

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) A.Q. Docket No. 08-0074
)
Leroy H. Baker, Jr., d/b/a)
Sugarcreek Livestock Auction,)
Inc.; Larry L. Anderson; and)
James Gadberry,)
) **Order Denying Petition to Reconsider**
) **as to Leroy H. Baker, Jr.**
Respondents)

PROCEDURAL HISTORY

On November 17, 2008, I issued a decision concluding Leroy H. Baker, Jr., violated the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note) and the regulations issued under the Commercial Transportation of Equine for Slaughter Act (9 C.F.R. pt. 88) [hereinafter the Regulations].¹ On December 1, 2008, Mr. Baker filed a petition to reconsider the November 17, 2008, decision. On December 12, 2008, Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Acting Administrator], filed a response to Mr. Baker's petition to reconsider, and the Hearing

¹*In re Leroy H. Baker, Jr.* (Decision as to Leroy H. Baker, Jr.), ___ Agric. Dec. ___ (Nov. 17, 2008).

Clerk transmitted the record to the Judicial Officer for a ruling on Mr. Baker's petition to reconsider. Based upon a careful review of the record, I deny Mr. Baker's petition to reconsider and reinstate the order in *In re Leroy H. Baker, Jr.* (Decision as to Leroy H. Baker, Jr.), __ Agric. Dec. ____ (Nov. 17, 2008).

CONCLUSIONS BY THE JUDICIAL OFFICER ON RECONSIDERATION

Mr. Baker raises four issues in his petition to reconsider. First, Mr. Baker asserts he was under the impression he would have a hearing (Pet. to Reconsider at 3).

Mr. Baker cites no basis for his belief that he is entitled to a hearing, and I find nothing in the record that supports Mr. Baker's belief that he is entitled to a hearing. To the contrary, on March 17, 2008, the Hearing Clerk served Mr. Baker with the Complaint, the rules of practice applicable to the instant proceeding,² and a service letter.³ The Rules of Practice explicitly provide an answer to a complaint must be filed within 20 days after service of the complaint; failure to file a timely answer shall be deemed, for purposes of the proceeding, an admission of the allegations in the complaint; and failure to file an answer or the admission by the answer of all the material allegations of fact contained in the complaint, constitutes a waiver of hearing (7 C.F.R. §§ 1.136(a), (c), .139).

Moreover, the Hearing Clerk's service letter informs Mr. Baker that "[f]ailure to file an

²The rules of practice applicable to the instant 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].

³United States Postal Service Domestic Return Receipt for article number 7004 2510 0003 7023 1197.

answer or filing an answer which does not deny the material allegations of the complaint, shall constitute an admission of those allegations and a waiver of your right to an oral hearing.”⁴ Further still, the Complaint informs Mr. Baker that “[f]ailure to file an answer within the prescribed time shall constitute an admission of the allegations in this complaint and a waiver of hearing.” (Compl. at 24.) Despite the Rules of Practice and the warnings in the Hearing Clerk’s service letter and the Complaint, Mr. Baker filed his first response to the Complaint on November 5, 2008, 6 months 29 days after Mr. Baker was required to file an answer; therefore, Mr. Baker waived his right to a hearing, and I find no basis for Mr. Baker’s continuing belief that he is entitled to a hearing.

Second, Mr. Baker contends that someone should have told him of the violations immediately after they occurred rather than presenting him with the Complaint that includes violations that occurred over a 5- or 6-year period (Pet. to Reconsider at 4).

As an initial matter, the Complaint alleges Mr. Baker committed violations of the Commercial Transportation of Equine for Slaughter Act and the Regulations during a 3-year 9-month 12-day period, not a 5- or 6-year period, as Mr. Baker asserts (Compl. ¶¶ IV-XXXVIII). Moreover, Mr. Baker cites no requirement that he must be informed of his violations immediately after they occur, and I cannot locate any such requirement.

Third, Mr. Baker asserts 95 percent of the allegations in the Complaint are false (Pet. to Reconsider at 6).

⁴Service letter dated March 12, 2008, from Joyce A. Dawson, Hearing Clerk, to Leroy Baker.

The Hearing Clerk served Mr. Baker with the Complaint on March 17, 2008. Mr. Baker was required by the Rules of Practice to file a response to the Complaint within 20 days after service of the Complaint:⁵ namely, no later than April 7, 2008. The Rules of Practice provide failure to file a timely answer shall be deemed, for purposes of the proceeding, an admission of the allegations in the complaint.⁶ Mr. Baker's denial of 95 percent of the allegations of the Complaint in his petition for reconsideration, filed December 1, 2008, 7 months 24 days after Mr. Baker was required to file an answer, comes far too late to be considered. As Mr. Baker has failed to file a timely answer, Mr. Baker is deemed to have admitted the material allegations of the Complaint, and I reject his late-filed denial of 95 percent of the allegations in the Complaint.

Fourth, Mr. Baker asserts he cannot pay the \$162,800 civil penalty assessed in the November 17, 2008, decision (Pet. to Reconsider at 7).

Neither the Commercial Transportation of Equine for Slaughter Act nor the Regulations provides that a respondent's inability to pay a civil penalty is a factor that I must consider when determining the amount of the civil penalty to be assessed for violations of the Commercial Transportation of Equine for Slaughter Act and the Regulations. Therefore, I decline to consider Mr. Baker's purported inability to pay the \$162,800 civil penalty.

⁵See 7 C.F.R. § 1.136(a).

⁶See 7 C.F.R. § 1.136(c).

Section 1.146(b) of the Rules of Practice (7 C.F.R. § 1.146(b)) provides that the decision of the Judicial Officer shall automatically be stayed pending the determination to grant or deny a timely-filed petition to reconsider. Mr. Baker's petition to reconsider was timely filed and automatically stayed *In re Leroy H. Baker, Jr.* (Decision as to Leroy H. Baker, Jr.), __ Agric. Dec. ____ (Nov. 17, 2008). Therefore, since Mr. Baker's petition to reconsider is denied, I hereby lift the automatic stay, and the order in *In re Leroy H. Baker, Jr.* (Decision as to Leroy H. Baker, Jr.), __ Agric. Dec. ____ (Nov. 17, 2008), is reinstated; except that, the effective date of the order is the date indicated in the order in this Order Denying Petition to Reconsider as to Leroy H. Baker, Jr.

For the foregoing reasons and the reasons in *In re Leroy H. Baker, Jr.* (Decision as to Leroy H. Baker, Jr.), __ Agric. Dec. ____ (Nov. 17, 2008), Mr. Baker's petition to reconsider is denied and the following Order is issued.

ORDER

Leroy H. Baker, Jr., d/b/a Sugarcreek Livestock Auction, Inc., is assessed a \$162,800 civil penalty. The civil penalty shall be paid by certified check or money order, payable to the Treasurer of the United States, and sent to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Payment of the civil penalty shall be sent to, and received by, the United States Department of Agriculture, APHIS Field Servicing Office, Accounting Section, within 60 days after service of this Order on Mr. Baker. Mr. Baker shall indicate on the certified check or money order that payment is in reference to A.Q. Docket No. 08-0074.

Done at Washington, DC

December 15, 2008

William G. Jenson
Judicial Officer