

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

AWA Docket No. 05-0024

In re: MILTON WAYNE SHAMBO,  
an individual doing business as Wayne's World Safari  
and Arbuckle Wilderness; Animals, Inc., a Texas  
domestic stock corporation doing business as  
Wayne's World Safari; and, Animals, Inc.,  
an Oklahoma domestic stock corporation  
doing business as Arbuckle Wilderness,

Respondents

**ORDER**

This action was brought by the Administrator of the Animal and Plant Health Inspection Service on July 7, 2005 seeking a cease and desist order and assessment of a civil penalty for allegedly willful and repeated violations of the Animal Welfare Act (the "Act") (7 U.S.C. § 2131, *et seq.*) while being licensed and operating as an "exhibitor" under the Act. Pursuant to information provided by the Administrator, three copies of the Complaint and the Hearing Clerk's letter of transmittal were sent to the Respondents, two of which were sent to Route 1, Box 63, Davis, Oklahoma 73030, and the third was sent to 400 Mann Street, Suite 901, Corpus Christi, Texas 78401.<sup>1</sup>

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<sup>1</sup> Of the two copies sent to the Davis, Oklahoma address, one was sent to Milton Wayne Shambo, d/b/a Wayne's World Safari and Arbuckle Wilderness and the other was sent to Animals, Inc., d/b/a Arbuckle Wilderness. The copy sent to the Corpus Christi, Texas address was addressed to Animals, Inc., d/b/a Wayne's World Safari. *See*, Hearing Clerk's Letter, Docket Entry 2.

The certified mail addressed to the Davis, Oklahoma address was signed for by a Melinda Baxter;<sup>2</sup> however, the mail sent to the Corpus Christi, Texas address was returned as undeliverable as addressed. Upon receipt of notification by the Postal Service that the mail to the Corpus Christi, Texas address could not be delivered, the mail was resent to the Davis, Oklahoma address where it was refused. A copy was then sent by regular mail to the Davis, Oklahoma address.

Upon expiration of the time allowed for filing an answer to the Complaint, relying upon the **presumption** set forth in Section 1.147(c) of the Rules of Practice, 7 C.F.R. § 1.130, *et seq.*, on November 16, 2005, the Administrator filed a Motion for Adoption of Proposed Decision and Order. On February 23, 2006, Administrative Law Judge Jill S. Clifton granted the Motion and entered a Decision by Reason of Default against all Respondents, ordering them to cease and desist from further violations of the Act and assessing a civil penalty against them, jointly and severally, in the amount of \$23, 265.00. Following entry of the decision, no appeal was filed within the presumptively allotted time and the decision was pronounced final by the Hearing Clerk on May 3, 2006.

This matter is now pending before me<sup>3</sup> as on July 17, 2006, the Hearing Clerk's Office received a letter dated July 11, 2006 from Milton Wayne Shambo, *pro se*, requesting that his letter be considered a Motion to Set Aside the Decision and Order,<sup>4</sup> alleging that he had never received copies of the complaint filed against him and the other respondents. The Administrator responded to the Motion on January 10, 2007,

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<sup>2</sup> The First Amended Motion indicates that Melinda Baxter is employed at a gift shop for a new owner and has no relationship with the Respondent.

<sup>3</sup> The case was assigned to me by Order entered on November 10, 2008 .

<sup>4</sup> The letter apparently was originally routed to the Judicial Officer who after review returned it to the Hearing Clerk's Officer to be returned to Judge Clifton who electronically contacted the parties and directed that copies of the relevant documents in the file be mailed to the Respondent at the address contained on his letterhead.

opposing the Motion to Set Aside the Decision and Order. On March 6, 2007, the Respondent, by and through counsel, filed a First Amended Motion to Set Aside Decision and Order and Reply to Complainant's Response to Respondent's Original Motion. The Administrator again responded in opposition to any move to set aside the Decision and Order entered by Judge Clifton on February 23, 2006, arguing that even if there was no actual notice of the pending action, the Department's position was that under existing departmental case law, all that is required is that notice of proceedings be sent in a manner "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (Citations omitted).<sup>5</sup>

It is well settled that the neither the Federal Civil Rules of Procedure, nor those procedural rules of either Texas or Oklahoma are applicable to proceedings before the Secretary and while on rare occasions, defaults have been set aside, good cause must be demonstrated before such relief will be granted. In ascertaining whether such good cause has been established, the interests of both parties must be considered. In this action, I am troubled by the fact that notice for both individual and corporate liability was predicated upon service to an Oklahoma address which the Respondents (now in Texas) assert that is no longer used and that first notice of the action was prompted by Treasury action which was relayed through Mr. Shambo's son. On the other hand, in view of the fact that no answer was tendered with the Motion requesting that the Decision and Order be set aside (other than general denials contained in the initial letter), there is a question of whether affording the Respondents the opportunity to answer the allegations will serve to do more

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<sup>5</sup> Although the First Amended Motion was filed by counsel retained to represent the Respondents, for reasons which are not clear, rather than serving Respondents' counsel, the Administrator's response was sent to the Respondent's address provided in his July of 2006 letter.

than provide additional delay in the corrective action requested. Given the significant number of violations, it is of course also possible that the amount of the civil penalty might well be increased in the event a hearing is required. As I will find that good cause has been established, it will be unnecessary to determine whether the Administrator had knowledge from his inspectors that the Respondents no longer maintained any ties with the Oklahoma address used for service and whether additional effort should have been expended to provide a more accurate current address.

Accordingly, on the basis of the record before me, the following Order is entered:

1. The Decision and Order entered on February 23, 2006 is **SET ASIDE** and **VACATED**.
2. The Respondent is given Twenty (20) from date of service of this Order in which to file an Answer to the Complaint with the Hearing Clerk's Office. Failure to file an Answer within the allotted time may result in reinstatement of the Original Decision and Order.

Copies of this Order will be served upon the parties by the Hearing Clerk.

Done at Washington, D.C.  
November 10, 2008

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**PETER M. DAVENPORT**  
Administrative Law Judge

Copies to: Bernadette Juarez, Esquire  
Phillip Westergren, Esquire

Hearing Clerk's Office  
U.S. Department of Agriculture  
1400 Independence Avenue SW  
Room 1031, South Building  
Washington, D.C. 20250-9203  
202-720-4443  
Fax: 202-720-9776

