



UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) AWA Docket No. 29
)
 Aspen Airways, Inc.,)
)
)
 Respondent) Complaint

There is reason to believe that the respondent named herein has violated the Animal Welfare Act, as amended (7 U.S.C. 2131 et seq.), hereinafter referred to as the Act, and the regulations and standards (9 C.F.R. 1.1 et seq.) issued pursuant to the Act. Therefore, the Administrator, Animal and Plant Health Inspection Service, initiates this proceeding under section 19 of the Act (7 U.S.C. 2149) and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. 1.130 et seq.), hereinafter referred to as the Rules of Practice, and alleges the following:

1. Aspen Airways, hereinafter referred to as respondent, is a Colorado corporation whose mailing address is Hanger #5 - Stapleton International Airport, Denver, Colorado 80207.
2. At all times material herein respondent was registered under the Act as a carrier.
3. At the time respondent's registration No. CO-T2 was issued on December 11, 1978, respondent received a copy of the regulations and standards contained in Title 9, Chapter 1, Subchapter A of the Code of Federal Regulations and agreed to comply with said regulations and standards.
4. On July 12, 1983, respondent violated section 3.136(b) of the standards (9 C.F.R. 3.136(b)) by accepting for transportation and transporting, in commerce, a live animal in a primary enclosure which did not conform to the requirements set forth in section 3.137 of the standards (9 C.F.R. 3.137). The

primary enclosure was substandard in that: the opening of such enclosure was not easily accessible at all times for emergency removal of the animal in violation of 9 C.F.R. 3.137(a)(3); ventilation openings were inadequate in violation of 9 C.F.R. 3.137(a)(4); there were no projecting rims or other devices attached to the exterior of the outside walls to prevent obstruction of the ventilation opening in violation of 9 C.F.R. 3.137(a)(5); no adequate handholds or other devices were provided on the exterior to enable the enclosure to be lifted without tilting and to ensure that the person handling the enclosure would not be in contact with the animal in violation of 9 C.F.R. 3.137(a)(6); the enclosure was not large enough to insure that the animal had sufficient space to turn about freely and make normal postural adjustments in violation of 9 C.F.R. 3.137(c); the enclosure did not contain litter to absorb and cover excreta in violation of 9 C.F.R. 3.137(d), and no written instructions concerning food and water requirements of the animal during transportation were affixed to the outside of the enclosure in violation of 9 C.F.R. 3.139(e).

5. By reason of the facts alleged herein respondent has violated the Act and the regulations and standards under the Act. Therefore, complainant requests the issuance of an order granting the following relief authorized by section 19 of the Act (7 U.S.C. 2149):

- (a) assessing a civil penalty of \$500.00 against respondent; and,
- (b) requiring respondent to cease and desist from violating the Act and the regulations and standards under the Act.

WHEREFORE, in accordance with the Rules of Practice, this complaint shall be served upon respondent. Respondent is hereby afforded an opportunity to submit a written answer to the allegations set forth herein and to request an oral hearing on such allegations according to the Rules of Practice (7 C.F.R.

1.136, 1.141). Any such answer and/or request must be filed with the Hearing Clerk, U.S. Department of Agriculture, Washington, D. C. 20250, within 20 days of the service of this complaint.

Done at Washington, D. C.
this 15th day of June 1984

151 Bert W. Hawkins

Administrator, Animal and Plant
Health Inspection Service

Attorney for Complainant:
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