

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) AWA Docket No. 05-0016  
)  
Octagon Sequence of Eight, Inc., )  
a Florida corporation d/b/a )  
Octagon Wildlife Sanctuary and )  
Octagon Animal Showcase; )  
Lancelot Kollman Ramos, an )  
individual; and Manuel Ramos, )  
an individual, )  
)  
Respondents ) **Order Denying Petition for Rehearing  
as to Lancelot Kollman Ramos**

**PROCEDURAL HISTORY**

On October 2, 2007, I issued a Decision and Order as to Lancelot Kollman Ramos concluding Lancelot Kollman Ramos violated the regulations and standards issued under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Regulations and Standards].<sup>1</sup> On November 15, 2007, Lancelot Kollman Ramos filed a petition for rehearing.<sup>2</sup> On December 4, 2007, Kevin Shea, Administrator, Animal and

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<sup>1</sup>*In re Octagon Sequence of Eight, Inc.* (Decision as to Lancelot Kollman Ramos), \_\_\_ Agric. Dec. \_\_\_ (Oct. 2, 2007).

<sup>2</sup>“Motion for Rehearing of Default Decision and Order as to Lancelot Kollman Ramos a/k/a Lancelot Ramos Kollman” [hereinafter Petition for Rehearing].

Plant Health Inspection Service, United States Department of Agriculture, filed a response to Lancelot Kollman Ramos' Petition for Rehearing.<sup>3</sup> On December 5, 2007, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on the Petition for Rehearing. Based upon a careful review of the record, I deny Lancelot Kollman Ramos' Petition for Rehearing.

### **CONCLUSIONS BY THE JUDICIAL OFFICER**

Lancelot Kollman Ramos raises four issues in his Petition for Rehearing. First, Lancelot Kollman Ramos contends, when he filed his response to the Complaint, he was a pro se litigant and unaware of the specificity with which he was required to respond to the allegations in the Complaint.

I find no reasonable basis for Lancelot Kollman Ramos' ignorance of the provision in the rules of practice<sup>4</sup> that a failure to deny or otherwise respond to an allegation in a complaint is deemed an admission of that allegation. The Hearing Clerk served Lancelot Kollman Ramos with the Rules of Practice, the Complaint, and a service letter on July 5, 2005.<sup>5</sup> Section 1.136(c) of the Rules of Practice specifically provides that the failure to

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<sup>3</sup>“Complainant’s Response to Petition for Rehearing Filed by Respondent Lancelot Kollman Ramos.”

<sup>4</sup>The 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].

<sup>5</sup>United States Postal Service Track & Confirm for Receipt Number 7003 2260 0005 5721 4844.

deny or otherwise respond to an allegation in the complaint shall be deemed an admission of the allegation, as follows:

**§ 1.136 Answer.**

....

(c) *Default.* Failure to file an answer within the time provided under paragraph (a) of this section shall be deemed, for purposes of the proceeding, an admission of the allegations in the Complaint, and *failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation, unless the parties have agreed to a consent decision pursuant to § 1.138.*

7 C.F.R. § 1.136(c) (emphasis added).

Moreover, the Hearing Clerk, in the service letter accompanying the Rules of Practice, informed Lancelot Kollman Ramos that his failure to deny the allegations in the Complaint would constitute an admission of the allegations in the Complaint and a waiver of his right to a hearing, as follows:

The rules specify that you may represent yourself personally or by an attorney of record. Unless an attorney files an appearance in your behalf, it shall be presumed that you have elected to represent yourself personally. Most importantly, you have 20 days from the receipt of this letter to file with the Hearing Clerk an original and four copies of your written and signed answer to the complaint. It is necessary that your answer set forth any defense you wish to assert, and to specifically admit, deny or explain each allegation of the complaint.

Your answer may include a request for an oral hearing. Failure to file an 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.

Letter dated May 2, 2005, from Joyce A. Dawson, Hearing Clerk, to Lancelot Kollman Ramos (emphasis in original).

Further still, I reject Lancelot Kollman Ramos' suggestion that his status as a pro se litigant operates as an excuse for his failure to deny or otherwise respond to the allegations in the Complaint. The Rules of Practice do not distinguish between persons who appear pro se and persons represented by counsel.<sup>6</sup> Therefore, Lancelot Kollman Ramos' status as a pro se litigant is not a basis on which to grant his Petition for Rehearing or to set aside the default decision.<sup>7</sup>

Second, Lancelot Kollman Ramos contends he denied the allegations in the Complaint and raised meritorious defenses.

The record bellies Lancelot Kollman Ramos' contention that he denied the allegations in the Complaint and raised meritorious defenses. Lancelot Kollman Ramos' answer, dated July 15, 2005, and filed July 22, 2005, states in its entirety, as follows:

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<sup>6</sup>*In re Bodie S. Knapp*, 64 Agric. Dec. 253, 299 (2005) (stating the Rules of Practice makes no distinction between persons who appear pro se and persons represented by counsel); *In re Mary Meyers* (Order Denying Pet. for Recons.), 58 Agric. Dec. 861, 865 (1999) (stating the respondent is not exempt from the Rules of Practice merely because the respondent was pro se at the time her answer was due).

<sup>7</sup>*In re Anna Mae Noell*, 58 Agric. Dec. 130, 146 (1999) (stating lack of representation by counsel is not a basis for setting aside the default decision), *appeal dismissed sub nom. The Chimp Farm, Inc. v. U.S. Dep't of Agric.*, No. 00-10608-A (11th Cir. July 20, 2000); *In re Dean Byard* (Decision as to Dean Byard), 56 Agric. Dec. 1543, 1559 (1997) (stating the respondent's decision to proceed pro se does not operate as an excuse for the respondent's failure to file an answer).

July 15, 2005

The Hearing Clerk, OALJ Room 1081, South Building, United States  
Department of Agriculture, Washington, DC 20250-9200

Dear . Sir/Madam

I Lancelot Ramos Kollmann am responding to a complaint In re :  
OCTAGON SEQUENCE OF EIGHT INC., a Florida corporation doing  
business as OCTAGON WILDLIFE SANCTUARY AND OCTAGON  
ANIMAL SHOWCASE; PETER OCTAVE CARON an individual;  
LANCELOT KOLLMANN an individual and MANUEL RAMOS an  
individual: AWA DOCKET # 05-0016.

I Lancelot Kollmann as an individual am to requesting an oral hearing of  
this complaint. Please send any or all responses to this address P.O Box  
221 Balm, Fl 33503  
Phone # 813-633-6930 or 813-376-1023

Sincerely, Lancelot Kollmann

Signature

Therefore, I reject Lancelot Kollman Ramos' contention that he denied the  
allegations in the Complaint and raised meritorious defenses.

Third, Lancelot Kollman Ramos argues I erroneously concluded his July 30, 2007,  
filing is a supernumerary, late-filed appeal petition and I erroneously declined to consider  
the issues in his July 30, 2007, filing.

I have reviewed the record and find, for the reasons set forth in *In re Octagon  
Sequence of Eight, Inc.* (Decision as to Lancelot Kollman Ramos), \_\_ Agric. Dec. \_\_\_\_,  
slip op. at 10-11 (Oct. 2, 2007), that I properly concluded Lancelot Kollman Ramos'

July 30, 2007, filing is a supernumerary, late-filed appeal petition and that I properly declined to consider the issues in the July 30, 2007, filing.

Fourth, Lancelot Kollman Ramos contends he has been denied due process.

Lancelot Kollman Ramos' failure to deny or otherwise respond to the allegations in the Complaint is deemed, for purposes of this proceeding, an admission of the allegations in the Complaint (7 C.F.R. § 1.136(c)) and constitutes a waiver of hearing (7 C.F.R. §§ 1.139, .141(a)). Therefore, there are no issues of fact on which a meaningful hearing could be held in this proceeding and a default decision was properly issued under the Rules of Practice. The application of the default provisions of the Rules of Practice does not deprive Lancelot Kollman Ramos of his rights under the due process clause of the Fifth Amendment to the Constitution of the United States.<sup>8</sup>

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<sup>8</sup>See *United States v. Hulings*, 484 F. Supp. 562, 567-68 (D. Kan. 1980) (concluding a hearing was not required under the Fifth Amendment to the Constitution of the United States where the respondent was notified that failure to deny the allegations in the complaint would constitute an admission of those allegations under the Rules of Practice and the respondent failed to specifically deny the allegations). See also *Father & Sons Lumber and Building Supplies, Inc. v. NLRB*, 931 F.2d 1093, 1096 (6th Cir. 1991) (stating due process generally does not entitle parties to an evidentiary hearing where the National Labor Relations Board has properly determined that a default summary judgment is appropriate due to a party's failure to file a timely response); *Kirk v. INS*, 927 F.2d 1106, 1108 (9th Cir. 1991) (rejecting the contention that the administrative law judge erred by issuing a default judgment based on a party's failure to file a timely answer).

For the foregoing reasons and the reasons set forth in *In re Octagon Sequence of Eight, Inc.* (Decision as to Lancelot Kollman Ramos), \_\_\_ Agric. Dec. \_\_\_ (Oct. 2, 2007), Lancelot Kollman Ramos' Petition for Rehearing is denied.

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 for rehearing. Lancelot Kollman Ramos' Petition for Rehearing was timely filed and automatically stayed *In re Octagon Sequence of Eight, Inc.* (Decision as to Lancelot Kollman Ramos), \_\_\_ Agric. Dec. \_\_\_ (Oct. 2, 2007).

Therefore, since Lancelot Kollman Ramos' Petition for Rehearing is denied, I hereby lift the automatic stay, and the Order in *In re Octagon Sequence of Eight, Inc.* (Decision as to Lancelot Kollman Ramos), \_\_\_ Agric. Dec. \_\_\_ (Oct. 2, 2007), is reinstated; except that the effective date of the Order is the date indicated in the Order in this Order Denying Petition for Rehearing as to Lancelot Kollman Ramos.

For the foregoing reasons, the following Order is issued.

### **ORDER**

1. Lancelot Kollman Ramos, his agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards.

Paragraph 1 of this Order shall become effective on the day after service of this Order on Lancelot Kollman Ramos.

2. Lancelot Kollman Ramos is assessed a \$13,750 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States and sent to:

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

Payment of the civil penalty shall be sent to Colleen A. Carroll within 60 days after service of this Order on Lancelot Kollman Ramos. Lancelot Kollman Ramos shall state on the certified check or money order that payment is in reference to AWA Docket No. 05-0016.

3. Lancelot Kollman Ramos' Animal Welfare Act license (Animal Welfare Act license number 58-C-0816) is revoked.

Paragraph 3 of this Order shall become effective on the 60th day after service of this Order on Lancelot Kollman Ramos.

### **RIGHT TO JUDICIAL REVIEW**

Lancelot Kollman Ramos has the right to seek judicial review of the Order in this Order Denying Petition for Rehearing as to Lancelot Kollman Ramos in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. Such court has exclusive jurisdiction to enjoin, to set aside, to suspend (in whole or in part), or to



determine the validity of the Order in this Order Denying Petition for Rehearing as to Lancelot Kollman Ramos. Lancelot Kollman Ramos must seek judicial review within 60 days after entry of the Order in this Order Denying Petition for Rehearing as to Lancelot Kollman Ramos.<sup>9</sup> The date of entry of the Order in this Order Denying Petition for Rehearing as to Lancelot Kollman Ramos is December 13, 2007.

Done at Washington, DC

December 13, 2007

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William G. Jenson  
Judicial Officer

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<sup>9</sup>7 U.S.C. § 2149(c).