

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0566

In re: James Holtkamp,

Respondent

**Default Decision and Order**

**Preliminary Statement**

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*)(the "Act"), by an order to show cause (OSC)<sup>1</sup> filed on August 3, 2012, by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent is unfit to be licensed and the Administrator has determined that his continued licensure would be contrary to the purposes of the Act, and seeking the termination of AWA license number 43-A-4844.

On or about August 3, 2012, the Office of the Hearing Clerk sent copies of the OSC and the Rules of Practice governing proceedings under the Act (7 C.F.R. §§ 1.130-1.151), by certified mail, return receipt requested to Respondent at his last known address (provided on his latest license renewal form). The mailing was returned to the Office of the Hearing Clerk marked by the United States Postal Service as "unclaimed." Consistent with the Rules of Practice, the Office of the Hearing Clerk remailed the package to Respondent by regular mail on

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<sup>1</sup>Pursuant to section 1.132 of the Rules of Practice, an order to show cause filed to institute a proceeding falls within the definition of "complaint." 7 C.F.R. § 1.132.

September 11, 2012.

Respondent failed to file an Answer and an Order was entered on October 10, 2013 directing the parties to show cause why a Default Decision and Order should not be entered. Complainant has since moved for adoption of a Decision and Order by reason of default. Respondent failed to respond to the Show Cause Order.

As Respondent failed to file a timely Answer, the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice.

### **Findings of Fact**

1. Respondent James Holtkamp is an individual whose business mailing address is in Kirksville, Missouri.
2. At all times mentioned herein, Respondent was operating as a dealer, as that term is defined in the Act and the Regulations, and held Animal Welfare Act license number 43-A-4844.
3. On December 16, 2009, Animal Care Inspector (ACI) Robert W. Bacon attempted unsuccessfully to conduct an inspection of Respondent's facilities, animals and records. He attempted to reach Respondent on the telephone; however, Respondent did not answer. He knocked on the door of the residence, and heard what sounded like a television coming from inside the residence, but no one answered the door. ACI Bacon documented his attempted inspection. A copy of his inspection report was attached to the OSC as CX 1.
4. On June 9, 2010, ACI Jan R. Feldman conducted an inspection of Respondent's facility, and observed noncompliance with the AWA Regulations and with the minimum standards. ACI Feldman documented the deficiencies in an inspection report and discussed them with Respondent in an exit interview. A copy of the inspection report was sent to Respondent by

certified mail, at Respondent's request. A copy of the inspection report was attached to the OSC as CX 2.

5. The following day, June 10, 2010, a man later identified as Respondent telephoned the APHIS Animal Care office in Fort Collins, Colorado. Katie Green, an Inspection and Licensing Assistant, took the call. Respondent Holtkamp said that he was a kennel owner and complained about the inspection he had received. Ms. Green invited him to submit his complaints in writing. Respondent then proceeded to curse at Ms. Green and to call her names, including "idiot," and, referring to his inspector, stated: "if she ever comes onto my property, I will have the [expletive] removed." Ms. Green documented her exchange with respondent Holtkamp in a memorandum, a copy of which was attached to the OSC as CX 3.

6. On August 24, 2010, at approximately 1:00 p.m., ACI Feldman attempted to conduct an inspection of respondent's facilities, animals and records. On this occasion, she was accompanied by APHIS Veterinary Medical Officer ("VMO") Michael Tygart, and Corporal E.L. Grissom, Missouri Highway Patrol. Respondent refused to permit an inspection, and stated that ACI Feldman was "not allowed" on his property. He repeatedly directed profanity at ACI Feldman, calling her offensive names, and ultimately reached forward and made contact with her arm, whereupon ACI Feldman moved back and Cpl. Grissom intervened. Cpl. Grissom advised Respondent to calm down and that he was getting out of control. Respondent continued to be verbally abusive. ACI Feldman documented the events in an inspection report and a memorandum, copies of which were attached to the OSC as CX 4 and CX 5, respectively. Cpl. Grissom prepared an incident report, a copy of which was attached to the OSC as CX 6.

7. On March 20, 2012, at approximately 10:30 a.m., VMO Konnie Plumlee and ACI

Stephanie Osborne attempted to conduct an inspection of Respondent's facilities, animals and records. They were accompanied by Missouri State Trooper S.P. Smeltser. The inspectors heard multiple dogs barking inside the green barn on the premises. Respondent again refused to permit an inspection, and told the inspectors to leave his property "right now." Respondent stated that he did not raise dogs anymore, and told Trooper Smeltser that "the only dog he owned was the Basset Hound in his yard." Trooper Smeltser later recommended to the inspectors that they not return to respondent's facility without a warrant and law enforcement personnel. ACI Osborne documented the events in an inspection report and a memorandum, copies of which were attached to the OSC as CX 7 and CX 8, respectively. VMO Plumlee also prepared a memorandum, a copy of which was attached to the OSC as CX 9.

8. On approximately April 25, 2012, Respondent submitted a license renewal application to APHIS. On May 11, 2012, APHIS sent the renewed license to Respondent, along with a cover letter advising that "Animal Care intends to pursue administrative action to terminate this license." These materials were returned marked "unclaimed," and were resent to Respondent by regular mail on June 4, 2012. Copies of this correspondence were attached to the OSC as CX 10.

### **Conclusions of Law**

1. The Secretary has jurisdiction in this matter.
2. Respondent's conduct has impeded Complainant from carrying out its mandate to enforce the Act, in contravention of the AWA and the Regulations.
3. Respondent willfully and repeatedly violated 9 C.F.R. § 2.126, and 2.4 of the Regulations.
4. Respondent's conduct warrants a finding that he is no longer fit to be a licensee and his

continued licensure would be contrary to the purposes of the Act.

**Order**

1. The Administrator's determination that Respondent is no longer fit to be a licensee and that the continued licensure of respondent would be contrary to the purposes of the Act is **AFFIRMED**.

2. Animal Welfare Act license number 43-A-4844 is hereby **TERMINATED**.

3. The provisions of this order shall become effective on the first day after this decision becomes final. This decision becomes final without further proceedings 35 days after service unless appealed to the Judicial Officer as provided in sections 1.142 and 1.145 of the Rules of Practice.

Copies of this Decision and Order shall be served upon the parties.

May 29, 2013

*Peter M. Davenport*

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**Peter M. Davenport**  
Chief Administrative Law Judge