retriever had holes containing standing water. 9 C.F.R. § 3.1(f).

q. July 22, 2010. Respondent's drainage system for sheltered facilities housing dogs was non-functioning, and waste material washed directly onto the ground and flowed downhill through the enclosure. 9 C.F.R. § 3.1(f).

r. July 22, 2010. Respondent's outside wash-downs for sheltered facilities were constructed and maintained in a manner that permitted animal waste from upper enclosures to fall directly onto dogs housed in lower enclosures. 9 C.F.R. § 3.1(f).

s. July 22, 2010. Enclosures housing three dogs had wooden floors that were not impervious to moisture. 9 C.F.R. § 3.2(d).

t. March 31, 2010. There was inadequate shelter from the elements for ten dogs housed outdoors. 9 C.F.R. § 3.4(b)(1), (2).

u. March 31, 2010. There was inadequate shade provided to ten dogs housed outdoors. 9 C.F.R. § 3.4(b).

v. July 22, 2010. There was inadequate shelter from the elements for eleven dogs housed outdoors. 9 C.F.R. § 3.4(b)(1), (2).

w. July 22, 2010. There was inadequate shade provided to eleven dogs

housed outdoors. 9 C.F.R. § 3.4(b).

x. March 31, 2010. Respondent housed dogs in enclosures with floors that sagged and bounced under the weight of the dogs, and did not support the dogs as required. 9 C.F.R. § 3.6(a)(2)(xii).

y. July 22, 2010. Respondent housed dogs in three enclosures with floors constructed of uncoated, bare wire under 1/8" in diameter, which wire could injure the dogs' feet. 9 C.F.R. § 3.6(a)(2)(xii).

z. July 22, 2010. Feeding receptacles for dogs housed in four enclosures were not located so as to minimize contamination, were not protected from rain and snow, and were not cleaned and sanitized as required. 9 C.F.R. § 3.9(b).

aa. July 22, 2010. Respondent failed to remove a female Shih-Tzu and her four puppies from their enclosure before cleaning the enclosure with water by hosing, flushing or other methods, and the enclosure was not large enough to permit the dogs to avoid being wetted. 9 C.F.R. § 3.11(a).

bb. March 31, 2010. Respondent stored frayed and discarded carpet remnants on top of an enclosure housing dogs, and one of the dogs had become entangled in the strands of the carpet remnants. 9 C.F.R. § 3.11(c).

cc. July 22, 2010. Respondent failed to keep the premises clean and free of accumulations of trash and discarded material. 9 C.F.R. § 3.11(c).

8. At all times mentioned herein, respondent Bruce Britz was an agent of respondent Phyllis J. Britz and was responsible for or participated in the violations upon which the order revoking AWA license 43-A-4935 was based.

ORDER

Respondent Bruce Britz, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the Regulations and Standards.

The provisions of this order shall become effective on the first day after this decision becomes final. This decision becomes final without further proceedings 35 days after service as provided in sections 1.142 and 1.145 of the Rules of Practice. Copies of this decision shall be served upon the parties.

Done at Washington, D.C.
this 26 day of Sept, 2016

[redacted]

Jill S. Clifton
Administrative Law Judge

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