

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

2016 APR 27 AM 10: 26

In re:)	A.Q. Docket No.: 16- 0080
)	A.Q. Docket No.: 16-0081
)	
Dennis V. Chavez, L.L.C., and)	
Barrera & Company, L.L.C.,)	Default Decision and
)	Order as to respondent Barrera &
)	Company, L.L.C.
)	
Respondents.)	

RECEIVED

This administrative proceeding seeks the assessment of a civil penalty for violations of the Commercial Transportation of Equine for Slaughter Act, 7 U.S.C. § 1901 note, and the regulations promulgated thereunder (9 C.F.R. part 88), in accordance with the rules of practice applicable to this proceeding as set forth in 7 C.F.R. §§ 1.130 et seq. and 380.1 et seq.

On March 15, 2016, the Administrator of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), initiated this proceeding by filing an administrative complaint against respondent Barrera & Company, L.L.C. (hereinafter, respondent Barrera). The complaint was mailed to respondent Barrera at 54110 North Highway 187, Arrey, New Mexico 8793, via both certified mail, return receipt requested (tracking number 7012 3460 0003 3833 2906), and regular mail. U.S.P.S. on-line tracking indicates that the complaint was delivered to respondent Barrera on March 22, 2016. Therefore, respondent Barrera is deemed to have been properly served with the complaint on March 22, 2016.

Section 1.136 of the rules of practice (7 C.F.R. § 1.136) states that an answer to a complaint should be filed with the Hearing Clerk within twenty (20) days after service of the complaint, and that failure to file an answer or otherwise respond to an allegation of the complaint within twenty (20) days after service of the complaint shall be deemed both an admission of the allegation in the complaint and a waiver of a hearing. Respondent Barrera's

answer thus was due no later than April 11, 2016, twenty days after service of the complaint (7 C.F.R. § 136(a)). Pursuant to section 1.136 of the Rules of Practice, respondent Barrera was informed in both the complaint and the Hearing Clerk's letter accompanying the complaint that an answer should be filed with the Hearing Clerk within twenty (20) days after service of the complaint, and that failure to file an answer within twenty (20) days after service of the complaint constitutes an admission of the allegations in the complaint and waiver of a hearing. Despite being so notified, respondent Barrera has not filed an answer to the complaint as of the date of this Order.

Respondent Barrera has failed to file an answer within the time prescribed in section 1.136(a) of the Rules of Practice and thus has failed to deny or otherwise respond to an allegation of the complaint. In accordance with section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)), respondent Barrera's failure to answer to the complaint is deemed an admission of the allegations in the complaint. Furthermore, section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) states that an admission of the allegations in a complaint constitutes a waiver of hearing. Because respondent Barrera's failure to answer constitutes an admission of the allegations in the complaint pursuant to section 1.136(c), it is likewise deemed a waiver of hearing pursuant to section 1.139. Accordingly, the material allegations in the complaint are adopted and set forth in this default decision as the Findings of Fact, and this decision is issued pursuant to section 1.139 of the rules of practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Barrera & Company, L.L.C., hereinafter referred to as respondent Barrera, is a limited liability company, corporation # 4557417, that was incorporated in New Mexico in 2012 and has a mailing address of 54110 North Highway 187, Arrey, New Mexico 87930.

Respondent Barrera has commercially transported horses to Mexico for slaughter on the behalf of respondent Chavez at the rate of approximately 240 horses per month.

2.(a) On or about June 16, 2013, respondent Barrera commercially transported 32 horses from Southwest Livestock Auction in Los Lunas, New Mexico (hereinafter referred to as Southwest), to the Ruben Brito Export Pens in Presidio, Texas (hereinafter, the export pens), in anticipation that said horses would be exported to Mexico for slaughter at Carnicos de Jerez S.A. de C.V., a commercial horse slaughter plant located in San Nicolas de Los Garza, Nuevo Leon, Mexico (hereinafter, Carnicos). The animal cargo space of the conveyance that respondent Barrera used to transport the horses had areas of torn, bent metal with sharp edges that had the potential to injure the horses during said transportation. Respondent Barrera thus failed to use a conveyance that had been designed, constructed, and maintained in a manner that at all times protected the health and well-being of the horses being transported, in violation of 9 C.F.R. § 88.3(a)(1).

(b) On or about June 16, 2013, respondent Barrera commercially transported 32 horses from Southwest to the export pens in anticipation that said horses would be exported to Mexico for slaughter at Carnicos. One of the horses in the shipment, a sorrel gelding with no back tag, was blind in both eyes and thus not fit for travel to slaughter, but respondents transported the horse anyway. In so doing, respondent failed to handle the blind horse as expeditiously and carefully as possible in a manner that did not cause it unnecessary discomfort, stress, physical harm or trauma, in violation of 9 C.F.R. § 88.4(c).

Conclusion

By reason of the Findings of Fact set forth above, respondent Barrera & Company, L.L.C., violated the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note). Further, given the nature of the violations, and in order to deter respondent Barrera and others similarly situated from committing violations of this nature in the future, the assessment of a civil penalty of in the amount of seven thousand dollars (\$7,000.00) as requested by the Administrator of the Animal and Plant Health Inspection Service is deemed warranted and appropriate. Therefore, the following Order is issued.

Order

Respondent Barrera & Company, L.L.C., is hereby assessed a civil penalty of seven thousand dollars (\$7,000.00). Respondent shall send a certified check or money order for seven thousand dollars (\$7,000.00), made payable to the U.S. Department of Agriculture, to USDA APHIS, P. O. Box 979043, St. Louis, Missouri 63197-9000 within thirty (30) days from the effective date of this Order. Respondent shall indicate on the certified check or money order that this payment is in reference to A.Q. Docket No. 16-0081.

This order shall be final and effective thirty five (35) days after service of this default decision and order upon respondent Barrera & Company, L.L.C., unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.145).

So Ordered:

this 27th day of April, 2016 Washington, D.C.


Chief Administrative Law Judge