UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	HPA Docket No. 00-0017
	)	
Bowtie Stables, LLC, a Tennessee corporation; James L. Corlew, Sr., an individual; Betty Corlew, an individual; and B.A. Dorsey, an individual,	)	
Respondents	)	**Decision and Order**

PROCEDURAL HISTORY

Bobby R. Acord, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a "Complaint" on July 5, 2000. Complainant instituted the proceeding under the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) [hereinafter the Horse Protection Act]; and 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]. The Complaint includes "Billy Corlew, an individual" as one of the Respondents. On August 31, 2000, Complainant filed a "Notice of Withdrawal of Complaint Without Prejudice as to Respondent Billy Corlew." On September 8, 2000, Chief Administrative Law Judge James W. Hunt issued an

"Order Allowing Withdrawal of 'Billy Corlew' as a Respondent and Order Amending Case Caption." On May 9, 2001, Complainant filed an "Amended Complaint" which added "Betty Corlew, an individual," as a Respondent.

Complainant alleges that: (1) on or about March 22, 2000, James L. Corlew, Sr., and B.A. Dorsey entered a horse known as "Ebony's Bad Bubba" as entry 181 in class 9 at the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, while Ebony's Bad Bubba was sore, for the purpose of showing or exhibiting the horse, in violation of section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)); and (2) on or about March 22, 2000, Bowtie Stables, LLC, and Betty Corlew allowed James L. Corlew, Sr., and B.A. Dorsey to enter Ebony's Bad Bubba as entry 181 in class 9 at the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, while Ebony's Bad Bubba was sore, for the purpose of showing or exhibiting the horse, in violation of section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)) (Amended Compl. ¶¶ 7-8). On June 4, 2001, Bowtie Stables, LLC, James L. Corlew, Sr., Betty Corlew, and B.A. Dorsey [hereinafter Respondents] filed "Respondent's Answer to Amended Complaint" [hereinafter Answer to Amended Complaint] in which Respondents deny violating the Horse Protection Act (Answer to Amended Compl. ¶ 3).

Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] presided at a hearing in Clarksville, Tennessee, on August 8 and 9, 2001. Sharlene A. Deskins, Office of the General Counsel, United States Department of Agriculture, represented Complainant.

David F. Broderick, Broderick & Thornton, Bowling Green, Kentucky, represented Respondents.

On October 17, 2001, Respondents filed "Respondents' Proposed Findings of Fact, Conclusions and Order" and "Respondents' Opening Brief" and Complainant filed "Complainant's Proposed Findings of Fact, Conclusions of Law, Proposed Order and Brief in Support Thereof." On November 7, 2001, Complainant filed "Complainant's Reply to the Respondent's Proposed Findings of Fact, Conclusions and Order of Dismissal." On November 8, 2001, Respondents filed "Respondents' Responsive Brief."

On April 4, 2002, the ALJ issued a "Decision and Order" [hereinafter Initial Decision and Order] in which the ALJ: (1) concluded Bowtie Stables, LLC, and Betty Corlew allowed Ebony's Bad Bubba to be entered at the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, while Ebony's Bad Bubba was sore, for the purpose of showing or exhibiting the horse, in violation of section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)); (2) concluded James L. Corlew, Sr., Betty Corlew, and B.A. Dorsey entered Ebony's Bad Bubba at the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, while Ebony's Bad Bubba was sore, for the purpose of showing or exhibiting the horse, in violation of section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)); (3) assessed each Respondent a $2,200 civil penalty; and (4) disqualified each Respondent from showing, exhibiting, or entering any horse and from managing, judging, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction for 1 year (Initial Decision and Order at 22-25).

On June 5, 2002, Respondents appealed to the Judicial Officer. On July 19, 2002, Complainant filed "Complainant's Opposition to the Respondents' Appeal Petition." On July 23, 2002, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

Based upon a careful consideration of the record, I agree with the ALJ's Initial Decision and Order, except for the ALJ's finding that Betty Corlew was not an owner of Ebony's Bad Bubba and the ALJ's conclusion that Betty Corlew violated 15 U.S.C. § 1824(2)(B). Therefore, I adopt, with modifications, the Initial Decision and Order as the final Decision and Order.

Complainant's exhibits are designated by "CX." Respondents' exhibits are designated by "RX." Transcript references are designated by "Tr."

APPLICABLE STATUTORY AND REGULATORY PROVISIONS

15 U.S.C.:

TITLE 15—COMMERCE AND TRADE

. . . .

CHAPTER 44—PROTECTION OF HORSES

§ 1821. Definitions

As used in this chapter unless the context otherwise requires:

. . . .

(3) The term "sore" when used to describe a horse means that–

(A) an irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse,

(B) any burn, cut, or laceration has been inflicted by a person on any limb of a horse,

(C) any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse, or

(D) any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse,

and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of a horse by or under the supervision of a person licensed to practice veterinary medicine in the State in which such treatment was given.

§ 1822. Congressional statement of findings

The Congress finds and declares that–

(1) the soring of horses is cruel and inhumane;

(2) horses shown or exhibited which are sore, where such soreness improves the performance of such horse, compete unfairly with horses which are not sore;

(3) the movement, showing, exhibition, or sale of sore horses in intrastate commerce adversely affects and burdens interstate and foreign commerce;

(4) all horses which are subject to regulation under this chapter are either in interstate or foreign commerce or substantially affect such commerce; and

(5) regulation under this chapter by the Secretary is appropriate to prevent and eliminate burdens upon commerce and to effectively regulate commerce.

§ 1823. Horse shows and exhibitions

(a) Disqualification of horses

The management of any horse show or horse exhibition shall disqualify any horse from being shown or exhibited (1) which is sore or (2) if the management has been notified by a person appointed in accordance with regulations under subsection (c) of this section or by the Secretary that the horse is sore.

. . . .

(c) Appointment of inspectors; manner of inspections

The Secretary shall prescribe by regulation requirements for the appointment by the management of any horse show, horse exhibition, or horse sale or auction of persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses for the purposes of enforcing this chapter. Such requirements shall prohibit the appointment of persons who, after notice and opportunity for a hearing, have been disqualified by the Secretary to make such detection, diagnosis, or inspection. Appointment of a person in accordance with the requirements prescribed under this subsection shall not be construed as authorizing such person to conduct inspections in a

manner other than that prescribed for inspections by the Secretary (or the Secretary's representative) under subsection (e) of this section.

§ 1824. Unlawful acts

The following conduct is prohibited:

. . . .

(2) The (A) showing or exhibiting, in any horse show or horse exhibition, of any horse which is sore, (B) entering for the purpose of showing or exhibiting in any horse show or horse exhibition, any horse which is sore, (C) selling, auctioning, or offering for sale, in any horse sale or auction, any horse which is sore, and (D) allowing any activity described in clause (A), (B), or (C) respecting a horse which is sore by the owner of such horse.

§ 1825. Violations and penalties

. . . .

(b) Civil penalties; review and enforcement

(1) Any person who violates section 1824 of this title shall be liable to the United States for a civil penalty of not more than $2,000 for each violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing before the Secretary with respect to such violation. The amount of such civil penalty shall be assessed by the Secretary by written order. In determining the amount of such penalty, the Secretary shall take into account all factors relevant to such determination, including the nature, circumstances, extent, and gravity of the prohibited conduct and, with respect to the person found to have engaged in such conduct, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) Any person against whom a violation is found and a civil penalty assessed under paragraph (1) of this subsection may obtain review in the court of appeals of the United States for the circuit in which such person resides or has his place of business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found and such penalty assessed, as provided in section 2112 of

title 28. The findings of the Secretary shall be set aside if found to be unsupported by substantial evidence.

. . . .

(c) Disqualification of offenders; orders; civil penalties applicable; enforcement procedures

In addition to any fine, imprisonment, or civil penalty authorized under this section, any person who was convicted under subsection (a) of this section or who paid a civil penalty assessed under subsection (b) of this section or is subject to a final order under such subsection assessing a civil penalty for any violation of any provision of this chapter or any regulation issued under this chapter may be disqualified by order of the Secretary, after notice and an opportunity for a hearing before the Secretary, from showing or exhibiting any horse, judging or managing any horse show, horse exhibition, or horse sale or auction for a period of not less than one year for the first violation and not less than five years for any subsequent violation. Any person who knowingly fails to obey an order of disqualification shall be subject to a civil penalty of not more than $3,000 for each violation. Any horse show, horse exhibition, or horse sale or auction, or the management thereof, collectively and severally, which knowingly allows any person who is under an order of disqualification to show or exhibit any horse, to enter for the purpose of showing or exhibiting any horse, to take part in managing or judging, or otherwise to participate in any horse show, horse exhibition, or horse sale or auction in violation of an order shall be subject to a civil penalty of not more than $3,000 for each violation. The provisions of subsection (b) of this section respecting the assessment, review, collection, and compromise, modification, and remission of a civil penalty apply with respect to civil penalties under this subsection.

(d) Production of witnesses and books, papers, and documents; depositions; fees; presumptions; jurisdiction

. . . .

(5) In any civil or criminal action to enforce this chapter or any regulation under this chapter a horse shall be presumed to be a horse which is sore if it manifests abnormal sensitivity or inflammation in both of its forelimbs or both of its hindlimbs.

§ 1828. Rules and regulations

The Secretary is authorized to issue such rules and regulations as he deems necessary to carry out the provisions of this chapter.

15 U.S.C. §§ 1821(3), 1822, 1823(a), (c), 1824(2), 1825(b)(1)-(2), (c), (d)(5), 1828.

28 U.S.C.:

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

. . . .

PART VI—PARTICULAR PROCEEDINGS

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CHAPTER 163—FINES, PENALTIES AND FORFEITURES

§ 2461. Mode of recovery

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FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Civil Penalties Inflation Adjustment Act of 1990"

FINDINGS AND PURPOSE

SEC. 2. (a) FINDINGS.–The Congress finds that–

(1) the power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring violations and furthering the policy goals embodied in such laws and regulations;

(2) the impact of many civil monetary penalties has been and is diminished due to the effect of inflation;

(3) by reducing the impact of civil monetary penalties, inflation has weakened the deterrent effect of such penalties; and

(4) the Federal Government does not maintain comprehensive, detailed accounting of the efforts of Federal agencies to assess and collect civil monetary penalties.

(b) PURPOSE–The purpose of this Act is to establish a mechanism that shall–

(1) allow for regular adjustment for inflation of civil monetary penalties;

(2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and

(3) improve the collection by the Federal Government of civil monetary penalties.

DEFINITIONS

SEC. 3. For purposes of this Act, the term–

(1) "agency" means an Executive agency as defined under section 105 of title 5, United States Code, and includes the United States Postal Service;

(2) "civil monetary penalty" means any penalty, fine, or other sanction that–

(A)(i) is for a specific monetary amount as provided by Federal law; or

(ii) has a maximum amount provided for by Federal law; and

(B) is assessed or enforced by an agency pursuant to Federal law; and

(C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts; and

(3) "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

CIVIL MONETARY PENALTY INFLATION ADJUSTMENT REPORTS

SEC. 4. The head of each agency shall, not later than 180 days after the date of enactment of the Debt Collection Improvement Act of 1996 [Apr. 26, 1996], and at least once every 4 years thereafter–

(1) by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency, except for any penalty (including any addition to tax and additional amount) under the

Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.], the Tariff Act of 1930 [19 U.S.C. 1202 et seq.], the Occupational Safety and Health Act of 1970 [20 U.S.C. 651 et seq.], or the Social Security Act [42 U.S.C. 301 et seq.], by the inflation adjustment described under section 5 of this Act [bracketed material in original]; and

(2) publish each such regulation in the Federal Register.

COST-OF-LIVING ADJUSTMENTS OF CIVIL MONETARY PENALTIES

SEC. 5. (a) ADJUSTMENT.–The inflation adjustment under section 4 shall be determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this subsection shall be rounded to the nearest–

(1) multiple of $10 in the case of penalties less than or equal to $100;

(2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) multiple of $25,000 in the case of penalties greater than $200,000.

(b) DEFINITION.–For purposes of subsection (a), the term "cost-of-living adjustment" means the percentage (if any) for each civil monetary penalty by which–

(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds

(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

ANNUAL REPORT

SEC. 6. Any increase under this Act in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.

28 U.S.C. § 2461 note.

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

. . . .

PART 3—DEBT MANAGEMENT

. . . .

Subpart E—Adjusted Civil Monetary Penalties

§ 3.91 Adjusted civil monetary penalties.

(a) *In general*. The Secretary will adjust the civil monetary penalties, listed in paragraph (b), to take account of inflation at least once every 4 years as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. No. 104-134).

(b) *Penalties*– . . . .

. . . .

(2) *Animal and Plant Health Inspection Service*. . . .

. . . .

(vii) Civil penalty for a violation of Horse Protection Act, codified at 15 U.S.C. 1825(b)(1), has a maximum of $2,200[.]

7 C.F.R. § 3.91(a), (b)(2)(vii).

9 C.F.R.:

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—ANIMAL WELFARE

. . . .

PART 11—HORSE PROTECTION REGULATIONS

§ 11.1 Definitions.

For the purpose of this part, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also impart the plural and the masculine form shall also impart the feminine. Words of art undefined in the following paragraphs shall have the meaning attributed to them by trade usage or general usage as reflected in a standard dictionary, such as "Webster's."

. . . .

Action Device means any boot, collar, chain, roller, or other device which encircles or is placed upon the lower extremity of the leg of a horse in such a manner that it can either rotate around the leg, or slide up and down the leg so as to cause friction, or which can strike the hoof, coronet band or fetlock joint.

. . . .

Designated Qualified Person or *DQP* means a person meeting the requirements specified in § 11.7 of this part who has been licensed as a DQP by a horse industry organization or association having a DQP program certified by the Department and who may be appointed and delegated authority by the management of any horse show, horse exhibition, horse sale or horse auction under section 4 of the Act to detect or diagnose horses which are sore or to otherwise inspect horses and any records pertaining to such horses for the purposes of enforcing the Act.

Exhibitor means (1) any person who enters any horse, any person who allows his horse to be entered, or any person who directs or allows any horse in his custody or under his direction, control or supervision to be entered in any horse show or horse exhibition; (2) any person who shows or exhibits any horse, any person who allows his horse to be shown or exhibited, or any person who directs or allows any horse in his custody or under his direction, control, or supervision to be shown or exhibited in any horse show or horse exhibition; (3) any person who enters or presents any horse for sale or auction, any person who allows his horse to be entered or presented for sale or auction, or any person who allows any horse in his custody or under his direction, control, or supervision to be entered or presented for sale or auction in any horse sale or horse auction; or (4) any person who sells or auctions any horse, any person who allows his horse to be sold or auctioned, or any person who directs or allows any horse in his custody or under his direction, control, or supervision to be sold or auctioned.

. . . .

Horse Exhibition means a public display of any horses, singly or in groups, but not in competition, except events where speed is the prime factor, rodeo events, parades, or trail rides.

. . . .

Horse Sale or Horse Auction means any event, public or private, at which horses are sold or auctioned, regardless of whether or not said horses are exhibited prior to or during the sale or auction.

Horse Show means a public display of any horses, in competition, except events where speed is the prime factor, rodeo events, parades, or trail rides.

Inspection means the examination of any horse and any records pertaining to any horse by use of whatever means are deemed appropriate and necessary for the purpose of determining compliance with the Act and regulations. Such inspection may include, but is not limited to, visual examination of a horse and records, actual physical examination of a horse including touching, rubbing, palpating and observation of vital signs, and the use of any diagnostic device or instrument, and may require the removal of any shoe, pad, action device, or any other equipment, substance or paraphernalia from the horse when deemed necessary by the person conducting such inspection.

9 C.F.R. § 11.1.

ADMINISTRATIVE LAW JUDGE'S INITIAL DECISION AND ORDER (AS RESTATED)

Decision Summary

In this Decision and Order, I determine the act of being the scheduled rider, who is to show a horse, is an act of entering the horse to be shown or exhibited in a horse show, within the meaning of 15 U.S.C. § 1824(2)(B); however, I do not conclude the scheduled rider of Ebony's Bad Bubba, Betty Corlew, entered Ebony's Bad Bubba in the 32nd Annual National Walking Horse Trainers Show in violation of 15 U.S.C. § 1824(2)(B) because that violation was not alleged in the Amended Complaint. I determine an individual who controls the corporate owner of a horse can be liable for a violation of 15 U.S.C. § 1824(2)(D). I determine Bowtie Stables, LLC, James L. Corlew, Sr., Betty Corlew, and B.A. Dorsey violated the Horse Protection Act, even if they were unaware that Ebony's Bad Bubba was sore. I determine the assessment of the usually-imposed $2,200 civil penalty against each Respondent is appropriate. Further, while disqualification is discretionary, I determine the usual practice of imposing the minimum 1 year disqualification period for the first violation of the Horse Protection Act is appropriate as to each Respondent.

Discussion

The first issue is whether Ebony's Bad Bubba was entered to be shown or exhibited in the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000. If so, the second issue is whether Ebony's Bad Bubba was sore at the time. Complainant need merely prove the case by a preponderance of the evidence. If

Complainant can prove the horse was sore, Complainant need not prove who sored the horse or how the horse was sored. Complainant need not even prove that any of the Respondents knew the horse was sore.

The remaining issues concern Betty Corlew. Did she enter Ebony's Bad Bubba in the 32nd Annual National Walking Horse Trainers Show to be shown or exhibited? Was she Ebony's Bad Bubba's owner or co-owner?

First issue: Was Ebony's Bad Bubba entered to be shown or exhibited in the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000? Respondents claim Ebony's Bad Bubba's entry was never completed; therefore, he was not entered.[1] I find to the contrary, that Ebony's Bad Bubba was entered. During the pre-show inspection, two designated qualified persons [hereinafter DQPs],[2] Robert (Bob) Flynn and Mark Thomas, inspected Ebony's Bad Bubba (CX 3, CX 4). The DQPs agreed on an "Exam Score" of seven points; prepared and issued Ticket No. 21878 to Ebony's Bad

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[1]Complainant alleges and Respondents admit James L. Corlew, Sr., and B.A. Dorsey entered Ebony's Bad Bubba in the 32nd Annual National Walking Horse Trainers Show and Bowtie Stables, LLC, and Betty Corlew allowed James L. Corlew, Sr., and B.A. Dorsey to enter Ebony's Bad Bubba in the 32nd Annual National Walking Horse Trainers Show (Amended Compl. ¶¶ 5-6; Answer to Amended Compl. ¶ 2). Moreover, each individual Respondent states in an affidavit that Ebony's Bad Bubba was entered in the 32nd Annual National Walking Horse Trainers Show on March 22, 2000 (CX 9, CX 10, CX 11). Therefore, I find Respondents' contention that Ebony's Bad Bubba was not entered in the 32nd Annual National Walking Horse Trainers Show perplexing. Nonetheless, I address the entry of Ebony's Bad Bubba in the 32nd Annual National Walking Horse Trainers Show.

[2]A designated qualified person or DQP is an individual appointed by the management of a horse show and trained under a United States Department of Agriculture-sponsored program to inspect horses for compliance with the Horse Protection Act (15 U.S.C. § 1823; 9 C.F.R. §§ 11.1, .7).

Bubba's trainer, B.A. Dorsey; and prevented the horse from competing in the 32nd Annual National Walking Horse Trainers Show (CX 2-CX 5). Ebony's Bad Bubba was "disqualified" or "excused," based on the seven-point score. I find Ebony's Bad Bubba was entered to be shown or exhibited, even though, based on the pre-show inspection, he was disqualified or excused from competing. A finding of soreness made during pre-show inspection has consistently been a sufficient basis upon which to find that a violation of "entering a horse while sore" has occurred.[3]

Second issue: Was Ebony's Bad Bubba sore at the time of the pre-show inspections? Relying on palpation results from Ebony's Bad Bubba's front feet, Dr. Lynn P. Bourgeois and Dr. David C. Smith, Animal and Plant Health Inspection Service veterinary medical officers, each found the horse had been sored in both front feet. Based upon their pre-show inspections of Ebony's Bad Bubba on March 22, 2000, I find Ebony's Bad Bubba was sore.

Drs. Bourgeois and Smith opined that the horse was sored by overuse of action devices or other mechanical means or by chemical means. Because of the specific location of the painful areas, they testified they could reasonably expect that Ebony's Bad Bubba would have been in physical pain if he had been exhibited on March 22, 2000. Both veterinarians concluded that the horse's pain was not due to accidental causes.

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[3]*In re William Dwaine Elliott* (Decision as to William Dwaine Elliott), 51 Agric. Dec. 334 (1992), *aff'd*, 990 F.2d 140 (4th Cir.), *cert. denied*, 510 U.S. 867 (1993).

Before detailing the findings by the Animal and Plant Health Inspection Service veterinary medical officers, I now mention evidence presented by Mr. Lonnie Messick, an official at the 32nd Annual National Walking Horse Trainers Show, and additional findings by the DQPs. Mr. Messick was subpoenaed by Respondents to bring a copy of a videotape recorded at the 32nd Annual National Walking Horse Trainers Show (Tr. 244). The tape was marked as RX 2 and was viewed at the hearing. Mr. Messick testified that exhibitors should have been aware that the inspections of their horses were videotaped. He said he has a sign outside the inspection area that states the horses are video and audio taped during inspection, and he normally holds pre-show conferences in which he discusses, among other things, the videotaping of the inspection of horses. (Tr. 308-09.) Mr. Messick also testified about the DQP inspection of horses. He said very few horses receive a score of nine, occasionally a horse receives a score of eight, and a score of seven is not given very often (Tr. 284-85). Mr. Messick was asked if a score of seven indicates a horse is sore. Mr. Messick answered:

> In March of 2000 a score of seven would have been a penalty of eight months and a $600 fine from the National Horse Show Commission. A Horse Protection violation at that time, normally individuals would have received for a horse in violation of a sore horse, would have been anywhere from eight months to a year plus some fine. Now that's just from the experience that I've had.
>
> Your VMOs will have to answer that question as to what the penalty is for a sore horse from USDA.

Tr. 286.

Mr. Messick also testified "the reason we have two examination sheets is our procedure is any score of seven or above requires two DQPs to inspect that horse and they have to agree that that horse is a seven or greater before it would receive that score." (Tr. 300.) He said the DQPs and Animal and Plant Health Inspection Service veterinary medical officers are jointly trained by the United States Department of Agriculture to conduct horse inspections (Tr. 304).

DQP Robert Flynn determined Ebony's Bad Bubba presented at the pre-show inspection with the following indicators (CX 3):

Locomotion (2 points):	Gait, slow around cone putting a lot of weight on his back end.
Physical examination (3 points):	Palpation, Very strong reaction in both feet– hind & front.
Appearance (2 points):	Tucking of Flanks, Flexing Abdominal Muscles, horse was hot–tucked flanks–shifted weight to the back end.

DQP Mark Thomas determined Ebony's Bad Bubba presented at the pre-show inspection with the following indicators (CX 4):

Locomotion (2 points):	Stance, Gait, Freedom of Movement When Led, Turning Around Cone, Led slow and in a cramped position–taking very short steps at times. Led on a very tight rein.
Physical examination (3 points):	Palpation, Reacted to palpation on both front feet down the center and around both sides on both front feet and also in both pockets on both feet
Appearance (2 points):	Tucking of Flanks, Flexing Abdominal Muscles, Rocking Forward or Standing on Toes, Rear

> Limbs, Stayed tensed in his abdominal muscles, tucked flanks during palpation. Rocked back and forth during palpation.

Dr. Bourgeois inspected Ebony's Bad Bubba after the DQPs had completed their inspections. Dr. Bourgeois testified as to his knowledge, training, and experience in the field of horse inspections. He is a doctor of veterinary medicine with 20 years of experience as to the Horse Protection Act (Tr. 162-63). Dr. Bourgeois had no specific recollection of Ebony's Bad Bubba and his inspection (Tr. 163-64). Dr. Bourgeois stated that the Xs on APHIS Form 7077 (CX 6) were his marks (Tr. 167). Upon review of his affidavit (CX 7) and review of his marks on APHIS Form 7077 (CX 6), Dr. Bourgeois opined that Ebony's Bad Bubba was sored and that the "[soring was] concurrent [sic] with chemical soring or working with chains." (Tr. 168.) He stated he and Dr. Smith discussed their findings with each other at the pre-show inspection before coming to a conclusion that Ebony's Bad Bubba was sored (Tr. 167). Both of the United States Department of Agriculture veterinary medical officers observed Ebony's Bad Bubba's reaction to palpation when he was being inspected by the DQPs (CX 7, CX 8).

Dr. Bourgeois explained that the proper procedure for palpating a horse is that "we palpate that area at least three times. If you get a reproducible, repeatable response in that one area, that is considered enough to call a hard [sic] sore." (Tr. 173.) The APHIS Form 7077 completed by Drs. Bourgeois and Smith shows that they agreed on 12 out of 16 locations where palpation resulted in pain responses (CX 6).

Dr. Smith inspected Ebony's Bad Bubba after both DQPs and Dr. Bourgeois had inspected the horse. Dr. Smith testified as to his knowledge, training, and experience in the field of horse inspection. He is a doctor of veterinary medicine with 5 years of experience with Tennessee Walking Horse shows and special training as to the Horse Protection Act (Tr. 30, 63). He testified that he had no independent recollection of the inspection, but his recollection was refreshed upon review of his affidavit and APHIS Form 7077 (Tr. 34-35). He stated that the notes from which he prepared his affidavit were prepared within 45 minutes of the inspection (Tr. 115).

Dr. Smith opined that Ebony's Bad Bubba was sored. Dr. Smith determined that due to the symmetry of the horse's reaction to his palpation, the soring was not accidental. He likewise ruled out developmental changes, such as "contracted heels," as a basis for the horse's reaction to palpation on all sides of the horse's front feet. (Tr. 47-50.)

Dr. Smith explained the marking system on APHIS Form 7077 (CX 6). He stated that the places where he tested and found painful reaction to palpation were shown as circles (0s) on the front, back, left, and right side views of Ebony's Bad Bubba's front pasterns (the area between the hoof and what looks like an ankle joint on the leg) (Tr. 42-46). As Dr. Smith explained, "[p]alpation consists of taking my thumb and gently pressing on these areas, looking for areas that are painful." (Tr. 42.) "[T]he horse, if it's painful, will try to jerk the foot away. That's just a natural pain response." (Tr. 43.) "Every time I pressed on those areas [indicated by circles on APHIS Form 7077 (CX 6)], the horse gave me a withdrawal reflex. Now that's the gentle pressure of my thumb on the horse's

pastern." (Tr. 45-46.) Dr. Smith was also able to narrate the horse's reaction to palpation upon reviewing the video (Tr. 128-34, 142; RX 2).

While Dr. Smith viewed Ebony's Bad Bubba being led, he observed that the horse was "moving slowly . . . tentatively . . . stabbing into the ground in choppy motions." He made these observations from a distance of approximately 20 feet. (Tr. 47, 89, 96, 126.)

Respondents argue Drs. Bourgeois and Smith reached their mutual conclusion that Ebony's Bad Bubba was sore based solely upon palpation without evidence that chemical irritants or other mechanical devices were used and therefore their conclusions were flawed (Respondents' Responsive Brief at 3). Respondents further argue the opinions expressed (a) by Dr. Bourgeois, that "this horse was sored with caustic chemicals, overwork in chains, or a combination of both" (CX 7 at 2), and (b) by Dr. Smith, that "this horse was sored by mechanical and/or chemical means" (CX 8 at 2), are faulty conclusions without any specific evidence of chemical or physical injury (Respondents' Responsive Brief at 3).

Neither Dr. Bourgeois nor Dr. Smith found evidence of: (a) prohibited chemicals that might be associated with chemical burns (Tr. 138-39, 192, 205); (b) violations of the Scar Rule (Tr. 100, 195-96); or (c) inflammation at the sored site (Tr. 106-07, 196, 199). Respondents' cross-examinations of Dr. Bourgeois and of Dr. Smith establish that certain tests, which might have tended to rebut the presumption of soreness, were not conducted, to wit, (a) they did not measure the horse's temperature, (b) they did not measure the horse's pulse, and (c) they did not measure the horse's respiration rate (Tr. 106-10,

200-01). Both doctors observed, but did not measure, the horse's heel-to-toe measurements and pad measurements (Tr. 111-12, 214). Neither Dr. Bourgeois nor Dr. Smith requested that Ebony's Bad Bubba be trotted while they observed (Tr. 110-11, 200).

A horse shall be presumed to be sore if it manifests abnormal sensitivity in both of its forelimbs or both of its hindlimbs.[4] The Secretary of Agriculture's policy has been that palpation alone is a reliable method to determine soring. The method of using palpation alone to determine whether a horse is sore has not been found suspect by the United States Court of Appeals for the Sixth Circuit Court or the United States Court of Appeals for the District of Columbia Circuit. The United States Court of Appeals for the Sixth Circuit has held that a finding of soreness based upon the results of palpation alone is sufficient to invoke the rebuttable presumption that a horse is sore.[5]

Respondents argue even if I were to find that Complainant has met the threshold test of proving Ebony's Bad Bubba was sore, then the testimony of B.A. Dorsey and Dr. Kimmons rebut that threshold finding (Respondents' Responsive Brief at 5). I respectfully must disagree. Even though it appears to me that Ebony's Bad Bubba reacted to quick and rough handling by one or both DQPs just prior to the Animal and Plant Health Inspection Service veterinary medical officers' inspections, and even though it appears to me that Ebony's Bad Bubba's peculiar gait and stance were characteristic of him and did not

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[4]15 U.S.C. § 1825(d)(5).

[5]*Bobo v. United States Dep't of Agric.*, 52 F.3d 1406, 1413 (6th Cir. 1995).

necessarily show reluctance to put weight on his front feet, I rely on the Animal and Plant Health Inspection Service veterinary medical officers' expert ability to distinguish a pain response from other reactions and to identify pain that has been caused by soring.

Respondents may have been unaware that Ebony's Bad Bubba was sore, but they nevertheless are responsible for a violation if the horse was sore, because they each entered him to be shown or exhibited or allowed him to be entered to be shown or exhibited. As the Judicial Officer has observed, "[i]ntent and knowledge are not elements of the violation of section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)) and rarely is there any proof of a knowing or intentional violation of section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B))." *In re Derwood Stewart* (Decision as to Derwood Stewart), 60 Agric. Dec. 570, 602 (2001). And also, "it is clear under the 1976 amendments [to the Horse Protection Act] that intent and knowledge are not elements of a violation . . . ." *In re Derwood Stewart* (Decision as to Derwood Stewart), 60 Agric. Dec. 570, 604 (2001).

Respondents offer alternate theories, other than being sore, as to why Ebony's Bad Bubba reacted upon palpation (Respondents' Responsive Brief at 6-7). Respondents suggest the horse was reacting due to having being handled roughly by one or more examiners. B.A. Dorsey noted that the initial inspection conducted by DQP Robert Flynn included snatching the horse's front leg up and pulling it off to the left. B.A. Dorsey said, "[i]f you remember that tape, you can see where he picked him up, snatched him up, and pulled him off to the left. If he would have just picked him up normal, the horse would have

been fine. Right off the bat, he just snatched him up and went to probing on him, and that horse will not take it." (Tr. 453.) B.A. Dorsey believed the horse was treated roughly by design (Tr. 453-54).

In watching the videotape, I saw what I believe was quick and rough handling of Ebony's Bad Bubba by the DQPs. It appeared to me that DQP Robert Flynn pulled the horse's front leg not just up and back, but out to the side, in what looked to me to be a painful position. (Tr. 453.)

B.A. Dorsey said he palpated Ebony's Bad Bubba probably three times before the first DQP inspected him, and Ebony's Bad Bubba was "fine." B.A. Dorsey suggested that the procession of inspections (four inspections) caused Ebony's Bad Bubba to react progressively more agitated as different persons inspected him. The horse had never been inspected that much before. (Tr. 431-33, 451-52.)

Respondents suggest that Ebony's Bad Bubba was disturbed by other horses, that he is a stallion and mares were present; consequently, he was nervous. As Dr. Kimmons stated, however, veterinarians typically have the skills to determine whether a horse is moving due to being in pain, for example, reacting because the horse has been touched [palpated], as opposed to just being curious about his environment or just looking around (Tr. 399-400).

The evidence indicates that during the pre-show inspection, Ebony's Bad Bubba was being led on a "tight rein" and that he did not always have a "loose rein" (CX 4; Tr. 222). The implication is that Ebony's Bad Bubba was reluctant to be led. B.A. Dorsey stated that

the manner in which Ebony's Bad Bubba moved when being led around the cones was normal for him (Tr. 431-35). I accept as accurate B.A. Dorsey's characterization of Ebony's Bad Bubba's normal movements. Nevertheless, I am persuaded by the evidence presented by the two Animal and Plant Health Inspection Service veterinary medical officers, given their training and experience, that bilateral, reproducible reaction to palpation, found in 16 separate locations, 12 of which they agreed upon, proved Ebony's Bad Bubba was sore on March 22, 2000, when he was entered in the 32nd Annual National Walking Horse Trainers Show.

Respondents request that I consider that because Ebony's Bad Bubba has a lower back end due to his body size and body makeup, he has an unusual stride or gait (Tr. 409-10). B.A. Dorsey describes Ebony's Bad Bubba as having a "deep, really deep behind . . . sort of setting down on his haunches . . . short stride . . . ." (Tr. 435.) Dr. Kimmons described Ebony's Bad Bubba as "a small horse in stature, in height . . . has a short back, short rump, somewhat short strided." (Tr. 379.) My view of the horse at the beginning of the second day of the hearing confirmed that B.A. Dorsey's and Dr. Kimmons' descriptions of Ebony's Bad Bubba's structure are accurate. It appeared that the horse's gait and stance are somewhat unusual, as B.A. Dorsey and Dr. Kimmons described, but I have no way of knowing whether the horse was sore at the time I viewed him. B.A. Dorsey's and Dr. Kimmons' testimony about Ebony's Bad Bubba's structure and his normal gait, together with my view of the horse, persuade me to give little weight to the DQPs' and the Animal and Plant Health Inspection Service veterinary medical officers'

visual observations about the horse's appearance and locomotion. Nevertheless, the palpation evidence still persuades me that Ebony's Bad Bubba was sore on March 22, 2000.

Ebony's Bad Bubba wore pads on his feet during shows. During Dr. Smith's cross-examination, he admitted that putting 3-inch pads on the horse would probably have altered his gait (Tr. 140-41). Respondents argue that if Drs. Smith and Bourgeois had requested the horse to have been trotted, they could have better determined whether or not Ebony's Bad Bubba was sored (Respondents' Responsive Brief at 5). While that may be true, their failure to have the horse trot does not negate their findings upon palpation.

Dr. Kimmons opined that there was no reason for disqualifying Ebony's Bad Bubba from participation in the 32nd Annual National Walking Horse Trainers Show (Tr. 378). Dr. Kimmons' opinion was derived from his video review (RX 2) of others conducting the pre-show inspection of Ebony's Bad Bubba. Dr. Kimmons stated a horse that is bright, alert, and not sweating indicates to him that the horse is not sore. He agreed that he could not tell from the video if Ebony's Bad Bubba was sweating. (Tr. 393.) DQP Robert Flynn's examination report states the "horse was hot" (CX 3).

Although I value Dr. Kimmons' testimony, he had no opportunity to inspect Ebony's Bad Bubba on March 22, 2000. His examination of the horse was in April 1998 (Tr. 370). Dr. Kimmons testified he had never seen a walking horse in his practice that had been sored (Tr. 387-88, 391). Even though Dr. Kimmons was able to make observations from his review of the videotape, he agreed that he could give a better professional opinion if he had actually inspected the horse (Tr. 391).

In conclusion, after careful evaluation of the evidence as a whole, I must conclude that Ebony's Bad Bubba was sore when he was entered on March 22, 2000, to be shown or exhibited in the 32nd Annual National Walking Horse Trainers Show. As earlier stated, I rely upon the results of palpation of Ebony's Bad Bubba's front feet by Dr. Lynn P. Bourgeois and Dr. David C. Smith.

Third issue: Did Betty Corlew enter Ebony's Bad Bubba to be shown or exhibited? The evidence is sufficient to find that she did. Betty Corlew was scheduled to be "up" as the rider who was to show Ebony's Bad Bubba at the 32nd Annual National Walking Horse Trainers Show (CX 2; Tr. 479-80). Riding a horse is one of those activities necessary to entering a horse show, each of which constitutes "entering" the horse to be shown or exhibited. These acts of "entering" include clerical entries such as completing the entry form and paying the entry fees, and include presenting the horse for pre-show inspection.[6] The act of being the scheduled rider to show the horse, is also an act of entering. However, Complainant does not allege that Betty Corlew entered Ebony's Bad Bubba to be shown or exhibited in violation of 15 U.S.C. § 1824(2)(B); therefore, based on Complainant's failure to allege that Betty Corlew violated 15 U.S.C. § 1824(2)(B), I do not conclude that Betty Corlew violated 15 U.S.C. § 1824(2)(B).

Last issue: Was Betty Corlew Ebony's Bad Bubba's owner, who can therefore be found to have allowed the horse to be entered in the 32nd Annual National Walking Horse

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[6]See note 3.

Trainers Show while sore, in violation of 15 U.S.C. § 1824(2)(D)? I find Betty Corlew was an owner of Ebony's Bad Bubba. Complainant alleges Betty Corlew was the owner or a co-owner of Ebony's Bad Bubba on or about March 22, 2000 (Amended Compl. ¶ 2). Respondents admit this allegation (Answer to Amended Compl. ¶ 2). Based on Respondents' admissions in Respondents' Answer to Amended Complaint, I conclude Betty Corlew was an owner of Ebony's Bad Bubba at the time Ebony's Bad Bubba was entered for the purpose of showing or exhibiting the horse in the 32nd Annual National Walking Horse Trainers Show.[7]

Moreover, an individual who controls the corporation that owns a horse can be found to have violated 15 U.S.C. § 1824(2)(D). Otherwise, the intent of the Horse Protection Act could be thwarted. There is no formula under 15 U.S.C. § 1824(2)(D) for evaluating the responsibility of corporate officers, directors, or major shareholders who control the corporation that owns a horse. Nevertheless, under the circumstances here, I conclude that Betty Corlew, for purposes of the Horse Protection Act only, controlled Bowtie Stables, LLC, an owner of Ebony's Bad Bubba, and is thereby responsible under 15 U.S.C. § 1824(2)(D).

Findings of Fact

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[7]*In re Jack Kelly*, 52 Agric. Dec. 1278, 1297 (1993) (stating the respondents have no real defense to the allegation that they entered and allowed the entry of the horse in a horse show because the respondents stipulated these facts in their answer and at the hearing), *appeal dismissed*, 38 F.3d 999 (8th Cir. 1994).

1. Bowtie Stables, LLC, is a Tennessee corporation whose business mailing address is 4501 Trough Springs Road, Adams, Tennessee 37041, and whose registered agent is James L. Corlew, Sr., 4501 Trough Springs Road, Adams, Tennessee 37041. Bowtie Stables, LLC, is a limited liability company, owned by James L. Corlew, Sr., and Betty Corlew. The only directors and officers of Bowtie Stables, LLC, are James L. Corlew, Sr., and Betty Corlew. (Amended Compl. ¶ 1; Answer to Amended Compl. ¶ 2; Tr. 477, 489.)

2. James L. Corlew, Sr., Betty Corlew, and B.A. Dorsey are individuals with the same mailing address: 4501 Trough Springs Road, Adams, Tennessee 37041 (Amended Compl. ¶¶ 2-4; Answer to Amended Compl. ¶ 2; Tr. 419, 476).

3. Bowtie Stables, LLC, and Betty Corlew are owners of Ebony's Bad Bubba (Amended Compl. ¶¶ 1-2; Answer to Amended Compl. ¶ 2).

4. Bowtie Stables, LLC, and Betty Corlew allowed Ebony's Bad Bubba to be entered for the purpose of showing or exhibiting the horse in the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000 (Amended Compl. ¶ 6; Answer to Amended Compl. ¶ 2).

5. James L. Corlew, Sr., prepared the entry form for Ebony's Bad Bubba to be shown or exhibited in the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000 (Tr. 489; CX 9 at 2, CX 10 at 2, CX 11 at 2).

6. James L. Corlew, Sr., paid the entry fee for Ebony's Bad Bubba to be shown or exhibited in the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000 (Tr. 489; CX 9 at 2, CX 10 at 2, CX 11 at 2).

7. B.A. Dorsey was Ebony's Bad Bubba's trainer and had responsibility for the day-to-day operation of Bowtie Stables, LLC (Tr. 421, 432, 478, 489; CX 5, CX 10 at 2, CX 11 at 2).

8. B.A. Dorsey presented Ebony's Bad Bubba to the Animal and Plant Health Inspection Service veterinary medical officers for pre-show inspection at the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000 (CX 6, CX 7 at 1, CX 9 at 3).

9. During the time Ebony's Bad Bubba was undergoing pre-show inspection, Betty Corlew was scheduled to be the rider who was to show Ebony's Bad Bubba at the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000 (Tr. 479-80; CX 2).

10. Betty Corlew, for purposes of the Horse Protection Act only, controlled Bowtie Stables, LLC, and is thereby responsible for allowing Ebony's Bad Bubba to be entered for the purpose of showing or entering the horse in the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000. Betty Corlew is an owner of Ebony's Bad Bubba and is thereby responsible for allowing Ebony's Bad Bubba to be entered for the purpose of showing or exhibiting the horse in the 32nd Annual

National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000. (Amended Compl. ¶ 2; Answer to Amended Compl. ¶ 2; Tr. 477, 489.)

11. At least five individuals evaluated Ebony's Bad Bubba for pain on March 22, 2000: (a) B.A. Dorsey palpated Ebony's Bad Bubba approximately three times (before the first DQP inspected him) and found Ebony's Bad Bubba was "fine;" (b) two DQPs, Robert Flynn and Mark Thomas, inspected Ebony's Bad Bubba and disqualified him from participating in the 32nd Annual National Walking Horse Trainers Show; and (c) the two Animal and Plant Health Inspection Service veterinary medical officers, Drs. Lynn P. Bourgeois and David C. Smith, inspected Ebony's Bad Bubba and found him to be sore (Tr. 451-52; CX 3-CX 8).

12. The palpation by the two Animal and Plant Health Inspection Service veterinary medical officers consisted of gently pressing with the thumb to find areas that were painful (Tr. 42-46). Ebony's Bad Bubba's pain responses included withdrawal reflexes, when he tried to jerk his foot away (CX 7, CX 8).

13. The Animal and Plant Health Inspection Service veterinary medical officers observed painful reactions to palpation on the front, back, left, and right side of Ebony's Bad Bubba's front pasterns (the area between the hoof and what looks like an ankle joint on the leg) (CX 6-CX 8).

14. The Animal and Plant Health Inspection Service veterinary medical officers palpated each area at least three times, looking for a reproducible, repeatable response in each area (Tr. 173). The APHIS Form 7077 completed by Drs. Bourgeois and Smith

(Dr. Bourgeois used Xs; Dr. Smith used circles (Os)) shows that they agreed on 12 out of 16 separate locations on Ebony's Bad Bubba's front feet that, upon palpation, produced pain responses (CX 6).

15. Ebony's Bad Bubba was "sore," as that word is defined in the Horse Protection Act, during pre-show inspection, at the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000.

Conclusions of Law

1. A horse shall be presumed to be sore if it manifests abnormal sensitivity in both of its forelimbs or both of its hindlimbs (15 U. S. C. § 1825(d)(5)).

2. The results of palpation of Ebony's Bad Bubba's front feet by two Animal and Plant Health Inspection Service veterinary medical officers outweigh in probative value the remainder of the evidence and persuade me that Ebony's Bad Bubba was sore when he was entered for the purpose of showing or exhibiting him in the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000.

3. Bowtie Stables, LLC, an owner of Ebony's Bad Bubba, allowed Ebony's Bad Bubba to be entered, while he was sore, for the purpose of showing or exhibiting him in the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000, in violation of section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)).

4. Betty Corlew, an owner of Ebony's Bad Bubba and an individual who controlled Bowtie Stables, LLC, allowed Ebony's Bad Bubba to be entered, while he was sore, for the purpose of showing or exhibiting him in the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000, in violation of section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)).

5. The acts of preparing the entry form and paying the entry fee are acts of entering a horse to be shown or exhibited in a horse show within the meaning of section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)). James L. Corlew, Sr., who prepared the entry form and paid the entry fee, thereby entered Ebony's Bad Bubba to be shown or exhibited while the horse was sore, in the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000, in violation of section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)).

6. The act of presenting a horse for pre-show inspection is an act of entering a horse to be shown or exhibited in a horse show, within the meaning of section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)). B.A. Dorsey, Ebony's Bad Bubba's trainer, who presented Ebony's Bad Bubba for pre-show inspection, thereby entered Ebony's Bad Bubba to be shown or exhibited while the horse was sore, in the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000, in violation of section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)).

ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER

Respondents' Appeal Petition

Respondents raise five issues in "Respondents' Appeal Petition and Brief" [hereinafter Appeal Petition]. First, Respondents contend the ALJ's finding that Ebony's Bad Bubba was sored is not supported by substantial evidence and is contrary to law (Appeal Pet. at 1-8).

The ALJ's finding that Ebony's Bad Bubba was "sore," as that word is defined in the Horse Protection Act, during the pre-show inspection, at the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000, must be supported by substantial evidence.[8] "Substantial evidence" is generally defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[9] I have reviewed the record. I agree with the ALJ that the record contains substantial evidence that Ebony's Bad Bubba was "sore," as that word is defined in the Horse Protection Act, during the pre-show inspection, at the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000. In the Initial Decision and Order, the ALJ thoroughly discusses the evidence establishing that Ebony's Bad Bubba was sore, during the pre-show

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[8]5 U.S.C. § 556(d).

[9]*Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 619-20 (1966); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951); *NLRB v. Columbian Enameling & Stamping Co.*, 306 U.S. 292, 300 (1939); *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938); *Lee v. NLRB*, 325 F.3d 749, 754 (6th Cir. 2003); *Wright v. Massanari*, 321 F.3d 611, 614 (6th Cir. 2003); *NLRB v. V & S Schuler Engineering, Inc.*, 309 F.3d 362, 372 (6th Cir. 2002); *Van Dyke v. NTSB*, 286 F.3d 594, 597 (D.C. Cir. 2002); *JSG Trading Corp. v. Department of Agric.*, 235 F.3d 608, 611 (D.C. Cir.), *cert. denied*, 534 U.S. 992 (2001); *Corrections Corp. of America v. NLRB*, 234 F.3d 1321, 1323 (D.C. Cir. 2000); *Bobo v. United States Dep't of Agric.*, 52 F.3d 1406, 1410 (6th Cir. 1995).

inspection, at the 32nd Annual National Walking Horse Trainers Show, on March 22, 2000. I adopt that discussion, with minor modifications, in this Decision and Order, *supra*. I find no reason to reiterate that discussion here.

Relying on *Young v. United States Dep't of Agric.*, 53 F.3d 728 (5th Cir. 1995), and *Bradshaw v. United States Dep't of Agric.*, 254 F.3d 1081 (5th Cir. 2001) (Table), Respondents contend the reaction of a horse to digital palpation alone is not substantial evidence that the horse is sore (Appeal Pet. at 2-8).

The ALJ based her finding that Ebony's Bad Bubba was sore during the pre-show inspection at the 32nd Annual National Walking Horse Trainers Show on the results of digital palpation of Ebony's Bad Bubba's front feet by two Animal and Plant Health Inspection Service veterinary medical officers, Dr. Lynn P. Bourgeois and Dr. David C. Smith (Initial Decision and Order at 9, 19). However, notwithstanding *Young* and *Bradshaw*, I find the ALJ properly relied on the results of digital palpation.

Young and *Bradshaw* are inapposite because jurisdiction to review this Decision and Order does not lie with the United States Court of Appeals for the Fifth Circuit. The United States Court of Appeals for the Sixth Circuit and the United States Court of Appeals for the District of Columbia Circuit, the two courts which have jurisdiction to review this

Decision and Order,[10] have each held that digital palpation alone is a reliable method for determining whether a horse is "sore," as defined in the Horse Protection Act.[11]

Moreover, the United States Department of Agriculture has long held that palpation is a highly reliable method for determining whether a horse is "sore," as defined in the Horse Protection Act.[12] The United States Department of Agriculture's reliance on

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[10]15 U.S.C. § 1825(b)(2), (c).

[11]*Reinhart v. United States Dep't of Agric.*, 39 Fed. Appx. 954, 957 (6th Cir. 2002) (per curiam) (stating the Secretary of Agriculture's finding that Reinhart violated the Horse Protection Act appears to be supported by substantial evidence, particularly in light of the fact that this court has specifically held that a finding of soreness for the purposes of the Horse Protection Act may be based solely upon the results of palpation), *cert. denied*, 123 S. Ct. 1802 (2003); *Bobo v. United States Dep't of Agric.*, 52 F.3d 1406, 1413 (6th Cir. 1995) (stating a finding of soreness based upon the results of digital palpation alone is sufficient to invoke the rebuttable presumption of 15 U.S.C. § 1825(d)(5)); *Crawford v. United States Dep't of Agric.*, 50 F.3d 46, 50 (D.C. Cir.) (stating we have no legitimate basis to reject digital palpation as a diagnostic technique, whether used alone or not), *cert. denied*, 516 U.S. 824 (1995).

[12]*See, e.g., In re William J. Reinhart*, 59 Agric. Dec. 721, 751 (2000), *aff'd per curiam*, 39 Fed. Appx. 954 (6th Cir. 2002), *cert. denied*, 123 S. Ct. 1802 (2003); *In re John T. Gray* (Decision as to Glen Edward Cole), 55 Agric. Dec. 853, 878 (1996); *In re Mike Thomas*, 55 Agric. Dec. 800, 836 (1996); *In re Kim Bennett*, 55 Agric. Dec. 176, 180-81, 236-37 (1996); *In re C.M. Oppenheimer, d/b/a Oppenheimer Stables* (Decision as to C.M. Oppenheimer Stables), 54 Agric. Dec. 221, 309 (1995); *In re Kathy Armstrong*, 53 Agric. Dec. 1301, 1319 (1994), *aff'd per curiam*, 113 F.3d 1249 (11th Cir. 1997) (unpublished); *In re Eddie C. Tuck* (Decision as to Eddie C. Tuck), 53 Agric. Dec. 261, 292 (1994), *appeal voluntarily dismissed*, No. 94-1887 (4th Cir. Oct. 6, 1994); *In re William Earl Bobo*, 53 Agric. Dec. 176, 201 (1994), *aff'd*, 52 F.3d 1406 (6th Cir. 1995); *In re Jack Kelly*, 52 Agric. Dec. 1278, 1292 (1993), *appeal dismissed*, 38 F.3d 999 (8th Cir. 1994); *In re Charles Sims* (Decision as to Charles Sims), 52 Agric. Dec. 1243, 1259-60 (1993); *In re Cecil Jordan* (Decision as to Sheryl Crawford), 52 Agric. Dec. 1214, 1232-33 (1993), *aff'd sub nom. Crawford v. United States Dep't of Agric.*, 50 F.3d 46 (D.C. Cir.), *cert. denied*, 516 U.S. 824 (1995); *In re Paul A. Watlington*, 52 Agric. Dec. 1172, 1191 (1993); *In re Glen O. Crowe*, 52 Agric. Dec. 1132, 1151 (1993); *In re Billy*

(continued...)

palpation to determine whether a horse is sore is based upon the experience of a large number of veterinarians, many of whom have had 10 to 20 years of experience in examining many thousands of horses as part of their efforts to enforce the Horse Protection Act. Moreover, the Horse Protection Regulations (9 C.F.R. pt. 11), issued pursuant to the Horse Protection Act, explicitly provides for digital palpation as a diagnostic technique to determine whether a horse complies with the Horse Protection Act.

Second, Respondents contend Dr. Kimmons' testimony and B.A. Dorsey's testimony rebut the presumption that Ebony's Bad Bubba was sore during the pre-show inspection conducted on March 22, 2000, and the ALJ "completely disregarded the Respondents' evidence rebutting the presumption of soreness" (Appeal Pet. at 8-16).

The record establishes that Ebony's Bad Bubba manifested abnormal sensitivity in both of his forelimbs during a pre-show inspection conducted on March 22, 2000, at the 32nd Annual National Walking Horse Trainers Show. This manifestation raises the presumption that Ebony's Bad Bubba was sore.[13] I disagree with Respondents' contention that the ALJ disregarded Respondents' evidence offered to rebut the presumption that Ebony's Bad Bubba was sore.

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[12](...continued)
Gray, 52 Agric. Dec. 1044, 1072-73 (1993), *aff'd*, 39 F.3d 670 (6th Cir. 1994); *In re John Allan Callaway*, 52 Agric. Dec. 272, 287 (1993); *In re Steve Brinkley* (Decision as to Doug Brown), 52 Agric. Dec. 252, 266 (1993); *In re A.P. Holt* (Decision as to Richard Polch and Merrie Polch), 52 Agric. Dec. 233, 246 (1993), *aff'd per curiam*, 32 F.3d 569, 1994 WL 390510 (6th Cir. 1994) (citation limited under 6th Circuit Rule 24).

[13]See note 4.

The ALJ discussed Respondents' rebuttal evidence and explained her reasons for disagreeing with Respondents' contention that Dr. Kimmons' and B.A. Dorsey's testimony rebutted the presumption that was raised by the manifestation of abnormal sensitivity in both of Ebony's Bad Bubba's forelimbs (Initial Decision and Order at 15-19). I agree with the ALJ's conclusion and her reasons for her conclusion that Respondents failed to rebut the presumption that Ebony's Bad Bubba was sore. Therefore, I reject Respondents' contention that the ALJ erroneously failed to consider Respondents' evidence offered to rebut the presumption that Ebony's Bad Bubba was sore. Moreover, I adopt the ALJ's conclusion that Respondents failed to rebut the presumption that Ebony's Bad Bubba was sore and the ALJ's reasons for this conclusion in this Decision and Order, *supra*.

Third, Respondents contend they did not enter Ebony's Bad Bubba in the 32nd Annual National Walking Horse Trainers Show; therefore, they are not liable for a violation of the Horse Protection Act. Respondents state Ebony's Bad Bubba was not entered in the 32nd Annual National Walking Horse Trainers Show because two DQPs disqualified him from participating in the show during the pre-show inspection. (Appeal Pet. at 16-19.)

I am perplexed by Respondents' contention that they did not enter Ebony's Bad Bubba in the 32nd Annual National Walking Horse Trainers Show. Complainant alleged that on March 22, 2000, James L. Corlew, Sr., and B.A. Dorsey entered Ebony's Bad Bubba in the 32nd Annual National Walking Horse Trainers Show for the purpose of showing or exhibiting the horse, and on March 22, 2000, Bowtie Stables, LLC, and Betty Corlew allowed James L. Corlew, Sr., and B.A. Dorsey to enter Ebony's Bad Bubba in the 32nd

Annual National Walking Horse Trainers Show (Amended Compl. ¶¶ 5-6). Respondents admit these allegations (Answer to Amended Compl. ¶ 2). Further, each individual Respondent states in an affidavit that Ebony's Bad Bubba was entered in the 32nd Annual National Walking Horse Trainers Show (CX 9 at 2, CX 10 at 2, CX 11 at 2-3). Based on Respondents' admissions in their Answer to Amended Complaint and the statements made in the individual Respondents' affidavits, I conclude: (1) on March 22, 2000, James L. Corlew, Sr., and B.A. Dorsey entered Ebony's Bad Bubba in the 32nd Annual National Walking Horse Trainers Show for the purpose of showing or exhibiting the horse; and (2) on March 22, 2000, Bowtie Stables, LLC, and Betty Corlew allowed James L. Corlew, Sr., and B.A. Dorsey to enter Ebony's Bad Bubba in the 32nd Annual National Walking Horse Trainers Show for the purpose of showing or exhibiting the horse.

Moreover, I disagree with Respondents' contention that Ebony's Bad Bubba was not entered because he did not participate in the 32nd Annual National Walking Horse Trainers Show. It is well-settled that "entering" as that term is used in section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)) is a process, not an event, and includes all activities required to be completed before a horse can actually be shown or exhibited. The process generally begins with the payment of the fee to enter a horse in a horse show or horse exhibition and includes the pre-show inspection of the horse by DQPs or Animal and Plant Health Inspection Service veterinarians or both.[14] James L. Corlew, Sr., paid the entry

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[14]*Gray v. United States Dep't of Agric.*, 39 F.3d 670, 676 (6th Cir. 1994) (stating

(continued...)

fee and prepared the entry forms for Ebony's Bad Bubba's participation in the 32nd Annual

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[14](...continued)
entry of a horse in a horse show, for purposes of liability under the Horse Protection Act includes paying the entry fee, registering the horse, and presenting the horse for inspection); *Elliott v. Administrator, Animal and Plant Health Inspection Service*, 990 F.2d 140, 143, 145 (4th Cir.) (stating entering a horse in a horse show is a process and includes all activities required to be completed before a horse can actually be shown or exhibited), *cert. denied*, 510 U.S. 867 (1993); *In re William J. Reinhart*, 60 Agric. Dec. 241, 253 (2001) (Order Denying William J. Reinhart's Pet. for Recons.) (stating it is well settled that "entry" within the meaning of the Horse Protection Act is a process, not an event; the process of entry includes all activities required to be completed before a horse can be shown or exhibited; the process generally begins with the payment of the fee to enter a horse in a horse show and includes the examination of the horse by DQPs or United States Department of Agriculture veterinarians or both); *In re Jack Stepp*, 57 Agric. Dec. 297, 309 (1998) (stating "entering," within the meaning of the Horse Protection Act, is a process that begins with the payment of the entry fee and includes pre-show examination by the DQP or the United States Department of Agriculture veterinarian or both), *aff'd*, 188 F.3d 508 (Table), 1999 WL 646138 (6th Cir. 1999) (not to be cited as precedent under 6th Circuit Rule 206); *In re Danny Burks*, 53 Agric. Dec. 322, 334 (1994) (rejecting the respondent's argument that "the mere act of submitting a horse for pre-show inspection does not constitute 'entering' as that term is [used in the Horse Protection] Act"); *In re Eddie C. Tuck* (Decision as to Eddie C. Tuck), 53 Agric. Dec. 261, 280 (1994) (rejecting the respondent's argument that "entering," as used in the Horse Protection Act, is limited to "doing whatever is specifically required by the management of any particular horse show to cause a horse to become listed on the class sheet for a specific class of that horse show"), *appeal voluntarily dismissed*, No. 94-1887 (4th Cir. Oct. 6, 1994); *In re William Earl Bobo*, 53 Agric. Dec. 176, 206 (1994) (stating the United States Department of Agriculture has always construed entry to be a process), *aff'd*, 52 F.3d 1406 (6th Cir. 1995); *In re Billy Gray*, 52 Agric. Dec. 1044, 1055 (1993) (stating the United States Department of Agriculture has considered entry to be a process which includes pre-show inspection for at least 13 years), *aff'd*, 39 F.3d 670 (6th Cir. 1994); *In re John Allan Callaway*, 52 Agric. Dec. 272, 293 (1993) (stating "entering" a horse in a horse show is a continuing process, not an event, and includes all activities required to be completed before a horse can actually be shown or exhibited); *In re Paul A. Watlington*, 52 Agric. Dec. 1172, 1183 (1993) (stating entry is a process that gives a status of being entered to a horse and entry includes filling out forms and presenting the horse to the Designated Qualified Person for inspection); *In re Glen O. Crowe*, 52 Agric. Dec. 1132, 1146-47 (1993) (stating "entering," within the meaning of the Horse Protection Act, is a process that begins with the payment of the entry fee).

National Walking Horse Trainers Show (Tr. 489; CX 9 at 2, CX 10 at 2, CX 11 at 2); B.A. Dorsey presented Ebony's Bad Bubba for pre-show inspection at the 32nd Annual National Walking Horse Trainers Show (CX 6, CX 7 at 1, CX 9 at 3); and Betty Corlew was scheduled to be the rider who was to show Ebony's Bad Bubba at the 32nd Annual National Walking Horse Trainers Show (Tr. 479-80; CX 2). Therefore, I find that at the time of Ebony's Bad Bubba's pre-show inspection, he was entered in the 32nd Annual National Walking Horse Trainers Show, and I reject Respondents' contention that Ebony's Bad Bubba was not entered in the 32nd Annual National Walking Horse Trainers Show because he did not participate in the horse show.

Fourth, Respondents contend Respondent Betty Corlew is not an owner of Ebony's Bad Bubba (Appeal Pet. at 19-20).

I find Respondents' contention that Betty Corlew is not an owner of Ebony's Bad Bubba perplexing. Complainant alleged that Betty Corlew was the owner or a co-owner of Ebony's Bad Bubba on or about March 22, 2000 (Amended Compl. ¶ 2). Respondents admit this allegation (Answer to Amended Compl. ¶ 2). Based on Respondents' admissions in their Answer to Amended Complaint, I conclude Betty Corlew was an owner of Ebony's Bad Bubba at the time Ebony's Bad Bubba was entered in the 32nd Annual National Walking Horse Trainers Show for the purpose of showing or exhibiting the horse.[15]

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[15]See note 7.

Fifth, Respondents contend the ALJ's finding that Betty Corlew controlled Bowtie Stables, LLC, is error (Appeal Pet. at 19-20).

I disagree with Respondents' contention that the ALJ's finding that Betty Corlew controlled Bowtie Stables, LLC, is error. The record establishes that Betty Corlew and James L. Corlew, Sr., owned Bowtie Stables, LLC. Betty Corlew and James L. Corlew, Sr., are the only officers of Bowtie Stables, LLC, and the only members of the board of directors of Bowtie Stables, LLC. (Tr. 481, 485, 493.) B.A. Dorsey conducts the day-to-day operations of Bowtie Stables, LLC, but he reports to Betty Corlew and James L. Corlew, Sr. (Tr. 493-94). Decisions regarding the purchase and showing of horses ultimately reside with Betty Corlew and James L. Corlew, Sr. (Tr 494-95). Therefore, I agree with the ALJ that, at all times material to this proceeding, Betty Corlew (along with James L. Corlew, Sr.) controlled Bowtie Stables, LLC.

Complainant's Appeal

Complainant states the ALJ's Initial Decision and Order "should be affirmed." (Complainant's Opposition to the Respondents' Appeal Pet. at cover page, 8.) However, Complainant also appeals the conclusion that Betty Corlew violated 15 U.S.C. § 1824(2)(D) based solely on her ownership of Bowtie Stables, LLC. Complainant contends Betty Corlew's liability under 15 U.S.C. § 1824(2)(D) is based upon her ownership of Ebony's Bad Bubba, as well as her ownership of Bowtie Stables, LLC. (Complainant's Opposition to the Respondents' Appeal Pet. at 7 n.4.)

As discussed in this Decision and Order, *supra*, based on Respondents' admissions in Respondents' Answer to Amended Complaint, I conclude Betty Corlew was an owner of Ebony's Bad Bubba at the time Ebony's Bad Bubba was entered in the 32nd Annual National Walking Horse Trainers Show for the purpose of showing or exhibiting the horse. My conclusion that Betty Corlew violated section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)) is based upon her ownership of Ebony's Bad Bubba, as well as her control of Bowtie Stables, LLC.

Sanction

Section 6(b)(1) of the Horse Protection Act (15 U.S.C. § 1825(b)(1)) authorizes the assessment of a civil penalty of not more than $2,000 for each violation of section 5 of the Horse Protection Act (15 U.S.C. § 1824). However, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), the Secretary of Agriculture, by regulation effective September 2, 1997, adjusted the civil monetary penalty that may be assessed under section 6(b)(1) of the Horse Protection Act (15 U.S.C. § 1825(b)(1)) for each violation of section 5 of the Horse Protection Act (15 U.S.C. § 1824) by increasing the maximum civil penalty from $2,000 to $2,200.[16] The Horse Protection Act also authorizes the disqualification of any person assessed a civil penalty, from showing or exhibiting any horse or judging or managing any horse show, horse exhibition, horse sale, or horse auction. The Horse Protection Act provides

[16]62 Fed. Reg. 40,924-28 (July 31, 1997); 7 C.F.R. § 3.91(b)(2)(vii).

minimum periods of disqualification of not less than 1 year for a first violation and not less than 5 years for any subsequent violation.[17]

Congress has recognized the seriousness of soring horses. The legislative history of the Horse Protection Act Amendments of 1976 reveals the cruel and inhumane nature of soring horses, the unfair competitive aspects of soring, and the destructive effect of soring on the horse industry, as follows:

NEED FOR LEGISLATION

> The inhumanity of the practice of "soring" horses and its destructive effect upon the horse industry led Congress to pass the Horse Protection Act of 1970 (Public Law 91-540, December 9, 1970). The 1970 law was intended to end the unnecessary, cruel and inhumane practice of soring horses by making unlawful the exhibiting and showing of sored horses and imposing significant penalties for violations of the Act. It was intended to prohibit the showing of sored horses and thereby destroy the incentive of owners and trainers to painfully mistreat their horses.
>
> The practice of soring involved the alteration of the gait of a horse by the infliction of pain through the use of devices, substances, and other quick and artificial methods instead of through careful breeding and patient training. A horse may be made sore by applying a blistering agent, such as oil or mustard, to the p[a]stern area of a horse's limb, or by using various action or training devices such as heavy chains or "knocker boots" on the horse's limbs. When a horse's front limbs are deliberately made sore, the intense pain suffered by the animal when the forefeet touch the ground causes the animal to quickly lift its feet and thrust them forward. Also, the horse reaches further with its hindfeet in an effort to take weight off its front feet, thereby lessening the pain. The soring of a horse can produce the high-stepping gait of the well-known Tennessee Walking Horse as well as other popular gaited horse breeds. Since the passage of the 1970 act, the bleeding horse has almost disappeared but soring continues almost unabated. Devious soring methods have been developed that cleverly mask visible evidence of

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[17]15 U.S.C. § 1825(c).

> soring. In addition the sore area may not necessarily be visible to the naked eye.
>
> The practice of soring is not only cruel and inhumane. The practice also results in unfair competition and can ultimately damage the integrity of the breed. A mediocre horse whose high-stepping gait is achieved artificially by soring suffers from pain and inflam[m]ation of its limbs and competes unfairly with a properly and patiently trained sound horse with championship natural ability. Horses that attain championship status are exceptionally valuable as breeding stock, particularly if the champion is a stallion. Consequently, if champions continue to be created by soring, the breed's natural gait abilities cannot be preserved. If the widespread soring of horses is allowed to continue, properly bred and trained "champion" horses would probably diminish significantly in value since it is difficult for them to compete on an equal basis with sored horses.
>
> Testimony given before the Subcommittee on Health and the Environment demonstrated conclusively that despite the enactment of the Horse Protection Act of 1970, the practice of soring has continued on a widespread basis. Several witnesses testified that the intended effect of the law was vitiated by a combination of factors, including statutory limitations on enforcement authority, lax enforcement methods, and limited resources available to the Department of Agriculture to carry out the law.

H.R. Rep. No. 94-1174, at 4-5 (1976), *reprinted in* 1976 U.S.C.C.A.N. 1696, 1698-99.

The United States Department of Agriculture's sanction policy is set forth in *In re S.S. Farms Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), *aff'd*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under the 9th Circuit Rule 36-3), as follows:

> [T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

Section 6(b)(1) of the Horse Protection Act (15 U.S.C. § 1825(b)(1)) provides that in determining the amount of the civil penalty, the Secretary of Agriculture shall take into account all factors relevant to such determination, including the nature, circumstances, extent, and gravity of the prohibited conduct and, with respect to the person found to have engaged in such conduct, the degree of culpability, and any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

Complainant recommends that I assess each Respondent a $2,200 civil penalty (Complainant's Proposed Findings of Fact, Conclusions of Law, Proposed Order and Brief in Support Thereof at 20-24). The extent and gravity of Respondents' prohibited conduct are great. Two United States Department of Agriculture veterinary medical officers found Ebony's Bad Bubba's pain so great that it affected his ability to walk (Tr. 46-47, 168-69; CX 7). Dr. Lynn P. Bourgeois described Ebony's Bad Bubba's pain responses to his examination of his left front foot as "marked" and right front foot as "severe" (CX 7 at 1-2), and Dr. David C. Smith described Ebony's Bad Bubba's pain responses to his examination of the palmar aspects of both forefeet as "clear" (CX 8 at 1).

James L. Corlew, Sr., testified that he, Bowtie Stables, LLC, and Betty Corlew could each afford to pay the civil penalty (Tr. 492). B.A. Dorsey is gainfully employed by Bowtie Stables, LLC, and he presented no evidence that he is unable to pay a $2,200 civil penalty. Further, James L. Corlew, Sr., is the owner of a Chevrolet dealership and a $2,200 civil penalty would not adversely affect his ability to continue in business.

In most Horse Protection Act cases, the maximum civil penalty per violation has been warranted.[18] Based on the factors that are required to be considered when determining the amount of the civil penalty to be assessed and the recommendation of administrative officials charged with responsibility for achieving the congressional purpose of the Horse Protection Act, I find no basis for an exception to the United States Department of Agriculture's policy of assessing the maximum civil penalty for each violation of the Horse Protection Act. Therefore, I assess each Respondent a $2,200 civil penalty.

Section 6(c) of the Horse Protection Act (15 U.S.C. § 1825(c)) provides that any person assessed a civil penalty under section 6(b) of the Horse Protection Act (15 U.S.C. § 1825(b)) may be disqualified from showing or exhibiting any horse, and from judging or

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[18]*See, e.g.*, *In re Robert B. McCloy, Jr.*, 61 Agric. Dec. 173 (2002), *appeal docketed*, No. 02-9543 (10th Cir. July 19, 2002); *In re Jack Stepp*, 57 Agric. Dec. 297 (1998), *aff'd*, 188 F.3d 508 (Table), 1999 WL 646138 (6th Cir. 1999) (not to be cited as precedent under 6th Circuit Rule 206); *In re Carl Edwards & Sons Stables* (Decision as to Carl Edwards & Sons Stables, Gary R. Edwards, Larry E. Edwards, and Etta Edwards), 56 Agric. Dec. 529 (1997), *aff'd per curiam*, 138 F.3d 958 (11th Cir. 1998) (Table), *printed in* 57 Agric. Dec. 296 (1998); *In re Gary R. Edwards* (Decision as to Gary R. Edwards, Larry E. Edwards, and Carl Edwards & Sons Stables), 55 Agric. Dec. 892 (1996), *dismissed*, No. 96-9472 (11th Cir. Aug. 15, 1997); *In re John T. Gray* (Decision as to Glen Edward Cole), 55 Agric. Dec. 853 (1996); *In re Mike Thomas*, 55 Agric. Dec. 800 (1996); *In re C.M. Oppenheimer* (Decision as to C.M. Oppenheimer), 54 Agric. Dec. 221 (1995); *In re Eddie C. Tuck* (Decision as to Eddie C. Tuck), 53 Agric. Dec. 261 (1994), *appeal voluntarily dismissed*, No. 94-1887 (4th Cir. Oct. 6, 1994); *In re Linda Wagner* (Decision as to Roy E. Wagner and Judith E. Rizio), 52 Agric. Dec. 298 (1993), *aff'd*, 28 F.3d 279 (3d Cir. 1994), *reprinted in* 53 Agric. Dec. 169 (1994); *In re William Dwaine Elliott* (Decision as to William Dwaine Elliott), 51 Agric. Dec. 334 (1992), *aff'd*, 990 F.2d 140 (4th Cir.), *cert. denied*, 510 U.S. 867 (1993); *In re Eldon Stamper*, 42 Agric. Dec. 20 (1983), *aff'd*, 722 F.2d 1483 (9th Cir. 1984), *reprinted in* 51 Agric. Dec. 302 (1992).

managing any horse show, horse exhibition, horse sale, or horse auction for a period of not less than 1 year for the first violation of the Horse Protection Act and for a period of not less than 5 years for any subsequent violation of the Horse Protection Act.

The purpose of the Horse Protection Act is to prevent the cruel practice of soring horses. Congress amended the Horse Protection Act in 1976 to enhance the Secretary of Agriculture's ability to end soring of horses. Among the most notable devices to accomplish this end is the authorization for disqualification which Congress specifically added to provide a strong deterrent to violations of the Horse Protection Act by those persons who have the economic means to pay civil penalties as a cost of doing business.[19]

Section 6(c) of the Horse Protection Act (15 U.S.C. § 1825(c)) specifically provides that disqualification is in addition to any civil penalty assessed under section 6(b) of the Horse Protection Act (15 U.S.C. § 1825(b)). While section 6(b)(1) of the Horse Protection Act (15 U.S.C. § 1825(b)(1)) requires that the Secretary of Agriculture consider certain specified factors when determining the amount of the civil penalty to be assessed for a violation of the Horse Protection Act, the Horse Protection Act contains no such requirement with respect to the imposition of a disqualification period.

While disqualification is discretionary with the Secretary of Agriculture, the imposition of a disqualification period, in addition to the assessment of a civil penalty, has been recommended by administrative officials charged with responsibility for achieving the

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[19]*See* H.R. Rep. No. 94-1174, at 11 (1976), *reprinted in* 1976 U.S.C.C.A.N. 1696, 1706.

congressional purpose of the Horse Protection Act, and the Judicial Officer has held that disqualification, in addition to the assessment of a civil penalty, is appropriate in almost every Horse Protection Act case, including those cases in which a respondent is found to have violated the Horse Protection Act for the first time.[20]

Congress has provided the United States Department of Agriculture with the tools needed to eliminate the practice of soring Tennessee Walking Horses, but those tools must be used to be effective. In order to achieve the congressional purpose of the Horse Protection Act, it would seem necessary to impose at least the minimum disqualification provisions of the 1976 amendments on any person who violates section 5 of the Horse Protection Act (15 U.S.C. § 1824).

Circumstances in a particular case might justify a departure from this policy. Since it is clear under the 1976 amendments that intent and knowledge are not elements of a

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[20]*In re Robert B. McCloy, Jr.*, 61 Agric. Dec. 173, 209 (2002), *appeal docketed*, No. 02-9543 (10th Cir. July 19, 2002); *In re Carl Edwards & Sons Stables* (Decision as to Carl Edwards & Sons Stables, Gary R. Edwards, Larry E. Edwards, and Etta Edwards), 56 Agric. Dec. 529, 591 (1997), *aff'd per curiam*, 138 F.3d 958 (11th Cir. 1998) (Table), *printed in*, 57 Agric. Dec. 296 (1998); *In re Gary R. Edwards* (Decision as to Gary R. Edwards, Larry E. Edwards, and Carl Edwards & Sons Stables), 55 Agric. 892, 982 (1996), *dismissed*, No. 96-9472 (11th Cir. Aug. 15, 1997); *In re John T. Gray* (Decision as to Glen Edward Cole), 55 Agric. Dec. 853, 891 (1996); *In re Mike Thomas*, 55 Agric. Dec. 800, 846 (1996); *In re C.M. Oppenheimer* (Decision as to C.M. Oppenheimer), 54 Agric. Dec. 221, 321-22 (1995); *In re Danny Burks* (Decision as to Danny Burks), 53 Agric. Dec. 322, 347 (1994); *In re Eddie C. Tuck* (Decision as to Eddie C. Tuck), 53 Agric. Dec. 261, 318-19 (1994), *appeal voluntarily dismissed*, No. 94-1887 (4th Cir. Oct. 6, 1994); *In re Linda Wagner* (Decision as to Roy E. Wagner and Judith E. Rizio), 52 Agric. Dec. 298, 318 (1993), *aff'd*, 28 F.3d 279 (3d Cir. 1994), *reprinted in* 53 Agric. Dec. 169 (1994); *In re William Dwaine Elliott* (Decision as to William Dwaine Elliott), 51 Agric. Dec. 334, 352 (1992), *aff'd*, 990 F.2d 140 (4th Cir.), *cert. denied*, 510 U.S. 867 (1993).

violation, there are few circumstances warranting an exception from this policy, but the facts and circumstances of each case must be examined to determine whether an exception to this policy is warranted. An examination of the record before me does not lead me to believe that an exception from the usual practice of imposing the minimum disqualification period for the first violation of the Horse Protection Act, in addition to the assessment of a civil penalty, is warranted.

For the foregoing reasons, the following Order should be issued.

ORDER

1. Bowtie Stables, LLC, James L. Corlew, Sr., Betty Corlew, and B.A. Dorsey are each assessed a $2,200 civil penalty ($8,800 total). The civil penalty shall be paid by certified check(s) or money order(s) made payable to the "Treasurer of the United States" and sent to:

Sharlene A. Deskins
United States Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Room 2343-South Building, Stop 1417
Washington, DC 20250-1417

Respondents' payment(s) of the civil penalty shall be forwarded to, and received by, Ms. Deskins within 60 days after service of this Order on Respondents. Respondents shall indicate on the certified check(s) or money order(s) that payment is in reference to HPA Docket No. 00-0017.

2. Bowtie Stables, LLC, James L. Corlew, Sr., Betty Corlew, and B.A. Dorsey are each disqualified for a period of 1 year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or device, and from managing, judging, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction. "Participating" means engaging in any activity beyond that of a spectator, and includes, without limitation: (a) transporting or arranging for the transportation of horses to or from any horse show, horse exhibition, horse sale, or horse auction; (b) personally giving instructions to exhibitors; (c) being present in the warm-up areas, inspection areas, or other areas where spectators are not allowed at any horse show, horse exhibition, horse sale, or horse auction; and (d) financing the participation of others in any horse show, horse exhibition, horse sale, or horse auction.

The disqualification of Respondents shall become effective on the 60th day after service of this Order on Respondents.

3. Respondents have the right to obtain review of this Order in the court of appeals of the United States for the circuit in which they reside or have their place of business or in the United States Court of Appeals for the District of Columbia Circuit. Respondents must file a notice of appeal in such court within 30 days from the date of this Order and must simultaneously send a copy of such notice by certified mail to the Secretary of Agriculture.[21] The date of this Order is July 11, 2003.

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[21] 15 U.S.C. § 1825(b)(2), (c).

Done at Washington, DC

July 11, 2003

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William G. Jenson
Judicial Officer