

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:

Tri-State Zoological Park of Western  
Maryland, Inc., a Maryland  
corporation; and

Robert L. Candy, an individual,

Respondents.

AWA-D Docket No. 22-J-0040

AWA-D Docket No. 22-J-0041

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**DECISION AND ORDER DISMISSING NOTICE OF APPEAL**

Appearances:

*John V. Rodriguez, Esq., Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Administrator of the Animal and Plant Health Inspection Service (“APHIS”); and*

*John M. Pierce, Esq., of John Pierce Law, Woodland Hills, CA for the Respondents Tri-State Zoological Park of Western Maryland, Inc. and Robert L. Candy.*

Decision and Order entered by John Walk, Judicial Officer

**Preliminary Statement**

Complainant, the Administrator of the Animal and Plant Health Inspection Service (“APHIS”) initiated this administrative proceeding by filing an Order to Show Cause Why Animal Welfare License 51-C-0064 Should Not Be Terminated (“Order to Show Cause”).

Respondents, Tri-State Zoological Park of Western Maryland, Inc. and Robert L. Candy filed a timely Answer to the Order to Show Cause. Complainant moved for summary judgment which Administrative Law Judge Tierney Carlos (“ALJ”) granted in an initial decision and order.

Respondents, through counsel, filed a Notice of Appeal. For the following reasons Respondents’ Notice of Appeal is **DISMISSED**.

## Procedural Background

On March 25, 2022, Complainant instituted this proceeding by filing the Order to Show Cause under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131 *et seq.*) (“Act”) and its regulations (9 C.F.R. §§ 1.1 *et seq.*). On April 22, 2022, Respondents filed their Answer to the Order to Show Cause. Afterwards, Complainant filed a Motion for Summary Judgment along with a supporting Memorandum of Points and Authorities (“Motion for Summary Judgment”). On June 3, 2022, Respondents filed their Opposition to Complainant’s Motion for Summary Judgment. Complainant filed an additional Response to Respondents’ Opposition to Complainant’s Motion for Summary Judgment on June 22, 2022. The ALJ found that the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (“Rules of Practice”) did not provide a party a right to reply to the other party’s response but gives the administrative law judge discretion to order that a reply be filed. Even though Complainant did not move for leave to respond to the Respondents’ Opposition, the ALJ issued a *sua sponte* order accepting Complainant’s response and providing an opportunity for Respondents to respond. Respondent did not file a response.

On July 14, 2022, the ALJ issued his Decision and Order Granting Complainant’s Motion for Summary Judgment (“IDO”). The ALJ found there were no material issues of fact that merited a hearing. In addition, the ALJ found that Respondents violated the Endangered Species Act (“ESA”); the ESA is a federal law pertaining to the transportation, ownership, neglect, or welfare of animals; and the Complainant did not err in determining the renewal or continuation of Tri-State’s license would be contrary to the purposes of the AWA and that its license should be terminated. Accordingly, the ALJ granted the Motion for Summary Judgment, ordered Animal Welfare Act License 51-C-0064 terminated, and disqualified Respondent Tri-State

Zoological Park of Western Maryland, Inc. and Respondent Robert L. Candy from becoming licensed under the Act or otherwise obtaining, holding, or using an Animal Welfare Act license, directly or indirectly through any corporate or other device or person for a period of one (1) year.<sup>1</sup>

On August 11, 2022, Respondents filed their Notice of Appeal along with an Authorization for Representation/Release of Information and Declaration of Entry of Appearance. I granted Complainant's request to extend the time to respond. Complainant filed a response to the Notice of Appeal and Authorization for Representation/Release of Information and Declaration of Entry of Appearance on September 23, 2022.

I construe Respondents' request for "a hearing" in its Authorization for Representation/Release of Information and Declaration of Entry of Appearance a request for oral argument before the Judicial Officer which is discretionary under the Rules of Practice.<sup>2</sup> I find the Notice of Appeal does not raise any complex issues and oral argument would not significantly aid the decision in this proceeding. Accordingly, Respondents' request for oral argument is **DENIED**.

### **Discussion**

Complainant argues that Respondents' Notice of Appeal is not a proper appeal because it does not conform to the requirements in the Rules of Practice and should be dismissed.

Respondents' Notice of Appeal states:

**PLEASE TAKE NOTICE** that Respondents Tri-State Zoological Park of Western Maryland, Inc. ("Tri-State Zoological Park") and Robert L. Candy (collectively,

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<sup>1</sup> On August 15, 2022, the ALJ issued an Errata correcting citations for regulatory provisions referenced in the IDO.

<sup>2</sup> See 7 C.F.R. § 1.145(d).

“Respondents”), by and through their attorneys, John Pierce Law, P.C., hereby appeals to the Office of Administrative Law Judges, from the order (the “Order”) of the Honorable Tierney Carlos, dated and entered July 14, 2022, and entered on July 14, 2022, granting Complainant’s Motion for Summary Judgment, terminating Respondents’ Animal Welfare Act license 51-C-0064 and disqualifying Respondents for one (1) year from becoming licensed under the Animal Welfare Act or otherwise obtaining, holding, or using an Animal Welfare Act license, directly or indirectly through any corporate or other device or person. A copy of the Order, is attached as Exhibit A.

The document Respondents filed with the Notice of Appeal states:

**AUTHORIZATION FOR REPRESENTATION/RELEASE OF INFORMATION AND DECLARATION OF ENTRY OF APPEARANCE**

I appeal the adverse decision of **July 14, 2022**, from **U.S. Department of Agriculture** and hereby authorize John M. Pierce as my representative. I have reviewed the basis for appeal in this case with this representative and request a hearing.

I further authorize and request that NAD and the agency release all information and documents concerning me my [sic] representative. This authorization shall remain in effect until revoked in writing.

**DECLARATION OF ENTRY OF APPEARANCE**

Take notice that I, John M. Pierce am entering my appearance to represent the participant(s), Robert Candy, throughout the appeals process with the National Appeals Division. I have been duly authorized in writing by the participant(s) and will accept the service of all notices and documents related to the appeal. Should my representation end before the conclusion of the appeal process, I shall provide written notice to NAD.

The Rules of Practice describe the requirements for appealing an administrative law judge’s decision to the Judicial Officer. Specifically, section 1.145(a) states:

*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. . . . *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.*<sup>3</sup>

Respondents fail to satisfy the requirements to appeal the decision of an administrative law judge in accordance with section 1.145(a) of the of Rules of Practice. The Notice of Appeal identifies no error by the ALJ, points to no portion of the IDO or ruling of the ALJ with which Respondents disagree, alleges no deprivation of rights, and sets forth no issues or arguments. Therefore, the Notice of Appeal does not remotely conform to the requirements contained in section 1.145(a) of the Rules of Practice for filing an appeal. The Judicial Officer has repeatedly and consistently held that a purported appeal petition which does not remotely conform to these requirements should be dismissed.<sup>4</sup>

Nevertheless, the Judicial Officer has accepted appeal petitions that “fail[] to comply with all of the requirements” of section 1.145(a) where the filing “*clearly identifies* those parts of an administrative law judge’s decision with which that party disagrees.”<sup>5</sup> However, this allowance for some departure from the requirements for filing an appeal is inapplicable to

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<sup>3</sup> See 7 C.F.R. § 1.145(a) (emphasis added).

<sup>4</sup> *Bernice Atchison*, 75 Agric. Dec. 606, 608 (2016) (“I have long held that purported appeal petitions that do not remotely conform to the requirements of 7 C.F.R. § 1.145(a) are to be dismissed[.]” (citations omitted)); see also *Michael Tierney*, 73 Agric. Dec. 574, 576 (2014) (citations omitted); *Joseph M. Estes*, AWA Docket No. 11-0027, 2014 WL 4311065, at \*2 (U.S.D.A. June 12, 2014) (citations omitted); *Mark Kasmiersky*, 73 Agric. Dec. 275, 278 (2014) (citations omitted); *Oasis Corp.*, 72 Agric. Dec. 480, 483 (2013) (citations omitted); *Billy Mike Gentry*, P&S Docket No. D-07-0152, 2009 WL 875371, at \*2 (U.S.D.A. Mar. 18, 2009) (citations omitted); *Lloyd R. Smith*, 51 Agric. Dec. 327, 332 (1992) (“Respondents’ appeal is dismissed because of its complete failure to comply with the Rules of Practice[.]”); *Kermit Breed*, 50 Agric. Dec. 675, 676 (1991) (“In addition, even if the appeal had been timely filed, it would have been dismissed because it does not remotely conform to the requirements of the Rules of Practice (7 C.F.R. s 1.145)[.]”); *Bihari Lall*, 49 Agric. Dec. 895, 896 (1990).

<sup>5</sup> *Terry Wayne Sims*, 75 Agric. Dec. 184, 188 (2016) (emphasis added).

Respondents' Notice of Appeal because it entirely fails to identify any disagreement with the ALJ's IDO.

Respondents, represented by counsel, were fully informed that the Rules of Practice apply to this proceeding. The Hearing Clerk's Office's ("HCO") letter that accompanied the Order to Show Cause when it was served on Respondents states, "To assist you in responding to the Order to Show Cause, please refer to the rules of practice which govern the conduct of these proceedings found at 7 C.F.R. Part 1, §§ 1.130 through 1.151 ('the Rules')." In specific reference to filing an appeal, the HCO served a copy of the IDO on Respondents with an accompanying letter that provides, "Please refer to the Uniform Rules of Practice (7 C.F.R. § 1.145) to obtain information regarding the procedure for filing an appeal." The ALJ also provided notice, stating "This Decision and Order shall be final and effective thirty-five (35) days after service of this Decision and Order upon the Respondents, unless there is an appeal to the Judicial Officer under section 1.145 of the Rules of Practice (7 C.F.R. § 1.145) applicable to this proceeding." Nevertheless, Respondents' Notice of Appeal disregards the requirements for filing an appeal under the Rules of Practice and fails to identify any point of disagreement with the IDO.

Therefore, Respondents' Notice of Appeal is dismissed. Because no appeal has been filed which conforms with the requirements of section 1.145(a) of the Rules of Practice, the ALJ's IDO became final and effective 35 days after service on the Respondents.<sup>6</sup>

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<sup>6</sup> See *Mark Kasmiersky*, 73 Agric. Dec. 275, 278 (2014) (citations omitted); *Oasis Corp.*, 72 Agric. Dec. 480, 483 (2013); *Billy Mike Gentry*, P&S Docket No. D-07-0152, 2009 WL 875371, at \*2 (U.S.D.A. Mar. 18, 2009) (citations omitted); *Bihari Lall*, 49 Agric. Dec. 895, 896 (1990) (citations omitted).

## Order

1. Respondents' request for oral argument is **DENIED**.
2. Respondents' Notice of Appeal is **DISMISSED**.
3. The initial Decision and Order issued by Administrative Law Judge Tierney Carlos on July 14, 2022, is final and effective for purposes of this proceeding.

Done at Washington, D.C.,  
this 3rd day of November 2022.

**JOHN  
WALK**

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JOHN WALK  
Date: 2022.11.03  
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John Walk  
Judicial Officer

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