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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:

Jack Grisham Heffington, an individual (HPA Docket No. 17-0188).

Respondent.

**Decision and Order on the Written Record**

Appearances:

Lauren C. Axley, Esq. with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington DC 20250, for the Complainant (APHIS);<sup>1</sup> and

Jack G. Heffington, Esq., P.O. Box 1658, Shelbyville TN 37162, who represents himself, Respondent Jack Grisham Heffington (Respondent Heffington or Mr. Heffington).

**Decision Summary**

1. Three times during August 2014, Jack Grisham Heffington, Respondent, also known as Jack G. Heffington (“Mr. Heffington”), showed a horse named “I’m Infamous” at horse shows in Tennessee. Previously, Mr. Heffington and APHIS had agreed to a \$1,000.00 civil penalty and a period of disqualification from showing horses, in the Consent Decision and Order in HPA Docket No. 12-0199, issued on January 14, 2014, under which Mr. Heffington *could have* completed his period of disqualification on July 31, 2014, but *only if* before July 31, 2014, he had paid his \$1,000.00 civil penalty.

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1. The Complainant is the Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (“APHIS” or “Complainant”).

2. Mr. Heffington failed to end his period of disqualification as soon as he could have. Mr. Heffington failed to comply with 15 U.S.C. § 1825(c) when he began to show a horse named "I'm Infamous" during August 2014 while disqualified. Mr. Heffington did not deliberately disobey the disqualification order to which he had agreed, but he and he alone is responsible for his oversight in failing to pay the \$1,000.00 civil penalty he owed under the 12-0199 Consent Decision, before he showed the horse. Mr. Heffington should have known he was disobeying the disqualification order, and he disobeyed the disqualification order three times.

3. The maximum penalty for the three instances of disobeying the disqualification order during August 2014 is \$4,300.00 plus \$4,300.00 plus \$4,300.00; for a total of \$12,900.00 in civil penalties, under sections 1825(b) and (c) of the Horse Protection Act (15 U.S.C. § 1825(b) and (c)); and 7 C.F.R. § 3.91(b)(2)(ix). I determine that Mr. Heffington shall deliver to USDA APHIS by August 15 (Thur) 2019, payment of the following civil penalties under sections 1825(b) and (c) of the Horse Protection Act (15 U.S.C. § 1825(b) and (c)); and 7 C.F.R. § 3.91(b)(2)(ix), which I determine to be adequate, proportionate, reasonable and just: \$1,000.00 plus \$1,000.00, plus \$1,000.00, for a total of \$3,000.00 in civil penalties.

#### **Parties and Allegations**

4. The Complainant is the Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (frequently herein "APHIS" or "Complainant").

5. APHIS is represented in this case, HPA Docket No. **17-0188**, by Ms. Lauren C. Axley, Esq.; was previously represented by Ms. Sharlene Deskins, Esq.; and prior to that was represented by Ms. Colleen A. Carroll, Esq., each with the Office of the General Counsel, United States Department of Agriculture.

6. The Respondent is Jack Grisham Heffington, an individual (frequently herein “Mr. Heffington” or “Respondent Heffington” or “Respondent”).

7. The Respondent Jack Grisham Heffington represents himself; as a lawyer he is known as Jack G. Heffington, Esq.

8. APHIS alleged in the Complaint filed in Docket No. **17-0188** on January 31, 2017, that Respondent Jack Grisham Heffington violated the Horse Protection Act (“HPA” or “Act”), as amended (15 U.S.C. § 1821 *et seq.*), specifically 15 U.S.C. § 1825(c), when he, Respondent Heffington, knowingly failed to obey the order of disqualification issued in Docket No. 12-0199.

9. Respondent Heffington in his Answer filed February 27, 2017, denied that he knowingly failed to obey an order of disqualification.

### **Overview**

10. Before me are APHIS’s Motion for Summary Judgment filed February 28, 2018 with accompanying and subsequent filings; and Mr. Heffington’s Response filed March 19, 2018 with accompanying and subsequent filings. In addition to that voluminous documentation, painstakingly gathered by each side and very helpful, I examine two prior cases involving Mr. Heffington: Docket No. 12-0199, and Docket No. 14-0053. As I evaluate the written

record before me, which I conclude is sufficient to decide this case without an oral hearing, I next state a Time Line, which will be incorporated in my Findings of Fact.

### Time Line

11. This Time Line will be incorporated in the Findings of Fact.

2013, December 1 -	Disqualification under Docket No. 12-0199 BEGAN. (The parties agreed to the disqualification beginning date, which was prior to issuance of the Consent Decision.)
2014, January 14 -	Consent Decision was issued in Docket No. 12-0199.
2014, January 14 -	Consent Decision in Docket No. 12-0199 was sent to Mr. Heffington by certified mail [but subsequently, no proof of service was filed].
2014, August 2 -	Mr. Heffington showed a horse named I'm Infamous in a horse show in Wartrace, Tennessee.
2014, August 21 -	Mr. Heffington showed a horse named I'm Infamous in a horse show in Shelbyville, Tennessee.
2014, August 27 -	Mr. Heffington showed a horse named I'm Infamous in a horse show in Shelbyville, Tennessee.
on or about 2014, November 25 -	Mr. Heffington paid his civil penalty (\$1,000.00) under 12-0199. His check was dated 11-25-14. CX-10.
on or about 2014, November 26 -	Last day of Disqualification under 12-0199 (giving Mr. Heffington the earliest possible day).
2014, December 2 -	Mr. Heffington's \$1,000.00 check was processed by the U.S. Treasury.
on or about 2014, November 26 -	Disqualification under Docket No. 14-0053 BEGAN. (The parties agreed to a seven-month disqualification, to begin on the first day after Mr. Heffington fulfilled his obligations

under 12-0199, which day was prior to issuance of the Consent Decision.)

2014 December 5 - Consent Decision was issued in Docket No. 14-0053.

2014 December 5 - Consent Decision in Docket No. 14-0053 was sent to Mr. Heffington by regular mail.

on or about  
2015, May 11 - Mr. Heffington paid his civil penalty (\$1,100.00) under 14-0053. His check was dated 5-11-15. CX-10.

on or about  
2015, June 26 - Last Day of Disqualification under 14-0053.

2018, May 17 - Mr. Heffington was served with Consent Decision issued in Docket No. 12-0199.

2018, May 18 - Effective date of the Order in the Consent Decision issued in Docket No. 12-0199.

### **Background**

12. In his Answer (at 1), Respondent Heffington admitted that he was subject to two Consent Decision and Orders in the matters of *Heffington*, HPA Docket No. 12-0199, and *Heffington*, HPA Docket No. 14-0053, each including a civil penalty and an uninterrupted period of disqualification from “showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or other device, and from judging, managing or otherwise participating in any horse show, horse exhibition, or horse sale or auction”; but he denied that he knowingly failed to obey the order of disqualification in *Heffington*, HPA Docket No. 12-0199, on the three separate occasions alleged in the Complaint. In his Answer (at 2), Respondent Heffington demanded a hearing, and he demanded dismissal.

13. APHIS filed a Motion for Summary Judgment on February 28, 2018. In this Motion, APHIS argues that a hearing is not needed as no dispute of material fact remains. APHIS states, at 6-8, that 1) “[t]here is no factual dispute that Respondent Jack Heffington was disqualified from showing horses during the month of August, 2014,” and 2) “[t]here is no credible dispute that respondent showed I’m Infamous on three occasions in August, 2014.”

14. Respondent Heffington filed his “Response to Complainant’s Motion for Summary Judgment” (“Response to the Motion for SJ”) on March 19, 2018. In his Response to the Motion for SJ, at 1-3, Respondent Heffington argues that 1) APHIS’s Motion for Summary Judgment is “a motion to dismiss on the pleadings which is not allowed under The Rules of Practice,” and 2) that there is a genuine issue of material fact in that Respondent contends he did not “knowingly” disobey the HPA Docket No. 12-0199 Consent Decision and Order.

15. On May 8, 2018, I issued a Ruling Deferring Action on APHIS’s Motion for Summary Judgment (“Ruling Deferring Action”) which noted that, in considering APHIS’s Motion for Summary Judgment, it was necessary to examine two prior cases involving Mr. Heffington, Docket Nos. 12-0199 and 14-0053. Because the 12-0199 Consent Decision and Order issued on January 14, 2014 was sent via certified mail, but the record did not contain proof of delivery, I deferred action on APHIS’s Motion for Summary Judgment until proof was obtained that Respondent Heffington had been served a copy of the 12-0199 Consent Decision.<sup>2</sup>

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<sup>2</sup> The December 5, 2014 Consent Decision and Order in Docket No. 14-0053 was sent by regular mail and presumably received. My focus in this case Docket No. 17-0188 is almost entirely on the disqualification period resulting from the Consent Decision and Order in Docket No. 12-0199.

16. On October 3, 2018 I issued an order to “File Calculations by 31 October (Wed) 2018”, asking both parties to file their calculations of when the period(s) of disqualification under Docket Nos. 12-0199 and 14-0053 begin and end, and to also provide their interpretations on the impact of the Consent Decision order language: “shall become effective on the first day after service of this decision on the respondent.”

17. Respondent’s Response to Judge was filed on October 30, 2018 (“Respondent’s October 2018 Response”) and APHIS’s Filing Regarding the Disqualification Periods in Dockets 12-0199 and 14-0053 was filed on October 30, 2018 (“APHIS’s October 2018 Response”).

### **Discussion**

#### ***Determination of Disqualification Period under 12-0199***

18. It is not disputed that Respondent Heffington was subject to the Consent Decision and Order in HPA Docket No. 12-0199, nor is it disputed that the disqualification period imposed by the 12-0199 Decision started on December 1, 2013 and lasted through payment of the imposed civil penalty. Respondent’s Answer at para. 2.

19. In APHIS’s October 2018 Response, at 2-3, APHIS states that “(t)he dates of Respondent’s disqualification period are highly relevant to APHIS’s Motion for Summary Judgment and case” and argues that “the effective date clause in the 12-0199 Consent Decision has no bearing on the dates of the period of disqualification.”

20. The 12-0199 Decision includes language that the order “shall become effective on the first day after service of this decision on the respondent.”<sup>3</sup> As I suggested in the May 8, 2018 Ruling Deferring Action, para. 4, the Hearing Clerk re-mailed the 12-0199 Consent Decision and Order via certified mail on May 9, 2018. I conclude that the re-mailed 12-0199 Consent Decision and Order was received by Mr. Heffington on May 17, 2018; and that the effective date of the 12-0199 Decision order is May 18, 2018. Upon careful study, I agree with APHIS that the effective date of the Decision order does NOT change the disqualification period in the 12-0199 Decision order, which states in pertinent part:

2. Respondent Jack G. Heffington is disqualified for an uninterrupted period of 8 months beginning on December 1, 2013, from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or other device, and from judging, managing or otherwise participating in any horse show, horse exhibition, or horse sale or auction. "Participating" means engaging in any activity beyond that of a spectator, and includes, without limitation, transporting or arranging for the transportation of horses to or from equine events, personally giving instructions to exhibitors, being present in the warm-up or inspection areas, or in any area where spectators are not allowed, and financing the participation of others in equine events.

3. By signing this consent, respondent Jack G. Heffington certifies, that as of December 1, 2013, he has not shown, exhibited, or entered any horse, directly or indirectly through any agent, employee, or other device, nor has he judged, managed or otherwise participated in any horse show, horse exhibition, or horse sale or auction. Accordingly, Respondent's disqualification period that began on December 1, 2013, continues up to and including July 31, 2014.

4. If Respondent fails to pay the assessed civil penalty by July 31, 2014, his disqualification shall remain in effect until the first day after APHIS receives payment of the civil penalty.

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<sup>3</sup> Consent Decision and Order, *Heffington*, HPA Docket No. 12-0199 at ¶ 5. *See also* 7 C.F.R. § 1.138 (stating that “[s]uch decision . . . shall become final upon issuance to become effective in accordance with the terms of the decision.”).



21. In his Response to the Motion for SJ, Respondent Heffington explains (paras. 6-7) that he paid the civil penalty imposed by the 12-0199 Decision order on November 25, 2014 upon realization that no previous payment was received by APHIS. The date of the payment is corroborated by copies of the check, *see* CX-10, and the Declaration of (b) (7)(C), APHIS Financial Management Division, Account Receivable Team, Financial Management Analyst, para. 4, which states that “check number 1053 in the amount of \$1,000.00, dated November 25, 2014. Check number 1053 was made in payment of HPA case number 12-0199. The ECP indicates that check number 1053 was processed by the bank (U.S. Treasury) on December 2, 2014.”

22. Based on the parties’ responses regarding the disqualification period, it does not appear that there is any dispute regarding the beginning and the ending of the disqualification period under the Consent Decision and Order in Docket No. 12-0199. I agree with the analysis in APHIS’s Response that modification of consent decision terms would undermine the parties’ agreement, which could discourage parties from reaching such agreements, and the terms of a consent decision should not be modified unless “‘extreme circumstances’ [exist] related ‘to the assent of the parties to the agreement that was subsequently entered as a Consent Decision’”.<sup>4</sup> No extreme circumstances related to the assent of the 12-0199 Decision and Order exist here. Mr. Heffington does not argue that the effective date changes the disqualification period. I conclude that the disqualification period

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<sup>4</sup> APHIS’s Response at 6 (citing *Reid Haggan*, 35 Agric. Dec. 1812, 1817-19 (U.S.D.A. 1976) (additional citations omitted)).

to which Respondent Heffington was subject under the Consent Decision and Order in HPA Docket No. 12-0199 started on December 1, 2013 and ended on November 26, 2014.

***Impact of the Effective Date of the Decision Order in 12-0199***

23. The parties disagree regarding the impact of the effective date of the Decision Order in 12-0199. Mr. Heffington argues that he cannot have violated the Order in August 2014 if the effective date of the Order is May 18, 2018.

24. In Respondent's October 2018 Response, para. 1, Mr. Heffington states:

1. It appears to the Respondent that the main issue raised by the ALJ is as the ALJ states what impact does the order have when it states that it "shall become effective on the first day after service".

In what remains of my simple legal mind it means what the ORDER says and that is; "it is effective on the first day after service". Service was effectuated on May 17, 2018, so therefore it became effective on May 18, 2018, and had a beginning date at that time and has no effect until that time.

25. Respondent Heffington goes on to state that "[d]etermining the effective date of 12-0199 answers any query the ALJ has as to the beginning and ending date of any disqualification." *Id.* at para. 2. Respondent Heffington also states that, as all civil penalties in both previous dockets have been paid this matter should be dismissed. *Id.* at para. 3.

26. APHIS argues that the effective date of the Order has no practical implications under the circumstances here, because it does not change the period of disqualification. I agree with APHIS that the period of disqualification was clearly described by agreement of the

parties which specified dates and events that did not depend on when a judge would issue the Consent Decision and Order; and did not depend on when the Hearing Clerk's mailings of copies of the Consent Decision and Order would be delivered to the parties.

27. This is the language at the end of the Consent Decision and Order in 12-0199. What is its purpose?

5. This order shall have the same effect as if entered after a full hearing and shall become effective on the first day after service of this decision on the respondent.

Here, the prior paragraphs of the 12-0199 Consent Decision and Order contained everything that anyone needed to know, so I reluctantly conclude that the paragraph 5 language was superfluous.

28. Consent Decision and Order formats increasingly omit language that creates uncertainty, using instead language that is clear within the four corners of the document, for example:

The provisions of this order shall be final and effective on December 1, 2018. This order may be executed in counterparts. Copies of this decision shall be served upon the parties.

29. The Order was within the 12-0199 Consent Decision and Order, which Mr. Heffington had signed, agreeing to its requirements. Mr. Heffington did not need the Hearing Clerk to send him a copy of the Consent Decision to know what was required of him by the Consent Decision. Mr. Heffington failed to meet the requirement of paying the

\$1,000.00 to end the period of disqualification prior to showing the horse at horse shows.

Mr. Heffington's failure was an oversight, a mistake. Mr. Heffington did not deliberately disobey. Nevertheless, he "knowingly failed to obey" because he should have known he had failed to pay the \$1,000.00 civil penalty.

***Decision and Order on the Written Record***

30. The parties' detailed and voluminous submissions in this case **17-0188** go beyond summary judgment, which is why I have chosen to issue a Decision and Order on the Written Record. I have accepted as true the assertions in both parties' submissions, and there is no need to hear testimony, no need for an oral hearing.

31. Respondent Heffington argues in his Response to the Motion for SJ (at 1) that APHIS's Motion for Summary Judgment is "a motion to dismiss on the pleadings which is not allowed under The Rules of Practice." The Rules of Practice state that "[a]ny motion will be entertained other than a motion to dismiss on the pleading." 7 C.F.R. § 1.143(b)(1). That provision is not applicable here, but would perhaps have been applicable if Mr. Heffington had failed to answer APHIS's Complaint and had instead attempted a motion to dismiss (not a good idea). The Rules of Practice make clear that only an Answer will do.

32. It is well accepted that a hearing is futile and summary judgment appropriate where review of the pleadings and filings on the record reveal that no issue of material fact exists.

See *Knaust*, 73 Agric. Dec. 92, 98-9 (U.S.D.A. 2014).<sup>5</sup>

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<sup>5</sup> (citing *Pine Lake Enters., Inc.*, 69 Agric. Dec. 157, 162-63 (U.S.D.A. 2010); *Bauck*, 68 Agric. Dec. 853, 858-59 (U.S.D.A. 2009), *appeal dismissed*, No. 10-1138 (8th Cir. 2010); *Animals of Mont., Inc.*, 68 Agric. Dec. 92, 104 (U.S.D.A. 2009); *Veg-Mix, Inc. v. U.S. Dep't of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987) (affirming the Secretary of Agriculture's use of

Here, APHIS has not moved to dismiss the proceedings but has moved for summary judgment based on both the pleadings and other filings. *See* CX-1 - 10, Declaration of (b) (7)(C) and Declaration of (b) (7)(C). It is appropriate to entertain such a motion under 7 C.F.R. § 1.143(b)(1). *See Knaust, supra*, at 98-9.

***No Factual Dispute of Substance***

33. Hearings are futile and summary judgment is appropriate in proceedings in which there is no factual dispute of substance.<sup>6</sup>

34. Respondent Heffington argues in his Response to the Motion for SJ (at 1-3) that, in the event I consider the Motion for Summary Judgment, there exists a genuine issue of material fact in that he contends he did not “knowingly” disobey the 12-0199 Decision Order. I disagree with Mr. Heffington that he has raised a sufficient genuine issue of material fact that would merit an oral hearing.

As support for his contention, Respondent Heffington states that he

in fact believed that the order had been complied with until Nov. 2014, when he was informed by the APHIS attorney, Brian T. Hill, representing the USDA in case Docket No. 14-0053 that the civil penalty had not been paid in case No. 12-0199. . . . Respondent checked to see if the payment had cleared his bank and upon not being able to find proof that the check had cleared: he issued another check immediately.

*Id.* at para. 6.

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summary judgment under the Rules of Practice)).

<sup>6</sup> *Agri-Sales, Inc.*, 73 Agric. Dec. 612, 625 (U.S.D.A. 2014), in which the USDA Judicial Officer affirms a Decision made without an oral hearing (citing, among others, *Animals of Montana, Inc.*, 68 Agric. Dec. 92, 104 (U.S.D.A. 2009); *Bauck*, 68 Agric. Dec. 853, 858-59 (U.S.D.A. 2009); and *Veg-Mix, Inc. v. U.S. Dep't of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987).

35. Respondent Heffington goes on to explain that he

entered the horse to show after July 31, 2014, which was the disqualification end period. If there had been any intent to violate the order, the horse could have been entered any time prior to July 31, 2014. . . .

The USDA informs horse show management if a person is on disqualification list and therefore is prohibited from showing. Horse show management strictly enforces this prohibition.

The Respondent did not appear on any disqualification list when the horse was entered. If he had appeared on the USDA disqualification list he would have been informed at that time and would have known before Nov. 2014 that the civil penalty had not been paid. [Citation Omitted].

*Id.* at para. 8.

36. Respondent Heffington explains that, at the time of the alleged violations of the disqualification period, (b) (6)

(b) (6) leading to stressful circumstances contributing to his belief that the civil penalty had been paid. *Id.* at para. 9.

37. I accept as true Mr. Heffington's assertions that (b) (6)

(b) (6) leading to stressful circumstances, and also accept as true the Affidavits of Mr. Heffington and his daughter (b) (6) corroborating such assertions. I find, however, that knowingly failing to obey an order of disqualification can be and was committed under such circumstances. Knowingly failing as used in section 1825(c) of the Horse Protection Act (15 U.S.C. § 1825(c)) means knew or should have known. Mr. Heffington's assertions go to mitigation, that is, what the appropriate remedy should be; but those assertions do not outweigh the powerful evidence

that Mr. Heffington had control over how soon his period of disqualification would end after July 31, 2014; and Mr. Heffington had control over whether he would show the horse named “I’m Infamous” during August 2014 at horse shows in Tennessee.

38. Section 1825(c) of the Horse Protection Act (15 U.S.C. § 1825(c)) states in pertinent part “[a]ny person who **knowingly fails to obey** an order of disqualification shall be subject to a civil penalty . . .” (emphasis added). The term “knowingly” is defined by Black’s Law Dictionary as “1. [h]aving or showing awareness or understanding; well-informed”.<sup>7</sup> As pointed out in APHIS’s Motion for Summary Judgment (at 9), Respondent, having personally signed the Consent Decision and Order in Docket No. 12-0199, attesting to knowledge of its conditions, “knew that he was subject to an order disqualifying him.” Respondent Heffington knew of the order of disqualification and the terms therein.

39. APHIS contends (*Id.* at 10) that Respondent Heffington “knew that he did not pay the civil penalty until November 25, 2014.” It is not necessary to hold a hearing on the issue of what did Mr. Heffington know and when did he know it. I accept as true that Mr. Heffington did not know he had not paid at the times he showed the horse “I’m Infamous” on three occasions in August 2014. Nevertheless, Mr. Heffington should have known that he had not paid at the times he showed the horse “I’m Infamous” on three occasions in August 2014. Mr. Heffington’s failures to obey remain proved, and the mitigating factors that Mr. Heffington has proved change the amount of civil penalties.

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<sup>7</sup> *Black’s Law Dictionary*, 950 (Bryan A. Garner et al. eds., 9th ed. 2009).

40. Mr. Heffington knew that he was subject to a disqualification order within the meaning of the Horse Protection Act that “began on December 1, 2013, continu[ing] up to and including July 31, 2014” and “[i]f Respondent fail[ed] to pay the assessed civil penalty by July 31, 2014, his disqualification [would] remain in effect until the first day after APHIS receives payment of the civil penalty.”<sup>8</sup>

41. The responsibility to ensure payment of the civil penalty was on Mr. Heffington. Respondent Heffington argued that he was not listed on any disqualification list when showing the horse on each occasion in August 2014.<sup>9</sup> It was not the responsibility of the horse show management, and it was not the responsibility of the USDA, to prevent Mr. Heffington from showing the horse on each occasion in August 2014. Had Respondent Heffington taken care timely to confirm payment of his civil penalty, all this extra burden on horse show management and the USDA could have been avoided.

42. Respondent Heffington did not take the action of ensuring his payment and the cessation of his disqualification prior to showing the horse “I’m Infamous” on three occasions in August 2014, though he did take such action when informed of the non-payment by Mr. Hill in November 2014. I am sympathetic to Respondent Heffington under stressful circumstances, especially during the 8 months from December 1, 2013 through July 31, 2014. Those stressful circumstances did not dissolve Mr. Heffington’s knowledge of the

<sup>8</sup> Consent Decision and Order, *Heffington*, HPA Docket No. 12-0199 at ¶ 5.

<sup>9</sup> As corroborated by the Affidavit of (b) (6)

(b) (6)



disqualification order and did not absolve him of his carelessness in failing to assure his civil penalty payment prior to showing the horse in a horse show.

***Civil Penalties***

43. The maximum civil penalty of \$4,300.00 per offense<sup>10</sup> would ordinarily be the civil penalty amount that I would choose, but not here. While Respondent Heffington is responsible for his carelessness in failing to assure his civil penalty payment prior to showing a horse in a show, the circumstances leading to his error make the maximum penalty inappropriate.

44. Respondent Heffington's assertions that he thought he had paid, likely made a mistake due to dementia and other stressful circumstances, and that he paid as soon as he was notified that his payment was not received by APHIS, are not enough to negate his knowing violations of the disqualification order, but can be taken into consideration when determining the civil penalty in accordance with section 1825(b)(1) of the Horse Protection Act (15 U.S.C. § 1825(b)(1), including "as justice may require." Under the unique circumstances here, I find that \$1,000.00 per failure is adequate, proportionate, reasonable and just.

45. On December 5, 2014, the Hearing Clerk sent the Consent Decision issued on December 5, 2014 in Docket No. 14-0053 to the parties. Mr. Heffington's copy of the Consent Decision was sent by regular mail (ordinary mail), which he presumably received

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<sup>10</sup> 7 C.F.R. § 3.91(b)(2)(ix) provided that the maximum civil penalty for failure to obey Horse Protection Act disqualification under 15 U.S.C. § 1825(c) during 2014 was \$4,300.00; and now provides that the maximum civil penalty for failure to obey Horse Protection Act disqualification under 15 U.S.C. § 1825(c) is \$10,969.00.

(the mailing was not returned to the Hearing Clerk as undeliverable). The Consent Decision in 14-0053 required payment of a \$1,100 civil penalty but set no deadline for the payment. Mr. Heffington's \$1,100 payment was processed by the U.S. Treasury on May 15, 2015. Declaration of (b) (7)(C), filed February 28, 2018.

### **Findings of Fact**

46. The Time Line on pages 4 and 5 is hereby incorporated into these Findings of Fact.

47. Respondent Jack Grisham Heffington ("Mr. Heffington") is an individual with a business mailing address in Shelbyville, Tennessee, who at all times mentioned herein was a "person" and an "exhibitor" within the meaning of the Horse Protection Act.

48. On January 14, 2014, Administrative Law Judge Jill S. Clifton issued a Consent Decision and Order in *In re: Jack G. Heffington*, HPA Docket No. 12-0199. The order in that case states:

1. Respondent Jack G. Heffington is assessed a civil penalty of \$1,000, which shall be received by July 31, 2014. The civil penalty shall be paid by certified check, payable to the "Treasurer of the United States". The certified check shall include the docket number of these proceedings, namely HPA Docket No. 12-0199. The certified check shall be mailed to:

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

2. Respondent Jack G. Heffington is disqualified for an uninterrupted period of 8 months beginning on December 1, 2013, from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or other device, and from judging, managing or otherwise participating in any horse show, horse exhibition, or horse sale or auction. "Participating" means engaging in any activity beyond that of a spectator, and includes, without limitation, transporting or arranging for the transportation of horses to or from equine events, personally giving instructions to exhibitors, being present in the warmup or inspection areas, or in any area where spectators are not allowed, and financing the participation of others in equine events.

3. By signing this consent, respondent Jack G. Heffington certifies, that as of December 1, 2013, he has not shown, exhibited, or entered any horse, directly or indirectly through any agent, employee, or other device, nor has he judged, managed or otherwise participated in any horse show, horse exhibition, or horse sale or auction. Accordingly, Respondent's disqualification period that began on December 1, 2013, continues up to and including July 31, 2014.

4. If Respondent fails to pay the assessed civil penalty by July 31, 2014, his disqualification shall remain in effect until the first day after APHIS receives payment of the civil penalty.

5. This order shall have the same effect as if entered after a full hearing and shall become effective on the first day after service of this decision on the respondent.

Copies of this decision shall be served upon the parties.

*Heffington*, HPA Docket No. 12-0199 (Consent Decision and Order, Jan. 14, 2014).

49. Mr. Heffington dated his check November 25, 2014 to pay the \$1,000.00 civil penalty assessed in *Heffington*, HPA Docket No. 12-0199; the check was processed by the U.S. Treasury on December 2, 2014. Declaration of (b) (7)(C) CX-10.

50. For this Decision, November 26, 2014 is the last day of Mr. Heffington's disqualification under 12-0199. Using November 26, 2014 gives Mr. Heffington the earliest possible date for his disqualification to end. [Under 12-0199, disqualification continued until the first day after APHIS received payment of the civil penalty.]

51. On August 2, 2014, Mr. Heffington knowingly failed to obey the order of disqualification issued in *Heffington*, HPA Docket No. 12-0199, by showing a horse known as "I'm Infamous" in class 12 in a horse show in Wartrace, Tennessee.

52. On August 21, 2014, Mr. Heffington knowingly failed to obey the order of disqualification issued in *Heffington*, HPA Docket No. 12-0199, by showing a horse known as “I’m Infamous” in class 23 in a horse show in Shelbyville, Tennessee.

53. On August 27, 2014, Mr. Heffington knowingly failed to obey the order of disqualification issued in *Heffington*, HPA Docket No. 12-0199, by showing a horse known as “I’m Infamous” in class 134 in a horse show in Shelbyville, Tennessee.

54. Under Docket No. 12-0199, Respondent Mr. Heffington paid the \$1,000.00 civil penalty on or about November 25, 2014. If Mr. Heffington had paid that \$1,000.00 during the 8 months of his disqualification under Docket No. 12-0199, before he again showed horses, he would have avoided this case and the demand for \$12,900.00.

55. In this case (Docket No. **17-0188**), APHIS asks for an order requiring Respondent Mr. Heffington to pay \$4,300.00 plus \$4,300.00 plus \$4,300.00; for a total of \$12,900.00 in civil penalties.

56. The \$12,900.00 maximum in civil penalties is disproportionate for Mr. Heffington’s oversight, particularly in light of Mr. Heffington’s [REDACTED] and (b) (6) [REDACTED]

(b) (6) [REDACTED].

57. The assertions and evidence contained in the written record before me are accepted as true. An oral hearing is not necessary and would not change the law.

58. Mr. Heffington, from December 1, 2013, through June 26, 2015, was under consecutive periods of Horse Protection Act disqualification calculated in accordance with the agreements by Mr. Heffington and APHIS in two Consent Decisions.

### **Conclusions**

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

60. Any person who knowingly fails to obey an order of disqualification shall be subject to a civil penalty . . .” Section 1825(c) of the Horse Protection Act (15 U.S.C. § 1825(c)).

61. “Knowingly”, within the meaning of section 1825(c) of the Horse Protection Act (15 U.S.C. § 1825(c)), means the person knew, or should have known.

62. Mr. Heffington had agreed to an order of disqualification in the Consent Decision and Order he signed in Docket No. 12-0199. Mr. Heffington knew or should have known what was required of him by the Consent Decision.

63. Mr. Heffington failed to meet the requirement of paying the \$1,000.00 civil penalty to end the period of disqualification prior to showing the horse at horse shows. Mr. Heffington’s failure was an oversight, a mistake. Mr. Heffington did not deliberately disobey. Nevertheless, he “knowingly failed to obey” because he should have known he had failed to pay the \$1,000.00 civil penalty.

64. While under an order of disqualification, the Respondent Jack Grisham Heffington (“Mr. Heffington”) knowingly failed to obey an order of disqualification, in violation of section 1825(c) of the Horse Protection Act (15 U.S.C. § 1825(c)), three times during August 2014.

65. Mr. Heffington is responsible for his failing to assure that his civil penalty payment had been made, prior to showing a horse in a horse show.

66. While under a period of disqualification, which began on December 1, 2013, and which would last at least 8 months but would remain in effect until the first day after APHIS received payment of the \$1,000.00 civil penalty, Mr. Heffington knowingly failed to obey an order of disqualification by showing the horse named "I'm Infamous" on three occasions:

- (a) August 2, 2014 in a horse show in Wartrace, Tennessee;
- (b) August 21, 2014 in a horse show in Shelbyville, Tennessee; and
- (c) August 27, 2014 in a horse show in Shelbyville, Tennessee.

67. Mr. Heffington's evidence includes (a) the Affidavit of (b) (6)

filed March 20, 2018; the Affidavit of (b) (6) filed March 20, 2018, and Mr. Heffington's own Affidavit filed on March 20, 2018, each of which is accepted as true.

68. The evidence presented by Mr. Heffington through these three Affidavits shows that his assertions are true, that (b) (6) and

(b) (6) during the time in question; and that he was dealing with two USDA cases, Case No. 14-0053 and Case No. 12-0199 at the same time; and that these factors contributed to his belief that the civil penalty had been paid.

69. Neither S.H.O.W. nor APHIS stopped Mr. Heffington from showing the horse named "I'm Infamous" on three occasions in August 2014, because Jack Heffington's name did not appear on the USDA Horse Protection Act Federal Disqualification and Civil Penalty List

that was dated July 2014. Affidavit of (b) (6)

(b) (6) filed March 20, 2018.

70. Mr. Heffington's evidence goes to mitigation, that is, what the appropriate remedy should be; but Mr. Heffington's evidence does not outweigh the powerful evidence that Mr. Heffington had control over how soon his period of disqualification would end after July 31, 2014; and that Mr. Heffington had control over whether he would show the horse named "I'm Infamous" during August 2014 at horse shows in Tennessee.

71. APHIS's evidence is the Declaration of (b) (7)(C) plus the Declaration of (b) (7)(C) plus CX-1 through CX-10, each filed February 28, 2018, each of which is accepted as true.

72. The written record before me is sufficient to decide this case without an oral hearing,

73. The language in paragraph 5 of the Order, in the 12-0199 Consent Decision and Order, which states this order "shall become effective on the first day after service of this decision on the respondent" is superfluous. The prior paragraphs of the 12-0199 Consent Decision and Order contained everything that anyone needed to know. Mr. Heffington did not need to be served with a copy of the 12-0199 Consent Decision and Order by certified mail by the Hearing Clerk to know his obligations under the 12-0199 Consent Decision and Order.

74. The maximum civil penalty for failure to obey Horse Protection Act disqualification under 15 U.S.C. § 1825(c) during 2014 was \$4,300.00. 7 C.F.R. § 3.91(b)(2)(ix). [That

amount has increased; the maximum civil penalty for failure to obey Horse Protection Act disqualification under 15 U.S.C. § 1825(c) is now \$10,969.00. 7 C.F.R. § 3.91(b)(2)(ix).]

75. Ordinarily, the civil penalty of \$4,300.00 (the maximum civil penalty at the time for each failure to obey an order of disqualification) would be appropriate. *See Timothy Wayne Holley, d/b/a Tim Holley Stables*, 66 Agric. Dec. 481, 482 (U.S.D.A. 2007), [https://oalj.oaha.usda.gov/sites/default/files/070409\\_HPA\\_06-0005.pdf](https://oalj.oaha.usda.gov/sites/default/files/070409_HPA_06-0005.pdf)

where Mr. Holley was assessed \$115,500.00 for 35 violations of 15 U.S.C. § 1825(c), the maximum civil penalty at that time having been \$3,300.00 for each failure to obey an order of disqualification.

76. Under the unique circumstances here, considering the factors to be taken into account as enumerated in 15 U.S.C. § 1825(b), \$1,000.00 for each of Mr. Heffington's failures to obey is adequate, proportionate, reasonable and just. It is not necessary to crush Mr. Heffington.

77. Mr. Heffington should be required to deliver to USDA APHIS by August 15 (Thur) 2019, payment of the following civil penalties under sections 1825(b) and (c) of the Horse Protection Act (15 U.S.C. § 1825(b) and (c)); and 7 C.F.R. § 3.91(b)(2)(ix), \$1,000.00 plus \$1,000.00, plus \$1,000.00, for a total of \$3,000.00 in civil penalties.

### **Order**

78. Jack Grisham Heffington, Respondent, is assessed **civil penalties totaling \$3,000.00** for his three violations of 15 U.S.C. § 1825(c), which shall be **paid by check(s) delivered to USDA APHIS by August 15 (Thur) 2019.**



79. Mr. Heffington's payment(s) totaling \$3,000.00 shall be made **payable to the order of USDA APHIS**, with "**HPA 17-0188**" marked on the check(s).

80. The payment(s) totaling \$3,000.00 shall be sent to and received by

**USDA APHIS  
PO Box 979043  
St Louis MO 63197-9000**

81. If this Decision and Order is appealed to the Judicial Officer, the August 15 (Thur) 2019 deadline for receipt of Mr. Heffington's payment by USDA APHIS will not apply, but will instead be determined by further proceedings. See next paragraph for when this Decision and Order becomes final.

**Finality**

82. 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 Appendix A).

Copies of this Decision and Order on the Written Record shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.  
this 27<sup>th</sup> day of February 2019

  
Jill S. Clifton  
Administrative Law Judge

Hearing Clerk's Office  
U.S. Department of Agriculture  
Stop 9203 South Building Room 1031  
1400 Independence Ave SW  
Washington DC 20250-9203  
202-720-4443  
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## APPENDIX A

### 7 C.F.R.:

#### TITLE 7—AGRICULTURE

#### SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

#### PART 1—ADMINISTRATIVE REGULATIONS

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#### SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

#### ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER VARIOUS STATUTES

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##### **§ 1.145 Appeal to Judicial Officer.**

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145