

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWA Docket No. 10-0117
)	
Jack Thomas d/b/a Thomas Kennels)	
)	Decision and Order
Respondent)	by Reason of Default

1. The Complaint, filed on February 18, 2010, alleged that the Respondent, Jack Thomas, doing business as Thomas Kennels (frequently herein “Respondent Thomas” or “Respondent”), in 2007 and 2008, willfully violated the Animal Welfare Act, as amended (7 U.S.C. § 2131, *et seq.*) (frequently herein the “Animal Welfare Act” or the “AWA” or the “Act”), and regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 *et seq.*) (frequently herein the “Regulations” or the “Standards”).

Parties and Counsel

2. The Complainant, the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (herein frequently “APHIS” or “Complainant”), is represented by Brian T. Hill, Esq., Office of the General Counsel (Marketing Division), United States Department of Agriculture, 1400 Independence Avenue, S.W., Washington D.C. 20250-1417.

3. The Respondent, Jack Thomas, doing business as Thomas Kennels, represents himself (appears *pro se*).

Procedural History

4. The Complainant's Motion for Adoption of Proposed Decision and Order, filed April 16, 2010, is before me. Respondent Thomas responded to that Motion by letter timely filed April 28, 2010. Also before me is APHIS's Supplement, which I had requested, filed June 9, 2010. Respondent Thomas did not respond to the Supplement.

5. Respondent Thomas did not answer the Complaint, which was served on him on February 22, 2010. The time for filing an answer expired on March 15, 2010. Respondent Thomas is in default.

6. The Rules of Practice provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. § 1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139.

7. Accordingly, the material allegations in the Complaint, which are admitted by Respondent Thomas's default, are adopted and set forth herein as Findings of Fact. This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139. *See* 7 C.F.R. § 1.130 *et seq.*, especially 7 C.F.R. § 1.139.

Findings of Fact and Conclusions

8. The Secretary of Agriculture has jurisdiction over the parties and the subject matter.

9. Respondent Jack Thomas is an individual doing business as Thomas Kennels with a business mailing address of Box 31, Cannon Ball, ND 58528.

10. At all times material herein, Respondent Thomas was licensed and operating as a

dealer as defined in the Animal Welfare Act and the Regulations.

11. On September 4, 2007, APHIS inspected Respondent's premises and found that the Respondent had failed to provide adequate veterinary care to a Labradoodle puppy with a broken leg, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R.

§ 2.40(b)(2)).

12. On September 4, 2007, APHIS inspected Respondent's premises and found that Respondent failed to properly identify dogs held on the premises, in willful violation of section 2.50(a)(1) of the regulations (9 C.F.R. § 2.50(a)(1)).

13. On September 4, 2007, APHIS inspected Respondent's premises and found that Respondent failed to keep and maintain records which fully and correctly disclosed information about each dog purchased or held, and information about the disposition of each dog sold, in willful violation of sections 2.75(a)(1) and (2) of the regulations (9 C.F.R. § 2.75(a)(1), (2)).

14. On September 4, 2007, APHIS inspected Respondent's premises and found the following willful violations of section 2.100(a) of the Regulations (9 C.F.R. § 2.100(a)) and the Standards specified below:

- (A) Housing facilities were not designed and constructed in such a way as to protect the dogs from injuries (9 C.F.R. § 3.1(a));
- (B) Respondent failed to provide for regular and frequent collection, removal and disposal of animal and food waste from animal areas (9 C.F.R. § 3.1(f));

- (C) Respondent failed to maintain surfaces so they were impervious to moisture and could be readily cleaned and sanitized (9 C.F.R. § 3.4(c));
- (D) Respondent failed to remove excreta and food waste on a daily basis from primary enclosures (9 C.F.R. § 3.11(a)); and
- (E) Respondent failed to have an effective program for the control of insects, external parasites, birds and mammals (9 C.F.R. § 3.11(d)).

15. On September 5, 2007, APHIS inspected Respondent's premises and found that the Respondent had failed to provide adequate veterinary care to a Labradoodle puppy with a broken leg, in willful violation of section 2.40(b)(2) of the regulations (9 C.F.R. § 2.40(b)(2)). This animal was confiscated by APHIS.

16. On October 11, 2007, APHIS attempted to inspect Respondent's premises but no responsible party was available during normal business hours, in willful violation of section 2.126(b) of the Regulations (9 C.F.R. § 2.126(b)).

17. On October 31, 2007, APHIS inspected Respondent's premises and found the following willful violations of section 2.100(a) of the Regulations (9 C.F.R. § 2.100(a)) and the Standards specified below:

- (A) Respondent failed to provide an outdoor shelter large enough for all the dogs to sit, stand, lie in a normal manner and to turn about freely (9 C.F.R. § 3.4(b));
- (B) Respondent failed to provide clean dry bedding in outdoor shelters

when the ambient temperature was below fifty degrees (9 C.F.R. § 3.4(b)(4)); and

- (C) Respondent failed to remove excreta and food waste on a daily basis from primary enclosures (9 C.F.R. § 3.11(a)).

18. On April 8, 2008, APHIS inspected Respondent's premises and found that the Respondent had failed to provide adequate veterinary care to an injured dog, in willful violation of section 2.40(b)(2) of the regulations (9 C.F.R. § 2.40(b)(2)).

19. On April 8, 2008, APHIS inspected Respondent's premises and found the following willful violations of section 2.100(a) of the Regulations (9 C.F.R. § 2.100(a)) and the Standards specified below:

- (A) Housing facilities were not designed and constructed in such a way as to contain the dogs and protect them from injuries (9 C.F.R. § 3.1(a));
and
- (B) Respondent failed to remove excreta and food waste on a daily basis from primary enclosures (9 C.F.R. § 3.11(a)).

20. On June 10, 2008, APHIS inspected Respondent's premises and found that the Respondent had failed to provide adequate veterinary care to an injured dog, in willful violation of section 2.40(b)(2) of the Regulations (9 C.F.R. § 2.40(b)(2)).

21. On June 10, 2008, APHIS inspected Respondent's premises and found the following willful violations of section 2.100(a) of the Regulations (9 C.F.R. § 2.100(a)) and the Standards specified below:

- (A) Housing facilities were not designed and constructed in such a way as to contain the dogs and protect them from injuries (9 C.F.R. § 3.1(a));
- (B) Respondent failed to provide an outdoor shelter large enough for all the dogs to sit, stand, lie in a normal manner and to turn about freely (9 C.F.R. § 3.4(b));
- (C) Respondent tethered a dog to a post, without the necessary approval of APHIS (9 C.F.R. § 3.6(c)(4)); and
- (D) Food receptacles were not protected from the elements and were not made of a durable material that could be easily cleaned or sanitized (9 C.F.R. § 3.9(b)).

22. On June 12, 2008, APHIS attempted to inspect Respondent's premises but no responsible party was available during normal business hours, in willful violation of section 2.126(b) of the regulations (9 C.F.R. § 2.126(b)).

23. Robert M. Gibbens, D.V.M., the Western Regional Director of Animal Care, APHIS, established that Respondent Thomas's violations are grave. *See* Declaration executed by Dr. Gibbens on June 1, 2010 and included in APHIS's June 9, 2010 filing. Dr. Gibbens wrote: "As a result of Mr. Thomas' continuing failure to comply with the minimal requirements of the AWA, on September 5, 2007, APHIS confiscated a dog that APHIS officials found in a state of unrelieved suffering." Dr. Gibbens continues: "Many of Mr. Thomas' violations are at direct odds with the AWA's stated purpose of assuring the humane treatment of animals in commerce, and, in fact negatively impacted the health and

well-being of the animals by failing to provide animals with minimally-adequate veterinary care, husbandry, and housing, among other things. Mr. Thomas' repeated failure to provide veterinary care to a dog with compound leg fracture in September 2007, resulted in the animal's continued suffering and APHIS' confiscation of the animal."

24. Dr. Gibbens established through his Declaration that Respondent Thomas's violations show a lack of good faith and a history of violations, in that there were "no fewer than twenty-one separate violations of the AWA," and the violations show a "pattern of on-going non-compliance with the AWA" even after written notice to Respondent Thomas of his deficiencies in animal care and husbandry and suggested corrective action.

25. Dr. Gibbens declared: "Based on my experience administering the AWA, the seriousness of Mr. Thomas' violations, and the numerous willful violations identified in the complaint, I believe the revocation of Mr. Thomas' license and a civil penalty in the amount of \$29,625 (approximately one-third of the statutory maximum penalty for the violations), are appropriate sanctions and are consistent with the remedial purposes of the AWA."

26. The following Order is authorized by the Animal Welfare Act and is warranted under the circumstances.

Order

27. Respondent Thomas, and his agents and employees, successors and assigns, directly or indirectly, or through any corporate or other device or person, shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards issued thereunder, and in particular, shall cease and desist from:

(a) Failing to construct and maintain housing facilities for animals so that they are structurally sound and in good repair in order to protect the animals from injury;

(b) Failing to construct and maintain housing facilities for animals so that surfaces may be readily cleaned and sanitized or be replaced when necessary;

(c) Failing to maintain primary enclosures for animals in a clean and sanitary condition;

(d) Failing to provide sufficient space for animals in primary enclosures;

(e) Failing to provide for the regular and frequent collection, removal, and disposal of animal and food wastes, debris, garbage, other fluids and wastes, in a manner that minimizes contamination and disease risks;

(f) Failing to provide animals kept outdoors with shelter from inclement weather;

(g) Failing to establish and maintain an effective program for the control of pests;

(h) Failing to individually identify animals, as required;

(i) Failing to maintain records of the acquisition, disposition, description, and identification of animals, as required; and

(j) Failing to establish and maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine.

28. The foregoing **cease and desist** provisions of this Order (paragraph 27) shall be effective on the day after this Decision becomes final. [See paragraph 34 for when this Decision becomes final.]

29. Animal Welfare Act license number 45-A-0108 issued to Respondent Jack Thomas is **revoked**, effective on the day after this Decision becomes final. Further, Respondent Thomas's privilege to engage in activities that require an Animal Welfare Act license is **revoked**, effective on the day after this Decision becomes final.

30. Respondent Thomas is permanently disqualified from becoming licensed under the Animal Welfare Act or from otherwise obtaining, holding, or using an Animal Welfare Act license, directly or indirectly, or through any corporate or other device or person, effective on the day after this Decision becomes final.

31. Under the Animal Welfare Act, revocations and permanent disqualifications are equally permanent.

32. Respondent Jack Thomas is assessed civil penalties totaling **\$29,625.00**, which he shall pay by certified check(s), cashier's check(s), or money order(s) made payable to the order of "**Treasurer of the United States**," within 90 days after this Decision becomes final. [See paragraph 34 for when this Decision becomes final.]

33. Respondent Jack Thomas shall reference **AWA 10-0117** on his certified check(s), cashier's check(s), or money order(s). Payments of the civil penalties **shall be sent by a commercial delivery service, such as FedEx or UPS**, to, and received by, Brian T. Hill, Esq., at the following address:

United States Department of Agriculture
Office of the General Counsel, Marketing Division
Attn.: Brian T. Hill, Esq.
South Building, Room 2343, Stop 1417
1400 Independence Avenue, S.W.
Washington, D.C. 20250-1417

Finality

34. This Decision and Order shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see enclosed Appendix A).

Copies of this Decision and Order, including Appendix A, shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 19th day of July 2010

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
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