

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/DHC
2019 OCT 9 PM2:35

In re:)
)
Hugo T. Liebel, an individual,)
d/b/a Great American Family Circus, LLC,)
Florida State Family Circus,) AWA Docket No. 19-J-0077
Liebling Brothers Circus, and)
Liebling Brothers Family Circus,)
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearances:

Lauren C. Axley, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, Administrator of the Animal and Plant Health Inspection Service (“APHIS”); and

H. Hube Dodd, Esq., of the Dodd Law Firm LLC, Birmingham, AL, for the Respondent, Hugo T. Liebel.

Preliminary Statement

This is a proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131 *et seq.*) (“AWA” or “Act”); 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”).

Complainant, the Administrator of the Animal and Plant Health Inspection Service (“APHIS”), United States Department of Agriculture (“USDA”), initiated this proceeding against Respondent Hugo T. Liebel, an individual doing business as: Great American Family Circus, LLC; Florida State Family Circus; Liebling Brothers Circus; and Liebling Brothers Family Circus, by filing an Order to Show Cause Why Animal Welfare Act License 58-C-0288 Should

Not Be Terminated (“Order to Show Cause” or “Complaint”)¹ on May 6, 2019. The Order to Show Cause alleges that Respondent’s actions and lack thereof, as enumerated therein, demonstrate that Respondent is unfit to hold an AWA license and that continued licensure of Respondent jeopardizes the integrity of USDA’s administration of the AWA.² Complainant states that the Administrator has determined that renewal or continuation of Respondent’s license would be contrary to the purposes of the AWA and that Respondent’s license should be terminated.³

Respondent was duly served with a copy of the Order to Show Cause 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).⁴ On June 12, 2019 – six days after the due date⁵ – Respondent filed an untimely answer electronically signed by Respondent’s counsel, H. Hube Dodd, Esq.⁶

On July 9, 2019, Complainant filed a Motion for Adoption of Decision and Order by Reason of Default (“Motion for Default”) and Proposed Default Decision and Order (“Proposed Decision”). On August 8, 2019, Respondent filed four items: (1) “Answer to Order to Show Cause”; (2) “Answer”; (3) an Article in Support of Answer; and (4) a “Denial Letter.” Although

¹ Pursuant to section 1.132 of the Rules of Practice, an Order to Show Cause falls within the definition of “complaint.” 7 C.F.R. § 1.132.

² Order to Show Cause at 5.

³ *Id.*

⁴ United States Postal Service records reflect that the Order to Show Cause was sent to Respondent on May 7, 2019 via certified mail and delivered on May 17, 2019. 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 June 6, 2019.

⁵ *See supra* note 4.

⁶ Mr. Dodd did not submit a notice of appearance in this proceeding.

they may purport to respond to Complainant's Motion for Default, none of the items filed by Respondent on August 8, 2019 actually responds to the contentions in that Motion:⁷ that Respondent was properly served with the Order to Show Cause but failed to file a timely answer and, therefore, under USDA regulations and precedents, a default decision must be entered.⁸

On August 12, 2019, (b) (6) sent an email to the USDA Hearing Clerk on Respondent's behalf. The email states:

In trying to establish why Mr [sic] Dodd might have missed the deadline [for filing a response to the Motion for Default], I came to find out that USDA failed to notify him [of the Motion for Default]. Your letter dated July 9 [that is, the Hearing Clerk's serving the Motion for Default] was sent to me, but not to Mr. Dodd.

Email at 1. Although Mr. Dodd did not submit a notice of appearance in this proceeding, he was the electronic signatory on Respondent's late-filed Answer.⁹ (b) (6) is correct that the Hearing Clerk did not initially serve Mr. Dodd with Complainant's Motion for Default.¹⁰

Accordingly, on September 4, 2019, I issued an Order Granting Opportunity for Response by Respondent's Counsel to Motion for Default and Setting Deadline for Such Response.¹¹ Specifically, I directed the Hearing Clerk to serve a copy of the Motion for Default (along with the Order) on Mr. Dodd and granted Mr. Dodd "the usual twenty (20) days from his receipt of the Motion for Default to file a response to the Motion for Default."¹² Although

⁷ See Order Granting Opportunity for Response at 3-5.

⁸ See Motion for Default at 2-3.

⁹ See *supra* note 6 and accompanying text.

¹⁰ Order Granting Opportunity for Response at 5.

¹¹ See *id.* at 5-6.

¹² *Id.* at 6. In addition, I cautioned: "[T]his deadline is for a response to the Motion for Default, not for an answer to the Order to Show Cause/Complaint that initiated this proceeding. The deadline for filing an answer to the Order to Show Cause/Complaint passed twenty (20) days after service on Respondent and is not extended in his order. See 7 C.F.R. § 1.136(a)." *Id.* n.7.

service was properly made upon Mr. Dodd, he has nonetheless failed to respond to the Motion for Default.¹³

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.¹⁴ 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.¹⁵

As Respondent failed to timely 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 Hugo T. Liebel is an individual whose mailing address is (b) (6). Respondent has done business as: Great American Family Circus LLC; Florida State Family Circus; Liebling Brothers Circus; and Liebling Brothers Family

¹³ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Mr. Dodd via certified mail and delivered on September 9, 2019. Mr. Dodd had twenty days from the date of service to file objections to Complainant's Motion. 7 C.F.R. § 1.139. Weekends and federal holidays shall not be included in the count; however, if a 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, Mr. Dodd's objections were due by September 30, 2019. Mr. Dodd has not filed any objections.

¹⁴ 7 C.F.R. § 1.136(c).

¹⁵ 7 C.F.R. § 1.139; *see supra* notes 7-8, 13, and accompanying text.

Circus. Respondent is licensed as an exhibitor, as that term is defined in the Act and Regulations, and holds Animal Welfare Act license number 58-C-0288.

2. The AWA is a remedial statute enacted to “insure that animals . . . are provided humane care and treatment.”¹⁶ Section 2.12 of the Regulations,¹⁷ through section 2.11, authorizes the Department to terminate any license issued to a person who:

[h]as made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

9 C.F.R. § 2.11(a)(6).

3. Respondent Hugo T. Liebel previously exhibited a female African elephant named “Nosey.”
4. On June 16, 2017, the Florida Fish and Wildlife Conservation Commission (“Commission”) denied Respondent Hugo T. Liebel and (b) (6) s application for a License to Possess Class I and/or Class II Wildlife for Exhibition or Public Sale because the Commission alleged that the Liebels had withheld itinerary information and submitted materially false information on its application.¹⁸ Respondent challenged the Commission’s Notice of Denial on July 4, 2017 but withdrew the challenge and the underlying application on February 20, 2018, the day before a scheduled hearing.
5. On November 3, 2017, APHIS inspectors conducted an inspection of Nosey while the circus was away from home, in Cullman, Alabama. The APHIS inspectors observed that Nosey had

¹⁶ 7 U.S.C. § 2.131(1).

¹⁷ 9 C.F.R. § 2.12 (“A license may be terminated during the license renewal process or at any other time for any reason that an initial license application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice.”).

¹⁸ See Order to Show Cause, Exhibit A.

excessive accumulations of dead skin over her forehead and over her back area. The condition of Nosey's skin demonstrates Respondent Hugo T. Liebel's failure to establish and maintain programs of adequate veterinary care that included appropriate methods to prevent, control, diagnose, and treat diseases and injuries, in violation of 9 C.F.R. § 2.40(b)(2).

6. While Respondent Hugo T. Liebel was traveling with Nosey and four miniature ponies in Moulton, Alabama on November 8, 2017, the Lawrence County Animal Control Officer ("ACO") filed a Complaint for Writ of Seizure in the District Court of Lawrence County, Alabama, against Hugo Tomi Liebel and (b) (6) et al.¹⁹ The ACO alleged that the elephant ("Nosey") was chained by her legs, unable to move, standing in her own feces without adequate food, water, or shelter; that the animals were being transported in a cargo trailer that was out of compliance and in no way sufficient to transport the animals; that Respondent's State of Florida license had been revoked; that Respondent was "clearly unable to adequately provide for the animals"; and that "[b]ased on the foregoing information, the Plaintiff believe[d] and allege[d] that the above-described animals²⁰ [were] being neglected and [would be] subject to further harm unless they [were] removed immediately."²¹
7. The District Court of Lawrence County, Alabama signed the Writ of Seizure for Nosey on November 8, 2017; held an initial hearing on November 9, 2017; continued the Writ of Seizure; and granted the ACO the authority to make arrangements for housing and care of the animals.

¹⁹ See Order to Show Cause, Exhibit B.

²⁰ Referring to the elephant and four miniature ponies.

²¹ Order to Show Cause, Exhibit B.

8. The ACO arranged for the transfer of Nosey to The Elephant Sanctuary in Tennessee. Nosey arrived in the morning of November 10, 2017 and, upon information and belief, has been housed at there ever since.
9. The District Court of Lawrence County, Alabama held a trial on December 15, 2017 and issued a Final Order on January 22, 2018, finding that “[t]he Plaintiff ha[d] met its burden to sustain the Writ of Seizure as to the elephant in this case” and vesting custody of Nosey²² to the ACO of Lawrence County, Alabama.²³
10. During the December 15, 2017 trial, a veterinarian from The Elephant Sanctuary in Tennessee described Nosey’s condition on November 10, 2017, when Nosey arrived at the sanctuary. Her testimony of Nosey’s condition included the following:
 - a. Nosey was suffering from severe hyperkeratosis, a skin condition that is caused by too many cells present, and that can develop a bacterial infection.
 - b. Nosey was suffering from a urinary tract infection.
 - c. Nosey was suffering from osteoarthritis and had lameness and discomfort in multiple limbs and bones.
 - d. Nosey was suffering from a roundworm infection.
 - e. Nosey’s gastrointestinal tract was empty; it takes food thirty to fifty hours to pass through an elephant.
 - f. Nosey had foamy discharge in her eyes.

11. On December 16, 2017, the State of Alabama prosecuted Respondent Hugo T. Liebel and (b) (6) (b) (6) charging them with cruelty to animals pursuant to ALA. CODE § 13A-011-014 for their

²² Pursuant to an agreement between the parties, the miniature ponies were returned to the Defendants on December 16, 2017.

²³ See Order to Show Cause, Exhibit C.

treatment of Nosey on or about November 8, 2017.²⁴ On April 3, 2018, the criminal case was placed upon the Court's Administrative Docket pending the outcome of the Circuit Court civil case.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Permitting Respondent Hugo T. Liebel to continue to hold an AWA license would be contrary to the Act's purpose of ensuring humane treatment of animals because (a) Respondent has failed to establish and maintain programs of adequate veterinary care for Nosey that included appropriate methods to prevent, control, diagnose, and treat diseases and injuries and (b) Respondent was found incapable of caring for the elephant such that the District Court of Lawrence County, Alabama seized the elephant and vested custody in the animal control officer of the same county.
3. Respondent Hugo T. Liebel's actions, and lack thereof, demonstrate he is unfit to hold an AWA license. Continued licensure of Respondent jeopardizes the integrity of USDA's administration of the AWA.

ORDER

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. Animal Welfare Act license number 58-C-0288 is hereby TERMINATED.

The provisions of this Order shall become effective on the first day after this Decision becomes final. This Decision shall be final 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)

²⁴ See Order to Show Cause, Exhibit D.

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 9th day of October 2019



Channing D. Strother
Chief Administrative Law Judge

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