

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) [AHPA]
Middlesex Livestock Auction, LLC,) Docket No. **18-0034**
)
Respondent.)

**Decision and Order on the Written Record
(Ruling GRANTING in part and DENYING in part APHIS’s Motion for
Summary Judgment)**

Appearances:

Lauren C. Axley, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Ave SW, Washington, DC 20250, for the Complainant (frequently “APHIS”);¹ and

Ms. Lisa Scirpo, an owner and operator of the Respondent Middlesex Livestock Auction, LLC, a livestock market in Connecticut (frequently “Middlesex Livestock” or Respondent).

Decision Summary

1. Middlesex Livestock Auction, LLC, during 2014, 2015, and 2016, violated the Animal Health Protection Act (7 U.S.C. § 8301 *et seq.*) (frequently “AHPA”), by failing to comply with a regulation (9 C.F.R. § 79 *et seq.*) that required specific recordkeeping for the transfer of ownership of 3 goats and APHIS immediate access to inspect records.
2. The \$17,500 civil penalty, total, requested by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (frequently “APHIS” or

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

Complainant), reflects APHIS's need to rely on an auction's records in order to trace animals in the event of an outbreak of disease.

3. Middlesex Livestock Auction, LLC (frequently "Middlesex Livestock" or Respondent), does not have the cash flow to withstand paying a \$17,500 civil penalty.

Procedural History

4. Before me is APHIS's Motion for Summary Judgment filed on June 21, 2019, thoroughly and meticulously prepared and supported by declarations and exhibits and other attachments, requesting that a decision and order be issued. Middlesex Livestock Auction, LLC, the Respondent, filed a Response timely, on August 7 or 8, 2019. The Hearing Clerk greatly assisted, enhancing the legibility of the Response attachments. APHIS's Reply was timely filed on September 6, 2019. (Belatedly, I GRANT APHIS's Motion filed on August 9, 2019.)

5. This case had been scheduled to be heard in a 2-day, in-person, face-to-face Hearing in or around Middletown, Connecticut, on July 31 and August 1, 2019. I CANCELED the scheduled Hearing to consider the Motion for Summary Judgment. Upon careful consideration, the written record removes all questions that could have been addressed in an in-person Hearing. Consequently, I issue this Decision and Order without an oral hearing, finding that the written record provides all the evidence and reliable information needed to issue a Decision and Order that is fair and proportionate.

6. I GRANT in part and DENY in part APHIS's Motion for Summary Judgment. The violations are proved and serious. But the dollar amount of civil penalty APHIS requested (\$17,500) is more than Middlesex Livestock's cash flow can withstand.

7. Having carefully considered the written record, including evidence and authorities, R pleadings and arguments, the following Findings of Fact, Conclusions, and Order are entered without an oral hearing or other procedure.

Findings of Fact

8. Middlesex Livestock Auction, LLC, the Respondent, has been owned and operated by the Scirpo family for longer than 58 years. Middlesex Livestock adds value to the community (the community is Connecticut and surrounds), providing a livestock market for goats (the subject of this case), and other livestock: sheep, cattle, rabbits, fowl, horses, for example.

9. The parents have both passed on, Sebastian (Seb) Scirpo during the summer of 2002; and Kathleen (Kathy) Scirpo during the summer of 2020. Their daughters Lana and Lisa know and worked their family livestock auction operation for years. The responsibility for defending this administrative action falls to owner operator Lisa Scirpo, one of the two daughters.

10. Middlesex Livestock Auction, LLC, the Respondent, is a limited liability company with a mailing address of PO Box 404, Durham CT 06422; and a business location at 488 Cherry Hill Rd, Middlefield CT 06455, with auctions on Mondays and special sales.

11. Middlesex Livestock Auction, LLC, committed serious offenses when it failed to make records immediately available for inspection when APHIS requested access. These failures occurred 4 to 5 years ago, on multiple dates in 2015 and 2016, including September 11, 2015; April 21, 2016; May 4, 2016; and October 28, 2016.

12. Middlesex Livestock Auction, LLC, committed serious offenses when it failed to keep specified records relating to the transfer of ownership of 3 goats at issue in the Complaint, so

that those 3 goats could be traced. Those recordkeeping failures happened 5 to 6 years ago. One of the 3 goats was sold in 2014 (on November 17, 2014); two of the 3 goats were sold in 2015 (on August 31, 2015).

13. APHIS requests a \$17,500 civil penalty, total, for all the offenses.

14. Middlesex Livestock Auction, LLC, does not have the cash flow to pay \$17,500.

Conclusions

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

16. The specific recordkeeping required by the regulations at 9 C.F.R. § 79 *et seq.* for the transfer of ownership of 3 goats; and for APHIS immediate access to inspect records, is authorized under the Animal Health Protection Act. 7 U.S.C. § 8301 *et seq.*

17. Having the name and address of the buyer of each of the 3 goats in the records of Middlesex Livestock Auction, LLC, is essential to APHIS being able to trace the goats in the event of an outbreak of disease. APHIS is vigilant to prevent the spread of Scrapie, a degenerative and eventually fatal disease affecting the central nervous systems of sheep and goats. Title 9 Code of Federal Regulations Part 79 is entitled “Scrapie in Sheep and Goats”. 9 C.F.R. § 79 *et seq.*

18. Middlesex Livestock Auction, LLC failed to comply with records requirements of the regulations at 9 C.F.R. § 79 *et seq.* as stated in Findings of Fact, paragraphs 11 and 12.

19. Middlesex Livestock Auction, LLC does not have the cash flow to withstand the \$17,500 civil penalty recommended by APHIS.

20. The following Order is authorized by the Act and warranted under the circumstances.

Order

21. APHIS's Motion for Summary Judgment is GRANTED in part and DENIED in part, as stated in paragraph 6.

22. Respondent Middlesex Livestock Auction, LLC shall pay a **civil penalty totaling \$7,000 (seven thousand dollars)** within **90 days** after this Decision and Order becomes final and effective (see below, for when this Decision and Order becomes final and effective). The payment(s) shall be **paid by certified checks, cashier's checks, or money orders**, marked **Docket No. 18-0034**, payable to order of "**US Department of Agriculture**" and delivered to

U.S. Department of Agriculture
APHIS, U.S. Bank
PO Box 979043
St Louis MO 63197-9000

Finality

This Decision and Order shall be final and effective without further proceedings 35 (thirty-five) days after service, unless appealed to the Judicial Officer by a party to the proceeding by filing with the Hearing Clerk within 30 (thirty) 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 (Ruling GRANTING in part and DENYING in Part APHIS's Motion for Summary Judgment)" shall be sent by the Hearing Clerk to each of the parties.

The Hearing Clerk will use for the Respondent Middlesex Livestock Auction, LLC **both** certified mail and regular mail, and as a courtesy will email Ms. Lisa Scirpo at the email address she used to reach the Hearing Clerk.

Issued this 15th day of December 2020 at Washington, D.C.



Jill S. Clifton
Administrative Law Judge

see Appendix A

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

1-844-325-6940 FAX
1-202-720-4443 phone
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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

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

§ 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