

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
DERWOOD STEWART, an individual)	HPA Docket No. 06-0001
doing business as STEWART FARMS,)	
a sole proprietorship,)	
)	CONFIRMATION OF ORAL
Respondent.)	DECISION and ORDER

[1] The Complaint, filed on December 5, 2005, alleged that the Respondent Derwood Stewart, an individual doing business as Stewart Farms, a sole proprietorship (frequently herein “Respondent Stewart”) on February 26, 2005 violated the Horse Protection Act (frequently herein “the HPA” or “the Act”), specifically 15 U.S.C. § 1825(c).

[2] The Complainant, the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (frequently herein “APHIS” or “the Complainant”), is represented by Colleen A. Carroll, Esq., with the Office of the General Counsel, Marketing Division, United States Department of Agriculture, 1400 Independence Ave SW, Washington, D.C. 20250-1417.

[3] Respondent Stewart is represented by L. Thomas Austin, Esq., P.O. Box 666, Dunlap, Tennessee 37327-0666. Respondent Stewart timely filed an answer to the Complaint.

[4] On September 7, 2006, I issued my Decision and Order **orally** at the close of the hearing, in accordance with 7 C.F.R. § 1.142(c)(1). The transcript may not be available to the Hearing Clerk or the parties for weeks, so I provide this documentation. This writing confirms my oral

Decision and Order and instructs the Hearing Clerk to comply with 7 C.F.R. § 1.142 (c)(2); see attached Appendix 2.

[5] Three witnesses testified (Ms. Julie Lynn McMillan, Mr. Olin Aldean Valentine, and Mr. Paul Stanley Warren), and the following exhibits were admitted into evidence: CX 1 through CX 8; and RX 1 and RX 2.

Abbreviated Findings of Fact and Conclusions (See Transcript)

[6] The Secretary of Agriculture has jurisdiction.

[7] Respondent Stewart is an individual whose business address is 674 Gath Lucky Road, McMinnville, Tennessee 37110.

[8] On February 26, 2005, Respondent Stewart knowingly managed a horse exhibition of Tennessee Walking Horses at his business address, while he was under an order of disqualification.¹ Respondent Stewart thereby violated the Horse Protection Act, specifically 15 U.S.C. § 1825(c).

[9] The following order is authorized by the Act and warranted under the circumstances.

Abbreviated Order (See Transcript)

[10] Respondent Stewart is assessed a civil penalty of **\$500**, which shall be paid by a certified check or money order or cashier's check, made payable to the order of the **Treasurer of the United States**, and sent to the attention of Ms. Carroll via a commercial delivery service such as FedEx or UPS.

[11] My oral Decision and Order becomes final and effective without further proceedings on

¹ Respondent Stewart was under a one-year period of disqualification from July 25, 2004 through July 24, 2005.

Monday, October 16, 2006 (35 days after pronouncement), UNLESS an appeal to the Judicial Officer is filed with the Hearing Clerk by **Tuesday, October 10, 2006** (30 days after pronouncement), in accordance with 7 C.F.R. § 1.145 (see attached Appendix 1 and attached Appendix 2).

[12] The Hearing Clerk will comply with 7 C.F.R. § 1.142 (c)(2); see attached Appendix 2. Copies of this Confirmation shall be served by the Hearing Clerk upon each of the parties. Respondent Stewart's copy shall be sent by ordinary mail, and also by FAX to Mr. Austin at 423\ 949-4589, in addition to being served by certified mail. The Hearing Clerk shall use the same means to serve Respondent Stewart with the transcript excerpt when it is available.

Done at Washington, D.C.
this 14th day of September 2006

Jill S. Clifton
Administrative Law Judge

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

APPENDIX 1

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the

proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145.

APPENDIX 2**7 C.F.R.:****TITLE 7—AGRICULTURE****SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE****PART 1—ADMINISTRATIVE REGULATIONS**

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL**ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER****VARIOUS STATUTES**

...

§ 1.142(c) Judge's Decision

(1) The Judge may, upon motion of any party or in his or her own discretion, issue a decision orally at the close of the hearing, or within a reasonable time after the closing of the hearing.

(2) If the decision is announced orally, a copy thereof, excerpted from the transcript or recording, shall be furnished to the parties by the Hearing Clerk. Irrespective of the date such copy is mailed, the issuance date of the decision shall be the date the oral decision was announced.

(3) If the decision is in writing, it shall be filed with the Hearing Clerk and served upon the parties as provided in §1.147.

(4) The Judge's decision shall become final and effective without further proceedings 35 days after the issuance of the decision, if announced orally at the hearing, or if the decision is in writing, 35 days after the date of service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to §1.145; *Provided, however*, that no decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal.

7 C.F.R. § 1.142 (c).