



UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE 2018 JN 22 PN > NI

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In re:)
)
Sweeny S. Gillette,) AQ Docket No. 16-0024
)
Respondent)

ORDER DISMISSING CIVIL PENALTY HELD IN ABEYANCE

Appearances:

Thomas N. Bolick, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250, for the Complainant, Animal and Plant Health Inspection Service ("APHIS"); and

Gery W. Edson, Esq., for the Respondent, Sweeny S. Gillette.

This is a proceeding under the Animal Health Protection Act (7 U.S.C. §§ 8301 *et seq.*) ("AHPA") and the regulations promulgated thereunder (9 C.F.R. §§ 71.1 *et seq.* and 78.1 – 78.4) ("Regulations"). The matter initiated with a complaint filed on November 20, 2015, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture ("Complainant"), alleging that Sweeny S. Gillette ("Respondent") violated AHPA and seeking civil penalties for the same.

On December 5, 2016, former Chief Administrative Law Judge Bobbie J. McCartney ("Chief Judge McCartney")¹ entered an order granting summary judgment in favor of Complainant. Chief Judge McCartney found, *inter alia*, that Respondent had committed four willful violations of AHPA and the Regulations that generally governed the transportation of livestock and specifically restricted the interstate movement of cattle due to brucellosis. In accordance with section 10414(b) of AHPA (7 U.S.C. § 8312(b)), Chief Judge McCartney

¹ Chief Judge McCartney retired from federal service in January 2018, and this case was reassigned to my docket.

assessed Respondent a civil penalty of forty-thousand dollars (\$40,000.00).

On April 6, 2017, the parties filed a Joint Motion for Modification of the Summary Judgment Order. Specifically, the parties requested that the Order be modified to hold payment of thirty-thousand dollars (\$30,000.00) of Respondent's civil penalty in abeyance for a period of one year, provided that Respondent: (1) made full and timely payment of the remainder of the civil penalty; (2) dismissed, with prejudice, his federal lawsuit against the APHIS investigators who had investigated his violations of AHPA and the Regulations; (3) completed training on the Regulations governing the interstate movement of livestock within sixty days of the modified order; (4) completed one year of compliance monitoring upon completion of the aforementioned training; and (5) otherwise documented full compliance with AHPA and the Regulations. The Joint Motion further requested that, if Respondent met all the foregoing conditions, the thirty-thousand dollars (\$30,000.00) held in abeyance be dismissed upon Respondent's completion of the year of compliance monitoring.

On April 11, 2017, Chief Judge McCartney granted the Joint Motion and issued a modified order reflecting the terms described above. On the same date, Respondent filed a motion to dismiss with prejudice his lawsuit against the APHIS inspectors. The United States Court of Appeals for the Ninth Circuit granted Respondent's motion and dismissed the case on April 25, 2017.

On June 21, 2018, Complainant filed a Motion Requesting Order Dismissing Civil Penalty Held in Abeyance. In support thereof, Complainant states:²

Per the terms of the modified order, respondent paid ten thousand dollars (\$10,000.00) of the civil penalty in two payments of five thousand dollars (\$5,000.00) each, one on June 1, 2017, and the other on June 28, 2017. Also on June 1, 2017, respondent and his wife, [REDACTED], attended training on the APHIS regulations governing the interstate movement of livestock. Finally, on

² Mot. Requesting Order Dismissing Civil Penalty Held in Abeyance at 2-3.

May 31, 2018, respondent completed the one (1) year of compliance monitoring. APHIS found no violations of the Act and its accompanying regulations or any other irregularities during the year of compliance monitoring or since the completion thereof.

Good cause having been shown, the following Order is hereby entered.

ORDER

1. Complainant's Motion Requesting Order Dismissing Civil Penalty Held in Abeyance is GRANTED.
2. A finding is made that Respondent has met the terms and conditions of the Modified Summary Judgment Order filed by Chief Judge McCartney on April 11, 2017.
3. The thirty-thousand dollar (\$30,000.00) civil penalty that was held in abeyance per the terms of the Modified Summary Judgment Order is hereby DISMISSED.

Copies of this Order shall be served upon the parties by the Hearing Clerk, with courtesy copies provided via email where available.

Done at Washington, D.C.,
this 22nd day of June, 2018



Channing D. Strother
Acting Chief Administrative Law Judge

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