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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	AWA Docket No. 16-0003
)	
Arbuckle Adventures, LLC, an)	
Oklahoma limited liability company,)	
)	
Respondent)	Decision and Order

PROCEDURAL HISTORY

Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on October 6, 2015. The Administrator instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [Animal Welfare Act]; the regulations and standards issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [Rules of Practice].

The Administrator alleges in the Complaint that Arbuckle Adventures, LLC [Arbuckle], violated the Animal Welfare Act and the Regulations.¹ On November 3, 2015, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture [Hearing Clerk],

¹ Compl. ¶¶ 3-18 at 2-14.

by certified mail, served Arbuckle with the Complaint,² and, on December 4, 2015, Arbuckle timely filed an answer denying the material allegations of the Complaint and requesting a hearing.³

On May 3, 2016, the Administrator filed an Amended Complaint alleging Arbuckle violated the Animal Welfare Act and the Regulations.⁴ On May 10, 2016, the Hearing Clerk, by regular mail, served Arbuckle with the Amended Complaint,⁵ and, on May 27, 2016, Administrative Law Judge Jill S. Clifton [ALJ] extended to June 30, 2016, the time for Arbuckle's filing an answer to the Amended Complaint.⁶

Arbuckle failed to file an answer in response to the Amended Complaint by June 30, 2016, and, on July 8, 2016, the Administrator filed a Motion for Adoption of Decision and Order by Reason of Default [Motion for Default Decision] and a Proposed Decision and Order by Reason of Default. On July 13, 2016, Arbuckle filed an answer to the Amended Complaint denying the material allegations of the Amended Complaint,⁷ and on July 29, 2016, Arbuckle filed "Respondent's Objection to Motion for Adoption of Decision and Order by Reason of Default."

On August 18, 2016, the ALJ issued an order: (1) denying the Administrator's Motion for Default Decision, (2) authorizing the Administrator to file the Amended Complaint, and

² United States Postal Service Domestic Return Receipt for article number 7013 3020 0001 0700 9805.

³ Arbuckle captions its answer to the Complaint "Respondent's Answers to USDA Complaints" [Answer to the Complaint].

⁴ Am. Compl. ¶¶ 3-22 at 2-17.

⁵ Hearing Clerk's Office Document Distribution Form dated May 10, 2016, signed by Caroline Hill.

⁶ ALJ's May 27, 2016 Order captioned "File Answer by 30 June (Thur) 2016."

⁷ Arbuckle captions its answer to the Amended Complaint "Answers to the complaint filed by the USDA" [Answer to the Amended Complaint].

(3) canceling and withdrawing the ALJ's May 27, 2016 Order captioned "File Answer by 30 June (Thur) 2016."⁸ On September 2, 2016, the Administrator appealed the ALJ's August 18, 2016 Order,⁹ and, on September 22, 2016, Arbuckle filed a "Response to Complainant's Petition for Appeal." On September 26, 2016, the Hearing Clerk transmitted the record to the Office of the Judicial Officer, United States Department of Agriculture, for consideration and decision.

DECISION

Arbuckle's Request for Oral Argument

Arbuckle's request for oral argument,¹⁰ which the Judicial Officer may grant, refuse, or limit,¹¹ is refused because the issues raised in the Administrator's Appeal Petition and addressed in Arbuckle's Response to Complainant's Petition for Appeal are not complex and oral argument would serve no useful purpose.

Discussion

The ALJ denied the Administrator's Motion for Default Decision based upon the ALJ's conclusion that the Administrator prematurely filed the Motion for Default Decision. The ALJ identifies two bases for her conclusion. First, the ALJ states, at the time the Administrator filed the Motion for Default Decision, the ALJ had not authorized amendment of the Complaint, as required by 7 C.F.R. § 1.137(a); therefore, the Amended Complaint was inoperative and the

⁸ ALJ's "Order Authorizing Amendment; and Ruling Denying APHIS's Motion for a Default Decision" [ALJ's August 18, 2016 Order].

⁹ Complainant's Petition for Appeal [Appeal Petition].

¹⁰ Response to Complainant's Pet. for Appeal ¶ V at 8-9.

¹¹ 7 C.F.R. § 1.145(d).

Administrator's Motion for Default Decision, which was based upon Arbuckle's failure to file an answer to the Amended Complaint, was premature.¹²

The Rules of Practice provide that a complaint may be amended at any time prior to the filing of a motion for a hearing, as follows:

§ 1.137 Amendment of complaint, petition for review, or answer; joinder of related matters.

(a) *Amendment.* At any time prior to the filing of a motion for a hearing, the complaint, petition for review, answer, or response to petition for review may be amended. Thereafter, such an amendment may be made with consent of the parties, or as authorized by the Judge upon a showing of good cause.

7 C.F.R. § 1.137(a). The ALJ found Arbuckle had included a request for a hearing in its December 4, 2015 Answer to the Complaint¹³ and, based upon Arbuckle's having filed a request for a hearing, concluded the Administrator could only amend the Complaint with Arbuckle's consent or as authorized by the ALJ. However, the Rules of Practice distinguish between a request for a hearing and a motion for a hearing, as follows:

§ 1.141 Procedure for hearing.

(a) *Request for hearing.* Any party may request a hearing on the facts by including such request in the complaint or answer, or by a separate request, in writing, filed with the Hearing Clerk within the time in which an answer may be filed. . . .

(b) *Time, place, and manner.* (1) If any material issue of fact is joined by the pleadings, the Judge, upon motion of any party stating that the matter is at issue and is ready for hearing, shall set a time, place, and manner for hearing as soon as feasible after the motion is filed, with due regard for the public interest and the convenience and necessity of the parties. . . .

7 C.F.R. § 1.141(a)-(b)(1). The Judicial Officer has long held that a request for a hearing authorized in 7 C.F.R. § 1.141(a) is not the same as a motion for a hearing referred to in 7 C.F.R.

¹² ALJ's August 18, 2016 Order ¶ 3(a) at 2.

¹³ ALJ's August 18, 2016 Order ¶ 1 at 1.

§ 1.137(a) and 7 C.F.R. § 1.141(b)(1).¹⁴ I find Arbuckle's request for a hearing in its December 4, 2015 Answer to the Complaint is not a motion for a hearing referred to in 7 C.F.R. § 1.137(a). Therefore, I conclude the Administrator was not required by 7 C.F.R. § 1.137(a) to obtain Arbuckle's consent or authorization from the ALJ prior to amending the Complaint, and I reject the ALJ's conclusion that the Administrator's July 8, 2016 Motion for Default Decision was premature because the Amended Complaint was inoperative and Arbuckle's answer to the Amended Complaint was not yet required to be filed.

Second, the ALJ found the Hearing Clerk failed to properly serve Arbuckle with the Amended Complaint by certified mail, as required by 7 C.F.R. § 1.147(c)(1), and concluded the Administrator's July 8, 2016 Motion for Default Decision was premature because the time for filing Arbuckle's response to the Amended Complaint had not yet begun to run when the Administrator filed the Motion for Default Decision.¹⁵ The Administrator contends the Hearing Clerk properly served Arbuckle with the Amended Complaint by ordinary mail on May 10, 2016, and the time for Arbuckle's filing an answer in response to the Amended Complaint began to run on May 10, 2016, the date the Hearing Clerk mailed the Amended Complaint to Arbuckle; thus, the Administrator did not prematurely file the July 8, 2016 Motion for Default Decision.¹⁶

The Rules of Practice (7 C.F.R. § 1.147(c)(1)) identify six documents that, if served by certified or registered mail, are deemed to be received on the date of delivery to, among other places, the party's last known principal place of business. The six documents identified in 7 C.F.R.

¹⁴ Meacham, 47 Agric. Dec. 1708 (U.S.D.A. 1988) (Ruling on Certified Question).

¹⁵ ALJ's August 18, 2016 Order ¶ 3(b) at 2.

¹⁶ Administrator's Appeal Pet. ¶ III at 5-8.

§ 1.147(c)(1) include “[a]ny complaint or other document initially served on a person to make that person a party respondent in a proceeding.”¹⁷ The Rules of Practice provide that any document, other than the six documents identified in 7 C.F.R. § 1.147(c)(1), is deemed to be received by any party to the proceeding on the date of mailing by ordinary mail to the party’s last known principal place of business.¹⁸ Arbuckle argues the unambiguous language of 7 C.F.R. § 1.147(c)(1) requires “any complaint” to be served by certified or registered mail; therefore, the Hearing Clerk’s purported service of the Amended Complaint on Arbuckle on May 10, 2016, by ordinary mail, was ineffective and Arbuckle’s time for filing a response to the Amended Complaint had not yet begun to run when the Administrator filed the Motion for Default Decision on July 8, 2016.¹⁹

The Hearing Clerk served Arbuckle with the Complaint by certified mail on November 3, 2015.²⁰ The Hearing Clerk’s service of the Complaint on Arbuckle made Arbuckle a party respondent in this proceeding. Therefore, the Amended Complaint is not a “complaint . . . initially served on a person to make that person a party respondent in a proceeding.” Instead, the Amended Complaint is a document, other than a document specified in 7 C.F.R. § 1.147(c)(1), and, pursuant to 7 C.F.R. § 1.147(c)(2), the Amended Complaint is deemed to have been received by Arbuckle on May 10, 2016, the date the Hearing Clerk mailed the Amended Complaint by ordinary mail to Arbuckle’s last known principal place of business. Therefore, I reject the ALJ’s conclusion that the time for filing Arbuckle’s response to the Amended Complaint had not begun to run when the Administrator filed the Motion for Default Decision on July 8, 2016. Instead, I find the time for

¹⁷ The other five documents identified in 7 C.F.R. § 1.147(c)(1) are not at issue in this proceeding.

¹⁸ 7 C.F.R. § 1.147(c)(2).

¹⁹ Response to Appeal Pet. ¶ III at 6.

²⁰ See *supra* note 2.

filing Arbuckle's response to the Amended Complaint expired on June 30, 2016,²¹ and the Administrator's July 8, 2016 Motion for Default Decision was not premature.

While I reject the ALJ's conclusion that the Administrator prematurely filed the July 8, 2016 Motion for Default Decision, I affirm the ALJ's denial of the Administrator's Motion for Default Decision. A document is deemed to be filed on the date it reaches the Hearing Clerk.²² Arbuckle was required to file its Answer to the Amended Complaint with the Hearing Clerk no later than June 30, 2016. The record establishes that Arbuckle did not file its Answer to the Amended Complaint with the Hearing Clerk until July 13, 2016.²³ However, the record also establishes that, on June 29, 2016, Arbuckle tendered the Answer to the Amended Complaint to FedEx for overnight delivery to the Hearing Clerk. The FedEx "Travel History" related to Arbuckle's June 29, 2016 mailing indicates that, on June 30, 2016, FedEx delivered Arbuckle's Answer to the Amended Complaint to the United States Department of Agriculture building housing the Hearing Clerk's office, but that FedEx was unable to file Arbuckle's Answer to the Amended Complaint with the Hearing Clerk because of a "[r]ecipient location security delay."²⁴ While not without doubt, I find Arbuckle's failure to file its Answer to the Amended Complaint with Hearing Clerk on June 30, 2016, was caused by United States Department of Agriculture security personnel. Under circumstances in which United States Department of Agriculture personnel cause a respondent's failure to timely file a document with the Hearing Clerk, the

²¹ See *supra* note 6.

²² 7 C.F.R. § 1.147(g).

²³ Response to Complainant's Pet. for Appeal ¶ I(8) at 3.

²⁴ Response to Complainant's Pet. for Appeal ¶ I(6) at 2, Ex. 3.

Judicial Officer has treated the late-filed document as if the document had been timely filed.²⁵ Therefore, I treat Arbuckle's Answer to the Amended Complaint as timely filed and affirm the ALJ's denial of the Administrator's July 8, 2016 Motion for Default Decision.


For the foregoing reasons, the following Order is issued.

ORDER

1. The ALJ's August 18, 2016 ruling denying the Administrator's July 8, 2016 Motion for Default Decision is affirmed.
2. This proceeding is remanded to the ALJ for further proceedings in accordance with the Rules of Practice.

Done at Washington, DC

February 9, 2017


William G. Jensen
Judicial Officer

²⁵ See generally, Clark, 50 Agric. Dec. 386, 390 (U.S.D.A. 1991) (treating the respondent's late-filed appeal petition as timely filed with the Hearing Clerk based on the receipt of the respondent's appeal petition in the United States Department of Agriculture's mail room ten days before the effective date of the administrative law judge's order).