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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [HPA]
) Docket No. **15-0063**
John Allen)
)
Respondent) **Denial of Motion for Default Decision and Order**

Appearances:

Frank Martin, Jr., Esq. with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant (APHIS);¹ and

John Allen, the Respondent, also known as Jonathan Allen and Jon Allen, a resident of North Carolina, who represents himself (appears *pro se*).

1. The Complaint, filed on January 29, 2015, alleged that the Respondent John Allen (“Respondent John Allen”) violated the Horse Protection Act (15 U.S.C. § 1821 *et seq.*) (the “Act”), specifically, 3 violations of 15 U.S.C. § 1824(2)(B) involving 3 horses and 3 shows.
2. Respondent John Allen was served on February 9, 2015 with a copy of the Complaint accompanied by instructions in a Hearing Clerk letter to file an answer.

1. The Complainant is the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (“APHIS” or “Complainant”).

3. The time for Respondent John Allen to file an answer with the Hearing Clerk expired on March 2, 2015. 7 C.F.R. § 1.136(a). Respondent John Allen has not, to this date, filed an answer, or anything, with the Hearing Clerk, **in this case**.

4. By failing to file an answer, Respondent John Allen is in default, and his default is deemed to be an admission of the allegations in the Complaint. 7 C.F.R. § 1.136(c). Failing to file an answer constitutes a waiver of hearing, and the material facts alleged in the Complaint are admitted. 7 C.F.R. § 1.139.

5. Additionally, on August 24, 2015, Respondent John Allen was served with APHIS's "Motion for Adoption of Proposed Decision and Order as to Respondent John Allen" filed August 20, 2015. Respondent John Allen filed nothing with the Hearing Clerk in response to that Motion.

6. Nevertheless, on careful consideration, I have determined that instead of issuing a default decision in HPA Docket No. 15-0063, I will VACATE the Dismissal in HPA Docket No. 13-0348 regarding John Allen, also known as Jonathan Allen and Jon Allen, and I will by separate order consolidate this case with HPA Docket Nos. 13-0347 and 13-0348 for hearing.

7. My reasoning is that Respondent John Allen was not in default in HPA Docket No. 13-0348 regarding these same 3 alleged violations of 15 U.S.C. § 1824(2)(B) involving 3 horses and 3 shows. In HPA Docket No. 13-0348 Respondent John Allen was represented by counsel, timely filed an answer and request for hearing (during the October 2013 government shutdown), and completed the "exchange" process by identifying, on January

31, 2014, his proposed exhibits and anticipated witnesses. When Respondent John Allen's attorney moved to withdraw as counsel on January 10, 2014, the certificate of service accurately reported Respondent John Allen's address, which is still his current address, more than a year-and-a-half later. None of the filings in HPA Docket No. 13-0348 went to that correct address.

8. APHIS and the Judge and the Hearing Clerk failed to use the address the Hearing Clerk has had on record for him in HPA Docket No. 13-0348 since January 10, 2014, until the Complaint in this new case, HPA Docket No. 15-0063, included that same address. It would be unfair to issue a default decision based on failure to answer, because Respondent Allen did answer, in HPA Docket No. 13-0348. [No hearing is scheduled yet; if Respondent Allen fails to appear at the hearing, a default decision may be issued for his failure to appear at the hearing.]

9. The issues in both cases, HPA Docket No. 13-0348 and HPA Docket No. 15-0063, are whether John Allen, also known as Jonathan Allen and Jon Allen, knowingly violated section 5(2)(B) of the Act (15 U.S.C. § 1824(2)(B)):

(a) on or about July 27, 2012, by entering the horse "Jose's High Society", while "Jose's High Society" was sore, for the purpose of showing or exhibiting "Jose's High Society" as entry 292 in class number 24 at the Marshall County Horseman's Association Horse Show in Lewisburg, Tennessee; and

(b) on or about August 3, 2012, by entering the horse “Mr. Onyx”, while “Mr. Onyx” was sore, for the purpose of showing or exhibiting “Mr. Onyx” as entry 233 in class number 13 at the Belfast Lions Club 52nd Annual Horse Show in Belfast, Tennessee; and

(c) on or about August 26, 2012, by entering the horse “I’m Innocent”, while “I’m Innocent” was sore, for the purpose of showing or exhibiting “I’m Innocent” as entry 204 in class number 93 at the 74th Annual Tennessee Walking Horse National Celebration in Shelbyville, Tennessee.

10. APHIS’s “Motion for Adoption of Proposed Decision and Order as to Respondent John Allen” filed August 20, 2015 is DENIED.

Copies of this order denying the motion for a default decision shall be served by the Hearing Clerk upon each of the parties (to Respondent by both ordinary and certified mail; to APHIS’s counsel by in-person delivery to an Office of the General Counsel representative).

Done at Washington, D.C.
this 17th day of September 2015



Jill S. Clifton
Administrative Law Judge

Hearing Clerk’s Office
U.S. Department of Agriculture
Stop 9203 South Building Room 1031
1400 Independence Ave SW
Washington, DC 20250-9203
202-720-4443
FAX 202-720-9776
OALJHearingClerks@ocio.usda.gov