

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0197

In re: Joseph D. Graber and Rhoda Graber,

Respondents.

Decision and Order

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 et seq.), by a Complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that Respondents willfully violated the Act and the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 et seq.).

Copies of the Complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were served by the Hearing Clerk on Respondents on April 1, 2013. Respondents were informed in the letter of service that filing an Answer which does not deny the material allegations of the Complaint shall constitute an admission of those allegations and serve as a waiver of their right to an oral hearing. Respondents filed an Answer in which they substantially admitted the allegations within the Complaint.

There being no factual dispute of substance, no hearing is required and the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Respondents Joseph Graber and Rhoda Graber are individuals whose mailing address is in Odon, Indiana.

2. The Respondents, at all times material herein, were licensed and operating as a dealer as defined in the Act and the regulations.

3. On April 27, 2011, APHIS inspected Respondents' premises and found that they had failed to provide adequate veterinary care to a male Basset Hound.

4. On May 23, 2012, APHIS inspected Respondents' premises and records and found that they had failed to provide adequate veterinary care to 2 male Shih-Tzus.

5. On August 21, 2012, APHIS inspected Respondents' premises and records and found that they had failed to provide adequate veterinary care to at least 4 dogs resulting in at least one of them being euthanized.

6. On August 21, 2012, APHIS inspected the Respondents' facility and found the following willful violations of and the standards specified below:

a. Housing facilities surfaces were not constructed and maintained in a manner that allowed them to be readily cleaned and sanitized, or removed and replaced when worn or soiled; and

b. Primary enclosures were not sanitized often enough to prevent excessive accumulation of dirt, debris, food waste, excreta, and other disease hazards.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Respondents willfully violated section 2.40(b) of the regulations (9 C.F.R. § 2.40(b)) on the three occasions identified above.

3. Respondents willfully violated section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and sections 3.1(c) and 3.11(b) of the standards. (9 C.F.R. § 3.1(c) and § 3.11(b)).

Order

1. Respondents, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, shall cease and desist from:

(a) Failing to utilize adequate veterinary care;

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

(c) Failing to provide for the rapid elimination of excess waste from primary enclosures for animals.

2. The Respondents are jointly and severally assessed a civil penalty of \$7,500.00, which shall be paid by a certified check or money order made payable to the Treasurer of United States.

3. Respondents' license is suspended for a period of one year and continuing thereafter until they demonstrate to the Animal and Plant Health Inspection Service that they are in full compliance with the Act, the regulations and standards issued thereunder, and this order, including payment of the civil penalty imposed herein.

4. The provisions of this order shall become effective on the first day after this decision becomes final.

5. Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

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

August 9, 2013

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge