

## ANNUAL REPORT OF THE JUDICIAL OFFICER

### FISCAL YEAR 2013

The Judicial Officer issues final decisions for the Secretary of Agriculture in all cases appealed from initial decisions of USDA's administrative law judges. These cases arise under approximately 40 statutes administered by the Secretary of Agriculture. During FY 2013, the Judicial Officer issued cases arising under the Animal Welfare Act, the Commercial Transportation of Equine for Slaughter Act, the Equal Access to Justice Act, the Packers and Stockyards Act, and the Perishable Agricultural Commodities Act. The Judicial Officer also issues reparation orders for money damages under the Packers and Stockyards Act and the Perishable Agricultural Commodities Act, issues final decisions in cases appealed from initial decisions of the Commissioner of the Plant Variety Protection Office under the Plant Variety Protection Act, and rules on motions filed by parties to proceedings and questions submitted by administrative law judges. Appeals from the Judicial Officer's decisions lie primarily to the United States Courts of Appeals, but, under some statutes, appeals lie to the United States District Courts. USDA has no right of appeal from a decision by the Judicial Officer.

The Office of the Judicial Officer is staffed by three persons: the Judicial Officer, an attorney, and a legal technician, who also serves as secretary, paralegal, and administrative assistant. Currently, the attorney and legal technician positions are vacant.

The following two tables provide an indication of the production of the office and the direction of the backlog in the office.

#### CASES AND MOTIONS RECEIVED – DECIDED – PENDING

	FY 2011	FY 2012	FY 2013
Cases and Motions Pending Beginning of the FY	1	7	5
Cases and Motions Received During the FY	462	531	456
Cases and Motions Decided During FY	456	533	458
Cases and Motions Pending End of the FY	7	5	3

**INTERVAL BETWEEN REFERRAL TO JO AND JO DISPOSITION**

<b>Fiscal Year</b>	<b>Median Interval</b>	<b>Longest Interval</b>	<b>Number of Cases Over 4 Months</b>	<b>Number of Cases Over 8 Months</b>
2000	3 wks.	6 mo. 2 wk.	1	0
2001	1 wk.	2 mo.	0	0
2002	2 wk.	3 mo. 2wk.	0	0
2003	1 wk.	11 mo. 2 wk.	3	3
2004	1 wk.	1 yr. 5 mo.	4	4
2005	1 wk. 3 da.	1 yr. 6 mo.	3	1
2006	2 wk.	1 yr. 2 wk.	6	4
2007	1 mo. 3 wk.	11 mo. 1 wk.	6	2
2008	2 wk.	1 yr. 7 mo.	10	7
2009	1 wk. 3 da.	1 yr. 11 mo.	9	5
2010	5 da.	7 mo. 3 wk.	10	0
2011	1 da.	5 mo. 3 wk.	2	0
2012	4 da.	8 mo. 2 wk.	4	1
2013	4 da.	1 yr. 2 mo.	9	6

The following are summaries of major decisions issued by the Judicial Officer in FY 2013.

**SUMMARIES OF MAJOR DECISIONS BY THE JUDICIAL OFFICER**

**Fiscal Year 2013**

In *In re KDLO Enterprises, Inc.* (Consent Decision), PACA Docket No. D-09-0038, decided by the Judicial Officer on November 5, 2012, the Judicial Officer entered a decision upon the motion of the parties. The Judicial Officer concluded that KDLO willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4), during the period October 2006 through June 2007, by failing to make full payment promptly to seven produce sellers of the agreed purchase prices, in the amount of \$348,026.18 for 28 lots of perishable agricultural commodities which KDLO purchased, received, and accepted in interstate commerce. The Judicial Officer ordered the publication of the facts and circumstances of KDLO's violations, *nunc pro tunc*, effective November 8, 2011.

In *In re H.D. Edwards* (Order Denying Pet. to Reconsider), P.&S. Docket No. D-10-0296, decided by the Judicial Officer on November 5, 2012, the Judicial Officer denied the Deputy Administrator's request that the Judicial Officer reconsider *In re H.D. Edwards* (Order Denying Late Appeal), \_\_\_ Agric. Dec. \_\_\_ (Mar. 15, 2012). The Judicial Officer rejected the Deputy Administrator's contention that the Administrative Law Judge's statement at the close of the December 5, 2011, hearing was not an oral decision.

In *In re Samuel S. Petro* (Order Denying Pet. to Reconsider Decision as to Bryan Herr), PACA-APP Docket Nos. 09-0161 and 09-0162, decided by the Judicial Officer on November 13, 2012, the Judicial Officer denied the Agricultural Marketing Service's petition to reconsider *In re Samuel S. Petro* (Decision as to Bryan Herr), \_\_\_ Agric. Dec. \_\_\_\_ (Jan. 18, 2012), concluding that Mr. Herr, ostensibly a 25 percent shareholder of Kalil Fresh Marketing, d/b/a Houston's Finest Produce Co., demonstrated by a preponderance of the evidence that he was not actively involved in the activities resulting in Houston's Finest's violations of the PACA and that he was only nominally a shareholder of Houston's Finest. The Judicial Officer also stated, in light of the "actual, significant nexus test" described in *Taylor v. U.S. Dep't of Agric.*, 636 F.3d 608 (D.C. Cir. 2011), in future cases, he would abandon the use of the "actual, significant nexus test" to determine whether a person was nominally a partner, officer, director, or shareholder; instead, the inquiry as to whether a person is only nominally a partner, officer, director, or shareholder would be limited to whether the person is a partner, officer, director, or shareholder in name only.

In *In re Cheryl A. Taylor* (Modified Decision on Remand), PACA-APP Docket Nos. 06-0008 and 06-0009, decided by the Judicial Officer on December 18, 2012, the Judicial Officer applied the "actual, significant nexus test," as described in *Taylor v. U.S. Dep't of Agric.*, 636 F.3d 608 (D.C. Cir. 2011), to determine whether Ms. Taylor and Steven C. Finberg were responsibly connected with Fresh America Corporation during the time the corporation violated the PACA. The Judicial Officer concluded that both Ms. Taylor and Mr. Finberg proved that they were only nominal officers of Fresh America. Therefore, the Judicial Officer held that Ms. Taylor and Mr. Finberg were not responsibly connected with Fresh America. The Judicial Officer stated, in light of the "actual, significant nexus test" described in *Taylor v. U.S. Dep't of Agric.*, 636 F.3d 608 (D.C. Cir. 2011), in future cases, he would abandon the use of the "actual, significant nexus test" to determine whether a person was nominally a partner, officer, director, or shareholder; instead, the inquiry as to whether a person is only nominally a partner, officer, director, or shareholder would be limited to whether the person is a partner, officer, director, or shareholder in name only.

In *In re Golden West Cattle Co., P.&S.* Docket No. D-12-0206, decided by the Judicial Officer on December 18, 2012, the Judicial Officer affirmed the Chief Administrative Law Judge's decision concluding Golden West Cattle Company and Michael Kastner issued checks in payment for livestock without sufficient funds on deposit to pay the checks when presented and failed to pay the full purchase price for livestock within the time period required by the Packers and Stockyards Act, in willful violation of 7 U.S.C. §§ 192(a) and 228b(a). The Judicial Officer found Golden West and Mr. Kastner failed to file a timely answer to the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), Golden West and Mr. Kastner were deemed to have admitted the allegations in the

Complaint and waived the opportunity for hearing. The Judicial Officer rejected Golden West and Mr. Kastner's contention that their violations of the Packers and Stockyards Act were not "unfair practices" because the livestock sellers agreed to payment for the livestock in question in a manner other than required by 7 U.S.C. § 228b(a). The Judicial Officer found that Golden West and Mr. Kastner had not offered any evidence of their express written agreements with the livestock sellers as required by 7 U.S.C. § 228b(b), and stated, as a matter of law, a packer's delay in payment for livestock is an unfair practice (7 U.S.C. § 228b(c)). The Judicial Officer also rejected Golden West and Mr. Kastner's contention that the \$10,500 civil penalty assessed by the Chief ALJ was not warranted in law and was without justification in fact. Finally, the Judicial Officer rejected Golden West and Mr. Kastner's contention that a finding of actual or likely harm to competition is a necessary prerequisite to the conclusion that a violation of the Packers and Stockyards Act has occurred. The Judicial Officer, citing *Bowman v. U.S. Dep't of Agric.*, 363 F.2d 81 (5th Cir. 1966), stated one of the primary purposes of the Packers and Stockyards Act is to assure proper handling and transmission of a livestock seller's funds, including prompt payment. The requirement that a livestock purchaser make timely payment effectively prevents sellers from being forced to finance transactions. Golden West and Mr. Kastner contravened the timely payment requirement and their violations directly thwart one of the primary purposes of the Packers and Stockyards Act.

In *In re Vernon Black*, P.&S. Docket No. D-11-0139, decided by the Judicial Officer on December 31, 2012, the Judicial Officer affirmed the Chief Administrative Law Judge's decision concluding Vernon Black operated as a market agency buying cattle on a commission basis without obtaining and maintaining an adequate bond or bond equivalent, in willful violation of 7 U.S.C. § 213(a) and 9 C.F.R. § 201.29. The Judicial Officer declined to address Mr. Black's claims that the Deputy Administrator violated the Privacy Act of 1974 (5 U.S.C. § 552a) stating the Judicial Officer has no jurisdiction to address those claims (7 U.S.C. §§ 450c-450g; 7 C.F.R. § 2.35). The Judicial Officer rejected Mr. Black's contention that the Chief ALJ's finding that Mr. Black was notified of the requirement that he register with the Secretary of Agriculture and the requirement that he secure a bond or bond equivalent, is error, and further stated that neither the Packers and Stockyards Act nor the Regulations require the Packers and Stockyards Program to provide a market agency with actual notice of the bonding requirements prior to the institution of a disciplinary administrative proceeding against that market agency for a violation of the bonding requirements in 9 C.F.R. pt. 201. The Judicial Officer also rejected Mr. Black's contention that the Chief ALJ's finding that Mr. Black operated as a market agency in the transactions at issue, is error, stating the record clearly establishes that Mr. Black acted as an agent for principals for the purpose of buying cattle and was paid a commission for his services. The Judicial Officer further rejected Mr. Black's contention that he

had no obligation to obtain and maintain a bond because the auction market at which he bought cattle is bonded, his principals paid the livestock auction company directly, and he never took title to or possession of the cattle he buys for his principals. Finally, the Judicial Officer rejected Mr. Black's contention that the Chief ALJ prematurely issued a cease and desist order. The Judicial Officer ordered Mr. Black to cease and desist from further violations of the Packers and Stockyards Act and the Regulations and assessed Mr. Black a \$4,000 civil penalty.

In *In re Douglas Butler* (Order Granting in Part Pet. to Reopen), P.&S. Docket No. D-12-0033, decided by the Judicial Officer on January 15, 2013, the Judicial Officer reopened the proceeding and received in evidence a jury verdict form entered in *Pollock v. Butler*, Vermont Superior Court, Addison Civil Division, Docket No. 236-10-11, but denied Mr. Butler's request to remand the proceeding to the Chief Administrative Law Judge for a new hearing.

In *In re Douglas Butler*, P.&S. Docket No. D-12-0033, decided by the Judicial Officer on January 16, 2013, the Judicial Officer concluded that Mr. Butler failed to pay for livestock in willful violation of 7 U.S.C. §§ 213(a) and 228b(a) and failed to keep records of his transactions in willful violation of 7 U.S.C. § 221. The Judicial Officer ordered Mr. Butler to cease and desist from violating the Packers and Stockyards Act, suspended Mr. Butler as a registrant under the Packers and Stockyards Act for a period of 2 years, and assessed Mr. Butler a \$25,000 civil penalty. The Judicial Officer rejected Mr. Butler's contention that the Complaint contained no allegation that he engaged in an unfair practice. The Judicial Officer also rejected Mr. Butler's contention that the prompt payment requirement of the Packers and Stockyards Act does not apply to his purchases of livestock from other livestock dealers stating the prompt payment requirement of the Packers and Stockyards Act protects all livestock sellers, including livestock dealers who sell to other livestock dealers. Finally, the Judicial Officer rejected Mr. Butler's contention that, as there was no demand for payment, the prompt payment provision of the Packers and Stockyards Act does not apply.

In *In re Resolute Forest Products* (Ruling on Certified Question), ACPA Docket No. 12-0040, decided by the Judicial Officer on January 22, 2013, the Judicial Officer concluded that Resolute Forest Products' application for a subpoena duces tecum did not show the relevancy of, materiality of, and necessity for the production of documents that show the names of manufacturers and importers of softwood lumber and the names of voters in the Softwood Lumber referendum, as required in 7 C.F.R. § 900.62(b). The Judicial Officer stated the names of manufacturers, importers, and voters described in Resolute Forest Products' application might result in discovery of competent, relevant, material, and necessary evidence, but the Rules of Practice Governing Proceedings on

Petitions To Modify or To Be Exempted from Research, Promotion and Information Programs do not allow discovery. Pursuant to 7 C.F.R. § 900.62(b), the applicant for a subpoena duces tecum must show that the actual documents sought are themselves competent, relevant, material, and necessary not merely that the documents sought will result in discovery of competent, relevant, material, and necessary evidence.

In *In re Jennifer Caudill* (Rulings on Kalmanson's Motions), AWA Docket No. 10-0416, decided by the Judicial Officer on January 24, 2013, the Judicial Officer denied Mitchel Kalmanson's November 5, 2012: (1) motion to confirm that the proceeding had been bifurcated and that Mr. Kalmanson had been severed from the other respondents; (2) motion to strike an order extending the time for the Administrator's filing an appeal of the Chief Administrative Law Judge's Decision and Order as to Mitchell Kalmanson; (3) motion for fees, costs, and expenses incurred as a result of Mr. Kalmanson's November 5, 2012, filing; (4) motion to sanction the official who instituted the proceeding, a witness in the proceeding, and the attorney representing the complainant in the proceeding; and (5) motion for a monetary advance to be used for Mr. Kalmanson's defense in the proceeding.

In *In re Oasis Corporation* (Order Dismissing Purported Appeal Pet.), PACA Docket No. D-12-0423, decided by the Judicial Officer on January 25, 2013, the Judicial Officer dismissed Oasis Corporation's purported appeal petition because it did not remotely conform to the requirements for appeal petitions set forth in the Rules of Practice (7 C.F.R. § 1.145(a)).

In *In re Ronald Ryan Shepard, Jr.* (Decision as to Ronald Ryan Shepard, Jr.), P.&S. Docket No. D-12-0357, decided by the Judicial Officer on January 29, 2013, the Judicial Officer affirmed the Chief Administrative Law Judge's decision concluding Ronald Ryan Shepard, Jr., issued checks in payment for livestock without sufficient funds on deposit to pay the checks when presented; failed to pay and failed to pay, when due, the full purchase price for livestock; and engaged in the business of a dealer without maintaining a bond or bond equivalent, in willful violation of 7 U.S.C. §§ 204, 213(a), and 228b and 9 C.F.R. §§ 201.29-.30. The Judicial Officer found Mr. Shepard 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. Shepard was deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. The Judicial Officer rejected Mr. Shepard's contention that he was not served with the Complaint. The Judicial Officer found that the Hearing Clerk mailed the Complaint, by certified mail, to Mr. Shepard's last known residence where the Complaint was received by Janet Shepard. The Judicial Officer held that, in accordance with 7 C.F.R. § 1.147(c)(1), a complaint is deemed to be received by a party on the date of delivery of the complaint by certified mail to

the last known residence of that party.

In *In re Craig Perry* (Ruling Granting Mot. to Amend Caption), EAJA Docket No. 12-0645, decided by the Judicial Officer on February 1, 2013, the Judicial Officer, relying on 5 U.S.C. § 504(a)(1) and 7 C.F.R. § 1.184(a), stated, to be eligible for an Equal Access to Justice Act award, the applicant must have been a party to the adversary adjudication for which the applicant seeks attorney fees and other expenses. The Judicial Officer found Larry Thorson was not a party in *In re Terranova Enterprises, Inc.*, AWA Docket No. 09-0155, the adversary adjudication for which Craig Perry and Perry's Wilderness Ranch & Zoo, Inc., seek attorney fees and other expenses; therefore, the Judicial Officer granted the Administrator's request to amend the caption of the Equal Access to Justice Act proceeding to reflect the fact that Craig Perry and Perry's Wilderness Ranch & Zoo, Inc., are the only applicants in the proceeding.

In *In re Custom Cuts, Inc.* (Order Denying Late Appeal), PACA Docket Nos. D-12-0443 and D-12-0444, decided by the Judicial Officer on February 20, 2013, the Judicial Officer denied Custom Cuts, Inc., and Custom Cuts Fresh, LLC's appeal petition filed 1 month 27 days after the Chief Administrative Law Judge's written decision became final. The Judicial Officer held, under the Rules of Practice, the Judicial Officer has no jurisdiction to hear an appeal that is filed after an administrative law judge's decision becomes final.

In *In re Craig Perry* (Second Remand Order), EAJA Docket No. 12-0645, decided by the Judicial Officer on February 22, 2013, the Judicial Officer vacated the Administrative Law Judge's decision granting the Applicants' January 17, 2012, Equal Access to Justice Act application because the application was prematurely filed as it was filed before the underlying adversary adjudication, *In re Terranova Enterprises, Inc.* (Decision as to Craig Perry and Perry's Wilderness Ranch & Zoo, Inc.), \_\_ Agric. Dec. \_\_\_\_ (July 19, 2012), became final and unappealable. The Judicial Officer remanded the proceeding to the ALJ to consider the Applicants' timely filed October 11, 2012, Equal Access to Justice Act application.

In *Kriegel v. U.S. Dep't of Agric.* (Order Dismissing Appeal), Docket No. 12-0363, decided by the Judicial Officer on February 26, 2013, the Judicial Officer stated he had been delegated authority from the Secretary of Agriculture to act as final deciding officer in adjudicatory proceedings identified in 7 C.F.R. § 2.35, but that the religious discrimination action instituted by Laurance Kriegel and Kriegel, Inc., was not one of the proceedings identified in 7 C.F.R. § 2.35. The Judicial Officer dismissed Kriegels' appeal petition for lack of jurisdiction.

In *In re Tri-State Zoological Park of Western Maryland, Inc.*, AWA Docket

No. 11-0222, decided by the Judicial Officer on March 22, 2013, the Judicial Officer affirmed the Administrative Law Judge's decision concluding that Tri-State and Robert L. Candy violated the Animal Welfare Act and the Regulations, suspending Tri-State's Animal Welfare Act license for 45 days, and ordering Tri-State and Mr. Candy to cease and desist from violating the Animal Welfare Act and the Regulations. The Judicial Officer rejected Tri-State and Mr. Candy's contentions that the Administrator failed to prove the violations by a preponderance of the evidence, that their corrections of their violations barred the Administrator from filing a complaint, that the Administrator must conduct his own investigation prior to filing a complaint pursuant to 7 C.F.R. § 1.133(b), and that an Animal and Plant Health Inspection Service inspector must recommend that the Administrator file a complaint prior to the Administrator's filing a complaint. The Judicial Officer also rejected Tri-State and Mr. Candy's contention that the Regulations were void for vagueness. Finally, the Judicial Officer, citing 5 U.S.C. § 558(c), held, as Tri-State's violations of the Regulations were willful, the Administrator was not required to provide Tri-State notice of the facts warranting the suspension of Tri-State's Animal Welfare Act license and an opportunity to achieve compliance prior to the suspension of Tri-State's Animal Welfare Act license.

In *In re Jennifer Caudill* (Ruling Denying Mitchell Kalmanson's Mot. to Strike the Administrator's Second Request for Extension of Time), AWA Docket No. 10-0416, decided by the Judicial Officer on April 3, 2013, the Judicial Officer ruled, since the Administrator's Second Request for Extension of Time had been denied on March 4, 2013, Mr. Kalmanson's March 7, 2013, motion to strike is denied because it is moot.

In *In re Lanzie Carroll Horton, Jr.*, AWA Docket No. 12-0052, decided by the Judicial Officer on April 5, 2013, the Judicial Officer affirmed the Administrative Law Judge's decision concluding that Mr. Horton violated 9 C.F.R. § 2.1(a)(1) by operating as a dealer without an Animal Welfare Act license and ordering Mr. Horton to cease and desist operations as a dealer without first obtaining an Animal Welfare Act license. The Judicial Officer increased the \$14,430 civil penalty assessed by the ALJ to a civil penalty of \$191,200. The Judicial Officer rejected the Administrator's contentions that the ALJ's failure to determine whether Mr. Horton's violations were willful and the ALJ's exclusion of evidence, were error. The Judicial Officer also rejected Mr. Horton's contention that genuine issues of material fact necessitating denial of the Administrator's Motion for Summary Judgment, remained in the proceeding.

In *In re Piedmont Livestock, Inc.* (Order Denying Late Appeal), P.&S. Docket No. 13-0087, decided by the Judicial Officer on April 29, 2013, the Judicial Officer denied Piedmont Livestock, Inc., and Joseph Ray Jones' appeal petition filed after

the Chief Administrative Law Judge's written decision became final. The Judicial Officer held, under the Rules of Practice, the Judicial Officer has no jurisdiction to hear an appeal that is filed after an administrative law judge's decision becomes final.

In *In re Jeffrey W. Ash* (Remand Order), AWA Docket No. 12-0296, decided by the Judicial Officer on May 3, 2013, the Judicial Officer vacated the Chief Administrative Law Judge's decision dismissing the proceeding because the Hearing Clerk had not served Ashville Game Farm, Inc., with the Complaint and the proceeding was rendered moot by an order issued in *In re Jeffrey W. Ash*, \_\_\_ Agric. Dec. \_\_\_ (Sept. 14, 2012), terminating Mr. Ash's Animal Welfare Act license. The Judicial Officer found that the record established that the Hearing Clerk had served Ashville Game Farm, Inc., with the Complaint and held that the order terminating Mr. Ash's Animal Welfare Act license in *In re Jeffrey W. Ash*, \_\_\_ Agric. Dec. \_\_\_ (Sept. 14, 2012), did not render moot a proceeding in which the Administrator seeks suspension or revocation of the Animal Welfare Act license.

In *In re James Quarterman*, Docket No. 13-0159, decided by the Judicial Officer on May 10, 2013, the Judicial Officer dismissed Mr. Quarterman's appeal petition stating the Judicial Officer has no jurisdiction to hear Mr. Quarterman's appeal petition. The Secretary of Agriculture has delegated authority to the Judicial Officer to act as final deciding officer in the adjudicatory proceedings identified in 7 C.F.R. § 2.35. The United States Department of Agriculture program discrimination proceeding which was the subject of Mr. Quarterman's appeal petition is not an adjudicatory proceeding identified in 7 C.F.R. § 2.35.

In *In re Tri-State Zoological Park of Western Maryland, Inc.* (Order Granting in Part the Administrator's Pet. for Recons.), AWA Docket No. 11-0222, decided by the Judicial Officer on May 13, 2013, the Judicial Officer rejected the Administrator's contention that the Administrative Law Judge's failure to find 13 of the violations alleged in the Complaint, was error; rejected the Administrator's contention that the Judicial Officer's failure to comment on violations that were not alleged in the Complaint, was error; and rejected the Administrator's contention that the 45-day suspension of Tri-State's Animal Welfare Act license should be increased. The Judicial Officer agreed with the Administrator that the Judicial Officer's description of the ALJ's Decision and Order in *In re Tri-State Zoological Park of Western Maryland, Inc.*, \_\_\_ Agric. Dec. \_\_\_ (Mar. 22, 2013), should be amended.

In *In re Bodie S. Knapp*, AWA Docket No. 09-0175, decided by the Judicial Officer on June 3, 2013, the Judicial Officer, concluded that Mr. Knapp willfully violated 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a)(1) and 2.10(c) by operating as a dealer during the period November 2005 through September 25, 2010, without an

Animal Welfare Act license. The Judicial Officer assessed Mr. Knapp a \$42,800 civil penalty for his purchases and sales of 214 animals without an Animal Welfare Act license and assessed Mr. Knapp an additional \$353,100 civil penalty for his knowing failures to obey cease and desist orders issued in *In re Bodie S. Knapp* (Order Denying Mot. for Recons.), 64 Agric. Dec. 1668, and *In re Coastal Bend Zoological Ass'n.*, 65 Agric. Dec. 993 (2006). The Judicial Officer found the record was not clear regarding the issue of whether Mr. Knapp's purchases and sales of cattle, sheep, swine, goats, and llamas fell under the "farm animal" exemption (7 U.S.C. § 2132(g); 9 C.F.R. § 1.1 (*Farm animal*)) and the Judicial Officer dismissed all the alleged violations regarding Mr. Knapp's purchases and sales of cattle, sheep, swine, goats, and llamas. The Judicial Officer rejected Mr. Knapp's contention that his sales of hoofstock were exempt from regulation under the Animal Welfare Act, but the Judicial Officer assessed no civil penalty for Mr. Knapp's sales of hoofstock because the Animal Care Resource Guide Dealer Inspection Guide Policy #23, published by the Animal and Plant Health Inspection Service, unambiguously exempts limited sales of hoofstock. The Judicial Officer also rejected Mr. Knapp's contention that he was not required to obtain an Animal Welfare Act license for his purchases of animals because the purchases were for his own use or enjoyment. The Judicial Officer held that the "own use or enjoyment" exemption in 9 C.F.R. § 2.1(a)(3)(viii) is not available to persons who also sell or exhibit animals and the evidence established the Mr. Knapp sold animals for a regulated purpose.

In *In re John (Jack) Hennen*, A.Q. Docket No. 12-0092, decided by the Judicial Officer on June 7, 2013, the Judicial Officer, pursuant to 7 C.F.R. § 1.145(i), adopted the Administrative Law Judge's February 21, 2013, Decision and Order as the final order in the proceeding. The ALJ found that Mr. Hennen violated the Commercial Transportation of Equine for Slaughter Act and 9 C.F.R. §§ 88.3(a)(1), .4(a)(3)(v)-(vi), (b), and (c) when he shipped horses for slaughter to Cavel International, in DeKalb, Illinois, and assessed Mr. Hennen a \$17,375 civil penalty.

In *In re Lee Marvin Greenly*, AWA Docket No. 11-0073, decided by the Judicial Officer on July 2, 2013, the Judicial Officer terminated Lee Marvin Greenly's Animal Welfare Act license and disqualified Mr. Greenly from obtaining an Animal Welfare Act license for 2 years based upon Mr. Greenly's violations of the Lacey Act and Mr. Greenly's making false statements and providing false records to the Minnesota Department of Natural Resources. The Judicial Officer rejected Mr. Greenly's contention that the Animal Welfare Act license termination proceeding constituted a second prosecution and second punishment for Mr. Greenly's Lacey Act violations in violation of the Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States. The Judicial Officer also rejected Mr. Greenly's contention that the Animal Welfare Act license

termination proceeding was time barred by 18 U.S.C. § 3282(a) and 28 U.S.C. § 2462 stating that neither 18 U.S.C. § 3282(a) nor 28 U.S.C. § 2462 was applicable to the proceeding. In response to the Administrator's contention that the Chief Administrative Law Judge erroneously failed to rule on the Administrator's motion for summary judgment, the Judicial Officer stated the Chief ALJ was required by 7 C.F.R. § 1.143(a) to rule on the Administrator's motion for summary judgment. Nonetheless, the Judicial Officer did not remand the proceeding to the Chief ALJ, stating the Chief ALJ's Initial Decision and Order and failure to rule on the motion for summary judgment operate as an implicit denial of the Administrator's motion for summary judgment.

In *In re Tri-State Zoological Park of Western Maryland, Inc.* (Order Denying Respondents' Pet. for Recons.), AWA Docket No. 11-0222, decided by the Judicial Officer on July 12, 2013, the Judicial Officer rejected Respondents' contention that the Judicial Officer's conclusion that Respondents willfully violated the Regulations was error; rejected Respondents' contention that the Judicial Officer's failure to dismiss the Complaint was error; rejected Respondents' contention that the Regulations are void for vagueness; rejected Respondents' contention that a 45-day suspension of Tri-State's Animal Welfare Act license should be decreased in light of Respondents' corrections of their violations; and rejected Respondents' contention that litigation costs, United States Department of Agriculture inspections, lost business, lost revenue, and lost reputation are sanctions.

In *In re Lee Marvin Greenly* (Decision as to Lee Marvin Greenly and Minnesota Wildlife Connection, Inc.), AWA Docket No. 11-0072, decided by the Judicial Officer on August 5, 2013, the Judicial Officer concluded that Lee Marvin Greenly and Minnesota Wildlife Connection, Inc. (Respondents), committed 22 violations of the Animal Welfare Act and the Regulations during the period March 14, 2006, through October 19, 2010. The Judicial Officer revoked Mr. Greenly's Animal Welfare Act license, ordered Respondents to cease and desist from violating the Animal Welfare Act and the Regulations, and assessed Respondents a \$11,725 civil penalty. The Judicial Officer rejected Respondents' contentions that 9 C.F.R. § 2.131(b)(1) and (c)(1) are unconstitutionally vague, Respondents' unsupported contention that they are the target of selective enforcement, and Respondents' contention that the Chief Administrative Law Judge erroneously revoked Mr. Greenly's Animal Welfare Act in light of less severe sanctions imposed in cases in which consent decision were issued and in light of the effects revocation would have on Mr. Greenly's ability to earn a livelihood, on the public's access to game farms, on business in Sandstone, Minnesota, and on Respondents' animals. The Judicial Officer concluded the Chief ALJ's failure to assess Respondents a civil penalty, based upon the financial impact of revocation of Mr. Greenly's Animal Welfare Act license, was error.

In *In re Kriegel, Inc.* (Order Dismissing Appeal), Docket No. 13-0260, decided by the Judicial Officer on August 22, 2013, the Judicial Officer stated he had been delegated authority from the Secretary of Agriculture to act as final deciding officer in adjudicatory proceedings identified in 7 C.F.R. § 2.35, but that the religious and race discrimination action instituted by Kriegel, Inc., and Laurance Kriegel was not one of the proceedings identified in 7 C.F.R. § 2.35. The Judicial Officer dismissed the Petitioners' appeal petition for lack of jurisdiction.

In *In re Craig A. Perry* (Decision as to Craig A. Perry and Perry's Wilderness Ranch & Zoo, Inc.), AWA Docket No. 05-0026, decided by the Judicial Officer on September 6, 2013, the Judicial Officer concluded that Craig A. Perry and Perry's Wilderness Ranch & Zoo, Inc. (Respondents), committed 47 violations of the Animal Welfare Act and the Regulations during the period September 10, 2000, through June 15, 2005. The Judicial Officer ordered Respondents to cease and desist from violating the Animal Welfare Act and the Regulations and assessed Respondents a \$14,600 civil penalty. The Judicial Officer rejected the Administrator's contentions that the Administrative Law Judge was under the misapprehension that the proceeding was a tort action and that Respondents' violations of the Animal Welfare Act and the Regulations were torts. The Judicial Officer also rejected the Administrator's contention that the ALJ's determination that Mr. Perry was a credible witness, was error. The Judicial Officer stated the Judicial Officer's consistent practice has been to give great weight to credibility determinations of administrative law judges since they have the opportunity to see and hear witnesses testify and the Judicial Officer found no basis upon which to reverse the ALJ's credibility determination regarding Mr. Perry.

In *In re Craig A. Perry* (Decision as to Le Anne Smith), AWA Docket No. 05-0026, decided by the Judicial Officer on September 11, 2013, the Judicial Officer affirmed the Administrative Law Judge's decision dismissing the Complaint as to Le Anne Smith because Ms. Smith was not an exhibitor and did not violate the Animal Welfare Act and the Regulations. Citing *In re Gus White III*, 49 Agric. Dec. 123, 154 (1990), the Judicial Officer stated, when people act together in the exhibition of animals, they can be held jointly and severally liable for violations of the Animal Welfare Act. However, the record established that Ms. Smith was only minimally connected with the business conducted by Craig A. Perry and Perry's Wilderness Ranch & Zoo, Inc. (PWR). The Judicial Officer rejected the Administrator's assertions that Ms. Smith was a de facto partner in the business operated by Mr. Perry and PWR or a de facto principal of PWR and played a critical role in the operation of the business conducted by Mr. Perry and PWR.

In *In re Action Wildlife Foundation, Inc.*, AWA Docket No. 12-0339, decided

by the Judicial Officer on September 23, 2013, the Judicial Officer, pursuant to 7 C.F.R. § 1.145(i), adopted the Administrative Law Judge's July 29, 2013, Decision and Order as the final order in the proceeding. The ALJ found that Action Wildlife Foundation, Inc., willfully violated the regulations issued under the Animal Welfare Act, ordered Action Wildlife Foundation, Inc., to cease and desist from violating the Animal Welfare Act and the Regulations, assessed Action Wildlife Foundation, Inc., a \$30,000 civil penalty, and suspended Action Wildlife Foundation, Inc.'s Animal Welfare Act license for a period of 60 days. The Judicial Officer rejected Action Wildlife Foundation, Inc.'s contention that the civil penalty assessed by the ALJ and the period of license suspension ordered by the ALJ were excessive and harsh. The Judicial Officer also held that the fact that Action Wildlife Foundation, Inc., was a non-profit, charitable institution and that license suspension would have a negative impact on the semi-rural area that Action Wildlife Foundation, Inc., serves, were irrelevant in terms of the sanction to be imposed for Action Wildlife Foundation, Inc.'s violations of the Regulations.

The following are the three cases that were pending before the Judicial Officer on the last day of FY 2013, September 30, 2013.

**PENDING CASES APPEALED TO THE JUDICIAL OFFICER**

1. *In re Jennifer Caudill*, AWA 10-0416  
Referred to the Judicial Officer June 14, 2013
2. *In re Gus White*, AWA 12-0277  
Referred to the Judicial Officer July 26, 2013
3. *In re Bodie S. Knapp*, AWA 09-0175  
Referred to the Judicial Officer September 16, 2013