

2016 JUN 23 PM 4:01

RECEIVED

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

Docket No. AWA 14-0157

In re:

STEPHANIE TAUNTON, an individual
doing business as BOW WOW
PRODUCTIONS and HESPERIA ZOO,

Respondent.

**ORDER DENYING MOTION FOR DEFAULT AND
SETTING DEADLINES FOR SUBMISSIONS**

Procedural History

On July 14, 2014, the Administrator, Animal and Plant Health Inspection Service of the United States Department of Agriculture ("APHIS"; "USDA"; "Complainant") filed a Complaint against Stephanie Taunton, d/b/a Bow Wow Productions and Hesperia Zoo ("Respondent") alleging violations of Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.) ("Act"; "AWA"), and the regulations issued pursuant thereto (9 C.F.R. § 1.1 et seq.) ("Regulations"). On August 11, 2014, Respondent filed an answer through counsel, who entered his appearance on August 19, 2014.

On July 20, 2015, the Complainant filed an amended complaint. The Office of the Hearing Clerk (OHC) served Respondent on July 25, 2015, by U.S. Mail at Respondent's counsel's law office, Alderson Law Firm, at 14350 Civic Drive, Suite 220, Victorville, California 92392. Pursuant to section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)), Respondent was required to file an answer to the amended complaint within 20 days after service. The 20th day after service was August 11, 2015. The Respondent did not file an answer by that date.

On April 19, 2016, Judge Janice K. Bullard issued an Order To Show Cause Why Default Should Not Be Entered. Complainant responded to this Order by filing a Motion For Default on May 9, 2016. Respondent filed its response in opposition to the Motion for Default asserting that the Respondent by and through the Alderson Law Firm was unable to file an answer to the Amended Complaint because they never received the Amended Complaint. Respondent asserts further that on or about April 25, 2016, the Respondent, by and through the Alderson Law Firm received the Order To Show Cause Why Default Should Not Be Entered and that this was the first time that the Alderson Law Firm became aware that an Amended Complaint had been filed.

I. RULING DENYING MOTION FOR DEFAULT

The Amended Complaint was served on the Respondent by regular mail to Respondent's counsel's law office, Alderson Law Firm, at 14350 Civic Drive, Suite 220, Victorville, California 92392; however, the declarations of James Alderson, Mirna Portillo and Isabel Gonzalez indicate that the Alderson Law Firm never received the Amended Complaint. Further, a review of the Hearing Clerk's Log for this docket indicates some confusion regarding the mailing address for the Law Firm which was apparently in the middle of a move. Because genuine issues of fact have been raised regarding the sufficiency of service of process of the Amended Complaint, and because Complainant has not alleged prejudice by the late filing of Respondent's Answer, it is my determination that due process considerations and the balance of equities require a denial of Complainant's Motion For Default.

II. DEADLINES FOR SUBMISSIONS

A. Pre-Hearing Evidence Exchange and Submissions

The parties are directed to cooperate with each other in exchanging evidence, pursuant to the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary, USDA, found at 7 C.F.R. Part 1, §§1.130 through 1.151 ("the Rules"). The Rules may be accessed electronically at <http://www.dm.usda.gov/oaljdecisions/RulesofProcedure.htm>.

The parties shall proceed in a timely fashion so as to meet the deadlines imposed herein. Failure to file the lists identified infra, as directed, without good cause, may constitute grounds for excluding an exhibit or testimony.

By not later than **4:30 p.m. E.S.T., on July 26, 2016**, Complainant shall file with the Hearing Clerk a list of exhibits and witnesses that Complainant expects to rely upon to establish its case. The witness list should include a short statement describing the nature of the witness' anticipated testimony. Complainant's counsel shall also deposit for next day business day delivery to Respondent or Respondent's counsel, by commercial carrier such as Fed EX, UPS, or other comparable service, copies of the exhibits and list.

By not later than **4:30 p.m. E.S.T., on September 26, 2016**, Respondent shall file with the Hearing Clerk a list of exhibits and witnesses that Respondent expects to rely upon on defense. The witness list should include a short statement describing the nature of the witness' anticipated testimony. Respondents shall also deposit for next day business day delivery to Complainant's counsel, by commercial carrier such as Fed EX, UPS, or other comparable service, copies of Respondent's exhibits and the list filed with the Hearing Clerk.

Exhibits shall be denoted on the lower right corner, as CX-#1 et seq. for Complainant and RX-# 1 et seq. for Respondent. Multi-page exhibits shall be paginated with numbers placed at the bottom of the pages.

B. Hearing Date and Location

Within thirty (30) days of the last exchange due date, the parties will be contacted to schedule a **telephone conference** with me to discuss the place(s) and dates for the hearing(s) and the procedures we will follow to prepare for the hearing(s). The parties may use a "reply all"

email group to advise my staff as to what days and times you are available for a telephone conference, the **telephone number** where you will likely be reached, and your time zone.

The parties should be prepared to discuss the following issues:

- (a) what good faith settlement efforts have been made to resolve the issues in dispute;
- (b) preferred hearing dates in 2016 (please specify the number of days that the hearing is expected to continue);
- (c) preferred hearing location(s); and
- (d) preferred means (audio-visual telecommunication or in person, face-to-face).

C. Disposition Without Hearing

The parties may agree to request a Decision on the Record without hearing by the date of the deadline for submitting stipulations. The parties may enter into a consent decision at any time. In addition, all dispositive motions shall be entertained if filed.

D. Administrative Information

Contact with my office should be made by email to my Executive Assistant, Diane Green, at diane.green@dm.usda.gov, or by facsimile at 202-690-0790. Ms. Green may be reached by telephone at 202-720-6383. In exigent circumstances, the parties may contact my Legal Assistant, Marilyn Kennedy at 202-720-8423.

The Hearing Clerk's address is:

Hearing Clerk, Office of Administrative Law Judges
United States Department of Agriculture
South Building, Room 1031-S, Washington, DC 20250

E. Subpoenas and Discovery

The parties are encouraged to familiarize themselves with the Rules regarding subpoenas, 7 C.F.R. § 1.149. The parties are cautioned not to rely upon opposing counsel

producing every witness identified in a witness list. If a party requires the appearance of opposing party's witness, the use of subpoena is advised. (7 C.F.R. § 1.149).

In addition, the parties are reminded that discovery is very limited. Depositions may be requested under certain circumstances (7 C.F.R. § 1.148). Written statements by an investigating agent may be divulged upon request after the direct testimony pursuant to the Jencks Act. 1.141(h)(1)(iii). Accordingly, Complainant's counsel shall have available at the hearing any statements that meet this description.

Copies of this Order shall be served upon the parties and counsel by the Hearing Clerk.

So ORDERED this 23rd day of June, 2016, in Washington, D.C.



Bobbie J. McCartney
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

Stephanie Taunton, an individual d/b/a Bow Wow Productions And Hesperia Zoo, Respondent
Docket: 14-0157

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 the foregoing has been furnished and was served upon the following parties on June 24, 2016 by the following:

USDA (OGC) - Electronic Mail

Brian T. Hill, OGC

Brian.Hill@ogc.usda.gov

Joyce McFadden, OGC

Joyce.McFadden@ogc.usda.gov

USDA (APHIS) - Electronic Mail

Felicia Hubb, APHIS

Felicia.L.Hubb@aphis.usda.gov

Teresa M. Lorenzano, APHIS

Teresa.M.Lorenzano@aphis.usda.gov

Respondent(s) - Regular Mail

Alderson Law Firm

James Alderson, Esq.

14350 Civic Drive, Suite 280

Victorville, CA 92392

Respectfully Submitted,



Eliuth Moron

Legal Assistant

USDA/Office of Administrative Law Judges

Hearing Clerk's Office

1400 Independence Ave., SW, Room 1031-S

Washington, DC 20250-9203

Phone: 202-720-4443