UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	
JERRY BEATY, an individual;	)	HPA Docket No. 17-0056
MIKE DUKES, an individual; and	)	**HPA Docket No. 17-0057**
BILL GARLAND, an individual,	)	HPA Docket No. 17-0058
	)	
Respondents	)	

DEFAULT DECISION AND ORDER AS TO MIKE DUKES

Appearances:

Colleen A. Carroll, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington D.C. 20250, for the Complainant, Animal and Plant Health Inspection Service [APHIS]; and

Respondent Mike Dukes, pro se.

Preliminary Statement

This proceeding was instituted under the Horse Protection Act (15 U.S.C. § 1821 *et seq.*) [Act or HPA] by a complaint filed on December 28, 2016, by the Administrator of the Animal and Plant Health Inspection Service [APHIS or Complainant], alleging that the respondents violated the Act with respect to a horse named Line of Cash.

On March 17, 2017, the Office of the Hearing Clerk [OHC] sent respondent Mike Dukes [Mr. Dukes] a copy of the Complaint by certified mail. According to U.S. Postal Service records, the certified mailing was delivered on March 21, 2017.

Mr. Dukes was required to file an answer to the Complaint no later than twenty days after service.[1] The Complaint itself states that the "[f]ailure to file a timely answer shall constitute an

[1] "7 C.F.R. §§ 1.136(c) and 1.139 clearly describe the consequences of failing to answer a complaint in a timely fashion. These sections provide for default judgments to be entered. They specifically provide for admissions absent an answer. *See* 7 C.F.R. § 1.136(c) ('Failure to file an answer within the time . . . provided

admission of all the material allegations of this complaint." (Compl. at 7). The OHC's cover letter also advised Mr. Dukes that he could file his answer by email: "Your answer, as well as any other pleadings or requests regarding this proceeding may be submitted to the Hearing Clerk via email at (OALJHearingClerks@ocio.usda.gov)." (OHC Letter at 1).

The twentieth day after service of the Complaint was April 10, 2017. Mr. Dukes did not file an answer by that date; rather, he filed an answer on April 26, 2017.[2]

> [The respondent] filed no answer or any other document during the twenty-day period provided. His failure to file an answer within the time provided constitutes an admission of the allegations in the complaint, pursuant to section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)).

McDaniel, 45 Agric. Dec. 2255, 2257 (U.S.D.A. 1986).

> The requirement in the Department's rules of practice that respondent deny or explain any allegation of the complaint and set forth any defense in a timely answer is necessary to enable this Department to handle its large workload in an expeditious and economical manner. During the last fiscal year, the Department's five ALJ's (who do not have law clerks) disposed of 496 cases. The Department's Judicial Officer disposed of 42 cases. In a recent month, 66 new cases were filed with the Hearing Clerk. Over 150 new Plant Quarantine Act cases are awaiting processing in the Office of the General Counsel.
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> The courts have recognized that administrative agencies "should be 'free to

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shall be deemed . . . an admission of the allegations in the complaint. . . .'). Furthermore, the failure to answer constitutes a waiver of the right to a hearing. 7 C.F.R. § 1.139." Morrow v. Dep't of Agric., 65 F.3d 168 (6th Cir. 1995).

[2] United States Postal Service records reflect that Mr. Dukes received a copy of the Complaint on March 21, 2017. Mr. Dukes had twenty (20) days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. §§ 1.147(g), (h). In this case, Mr. Dukes's answer was due by April 10, 2017 but was not filed until April 26, 2017. Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision. 7 C.F.R. § 1136(c). Regrettably, other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely filed answer.

> fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.'" If a respondent in one case is permitted to contest some of the allegations of fact, or raise new issues, even though a timely answer was not filed, all other respondents in all other cases would have to be afforded the same privilege. Permitting such practice would greatly delay the administrative process and would require additional personnel.

Kaplinsky, 47 Agric. Dec. 613, 618–19 (U.S.D.A. 1988) (citing *Cella v. United States*, 208 F.2d 783, 789 (7th Cir. 1953), *cert. denied*, 347 U.S. 1016 (1954) (quoting *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 143 (1940)); *Swift & Co. v. United States*, 308 F.2d 849, 851- 52 (7th Cir. 1962)).

On April 19, 2017, Complainant filed a "Motion for Adoption of Decision and Order as to Mike Dukes by Reason of Default" [Motion for Default] and "Proposed Decision and Order as to Mike Dukes by Reason of Default" [Proposed Decision].

On April 24, 2017, Mr. Dukes responded via facsimile to Complainant's Motion for Default. The response simply reads:

> Dear Renee Leach-Carlos,
>
> In accordance with the previous letter sent, *I have already responded by mail.*
>
> The horse (Line of Cash) was never at any time entered in a horse show in my name. I was only the groom helping Jerry Beaty with this horse.
>
> The horse (I Be Stoned) was never at any time entered in a horse show in my name. I was only the groom helping Jerry Beaty with this horse.
>
> At no time have I owned, showed, or trained either of these horses.
>
> Mike Dukes

(Resp. at 1) (emphasis added).

Mr. Dukes's response does not set forth any meritorious objections to Complainant's

Motion for Default.[3] As previously discussed herein, the Rules of Practice[4] provide that a respondent shall file an answer with the Hearing Clerk "[w]ithin 20 days after the service of the complaint." 7 C.F.R. § 1.136(a). The Rules of Practice also specify that"[a]ny document or paper required or authorized under the rules in this part to be filed shall be deemed to be filed *at the time when it reaches the Hearing Clerk.*" 7 C.F.R. § 1.147(h) (emphasis added). Thus, it is the date an answer is received by the Hearing Clerk's Office—not the date on which an answer is mailed—that constitutes the effective filing date.

Here, Mr. Dukes's answer was required to be received by the OHC on or before April 10, 2017 in order to be deemed timely filed. The Hearing Clerk's records reflect that the Answer was received by the OHC on April 26, 2017. "Although, on rare occasions, default decisions have been set aside for good cause shown or where the complainant does not object to setting aside the default decision, generally there is no basis for setting aside a default decision that is based upon a respondent's failure to file a timely answer."[5]

Accordingly, the material facts alleged in the Complaint are all admitted by Mr. Dukes's failure to file a timely answer and are adopted and set forth herein as Findings of Fact and Conclusions of Law. This Decision and Order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

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[3] *See* 7 C.F.R. § 1.139 ("Within 20 days after service of such motion [for default] and proposed decision, the respondent may file with the Hearing Clerk objections thereto. . . . If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.").

[4] The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes [Rules of Practice] are set forth at 7 C.F.R. § 1.131 *et seq.*

[5] Knapp, 64 Agric. Dec. 253, 295 (U.S.D.A. 2005).

Findings of Fact

1. Mike Dukes is an individual whose business mailing address is 74 Evans Road, Winchester, Tennessee 37398. At all times mentioned herein, Mr. Dukes was a "person" and an exhibitor," as those terms are defined in the regulations issued pursuant to the Act (9 C.F.R. § 11.1 *et seq.*) [Regulations].

2. The nature, circumstances, and extent of the prohibited conduct are that Mr. Dukes entered a horse in a horse show while the horse was "sore" (as that term is defined in the Act and the Regulations) and bearing a prohibited substance. The gravity of the prohibited conduct alleged in the complaint is great. Congress enacted the HPA to end the practice of making gaited horses, including Tennessee Walking Horses, "sore" for the purpose of altering their natural gait to achieve a higher-stepping gait and gaining an unfair competitive advantage during performances at horse shows.[6]

3. Mr. Dukes is culpable for the violations herein. Exhibitors of horses are absolute guarantors that those horses will not be sore within the meaning of the HPA when they are entered or shown.[7]

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[6] "When the front limbs of a horse have been deliberately made 'sore,' usually by using chains or chemicals, 'the intense pain which the animal suffered when placing his forefeet on the ground would cause him to lift them up quickly and thrust them forward, producing exactly [the distinctive high-stepping gait of a champion Walker].' H.R. Rep. No. 91-1597, 91st Cong., 2d Sess. 2 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4870, 4871. Congress' reasons for prohibiting this practice were twofold. First, it inflicted unnecessary pain on the animals; and second, those who made their animal 'sore' gained an unfair competitive advantage over those who relied on skill and patience. In 1976, Congress significantly strengthened the Act by amending it to make clear that intent to make a horse 'sore' is not necessary an element of a violation. *See Thornton v. U.S.D.A.*, 715 F.2d 1508, 1511-12 (11th Cir. 1983)." Edwards, 55 Agric. Dec. 892, 950 (U.S.D.A. 1996).

[7] Carl Edwards & Sons Stables, 56 Agric. Dec. 529, 588-89 (U.S.D.A. 1997); Edwards, 55 Agric. Dec. 892, 979 (U.S.D.A. 1996).

4. On November 27, 2012, APHIS issued an Official Warning (TN 130086) to Mr. Dukes with respect to his having entered a horse (I Be Stoned) in a horse show on August 2, 2012, which horse APHIS found was sore.

Conclusions of Law

1. On or about August 31, 2016, Mr. Dukes entered a horse (Line of Cash), while the horse was sore, for showing in class 136 in a horse show in Shelbyville, Tennessee, in violation of the Act (15 U.S.C. § 1824(2)(B)).

2. On August 31, 2016, Mr. Dukes entered a horse (Line of Cash), while the horse was bearing a prohibited substance, for showing in class 136 in a horse show in Shelbyville, Tennessee, in violation of the Act (15 U.S.C. § 1824(7)).

ORDER

1. Respondent Mike Dukes is assessed a $4,400 civil penalty, which shall be paid by check made payable to USDA/APHIS, indicating that the payment is in reference to HPA Docket No. 17-0057, and sent to:

USDA, APHIS, MISCELLANEOUS
P.O. Box 979043
St. Louis, Missouri 63197-9000

2. Respondent Mike Dukes is disqualified for two (2) years from showing or exhibiting any horse in any horse show, horse exhibition, horse sale, or horse auction, directly or indirectly through any agent, employee, corporation, partnership, or other device, and from judging or managing any horse show, horse exhibition, horse sale, or horse auction.

This Decision and Order shall be final and effective without further proceedings thirty-five (35) days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within

thirty (30) days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties, with courtesy copies provided via email where available.

Done at Washington, D.C.,
this 30 day of May, 2017

[redacted]

Bobbie J. McCartney
Chief Administrative Law Judge

Hearing Clerk's Office
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