

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
FCCTX, LLC,) AHPA Docket No. 20-J-0151
d/b/a FCCTX, LLC, GTCO Series, and)
FCCTX, LLC, APB Series,)
)
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, Animal and Plant Health Inspection Service (“APHIS”).

Preliminary Statement

This is a proceeding under the Animal Health Protection Act, as amended, (7 U.S.C. §§ 8301 *et seq.*) (“AHPA”); the regulations promulgated thereunder (9 C.F.R. Part 93, Subpart D; 9 C.F.R. § 93.418) (“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 Complainant, the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, initiated this proceeding against Respondent FCCTX, LLC, doing business as FCCTX, LLC, GTCO Series and FCCTX, LLC, APB Series, by filing a complaint on August 6, 2020. The Complaint alleged that Respondent violated the AHPA and its Regulations by importing a bison from Canada into the United States without identification and removing Canadian bangle and RFID tags from other imported bison identification without authority. 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 September 16, 2020, Complainant filed a Motion for Adoption of Proposed Default Decision and Order (“Motion for Default”) and proposed Default Decision and Order (“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

¹ United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail on August 6, 2020 and delivered on August 14, 2020. Respondent 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(h). In this case, Respondent’s answer was due on or before September 3, 2020. 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 September 24, 2020. Respondent had twenty (20) 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 October 14, 2020. Respondent has not filed any objections.

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

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 FCCTX, LLC, doing business as FCCTX, LLC, GTCO Series and FCCTX, LLC, APB Series, herein referred to as the Respondent, is organized under the laws of the state of Texas. The Respondent's mailing address is 2201 Civic Circle Ste. 1000, Amarillo, Texas 79109. At the time of the alleged violations, FCCTX, LLC also operated under the name of or was affiliated with FCCTX, LLC, APB Series, which owned and/or operated Burgess Herring Ranch, located at 10500 Herring Ranch Road, Stinnett, Texas 79803.
2. The registered agent for the Respondent is InCorp Services, Inc., 815 Brazos St., Ste. 500, Austin, Texas 78701.
3. On May 29, 2017, the Canadian Food Inspection Agency (CFIA), Government of Canada, endorsed a Veterinary Health Certificate (health certificate), for the export of fifty-five (55) bison to the United States of America (Form HA 1941), reference number CWEN-2017-18-007. The health certificate documents Bar JL Enterprises, Inc., located in Alberta, Canada as the exporter, and "FCCTX LLC GTCO Series, 10550 Herring Ranch Road, Stinnett, Texas 79803," as the importer and the address of destination. In addition, the health certificate documents the bison as being exported to the United States for breeding purposes. Dr. Lacey Fowler, DVM, inspected the bison in Canada and signed the health certificate on May 25, 2017, and CFIA endorsed the health certificate on May 29, 2017.
4. The Annex of Certificate HA 1941, Identification of Animals, lists the official eartag numbers for the exported bison.

5. On June 15, 2017, the United States Department of the Interior, United States Fish and Wildlife Service, issued an Import/Export License (Permit number 55283B) to FCCTX, LLC, GTCO Series. The license shows the principal officer as Scott Lewis and an expiration date of May 31, 2018. On June 20, 2017, the United States Fish and Wildlife Service issued a Declaration for Importation or Exportation of Fish or Wildlife with an import/export license number of 55283b. The form documents FCCTX, LLC-GTCO Series as the importer and Bar JL Enterprises, Inc., as the foreign exporter.
6. The bison were transported by truck from Canada into the United States and crossed the border at Sweetgrass, Montana, Port of Entry, on or about June 20, 2017. They arrived at the Respondent's ranch, Burgess Herring Ranch, located at 10550 Herring Ranch Road, Stinnett, Texas, on June 22, 2017.
7. On June 22, 2017, Veterinary Medical Officer (VMO) Melissa Cleavinger, Veterinary Services, APHIS, went to the Burgess Herring Ranch to verify the identification of the bison. VMO Cleavinger observed one bison without any official identification.⁴
8. On June 23, 2017, the Texas Animal Health Commission (TAHC) issued an Order to Hold Animals on Premises in reference to the fifty-five (55) head of bison at the Burgess Herring Ranch.
9. On or about August 30, 2017, VMO Cleavinger visited the Burgess Herring Ranch with TAHC Inspector Billy Brown to oversee the re-export of those six (6) bison that were not listed on the Annex of Certificate and the one bison without any identification. APHIS

⁴ VMO Cleavinger also compared the bison's identification by bangle tags and RFID button tags and learned that there were six bison with Canadian official identification numbers 300731953, 300693593, 300693577, 300696108, 300696123 and 300739226 that were not listed on the official eartag numbers list on the Annex of Certificate.

presumes that one (1) of the bison, with Canadian official identification number 300731953, died during the quarantine period based on VMO Cleavinger's observation of its purported carcass. The remaining five (5) bison that were not listed on the Annex of Certificate and the one (1) unidentified bison were exported back to Canada.

10. On August 30, 2017, while overseeing the re-export of the bison, VMO Cleavinger reported that the Respondent had removed the Canadian bangle and radio-frequency identification (RFID) identification tags from the imported bison, which were not destined for slaughter, and replaced them with USA silver metal eartags along with a farm flap tag. Under the federal regulations governing the import of cattle and other bovines from Canada, "... no person may alter, deface, remove or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at slaughter..." (9 C.F.R. § 93.418(d)(2)(iii)).

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. On or about June 21, 2017, the Respondent imported one bison from Canada into the United States, not destined for immediate slaughter, without a unique individual identification that is traceable to the bovine's premises of origin, in willful violation of 9 C.F.R. § 93.418(d)(2)(iii).
3. On or before August 30, 2017, the Respondent removed, without authorization, the Canadian and RFID identification tags from the imported bison that were not destined for immediate slaughter and replaced them with USA silver metal eartags along with a farm flap tag, in willful violation of 9 C.F.R. § 93.418(d)(2)(iii).

ORDER

The Respondent is issued a civil penalty of eleven thousand dollars (\$11,000.00). The Respondent shall pay the civil penalty by bank check or money order, payable to the “U.S. Treasury” and include the Docket Number 20-J-0151 on the payment. This payment shall be mailed to the following address:

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

The payment shall be paid within thirty (30) days from the effective date of this Order.

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 19th day of October 2020


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: 1-202-720-4443
Fax: 1-844-325-6940
SM.OHA.HearingClerks@USDA.GOV