

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 11-0027
)
Joseph M. Estes, an individual,)
)
) **Order Dismissing Purported Appeal**
Respondent) **Petition and Cross-Appeal**

PROCEDURAL HISTORY

On March 20, 2014, Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] issued a Decision and Order: (1) concluding Joseph M. Estes violated 9 C.F.R. § 2.10(c), a regulation issued under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159); (2) ordering Mr. Estes to cease and desist from violating 9 C.F.R. § 2.10(c); and (3) assessing Mr. Estes a \$2,650 civil penalty.¹

On March 25, 2014, Mr. Estes sent an e-mail message to the ALJ, who, upon receipt of the message, asked Mr. Estes if he wanted the e-mail message to be regarded as an appeal to the Judicial Officer. Mr. Estes responded in the affirmative, and the ALJ forwarded Mr. Estes' March 25, 2014, e-mail message to the Hearing Clerk with instructions that it should be regarded as an appeal to the Judicial Officer. On April 28, 2014, the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], filed Complainant's Response to Respondent's Petition for Appeal. The

¹ALJ's Decision and Order ¶¶ 3, 20-21, 29-32 at 3, 5-8.

Administrator's response to Mr. Estes' March 25, 2014, filing also included a cross-appeal.

Mr. Estes failed to file a response to the Administrator's cross-appeal, and on June 10, 2014, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

DISCUSSION

Mr. Estes' March 25, 2014, E-Mail Message

Mr. Estes' March 25, 2014, e-mail message states in its entirety, as follows:

Good morning Judge Clifton,

Thank you for your time on this case. I started with animals when I was a child and loved them. It wasn't till later in life that I became more involved and obtained [a] USDA license. I always thought that when USDA came out they had good intentions and were trying to help me learn more about the care and better ideas about the animals I had. I had no idea that every time they came out they were collecting [a] file to fine me. I lost my license because [I] couldn't pay a fine on time, but it was paid. Through all this I have trusted a lot of people in the animal world [a]nd have found out that all people should not be trusted, very hard lesson. I still do not understand all of Title 9, 2.10 as most of USDA offices I've contacted. I had no intention of doing something willingly against this law, and I had contacted Dr. Gibbons concerning giving animals away after losing my license. I though I was doing the right thing that's why I had them fill out paper work on these animals. I love what I do, and I simply [w]ant to follow your regulations, but I feel if I was told by USDA that it was Ok then it [s]hould be ok.

Thank you for your time,

Joe Estes

The rules of practice applicable to this proceeding² set forth requirements for an appeal

²The rules of practice applicable to this proceeding are the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

petition, as follows:

§ 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.

7 C.F.R. § 1.145(a). Mr. Estes' March 25, 2014, e-mail message does not identify any error by the ALJ, does not identify any portion of the ALJ's Decision and Order or any ruling by the ALJ with which Mr. Estes disagrees, and does not allege any deprivation of rights. In short, Mr. Estes' March 25, 2014, e-mail message does not remotely conform to the requirements for an appeal petition in 7 C.F.R. § 1.145(a).

I have long held that purported appeal petitions which do not remotely conform to the requirements of 7 C.F.R. § 1.145(a) are dismissed;³ therefore, Mr. Estes' March 25, 2014, purported appeal petition is dismissed.

The Administrator's Cross-Appeal

³*In re Mark Kasmiersky* (Order Dismissing Purported Appeal Pet.), __ Agric. Dec. __ (June 9, 2014); *In re Oasis Corp.* (Order Dismissing Purported Appeal Pet.), __ Agric. Dec. __ (Jan. 25, 2013); *In re Billy Mike Gentry* (Order Dismissing Purported Appeal Pet.), __ Agric. Dec. __ (Mar. 18, 2009); *In re Kermit Breed* (Order Dismissing Purported Appeal), 50 Agric. Dec. 675 (1991); *In re Bihari Lall* (Order Dismissing Purported Appeal), 49 Agric. Dec. 895 (1990).

The Rules of Practice allow inclusion of a cross-appeal in a response to an appeal petition, as follows:

§ 1.145 Appeal to Judicial Officer.

.....
 (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.*

7 C.F.R. § 1.145(b) (emphasis added). The emphasized language was included in 7 C.F.R. § 1.145(b) so that neither party would have to file a protective notice of appeal (to be dropped if no appeal were filed by the other party), but could, instead, file the equivalent of a cross-appeal in response to the appeal petition filed by the other party.⁴ As Mr. Estes' March 25, 2014, e-mail message is not an appeal petition, I decline to consider the Administrator's April 28, 2014, cross-appeal, and I dismiss the Administrator's April 28, 2014, cross-appeal.⁵

⁴*In re Excel Corp.*, 62 Agric. Dec. 196, 248-49 (2003), *enforced as modified*, 397 F.3d 1285 (10th Cir. 2005); *In re Floyd Stanley White*, 47 Agric. Dec. 229, 262-63 (1988), *aff'd per curiam*, 865 F.2d 262, 1988 WL 133292 (6th Cir. 1988); *In re Richard L. Thornton*, 41 Agric. Dec. 870, 900 (1982), *aff'd*, 715 F.2d 1508 (11th Cir. 1983), *reprinted in* 51 Agric. Dec. 295 (1992); *In re Magic Valley Potato Shippers, Inc.*, 40 Agric. Dec. 1557, 1558 (1981), *aff'd per curiam*, 702 F.2d 840 (9th Cir. 1983); *In re Albert Lee Rowland*, 40 Agric. Dec. 1934, 1953 (1981), *aff'd*, 713 F.2d 179 (6th Cir. 1983).

⁵*Cf. In re Onofrio Calabrese*, 51 Agric. Dec. 131, 145-46 (1992) (stating, while the Judicial Officer may consider a cross-appeal as to the respondent that filed an appeal petition, the Judicial Officer's authority to consider a cross-appeal as it relates to the two respondents who did not file an appeal petition is not free from doubt; declining to consider the cross-appeal as it related to the two respondents who did not appeal the administrative law judge's decision), *aff'd sub nom. Balice v. U.S. Dep't of Agric.*, 203 F.3d 684 (9th Cir. 2000).

Status of the ALJ's Decision and Order

The ALJ's March 20, 2014, Decision and Order became final and effective 35 days after the Hearing Clerk served Mr. Estes with the Decision and Order.⁶ The Hearing Clerk served Mr. Estes with the ALJ's Decision and Order on March 27, 2014;⁷ therefore, the ALJ's Decision and Order became final and effective on May 1, 2014.

For the foregoing reasons, the following Order is issued.

ORDER

1. Mr. Estes' March 25, 2014, purported appeal petition is dismissed.
2. The Administrator's April 28, 2014, cross-appeal is dismissed.
3. The ALJ's March 20, 2014, Decision and Order became final and effective May 1, 2014.

Done at Washington, DC

June 12, 2014

William G. Jenson
Judicial Officer

⁶7 C.F.R. § 1.142(c)(4); ALJ's Decision and Order ¶ 33 at 8.

⁷United States Postal Service Domestic Return Receipt for article number 7005 1160 0002 7836 0747.