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Appearing as Attorneys for Sidney Jay Yost, an individual
and d/b/a Amazing Animal Productions
and Amazing Animal Productions, Inc.,
a California corporation.

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

In Re:

SIDNEY JAY YOST, an
individual; and AMAZING
ANIMAL PRODUCTIONS,
INC., a California corporation

AWA Docket Nos.
12-0294 and 12-0295

**PETITION BY
RESPONDENTS FOR
APPEAL TO JUDICIAL
OFFICER**

Submitted Concurrently
With Respondents' Brief
in Support of Appeal

Sidney Jay Yost, an individual and d/b/a Amazing Animal Productions
and Amazing Animal Productions, Inc., a California corporation HEREBY
PETITION FOR APPEAL TO THE JUDICIAL OFFICER from the DECISION
AND ORDER ON THE WRITTEN RECORD of Administrative Law Judge Jill S.
Clifton (herein, The "ALJ") issued on December 14, 2017 and served on counsel for

1 Respondents on December 19, 2017 by email.
2

3 **ISSUES FOR APPEAL**

- 4 1. Whether the failure and refusal of the ALJ to take testimony and permit cross
5 examination and oral argument as had been requested by Mr. Yost before
6 issuing her “Decision and Order on Written Record” (herein, “The Decision”)
7 constitutes error and a denial of Mr. Yost’s constitutionally protected rights
8 of due process and fair trial.
9
- 10 2. Whether the civil penalties assessed by the ALJ totaling \$30,000 was not
11 supported by the evidence and therefore excessive, arbitrary and capricious.
12
- 13 3. Whether the failure and refusal of the ALJ to fully correct The Decision as
14 requested by Mr. Yost on January 8, 2018 constitutes error and a denial of
15 Mr. Yost’s constitutionally protected rights of due process and fair trial.
16

17 **ARGUMENTS**

- 18
- 19 4. The decision of the ALJ to render a decision and order solely on the written
20 record and the refusal to take testimony and permit cross examination and
21 oral argument constitutes a denial of Mr. Yost’s constitutionally protected
22 rights of due process and fair trial.
23
- 24 5. The Civil Penalties assessed totaling \$30,000 was excessive, arbitrary and
25 capricious and not supported by the evidence. Mr. Yost takes issue with the
26 ALJ decision to adopt the Government’s \$30,000 “lump sum” number
27 *without* the Government’s compliance with the ALJ’s earlier orders to the
28 government to set forth specific penalty amounts proposed by the

1 Government for specific violations and to justify each such amount in light of
2 the evidence as Government intended to offer as to each specific violation.

- 3
4 6. The failure to fully correct The Decision constitutes error in several respects,
5 three summarized below and, with others, described in further detail in the
6 accompanying Brief in Support.

7 I

8 The “Decision” categorizes Mr. Yosts business as “small to
9 medium”, but the only evidence in the record reflects that Mr. Yost’s
10 business was that of a sole operator (*i.e.*, a “small” business). (Yost
11 Dec., Sept 30, 2013). Respondents argue that this is a material error
12 because the statute allows the ALJ (and presumably the Judicial Officer
13 on appeal) to take into account the size of the business in assessing a
14 penalty and the characterization by the ALJ of Mr. Yost’s business as
15 “small to medium” sidesteps the issue and characterizes the size of Mr.
16 Yost’s business in a way which is contrary to the evidence.

17 II

18 In connection with the handling of a young lion during a
19 “Tonight Show Taping” event (or, “non-event”, as the case may be
20 more accurately described), the Decision fails to properly apply the
21 applicable Regulation¹ to the facts as found by the ALJ. After first
22 reciting Yost’s arguments as to why, under the circumstances of the
23 event, the “distance” provided was “sufficient” and then specifically
24 finding that Yost’s “...arguments as to how they had the lion under control are

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¹ 9 C.F.R. § 2.131(c)(1)

1 persuasive...”,² the Decision then erred in failing to properly apply the
2 actual words of the applicable Regulation to the facts, as found, by
3 omitting the “/or” after the word “and” as the Decision addressed the
4 issue of “distance” and the issue of “barriers” between the animal and
5 the general viewing public. By its terms, the Regulation in question is
6 structured so as to provide a standard (i.e., “distance and/or barrier”) to
7 “assure” the safety of animals and the public. Yost contends the
8 inclusion of the “slash” and the word “or”, in the Regulation grants to
9 the handler a measure of discretion as to how the handler goes about
10 providing that “assurance” of safety for the animals and viewing
11 public. Yost further contends that the ALJ’s interpretation requiring
12 “distance *and* barriers”, in all circumstances is contrary to the plain
13 reading of the Regulation. Yost therefore contends that assessing a civil
14 penalty in connection with the taping of a “Tonight Show” episode is
15 error where the facts, as found by the ALJ, demonstrate no animal or
16 person was harmed *because* the “distance” itself (coupled with the
17 restraints used) in fact resulted in the necessary “assurance” that the
18 animal and the general viewing public were at all times “safe”.

19 III

20 In this case, the only evidence respecting the use of and teaching
21 of the use of a “Trainer’s Cane” were clearly in connection with
22 preparing for and executing the proper and reasonable use of a cane as
23 a protective device *in an emergency situation*. Yost contends that the
24 assessment of a civil assessment of any amount on these facts is

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27 ² The Decision, in paragraph 13 at page 7 reads as follows: “The Respondents’ arguments as
28 to how they had the lion under control are persuasive, but the Regulation specifies distance *and* barriers,
which were absent.” This is incorrect; the Regulation actually specifies “distance *and/or* barriers”.
(Emphasis added).

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arbitrary and capricious; no penalty should be assessed for teaching students how to protect themselves and others with a wooden cane in emergency situations.

Respectfully submitted:

Date: Jan 16, 2018

LAW OFFICES OF JAMES D. WHITE

By: [Signature]

James D. White, Esq, Attorney for Respondents Yost and AAP, Inc.

Deadline

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address currently is PO Box 367, 113 Quarter Horse Drive, Bellevue, Idaho, 83313:

On Jan. 16, 2018 , I served the foregoing document described as

PETITION FOR APPEAL BY RESPONDENTS

on interested parties in this action:

/xx/ by placing / XX / the original AND four copies thereof enclosed in sealed envelopes addressed as follows:

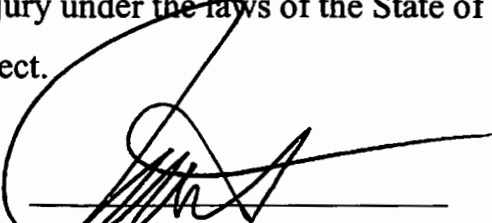
HEARING CLERK, OALJ
Room 1031, South Building
United States Department of Agriculture,
1400 Independence Ave., SW
Washington, DC 20250-9200

and by sending said envelope to the Hearing Clerk by Federal Express for Overnight Delivery with all charges prepaid.

/xx/ and by sending a copy by email to colleen.carroll@usda.gov and to Marilyn.Kennedy@dm.usda.gov for the attention of ALJ Clifton.

Executed on January 16, 2018 , at Laguna, California.

/xx/ I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



JAMES D. WHITE

CERTIFICATE OF SERVICE

Sidney Jay Yost, Respondent

Docket: 12-0294

Amazing Animal Productions Inc., Respondent

Docket: 12-0295

Having personal knowledge of the foregoing, I declare under penalty of perjury that the information herein is true and correct and this is to certify that a copy of PETITION BY RESPONDENTS FOR APPEAL TO JUDICIAL OFFICER has been furnished and was served upon the following parties on January 17, 2018 by the following:

USDA COGC) - Electronic Mail

Colleen A. Carroll, OGC

Donna Erwin, OGC

USDA (APHIS) - Electronic Mail

Teresa M. Lorenzano, APHIS

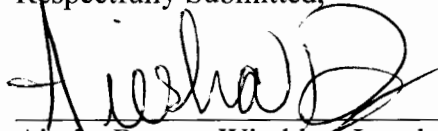
Felicia L. Hubb, APHIS

Counsel for Respondent - Electronic Mail

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jdwhite@jamesdwhitelaw.com

Respectfully Submitted,



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