

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/OHC
2019 JUN 5 PM 3:08

In re:)
)
Gary Leon Bigelow,) CTESA/AHPA Docket No. 19-0014
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Tracey Manoff, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Administrator of the Animal Plant Health Inspection Service ("APHIS").

Preliminary Statement

This proceeding was initiated under the Commercial Transportation of Equine for Slaughter Act, as amended, (7 U.S.C. § 1901 note) ("CTESA"), the Animal Health Protection Act, as amended (7 U.S.C. §§ 8301 *et seq.*) ("AHPA"); the regulations promulgated thereunder (9 C.F.R. §§ 88.1 *et seq.* and 9 C.F.R. §§ 91.1 *et seq.*, respectively); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 *et seq.*) ("Rules of Practice").

The Complainant, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture ("APHIS"), initiated this proceeding against Respondent Gary Leon Bigelow by filing a complaint on February 4, 2019. The Complaint alleged that Respondent violated the CTESA and AHPA, and the regulations promulgated thereunder, on or about February 26, 2016 by commercially transporting from Emmett, Idaho to Muleshoe, Texas through the United States, a shipment of approximately forty-eight (48) horses intended for export to Mexico for slaughter: a) in a prohibited means of commercial transportation, that being a double-deck trailer that has the animal cargo space divided into two or more stacked levels in

violation of 9 C.F.R. § 88.3(b); b) without a USDA backtag for each horse, in violation of 9 C.F.R. § 88.4(a)(2); c) without an owner-shipper certificate for each horse, in violation of 9 C.F.R. § 88.4(a)(3); d) without segregating one stallion located in the back compartment of the double deck trailer from other horses within that compartment, in violation of 9 C.F.R. § 88.4(a)(4)(ii); and e) without inspection and without obtaining the required origin health certificate for the intended export of those horses to Mexico, in violation of 9 C.F.R. § 91.3.

Complainant requested that an Administrative Law Judge issue an order assessing civil penalties against Respondent as authorized by section 903(c)(3) of the CTESA (7 U.S.C. § 1901 note), 9 C.F.R. § 88.6, and section 10414 of the AHPA (7 U.S.C. § 8313), including such other provisions as are warranted by the facts and circumstances of the case, for violation of the CTESA, AHPA, and the regulations promulgated thereunder.

Respondent 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

On May 1, 2019 Complainant filed a Motion for Adoption of Proposed Default Decision and Order (“Motion for Default”) and proposed Default Decision and Order (“Proposed Order”)

¹ United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and returned to the Hearing Clerk’s Office as “unclaimed” on March 21, 2019. The Complaint was then re-mailed (*see* 7 C.F.R. § 1.132) via regular mail on March 29, 2019 in accordance with 7 C.F.R. § 1.147(c)(1) (“if any such document or paper is sent by certified or registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address.”). 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 April 19, 2019. Respondent has not filed an answer in this matter.

on May 1, 2019. 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).

Findings of Fact

1. Respondent Gary Leon Bigelow is an individual whose mailing address is not released but on file with the Hearing Clerk's Office.
2. On or about February 26, 2016, respondent commercially transported from Idaho to Texas a shipment of approximately forty-eight (48) horses intended for slaughter in Mexico in a prohibited means of commercial transportation, that being a double-deck

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 May 13, 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 June 3, 2019. Respondent has not filed any objections.

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

trailer that has the animal cargo space divided into two or more stacked levels, in violation of 9 C.F.R. § 88.3(b).

3. On or about February 26, 2016, respondent commercially transported from Idaho to Texas a shipment of approximately forty-eight (48) horses intended for slaughter in Mexico, without a USDA backtag for each horse, in violation of 9 C.F.R. § 88.4(a)(2).
4. On or about February 26, 2016, respondent commercially transported from Idaho to Texas a shipment of approximately forty-eight (48) horses intended for slaughter in Mexico, without an owner-shipper certificate for each horse, (VS Form 10-13), in violation of 9 C.F.R. § 88.4(a)(3).
5. On or about February 26, 2016, respondent commercially transported from Idaho to Texas a shipment of approximately forty-eight (48) horses intended for slaughter in Mexico, without segregating one stallion located in the back compartment of the double deck trailer from other horses within that compartment, in violation of 9 C.F.R. § 88.4(a)(4)(ii).
6. On or about February 26, 2016, respondent commercially transported from Idaho to Texas a shipment of approximately forty-eight (48) horses intended for export to and slaughter in Mexico without inspection and without obtaining the required origin health certificate for the intended export of those horses to Mexico, in violation of 9 C.F.R. § 91.3.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent willfully violated 9 C.F.R. §§ 88.3(b), 88.4(a)(2), 88.4(a)(3), 88.4(a)(4)(ii) and 91.3.

ORDER

1. Complainant's Motion for Adoption of Proposed Default Decision and Order is GRANTED.
2. The Respondent, Gary Leon Bigelow, is assessed a civil penalty of eleven thousand seven hundred dollars (\$11,700.00), payable within thirty (30) days from the effective date of this Order. The Respondent shall pay the civil penalty by a bank check or money order and make it payable to the "Treasurer of the United States." The check should include the Docket Number of this case, APHIS Docket Number 19-0014.


The check shall be mailed to:

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

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.

Done at Washington, D.C.,
this 5th day of June 2019


Channing D. Strother
Chief Administrative Law Judge

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