

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

Docket Nos. 09-0155 and 10-0418

In re: Terranova Enterprises, Inc., a Texas corporation  
d/b/a Animal Encounters, Inc.;  
Douglas Keith Terranova, an individual;  
Will Ann Terranova, an individual;  
Farin Fleming, an individual;  
Craig Perry, an individual d/b/a  
Perry's Exotic Petting Zoo;  
Eugene ("Trey") Key, III, an individual;  
and Key Equipment Company, Inc.,  
an Oklahoma Corporation d/b/a  
Culpepper & Merriweather Circus,

Respondents.

**DECISION AND ORDER (RESPONDENT WILL ANN TERRANOVA)**

I. INTRODUCTION

The above captioned matters involve administrative disciplinary proceedings initiated by the Administrator of the Animal and Plant Health Inspection Service ("APHIS"), an agency of the United States Department of Agriculture ("USDA"; "Complainant"), against Terranova Enterprises Inc., Douglas Terranova, Will Ann Terranova, Farin Fleming ("Terranova Respondents")<sup>1</sup>; Craig Perry ("Perry Respondent"); and Eugene "Trey" Key, III, and Key Equipment Company, Inc. ("Key Respondents"). Complainant alleges that Respondents violated the Animal Welfare Act, as amended (7 U.S.C. §§ 2131- 2159; "the Act"), and the Regulations and Standards issued under the Act (9 C.F.R. §§ 1.1-3.142; "Regulations and Standards").

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<sup>1</sup> I have issued separate Decisions and Orders addressing the charges against Farin Fleming, Doug Terranova and the Terranova business entities, as well as all other named Respondents.

## **Procedural History**

In a Complaint filed on July 23, 2009, amended on June 8, 2010, Complainant alleged that the Terranova, Key and Perry Respondents<sup>2</sup> willfully violated the Act and the Regulations on multiple occasions between 2005 and 2008. Complainant filed another Complaint on September 7, 2010, charging the Terranova Respondents with additional violations of the Act. Generally, the Complaints allege that Respondents failed to properly handle and care for a variety of animals; failed to maintain proper records and facilities; failed to allow access to inspectors; and exhibited animals without proper licenses.

The two Complaints were consolidated, but in deference to the joint request of the Key and Perry Respondents, I found it appropriate to partition the hearing between the allegations raised in the 2009 Complaint and those raised in the 2010 Complaint. The events allegedly underlying the 2009 Complaint were addressed in a hearing that commenced on February 17, 2011 and continued through February 25, 2011, held in person in Washington, D.C., and through audio-visual equipment located in Texas, Iowa and Missouri. Events involving the Terranova Respondents alone were addressed at a hearing that was held on June 1 and 2, 2011 in Dallas, Texas.

Complainant is represented by Colleen A. Carroll, Esq., Office of the General Counsel, Washington D.C. The Terranova Respondents are represented by Bruce Monning, Esq.; the Perry Respondents are represented by Larry Thorson, Esq.; and the

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<sup>2</sup> The complaint also named an individual Sloan Damon as a Respondent, but Complainant and Respondent Damon entered into a Consent Decision dismissing Mr. Damon from the cause of action, which was filed with the Hearing Clerk for OALJ on January 31, 2011. Accordingly, I shall not address charges against Mr. Damon in this Decision and Order.

Key Respondents are represented by Derek Shaffer, Esq. and Michael Weitzner, Esq. At the hearings, the testimony of witnesses was transcribed, and I received into evidence<sup>3</sup> the parties' exhibits. At the hearing that commenced on February 17, 2011, I admitted to the record Complainant's exhibits identified as CX-1 through CX-67; Terranova Respondents' exhibits TX-1 through TX-41; Key Respondent exhibits KX-1 through KX-30; and Perry Respondents' exhibits PX-1 through PX-8. In addition, the parties entered into stipulations, regarding the admissibility and authenticity of the documentary evidence with the exception of certain photographic and holographic evidence. Tr. at 90-140.

At the hearing that commenced on June 1, 2011, I admitted to the record exhibits CX-69-93, and TX-42, 42. I granted Respondent's objection to the testimony of Margaret Whittaker. Tr. at 3162 - 3206. The witness was called by Complainant to provide opinions regarding what she believed to be the best training methods for working with elephants, which may have led to her concluding that Respondents did not use the best methods to handle animals. However, Ms. Whittaker had not reviewed the evidence regarding the incidents involved in the instant matter, and could formulate no opinion regarding whether animals had been handled properly. Tr. 3187 -3190. Though I credit Ms. Whittaker's training and expertise, I concluded that the proffered testimony regarding her opinion on the best methods to use to train animals in general is not material to my inquiry, as the Act and controlling regulations do not specify a particular method to train and handle animals. Moreover, Ms. Whittaker was not a fact witness,

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<sup>3</sup> I excluded from the record CX-23. Tr. at 116.

and was given no evidence relating to the events of this case to allow her to formulate an expert opinion that could be rebutted by Respondent.

Pursuant to my Order of June 28, 2011 the parties submitted corrections to the transcript, which I adopted by Order issued August 8, 2011. The parties submitted written closing argument pursuant to my Order of June 28, 2011. The instant decision<sup>4</sup> is limited to Respondent Will Ann Terranova, and is based upon consideration of the record evidence; the pleadings, arguments and explanations of the parties; and controlling law.

## II. ISSUE

Is Will Ann Terranova responsible for any violations of the Act as the result of her association with Terranova Enterprises Inc.?

## III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### A. Admissions

In its Answer to the Amended Complaint filed July 23, 2010, Respondent admitted that Terranova Enterprises, Inc. is a Texas corporation doing business as “Animal Encounters, Inc.”, corporate Number 159995901. The corporation’s registered agent, President, and director is Douglas Keith Terranova, who resides at 6962 S. FM 148, Kaufman, Texas 75142, which is also the corporation’s registered address. The corporate charter was forfeited during the period from February 11, 2005 until on or about November 30, 2005, for failure to file or pay state franchise taxes. The charter was again forfeited for noncompliance with state tax law for the period July 25, 2008 through March 11, 2009. Terranova Enterprises, Inc. and Mr. Terranova continued to

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<sup>4</sup> In this decision, exhibits shall be denoted as follows: Complainant’s shall be “CX-#”; Terranova Respondents’ shall be “TX-#”; Perry Respondent shall be “PX-#”; Key Respondents shall be “KX-#”. References to the transcript of the hearing shall be denoted as “Tr. at [page] #”.

operate as an exhibitor and held Animal Welfare Act license number 74-C-0199 during the periods relevant to this adjudication.

Respondent Will Ann Terranova's mailing address and residence is 5066 FM Road 4098, Kaufman, Texas 75142. She was an officer and director of Terranova Enterprises.

### **B. Summary of Factual History**

During the period encompassed by the instant causes of action, all of the Respondents were in the business of exhibiting animals. From 1987 until sometime in 2010, Douglas Keith Terranova trained animals under contract with their owners, and presented instructional programs at fairs and facilities using animals that he owned. Tr. at 2509; 2511; 2517-18. He also provided animals to circuses and production crews for television shows and films and acted with his animals. Tr. at 2517-2518. Mr. Terranova owns many different animals, including a number of tigers, camels, a cougar, and spider monkeys. Tr. at 2518-2523. He owned two elephants, Kamba and Congo, until he donated them to the Dallas zoo in 2009. Tr. at 2801.

Craig Alan Perry has been involved with exotic animals since he was sixteen years of age. Tr. at 1700. He has exhibited animals as an individual and through the auspices of a corporation, which is licensed by USDA. Tr. at 1700-1701. Mr. Perry has a number of different animals, including bobcats, servals, lynx, leopards, mountain lions, tigers, lions; and animals shown in a "petting zoo", such as zebras, kangaroos, goats, cattle, and water buffalo. Tr. at 1701. The petting zoo has been in operation for many years under the name of "Perry's Exotic Petting Zoo". Tr. at 1702;

Eugene Key, III, familiarly known as “Trey”, manages the Culpepper and Merriweather Circus (“the Circus”). Tr. at 2217. Mr. Key is President of Key Equipment Company, which bought the Circus approximately ten years ago. Tr. at 2217. The Key Respondents hold an exhibitor’s license, and Mr. Key performs in his circus with two tigers, Delia and Solomon, and a lion named Francis that are owned by Key Equipment. Tr. at 1222.

In December, 2007, Respondent Perry executed a contract with the Iowa State Fair (“the Fair”) to provide entertainment in the form of a petting zoo and animal rides during the August, 2008 Fair. PX-3; Tr. at 1709. Seeking to enhance the quality of his services, Mr. Perry arranged for horse and camel rides, and engaged the Terranova Respondents to provide elephant rides. Tr. at 1707-1708; 2654-2657; 2660. Mr. Perry provided the equipment for camel rides and the camels, which the Terranova Respondents had purchased<sup>5</sup>. Tr. at 2654-2656; 2657-8. Mr. Terranova also provided two zebu for Mr. Perry’s petting zoo. Tr. at 2666.

It was anticipated that the elephants would be brought to the Fair from the Circus, where they were performing under an agreement between the Terranova and Key Respondents. Tr. at 2553. The Circus travels to different venues from Chicago and the Mississippi to the West Coast, putting on two daily shows under “the Big Top”. Tr. at 2218-19. Mr. Key performs in the Circus with two tigers, Solomon and Delia, and a lion, Francis, which the Circus acquired in 2005. Tr. at 2207. The tigers are of the golden tabby variety and were litter mates. Tr. at 2213-2214.

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<sup>5</sup> The camels belonged to Perry in April, 2008, when arrangements were made with Terranova to provide camel rides at the Fair, and belonged to Respondents at the time of the Fair. Tr. at 2049.

Before the 2008 circus season began, the Key Respondents' big cats were housed in a compound built on Mr. Terranova's facility. Tr. at 2222; 2551-2. The compound was built to ensure separation of Delia from Solomon when necessary, though they were allowed to socialize; Mr. Terranova agreed with Mr. Key that the tigers should not be allowed to breed. Tr. at 2223. Mr. Key believed it would be irresponsible to intentionally breed litter mates, considering the risk of genetic mutation. Tr. at 2225. Mr. Terranova supervised the care of the cats in Mr. Key's absence, and Mr. Key was not at the Terranova property to confirm that the tigers were kept apart when Delia was "in heat". Tr. at 2224; 2551-2552.

At the start of the 2008 circus season, Terranova's elephant handler delivered the Key cats and Kamba and Congo to the Circus, but he soon returned to the Terranova facility with the elephants and quit his job. Tr. at 2556. Mr. Terranova could not show the elephants himself because of personal circumstances, and he therefore hired Mr. Sloan Damon upon a friend's recommendation. Tr. at 2557-2559. Mr. Damon trained under Mr. Terranova's supervision at his home before taking the elephants back to the Circus with Richard Childs. Tr. at 233; 2561-2562. Mr. Damon hired Mr. Childs to drive the semi-trailer that was used to transport the animals. Tr. at 231; 238. 230; 239. The semi-trailer was partitioned to transport the elephants in the front and the cats in the rear. Tr. at 239. Mr. Damon and Mr. Childs traveled with the animals in the semi until sometime in June or July, when Mr. Key purchased a truck to carry the cats. Tr. at 239. Mr. Damon also looked after Mr. Key's cats because Mr. Damon had large cat experience. Tr. at 2228.

Shortly after he joined the Circus, Mr. Damon noticed that Mr. Key's female tiger was exhibiting behavior associated with pregnancy, although she did not appear to be expecting cubs. Tr. at 241; 2225-7. While the Circus was in Glasgow, Missouri on May 3, 2008, Delia delivered three cubs, which Mr. Damon found outside the mother's cage. Tr. at 2229-2230. Mr. Damon alerted Mr. Key to the births and Mr. Key observed as Mr. Damon replaced the cubs in the cage with Delia, who pushed them away. Tr. at 2232. Mr. Damon was reluctant to expose the cubs to further rejection from their mother, and Mr. Key gave him approval to hand-raise the cubs. Tr. at 2233. Mr. Key was a risk to the newborns' immune systems because he lived with house cats, and he relied upon Mr. Damon's experience with large cats and his reassurance that he had hand-raised tigers in the past. Tr. at 2233; 226-230. A local veterinarian, Dr. Miller, was called to the site to examine the cubs on the night they were born. Tr. at 180-184; 2236. The doctor helped supply kitten milk replacer (KMR) and vitamins for the cubs, and injected Delia with antibiotics. Tr. at 185-188; CX-7.

Although the cubs appeared to be flourishing with hand feedings, the smallest died on May 6, 2008. Tr. at 246; 2239. It was buried at the Circus site, and the Circus moved to its next engagement in Kansas. Tr. at 2240. When one of the remaining cubs refused to eat on May 12, 2008, Mr. Key authorized Mr. Damon to make an appointment to take the cubs to the Kansas State University Veterinary School for examination. Tr. at 247; 2241. The cub soon showed signs of a seizure and Mr. Damon drove both cubs to the Veterinary School. Tr. at 247-248; 2242. By the time they arrived for examination by Dr. Gary West, the ailing cub had suffered additional seizures and was confirmed dead. Tr. at 248; 2242; 680; CX-9. Dr. West ordered a necropsy, and placed the

surviving cub in intensive care for observation. Tr. at 2243; Tr. at 680-1; CX-9; CX-12. The following day, the doctor discharged the survivor, a male that Mr. Damon named “Tubbs”, with a prescription for dietary changes. Tr. at 692-4; 2244 CX-12. Mr. Damon continued to feed and care for Tubbs, who was kept in a transport carrier in the cab of the truck used to transport the elephants and adult tigers. Tr. at 269-272.

On August 3, 2008, Mr. Damon left the Circus to travel to the Fair under the arrangement between the Perry and Terranova Respondents. Tr. at 2259. Mr. Damon set up the elephant ride arena in an area close to the Petting Zoo and camel rides. Tr. at 259-260; CX-35 at p. 4. He kept the semi, with Tubbs in the cab, parked away from the public. Tr. at 270-273; CX-35 at pp 121, 122, 127. Nearby, Mr. Damon erected a large outdoor pen where Tubbs spent some time together with a dog that Mr. Damon had found in his travels. Tr. at 272; CX-35 at p. 128.

On August 13, 2008, APHIS inspectors Dr. Zeigerer and Dr. Sofranko, together with APHIS investigator Mike Booth, arrived at the fairgrounds to inspect the facilities and animals. Tr. at 1715; 2536; 1919; CX-38, 39. The trailers belonging to Perry and Terranova were parked in close proximity, and were inspected, as were the Petting Zoo, and the elephant and camel ride areas. Tr. at 1721; CX-38, 39. The inspectors continued to visit the Respondents over the course of several days at the Fair, and on the second day of their inspection, they observed Tubbs in the cab of Terranova’s trailer. Tr. at 2602; 2612-13; CX-35 at pp. 121, 122. Mr. Damon did not have a written plan of veterinary care (Tr. at 233-234) and the inspectors instructed Mr. Damon to have Tubbs examined by a qualified veterinarian. Tr. at 288; 2612-4.

Mr. Terranova asked the Fair veterinarians to examine the cub, and Dr. Clothier, Dr. Lucien and two veterinary school students examined Tubbs. Tr. at 2614-5. Dr. Clothier produced a report of examination, and she also consulted with USDA's veterinarian Dr. Gage and drafted recommendations for the cub's diet. Tr. at 2121. Dr. Clothier's examination report was provided to the inspectors on August 15, 2008. Tr. at 2629; Tr. 2119-2121.

Meanwhile, the inspectors were concerned about the cub's welfare, as they believed the cab of the truck where he was kept during the day was too hot; that he was underweight; and that his living conditions were unsanitary. CX-38, 29, 48, 49. The inspectors conferred with other USDA personnel, in particular Dr. Gage, USDA's large cat expert. It was decided that Tubbs' interests would be best served if he were confiscated by the inspection team and relocated to another facility. CX-50. The confiscation was effected on Saturday, August 16, 2008, after which the cub was transported to a USDA approved facility, where he was examined by Dr. June Olds. CX-52, CX-54, CX-55. Dr. Olds concluded that the cub had worn an ill-fitting harness that caused skin abrasions, that he was underweight, and had suffered a wound near his right eye. CX- 54, 55. X-rays needed to be highlighted to see the tiger's bone structure. Tr. at 573; CX-53.

The inspectors cited all the Terranova and Key Respondents with violations of the Act regarding the care of the tiger cubs. CX-48, 49. The inspectors cited the Terranova and Perry Respondents with violations pertaining to the care, feeding and housing of the elephants, which were inspected on Saturday morning at the Fair in August 2008. Tr. at 2630-2631. Terranova and Perry Respondents were also charged with failure to handle

the elephants in a manner sufficient to avoid harm, and with failure to provide sufficient barrier between the public and elephants during elephant rides. Terranova was also charged with failure to provide adequate veterinary care and maintain a program of adequate care for the elephants.

APHIS investigator Rodney Walker traveled to the Fair from Kansas as part of his investigation into reports that Terranova's elephants had gotten loose on June 4, 2008, while traveling with the Circus in WaKeeney, Kansas. Tr. at 427; 439; CX-21.. Strong winds were present and although Mr. Key denied awareness of tornado advisories for the area, the weather was uncommonly changeable. Tr. at 252-254; 430; 2347. Mr. Key monitored the weather before determining that the Circus could be set up. Tr. at 252; 2344-2346. Mr. Damon had unloaded the elephants, but they were not prepared to conduct rides or show them because the weather was questionable. Tr. at 253-254. He was concerned about leaving the animals in the truck for too long. Tr. at 253. Although Mr. Damon said the decision to conduct the rides was his, he also testified that he would consult Mr. Key, who could override him. Id.

At some point it was decided that that the worst of the weather would bypass the Circus site, and the Circus began to set up attractions. Tr. at 253; 2279. The wind suddenly picked up, and the elephants spooked when a large inflatable amusement slide was blown toward<sup>6</sup> them, and they escaped from their handler. Tr. at 254. They wandered onto nearby private property and were reclaimed only after one was shot with tranquilizers. Tr. at 255-256; CX-18, 21, 22, 26. Apparently, the elephants suffered no

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<sup>6</sup> There is conflicting testimony regarding whether one of the elephants was struck by the inflatable device or whether the device was blown near the elephants. I need not determine which version is accurate because the significance of the event is that it precipitated the elephants' escape.

permanent injury as the result of this incident in June, because they continued to work at the Circus with Mr. Damon and travel with him to the Fair in August. Tr. at 234. There is conflicting evidence regarding whether Mr. Damon was injured by an elephant during this incident. CX-26.

After the Iowa Fair, Mr. Damon rejoined the circus with the elephants, but he quit his job in September, 2008. Tr. at 234. Mr. Terranova took over the work of handling the animals and was with them on November 4, 2009, at the Family Fun Circus in Enid, Oklahoma, when Kamba escaped and ran onto a highway where she was struck by a vehicle. Tr. at 3483 -3514; CX-70. She sustained various injuries, including lacerations on her right side, a fractured tarsal bone, a broken tusk, bruised trunk, and numerous abrasions. CX-74-76. When Mr. Terranova and his employee Carlos Quinones gave chase to Kamba, they left the other elephant, Congo, unattended for a period of time. Tr. at 3141. Kamba's injuries were treated at the Oklahoma State University School of Veterinary Medicine on the following day. CX-74-76. Kamba recovered from her injuries, and in February 2010, Terranova sold her and Congo to the Dallas Zoo. Tr. at 3517-3520. Mr. Terranova worked at the Zoo until February, 2011, when he resigned following negative publicity involving this case. Tr. at 3520.

Inspections of Terranova's exhibitions at other facilities were conducted and resulted in citations of violations of the Act. It is undisputed that spider monkeys on display at the Circus World Museum in Baraboo, Wisconsin in June, 2005 were provided a variety of foodstuffs and entertainment, but there was no formal enrichment program for primates in place. CX-1. Other inspections revealed that on June 15, 2006, a camel became entangled in a loose rope barrier that separated Terranova's camels and elephants

at the Circus World Museum (Tr. at 88; CX-2) and inspections further found that two camels were left unattended on that day (Tr. at 3444; CX-2). In addition, it was determined that there were insufficient distance and insufficient perimeter fencing at the Circus World Museum in July, 2007. Tr. at 3449; CX-4.

The record reflects that on June 5, 2007, an APHIS Veterinary Medical Officer (“VMO”) observed Terranova’s mountain lion being inadvertently sprayed with water and exposed to detergent during the cleaning of his cage at the Universoul Circus in Landover, Maryland. CX-3.

Terranova admittedly failed to provide a written program of veterinary care and other records required by the Act while exhibiting at Turner Field in Atlanta, Georgia in February, 2008. CX-6. Further, on June 9 and 10, 2008 no one was available to allow inspection of the Terranova home facility in Kaufman, Texas. CX-6.

At the hearing that commenced on June 1, 2011, Ms. Terranova testified that she was married to Mr. Terranova until their divorce was made final in 2009; however, she has not lived with him since 2006. Tr. at 3208. Ms. Terranova was Secretary and a Director of Terranova Enterprises. Tr. at 3210-3211. Although Ms. Terranova and her daughter Farin Fleming attended some meetings as part of their duties as officers of the corporation, she did not personally own any of the animals used in the business, nor did she perform any work involving the animals. Tr. at 3211. Ms. Terranova testified that she may have taken notes at meetings in the very beginning, but she observed that “it was a long time ago”. Tr. at 3228. She recalled that Mr. Terranova inherited some business shares from his father, and she and her husband formed the Terranova Enterprises when they were first married. Tr. at 3226.

Ms. Terranova denied being involved in making decisions regarding the operation of the business, but she recalled discussing the cost of purchases and budget items with her husband. Tr. at 3224-3225. She was not involved in decisions regarding buying and selling animals. Tr. at 3225. Ms. Terranova did not participate in any meetings or perform duties for the corporation since her separation from Mr. Terranova in 2006. Tr. at 3225.

Ms. Terranova did not know how many tigers the company owned, even when she lived with Mr. Terranova. Tr. at 3222. Ms. Terranova saw Mr. Terranova's circus act, but she refused to watch the tiger act. She believed that she remained a corporate officer during the pendency of her divorce proceedings, but thought that she had been removed as officer when the divorce was final. Tr. at 3209.

Ms. Terranova knew about Kamba's escape in Oklahoma, but she knew nothing about the incidents underlying the instant action until the complaint was filed against her. Tr. at 3212-3213. Ms. Terranova testified that she was not familiar with other incidents where animals were hurt, but she knew that Mr. Terranova had been injured by one of his cats. Tr. at 3215-3216. Despite that incident, Ms. Terranova believed that Mr. Terranova was in control of the animals when he worked with them. Tr. at 3217. She had no opinion regarding the incidents involving Kamba, as they occurred after her marriage. Tr. at 3218. She was not involved in the decision to sell the elephants to the Dallas Zoo, and could not say whether her divorce was final at the time of that decision. Tr. at 3218. She did not recall signing any documents regarding that sale, either as an individual or corporate officer. Id.

### **C. Prevailing Law and Regulations**

The purpose of the Animal Welfare Act, as it relates to exhibited animals, is to insure that they are provided humane care and treatment (7 U.S.C. § 2131). The Secretary of Agriculture is specifically authorized to promulgate regulations to govern the humane handling and transportation of animals by (7 U.S.C. §§ 2143(a), 2151). The Act requires exhibitors to be licensed and requires the maintenance of records regarding the purchase, sale, transfer and transportation of regulated animals. 7 U.S.C. §§2133, 2134, 2140. Exhibitors must also allow inspection by APHIS inspectors to assure that the provisions of the Act and the Regulations and Standards are being followed. 7 U.S.C. §§ 2142, 2143, 2143 (a)(1) and (2), 2146 (a).

Violations of the Act by licensees may result in the assessment of civil penalties, and the suspension or revocation of licensees. 7 U.S.C. § 2149. The maximum civil penalty that may be assessed for each violation was modified under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note) and various implementing regulations issued by the Secretary. Though the Act originally specified a \$2,500 maximum, between April 14, 2004 and June 17, 2008 the maximum for each violation was \$3,750. In addition, 7 U.S.C. § 2149(b), was itself amended and, effective June 18, 2008, the maximum civil penalty for each violation has been increased to \$10,000.

The Act extends liability for violations to agents, pursuant to 7 U.S.C. §2139, which states, in pertinent part: “the act, omission, or failure of any person acting for or employed by . . . an exhibitor or a person licensed as . . . an exhibitor . . . within the scope of his employment or office, shall be deemed the act, omission or failure of such . . . exhibitor as well as of such person.” 7 U.S.C. §2139.

Regulations promulgated to implement the Act provide requirements for licensing, recordkeeping and attending veterinary care, as well as specifications for the humane handling, care, treatment and transportation of covered animals. 9 C.F.R. Chapter 1, Subchapter A, Parts 1 through 4. The regulations set forth specific instructions regarding the size and environmental specifications of facilities where animals are housed or kept; the need for adequate barriers; the feeding and watering of animals; sanitation requirements; and the size of enclosures and manner used to transport animals. 9 C.F.R. Chapter 1, Subchapter A, Part 3, Subpart F. The regulations make it clear that exhibited animals must be handled in a manner that assures not only their safety but also the safety of the public, with sufficient distance or barriers between animals and people. *Id.*

#### **D. Discussion**

Complainant argues that because Respondent Will Ann Terranova was listed as an officer and director of Terranova Enterprises, Inc., she should be held personally responsible for any violations of the Act devolving from acts of other officers. In support of this theory, Complainant cites to the holding in *In re Lion Raisins, Inc.*, 69 Agric. Dec. \_\_\_ 2010, whereby the failure of a corporation to observe corporate formalities sufficed to render the individual officers indistinguishable from the corporate entity.

It is clear from the record that beyond holding a few meetings early after its formation, Terranova Enterprises, Inc. did not engage in formal corporate decision-making processes. I fully credit Ms. Terranova's testimony that the business decisions were left to her ex-husband, who had the experience and expertise with exhibiting animals. Tr. at 3226. She was not involved with the animals (Tr. at 3012), did not know

how many tigers the company owned and abhorred even watching her ex-husband interact with the business' tigers (Tr. at 3222). Her involvement was limited to taking minutes at a few meetings and discussing budgets and costs with her ex-husband. Tr. at 3224-3226. Therefore, factually, the instant matter is distinguishable from the circumstances involved in *In re Lion Raisins, Inc.*, supra., where the individuals were involved in the business. That case is further distinguishable because it involves an entirely separate statute with specific provisions regarding the personal liability of individuals.

Although it is likely that Will Ann Terranova's limited involvement as a corporate officer and director ended before her separation from her husband, the unrebutted record demonstrates by substantial evidence that she was not involved in any corporate decisions following her separation from her husband in 2006. I find insufficient evidence of record to impute to Respondent Will Ann Terranova knowledge of the business dealings of Terranova Enterprises during the period relevant to this adjudication. I find that she had little role in making decisions regarding business operations. There is no evidence that she acted on behalf of the corporation in any of the incidents underlying the Complaints under adjudication. There is no evidence that she was employed by the corporate entity during the entire period at issue. There is no evidence that she was familiar with the work involved in caring for or exhibiting animals. I further find that since 2006, her retention as a corporate officer was due solely to complications of ongoing divorce proceedings, and does not constitute more than a prima facie indication that she was involved in decisions involving the company. I further note that contrary to assertions by

Complainant, Ms. Terranova's mailing address is not the same as that of the corporate entity.

I find that there is insufficient evidence of record to substantially conclude that Ms. Terranova was individually responsible for any of the alleged violations represented by actions taken by Terranova Enterprises, Inc. or Mr. Doug Terranova at any time after they separated. The only alleged violation cited before 2006 is the failure to document a plan for environmental enhancement adequate to promote the psychological well-being of two spider monkeys on exhibition at the Circus World Museum in Baraboo, Wisconsin in June, 2005. There is no evidence that she was aware of this particular exhibition, or that she was involved in keeping records required under the Act. I credit Mr. Terranova's testimony in which he admitted to poor record keeping habits, and find that this violation has been established. Further, I credit his testimony that despite the lack of a formal plan, the monkeys were provided with a variety of foodstuffs and activities so as to promote their well being, which was corroborated by the inspector who cited Terranova with the violation. I find that the remedial nature of the Act does not support imposing pecuniary or other sanctions for such technical violations.

**E. Findings of Fact**

1. Respondent Will Ann Terranova is an individual residing in Kaufman, Texas.
2. Respondent Will Ann Terranova was the secretary and a director of Respondent Terranova Enterprises, Inc. until her divorce from Douglas Keith Terranova was finalized in 2009.
3. Terranova Enterprises, Inc., is a moderate sized business that exhibits wild and exotic animals, including tigers, a cougar, and spider monkeys, which operated as

an exhibitor under the Act at all times relevant to this adjudication, under AWA license number 74-C-0199.

4. Respondent Will Ann Terranova was not involved in any manner with the acts of Douglas Keith Terranova or Terranova Enterprises Inc. after she separated from Mr. Terranova in 2006.
5. In June, 2005 Respondents exhibited two spider monkeys at the Circus World Museum in Baraboo, Wisconsin.
6. Inspection of the exhibition disclosed that Respondents had not prepared a written plan for environmental enhancement.
7. Despite the lack of a written plan, the monkeys were provided with a variety of foodstuffs and activities to promote their physical and psychological well-being.

#### **F. Conclusions of Law**

1. The Secretary has jurisdiction in this matter.
2. In her capacity as corporate officer and director, Respondent Will Ann Terranova operated as an exhibitor as that term is defined by the Act and regulations until 2006.
3. Pursuant to 7 U.S.C. § 2139, Will Ann Terranova's acts, omissions or failures in her capacity as corporate officer and director until 2006 are deemed to be her own as well as those of the corporate entity.
4. In June, 2005, Respondents exhibited spider monkeys without having in place a documented environmental enhancement plan to promote the psychological well being of non-human primates pursuant to 9 C.F.R. § 3.81.

5. Because the monkeys were provided psychological stimulation and an enhanced environment, the lack of a documented plan constitutes a technical violation of the Act.
6. Beginning in 2006, Respondent Will Ann Terranova was a corporate officer and director in name only, and was not involved in any manner with the operation of Terranova Enterprises, Inc.
7. Any violations of the Act after 2005 are not imputed to Respondent Will Ann Terranova.

#### **G. Sanctions**

With respect to assessing civil penalties against Respondent for the violation of the Act and the Regulations and Standards, 7 U.S.C. § 2149(b) directs that "...[t]he Secretary shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person involved, the gravity of the violation, the person's good faith, and the history of previous violations". 7 U.S.C. § 2149(b).

Respondent admitted in Answer to the Complaints that during the period material to this adjudication that Respondents' business is of moderate size. The sole violation substantiated and imputed to Respondent Will Ann Terranova constitutes the first, chronologically, that was brought against the Respondents in this matter, and therefore, the history of violations and lack of Respondent's good faith are not factors meriting the assessment of a penalty. The violation itself is a record-keeping violation that is not per se offensive to the purposes of the Act, and did not merit the assessment of a monetary penalty when it was cited by APHIS inspector Cynthia Neis. The evidence does not

establish willfulness, as I find that the violation was not intentional or in reckless disregard of the law.

In consideration of the foregoing, I find that the evidence does not support an assessment of a civil money penalties against Respondent Will Ann Terranova with respect to this violation. As I have found that Respondent Will Ann Terranova was not involved in the activities or operation of the business conducted by Terranova Enterprises, Inc., or by Douglas Keith Terranova, there is no reason to consider any further sanction against her.

### **ORDER**

All charges brought against Will Ann Terranova with the exception of the failure to have a plan for environmental enrichment are DISMISSED.

This Decision and Order shall become effective and final 35 days from its service upon t unless an appeal is filed with the Judicial Office pursuant to 7 C.F.R. § 1.145.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk.

So Ordered this \_\_\_\_ day of \_\_\_\_\_, 2011 at Washington, DC.

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Janice K. Bullard  
Administrative Law Judge