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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [PPA]
) Docket No. **16-0079**
Donald C.R. Hinkel,)
)
Respondent) **Judge's Observations re: Service**

Appearances:

John V. Rodriguez, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington DC, for the Complainant (APHIS) ¹ ; and

no appearance by Donald C.R. Hinkel, the Respondent.

1. Then-Acting-Chief Judge Janice K. Bullard assigned to me for hearing and decision this case, 16-0079, on March 18, 2016.
2. Counsel for APHIS Mr. Rodriguez is requested to try to contact Respondent Donald C.R. Hinkel using the current business address of ABC Janitors of St Croix Inc.
3. ABC Janitors of St Croix Inc. is a carrier registered with the United States Department of Transportation (USDOT) Number 369501, primary contact Donald Hinkel. **Current contact information for ABC Janitors of St Croix Inc. may be 4000 La Grande Princess, Suite A, Christiansted, St Croix USVI 00820. Phone Number (340) 773-3780. Fax Number (340) 773-4770.**
4. The parties are encouraged to explore whether a Consent Decision may be negotiated to resolve all issues in this case.

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

5. Service upon Respondent Donald C.R. Hinkel (a) of the Complaint filed March 11, 2016; and (b) of the Motion for default decision filed June 15, 2016; may not yet have been accomplished to my satisfaction, as I detail below discussing the Hearing Clerk's mailings.

6. The Hearing Clerk sent a copy of the Complaint by certified mail to Donald C.R. Hinkel at a P.O. Box, St. Croix, U.S. Virgin Islands 00824. That P.O. Box was used at one time, but I am not sure when, by carrier ABC Janitors of St Croix Inc., registered with the United States Department of Transportation (USDOT) Number 369501, primary contact Donald Hinkel. On May 3, 2016, the U.S. Postal Service sent the Hearing Clerk's certified mailing back to the Hearing Clerk, and the envelope was marked:

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD
RETURN TO SENDER

7. The U.S. Postal Service's addition of "UNABLE TO FORWARD" troubles me. The Hearing Clerk re-sent the copy of the Complaint by regular mail to that same P.O. Box; *see* Memorandum to the File dated May 12, 2016. *See* 7 C.F.R. § 1.147.

8. I reserve ruling on whether service of the Complaint occurred on May 12, 2016 under our Rules of Practice. 7 C.F.R. § 1.147. Under the circumstances here, I am not yet persuaded that Donald C.R. Hinkel or carrier ABC Janitors of St Croix Inc. was using that P.O. Box in mid-March 2016 so that the certified mailing was available to Donald C.R. Hinkel in mid-March 2016 to claim or leave unclaimed. I am not yet persuaded that Donald C.R. Hinkel was using that P.O. Box in mid-May 2016, to receive the regular mailing. Investigators with proper authority may obtain information from the U.S. Postal Service regarding person(s) using a P.O. Box. Or, perhaps the information is available from the Department of Transportation. Whether such information will become necessary in this case remains to be seen.

9. Regarding the Motion for default decision filed June 15, 2016, the Hearing Clerk sent a copy by certified mail to Donald C.R. Hinkel at 2 different addresses. Both are being returned to the Hearing Clerk. A copy of the USPS Tracking information for each certified mailing is attached. I ask counsel for APHIS Mr. Rodriguez to alert the Hearing Clerk as to the current contact information for Respondent Donald C.R. Hinkel if he can obtain it.

10. I welcome telephone conferences to include me whenever counsel or parties believe I can assist. Marilyn ("Nita") Kennedy's phone is **202-720-8423**. Her FAX is **202-720-8424**. Her email address is Marilyn.Kennedy@dm.usda.gov Marilyn Kennedy is the Legal Assistant to the Judges. Please provide her with email addresses as well as phone numbers.

11. **The parties shall deliver all filings directly to the Hearing Clerk.** The Hearing Clerk's contact information is at the bottom of the last page, including not only address, but also FAX number. Filings should ordinarily be submitted in quadruplicate and must *arrive* in the Hearing Clerk's office earlier than 4:30 pm Eastern to be stamped "Received" on the arrival date. Please use a next-business-day delivery service through a commercial carrier such as FedEx or UPS to ensure timely filing. [Mail through the U.S. Postal Service is diverted for irradiation and will be delayed.]

For short filings (a few pages), you may instead utilize the Hearing Clerk's FAX number. Or, e-mail to OALJHearingClerks@ocio.usda.gov if that proves convenient. When FAXing or emailing to the Hearing Clerk, submit once [NOT in quadruplicate].

Copies of this notice "Judge's Observations re: Service" shall be sent by the Hearing Clerk to each of the parties, and I ask that the Hearing Clerk add the following as a third address, to the two already being used, for the Respondent Donald C.R. Hinkel (no PII is involved; this is a business address).

Donald C.R. Hinkel
ABC Janitors of St Croix Inc.
4000 La Grande Princess, Suite A
Christiansted, St Croix USVI 00820

Done at Washington, D.C.
this 28th day of July 2016



Jill S. Clifton
Administrative Law Judge

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