

UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE 2001 MAY 30 A 11: 10

In re:

DELTA AIR LINES, INC.,
a Georgia corporation,

Respondent.

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AWA Docket No. 01-

0626

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COMPLAINT

There is reason to believe that the respondent named herein has willfully violated the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(the "Act"), and the regulations and standards issued pursuant thereto (9 C.F.R. § 1.1 et seq.)(the "Regulations" and the "Standards"). The Administrator of the Animal and Plant Health Inspection Service therefore issues this complaint alleging the following:

JURISDICTIONAL ALLEGATIONS

1. Respondent Delta Air Lines, Inc. ("Delta"), is a Georgia corporation whose business address is Hartsfield-Atlanta International Airport, 1010 Delta Boulevard, Post Office Box 20706, Atlanta, Georgia 30320-6001.

2. At all times mentioned herein, respondent Delta was registered as a carrier, as that term is defined in the Act and the Regulations.

3. On April 24, 2000, respondent Delta transported a four-pound, fennec fox kit from Fort Myers, Florida, through Atlanta, Georgia, to Chicago, Illinois. The enclosure in which the fennec fox was housed was damaged in transit after it was accepted by respondent Delta in Fort Myers, Florida, the fennec fox was injured in transit, and the fennec fox died on April 25, 2000, as a result of the injuries it sustained in transit to Illinois.



VIOLATIONS OF THE REGULATIONS AND STANDARDS

4. On April 24, 2000, respondent Delta violated sections 2.100(b) and 2.131(a)(1) of the Regulations (9 C.F.R. §§ 2.100(b), 2.131(a)(1)) by failing to handle a fennec fox kit so as not to cause it trauma, behavioral stress, physical harm, and unnecessary discomfort.

5. On April 24, 2000, respondent Delta violated section 2.100(b) of the Regulations (9 C.F.R. § 2.100(b)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent Delta accepted a fennec fox for transportation from Atlanta, Georgia, to Chicago, Illinois, in a primary enclosure that did not conform to section 3.137(a) of the Standards (9 C.F.R. § 3.137(a)), in that its structural strength had been compromised and was insufficient to withstand the normal rigors of transportation, in contravention of section 3.136(a) of the Standards (9 C.F.R. § 3.136(a)).

6. On April 24, 2000, respondent Delta violated section 2.100(b) of the Regulations (9 C.F.R. § 2.100(b)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent Delta accepted a fennec fox for transportation from Atlanta, Georgia, to Chicago, Illinois, in a primary enclosure that did not conform to section 3.137(a) of the Standards (9 C.F.R. § 3.137(a)), in that the interior of the enclosure was not free from protrusions that could be injurious to the animal housed within, in contravention of section 3.136(a) of the Standards (9 C.F.R. § 3.136(a)).

7. On April 24, 2000, respondent Delta violated section 2.100(b) of the Regulations (9 C.F.R. § 2.100(b)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent Delta failed to observe a fennec fox in its custody as frequently as circumstances allowed, and failed to determine whether the animal was in obvious physical distress, in contravention of section 3.140(a) of the Standards (9 C.F.R. § 3.140(a)).

8. On April 24, 2000, respondent Delta violated section 2.100(b) of the Regulations (9 C.F.R. § 2.100(b)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent Delta failed to provide needed veterinary care to an injured fennec fox as soon as possible, or at all, in contravention of section 3.140(a) of the Standards (9 C.F.R. § 3.140(a)).

9. On April 24, 2000, respondent Delta violated section 2.100(b) of the Regulations (9 C.F.R. § 2.100(b)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent Delta transported an injured fennec fox that was in obvious physical distress, from Atlanta, Georgia, to Chicago, Illinois, in contravention of section 3.140(a) of the Standards (9 C.F.R. § 3.140(a)).

10. On April 24, 2000, respondent Delta violated section 2.100(b) of the Regulations (9 C.F.R. § 2.100(b)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent Delta failed to exercise care to avoid handling the primary enclosure housing a fennec fox in a manner that could cause physical trauma to the animal contained in the enclosure, in contravention of section 3.142(b) of the Standards (9 C.F.R. § 3.142(b)).

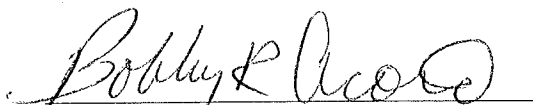
11. On April 24, 2000, respondent Delta violated section 2.100(b) of the Regulations (9 C.F.R. § 2.100(b)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent Delta failed to exercise care to avoid handling the primary enclosure housing a fennec fox in a manner that could cause physical trauma to the animal contained in the enclosure, in contravention of section 3.142(b) of the Standards (9 C.F.R. § 3.142(b)).

WHEREFORE, it is hereby ordered that for the purpose of determining whether the respondent has in fact willfully violated the Act and the regulations issued under the Act, this complaint shall be served upon the respondent. The respondent shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an answer shall constitute an admission of all the material allegations of this complaint.

The Animal and Plant Health Inspection Service requests:

1. That unless the respondent fails to file an answer within the time allowed therefor, or files an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the Act; and
2. That such order or orders be issued as are authorized by the Act and warranted under the circumstances, including an order requiring the respondent to cease and desist from violating the Act and the regulations and standards issued thereunder; and assessing civil penalties against the respondent in accordance with section 19 of the Act (7 U.S.C. § 2149).

Done at Washington, D.C.
this 25 day of May, 2001



Administrator
Animal and Plant Health Inspection Service

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