

FEB 27 PM 2:56
RECEIVED
U.S. DEPARTMENT OF AGRICULTURE

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

In re:)
)
 Lisa R. Whiteaker, an individual)
 doing business as MONKEYPRO,)
)
 Respondent.)
)
 AWA Docket No. 18-0072

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

John V. Rodriguez, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, D.C., for the Complainant, the Administrator of the Animal and Plant Health Inspection Service ("APHIS").

Preliminary Statement

This administrative proceeding was initiated under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131 *et seq.*) ("AWA"); the regulations promulgated thereunder (9 C.F.R. §§ 1.1 *et seq.*) ("Regulations"); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) ("Rules of Practice").

The Administrator of the Animal and Plant Health Inspection Service ("APHIS"), United States Department of Agriculture ("Complainant"), initiated this proceeding against Lisa R. Whiteaker, an individual doing business as MONKEYPRO ("Respondent") by filing a complaint on August 23, 2018. The Complaint alleged that, 1) the Respondent twice failed to obey the Cease and Desist Order made by the Secretary under section 2149(b) of the Act (7 U.S.C. § 2149(b)) in *Whiteaker*, 64 Agric. Dec. 734 (U.S.D.A. 2005) (AWA Docket No. 04-0026); 2) the Respondent, operated as a dealer, as that term is defined in the Act and the Regulations, without having been licensed by the Secretary to do so, in that the Respondent, in commerce, sold and

transported a monkey named “Mindy” from Marion, North Carolina to Dinwiddie, Virginia, for use as a pet, during a period of revocation, in willful violation of section 2134 of the Act (7 U.S.C. § 2134) and sections 2.1(a) and 2.10(c) of the Regulations. 9 C.F.R. §§ 2.1(a), 2.10(c); and 3) the Respondent obtained a monkey named “Mindy” by the use of false pretenses, misrepresentation, or deception, in that the Respondent offered the owner to take possession and train the monkey, instead the Respondent took possession and sold the monkey to a third party, in willful violation of section 2.132(b) of the Regulations. 9 C.F.R. § 2.132(b).

Complainant requested that an Administrative Law Judge find that Respondent violated the previous Cease and Desist Order and the AWA and its Regulations. The Complainant seeks the civil penalty of three thousand three hundred dollars (\$3,300.00) for when the Respondent twice failed to obey the Cease and Desist Order in *Whiteaker*, 64 Agric. Dec. 734 (U.S.D.A. 2005) (AWA Docket No. 04-0026); a civil penalty of four thousand five hundred dollars (\$4,500.00) for when the Respondent operated as a dealer without having been licensed by the Secretary to do so, in willful violation of section 2134 of the Act (7 U.S.C. § 2134) and sections 2.1(a), 2.10(c) of the Regulations (9 C.F.R. §§ 2.1(a), 2.10(c)); and a penalty of four thousand five hundred dollars (\$4,500.00) for when the Respondent obtained a monkey named “Mindy” by the use of false pretenses, misrepresentation, or deception, in willful violation of section 2.132(b) of the Regulations (9 C.F.R. § 2.132(b)).

Respondent Whiteaker was duly served with a copy of the Complaint and did not file an answer within the twenty-day period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).¹

¹ The Hearing Clerk’s records reflect that the Complaint was sent to Respondent via certified mail but returned “unclaimed” on August 27, 2018. In accordance with section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)), the Hearing Clerk re-mailed the Complaint to the

On December 21, 2018 Complainant filed a Motion for Adoption of Proposed Default Decision and Order (“Motion for Default and Proposed Decision”). Respondent has not filed any objections to Complainant’s Motion for Default or Proposed Decision.²

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. § 1.136(c). Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely filed answer where, as in the present case, no meritorious objections have been filed.³

As Respondent failed to answer the Complaint, and upon Complainant’s motion for the issuance of a decision without hearing by reason of default, this Decision and Order is issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

same address via ordinary mail on November 1, 2018. Respondent had twenty 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(h). In this case, Respondent’s answer was due on or before November 21, 2018. Respondent has not filed an answer in this matter.

² United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on February 4, 2019. Respondent had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal holidays shall not 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(h). In this case, Respondent’s objections were due by February 25, 2019. Respondent has not filed any objections.

³ 7 C.F.R. § 1.139; *see supra* note 2.

Findings of Fact

1. The Respondent Lisa R. Whiteaker, is an individual doing business as MONKEYPRO. The Respondent's mailing address was not provided in the complaint to protect the privacy of the Respondent, but was provided to the Hearing Clerk's Office, United States Department of Agriculture, on August 23, 2018 for the purpose of service of the complaint and future documents.
2. From on or about January 10, 2014, through on or about January 17, 2014, the Respondent twice failed to obey the Cease and Desist Order made by the Secretary under section 2149(b) of the Act (7 U.S.C. § 2149(b)) in *Whiteaker*, 64 Agric. Dec. 734 (U.S.D.A. 2005) (AWA Docket No. 04-0026).
3. From on or about January 10, 2014, through on or about January 17, 2014, the Respondent, operated as a dealer, as that term is defined in the Act and the Regulations, without having been licensed by the Secretary to do so, in that the Respondent, in commerce, sold and transported a monkey named "Mindy" from Marion, North Carolina to Dinwiddie, Virginia, for use as a pet, during a period of revocation, in willful violation of section 2134 of the Act (7 U.S.C. § 2134) and sections 2.1(a), 2.10(c) of the Regulations (9 C.F.R. §§ 2.1(a), 2.10(c)).
4. From on or about January 10, 2014, through on or about January 17, 2014, the Respondent obtained a monkey named "Mindy" by the use of false pretenses, misrepresentation, or deception, in that the Respondent offered the owner to take possession and train the monkey, instead the Respondent took possession and sold the monkey to a third party, in willful violation of section 2.132(b) of the Regulations (9 C.F.R. § 2.132(b)).

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. The Respondent twice failed to obey the Cease and Desist Order made by the Secretary under section 2149(b) of the Act (7 U.S.C. § 2149(b)) in *Whiteaker*, 64 Agric. Dec. 734 (U.S.D.A. 2005) (AWA Docket No. 04-0026).
3. The Respondent violated section 2134 of the Act (7 U.S.C. § 2134), and sections 2.1(a), 2.10(c), 2.132(b) of the Regulations (9 C.F.R. §§ 2.1(b), 2.10(c), 2.132(b)).

ORDER

1. Complainant's December 21, 2018 Motion for Adoption of Proposed Default Decision and Order is GRANTED.
2. A finding is made that the Respondent twice failed to obey the Cease and Desist Order in *Whiteaker*, 64 Agric. Dec. 734 (U.S.D.A. 2005) (AWA Docket No. 04-0026) and is assessed the civil penalty of three thousand three hundred dollars (\$3,300.00).⁴
3. A finding is made that the Respondent operated as a dealer without having been licensed by the Secretary to do so, in willful violation of section 2134 of the Act (7 U.S.C. § 2134) and sections 2.1(a), 2.10(c) of the Regulations (9 C.F.R. §§ 2.1(a), 2.10(c)) and is assessed the civil penalty four thousand five hundred dollars (\$4,500.00).
4. A finding is made that the Respondent obtained a monkey named "Mindy" by the use of false pretenses, misrepresentation, or deception, in willful violation of section 2.132(b) of the Regulations (9 C.F.R. § 2.132(b)) and is assessed the civil penalty four thousand five hundred dollars (\$4,500.00).

Respondent shall send a certified check or money order for twelve thousand three hundred

⁴ \$1,650.00 per violation.

dollars (\$12,300.00), made payable to the U.S. Department of Agriculture, to:

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

within thirty (30) days from the effective date of this Order. Respondent shall indicate on the certified check or money order that this payment is in reference to AWA Docket No. 18-0072.

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, as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 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 27th day of February 2019

[Redacted]
Channing D. Strother
Chief Administrative Law Judge

Hearing Clerk's Office
United States Department of Agriculture
Stop 9203, South Building, Room 1031
1400 Independence Avenue, SW
Washington, DC 20250-9203
Tel: 202-720-4443
Fax: 202-720-9776
SM.OHA.HearingClerks@USDA.GOV