

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) Docket Nos. 11-0256 and 11-0257
)
Jack L. Rader and)
Barbara L. Rader, individuals,)
and d/b/a Rader Stables,)
)
Respondents) **Decision and Order**

PROCEDURAL HISTORY

Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on May 26, 2011. The Administrator 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 Administrator alleges that, on July 2, 2009: (1) Jack L. Rader, in violation of 15 U.S.C. § 1824(1), transported, shipped, moved, delivered, or received a horse known as “Thumbs Up” while the horse was sore, so that the horse could be shown or exhibited at the Owingsville Lions Club Horse Show in Owingsville, Kentucky, as entry 381 in

class number 20; and (2) Jack L. Rader and Barbara L. Rader, in violation of 15 U.S.C. § 1824(2)(B) and (2)(D), entered and allowed the entry for the purpose of showing or exhibiting a horse known as “Thumbs Up,” as entry 381 in class number 20, at the Owingsville Lions Club Horse Show in Owingsville, Kentucky, while the horse was sore.¹

On June 9, 2011, the Hearing Clerk served Mr. Rader and Mrs. Rader with a copy of the Complaint, a copy of the Rules of Practice, and the Hearing Clerk’s May 27, 2011, service letter.² Mr. Rader and Mrs. Rader failed to file an answer to the Complaint within 20 days after the Hearing Clerk served the Complaint, as required by 7 C.F.R. § 1.136(a). The Hearing Clerk sent a letter, dated June 30, 2011, to Mr. Rader and Mrs. Rader informing them that their answer to the Complaint had not been filed within the time prescribed in the Rules of Practice. On July 5, 2011, Mr. Rader and Mrs. Rader each filed an answer to the Complaint.

On August 3, 2011, Administrative Law Judge Janice K. Bullard [hereinafter the ALJ] filed an Order To Show Cause Why Default Judgment Should Not Be Entered Against Respondents And Consolidating Cases [hereinafter Order to Show Cause] in

¹Compl. at 1-2 ¶¶ 5-6.

²Domestic Return Receipt for article number 7009 1680 0001 9851 7509 and Domestic Return Receipt for article number 7009 1680 0001 9851 7493.

which the ALJ provided Mr. Rader, Mrs. Rader, and the Administrator 20 days after the date of the Order to Show Cause within which to respond to the Order to Show Cause.³

On August 22, 2011, the Administrator filed a timely response to the ALJ's Order to Show Cause. On September 6, 2011, 14 days after the time for filing a response to the ALJ's Order to Show Cause had expired, Mr. Rader and Mrs. Rader filed a response to the ALJ's Order to Show Cause.

On September 21, 2011, in accordance with 7 C.F.R. § 1.139, the ALJ filed a Decision And Order Entering Default Judgment [hereinafter Default Decision]: (1) concluding that Mr. Rader and Mrs. Rader violated the Horse Protection Act, as alleged in the Complaint; (2) assessing Mr. Rader and Mrs. Rader each a \$2,200 civil penalty; and (3) disqualifying Mr. Rader and Mrs. Rader for 1 year from showing, exhibiting, or entering any horse and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction.⁴ Later that same day, September 21, 2011, Mr. Rader and Mrs. Rader filed a reply, dated September 13, 2011, to the Administrator's response to the ALJ's Order to Show Cause.

On October 19, 2011, Mr. Rader and Mrs. Rader appealed the ALJ's Default Decision to the Judicial Officer. On November 7, 2011, the Administrator filed Complainant's Opposition to the Respondents' Appeal of The Decision and Order Upon

³Order to Show Cause at 3.

⁴ALJ's Default Decision at 5-6.

Admission of Facts by Reason of Default. On November 10, 2011, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision. Based upon a careful consideration of the record, I adopt, with minor changes, the ALJ's Default Decision as the final agency decision.

DECISION

Statement of the Case

Mr. Rader and Mrs. Rader failed to file an answer to the Complaint within the time prescribed in 7 C.F.R. § 1.136(a). The Rules of Practice (7 C.F.R. § 1.136(c)) provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, pursuant to 7 C.F.R. § 1.139, the failure to file a timely answer constitutes a waiver of hearing. Accordingly, the material allegations of the Complaint are adopted as findings of fact. I issue this Decision and Order pursuant to 7 C.F.R. § 1.139.

Findings of Fact

1. Jack L. Rader is an individual whose mailing address is in the State of West Virginia. At all times material to the instant proceeding, Jack L. Rader: (a) used the business name "Rader's Stables" and (b) was the owner of the horse known as "Thumbs Up."

2. Barbara L. Rader is an individual whose mailing address is in the State of West Virginia. At all times material to the instant proceeding, Barbara L. Rader: (a) used

the business name “Rader’s Stables” and (b) was the owner of the horse known as “Thumbs Up.”

3. At all times material to the instant proceeding, Jack L. Rader was the trainer of “Thumbs Up.”

4. On or about July 2, 2009, Jack L. Rader transported “Thumbs Up” to the Owingsville Lions Club Horse Show in Owingsville, Kentucky, for the purpose of entering, showing, and exhibiting the horse.

5. On or about July 2, 2009, Jack L. Rader transported, shipped, moved, delivered, or received the horse known as “Thumbs Up,” in violation of 15 U.S.C. § 1824(1), while the horse was “sore,” as that term is defined in the Horse Protection Act, so that the horse could be shown or exhibited at the Owingsville Lions Club Horse Show in Owingsville, Kentucky, as entry 381 in class number 20.

6. On July 2, 2009, Jack L. Rader and Barbara L. Rader, in violation of 15 U.S.C. § 1824(2)(B) and (2)(D), entered and allowed the entry for the purpose of showing or exhibiting the horse known as “Thumbs Up,” as entry 381 in class number 20, at the Owingsville Lions Club Horse Show in Owingsville, Kentucky, while the horse was “sore,” as that term is defined in the Horse Protection Act.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. By reason of the findings of fact, Jack L. Rader has violated the Horse Protection Act (15 U.S.C. § 1824(1), (2)(B), (2)(D)).
3. By reason of the findings of fact, Barbara L. Rader has violated the Horse Protection Act (15 U.S.C. § 1824(2)(B), (2)(D)).
4. The Order in this Decision and Order is authorized by the Horse Protection Act and justified under the circumstances described in this Decision and Order.

Mr. Rader and Mrs. Rader's Appeal Petition

Mr. Rader and Mrs. Rader raise five issues in their letter to the Hearing Clerk, which they filed with the Hearing Clerk on October 19, 2011 [hereinafter Appeal Petition]. First, Mr. Rader and Mrs. Rader contend the Rules of Practice do not state that weekends and holidays are included in computing the time allowed for filing a response to a complaint with the Hearing Clerk. Mr. Rader and Mrs. Rader assert, if weekends and holidays are not included in the computation of the time allowed for filing a response to a complaint, their responses to the Complaint were timely filed with the Hearing Clerk. (Appeal Pet. at 1.)

The Rules of Practice provide that an answer to a complaint must be filed with the Hearing Clerk within 20 days after the Hearing Clerk serves the complaint.⁵ The Rules of

⁵7 C.F.R. § 1.136(a).

Practice specifically provide that Saturdays, Sundays, and Federal holidays are included in the computation of the time allowed for filing any document or paper, as follows:

§ 1.147 Filing; service; extensions of time; and computation of time.

....

(h) *Computation of time.* Saturdays, Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided*, That, when such time expires on a Saturday, Sunday, or Federal holiday, such period shall be extended to include the next following business day.

7 C.F.R. § 1.147(h). Therefore, I reject Mr. Rader and Mrs. Rader's contention that Saturdays, Sundays, and holidays are not included in the computation of the time allowed for filing their responses to the Complaint. The Hearing Clerk served Mr. Rader and Mrs. Rader with the Complaint on June 9, 2011;⁶ therefore, Mr. Rader's and Mrs. Rader's responses to the Complaint were required to be filed with the Hearing Clerk no later than June 29, 2011. Mr. Rader and Mrs. Rader filed their responses to the Complaint on July 5, 2011, 6 days after their responses were required to be filed. Therefore, Mr. Rader and Mrs. Rader are deemed, for the purposes of the instant proceeding, to have admitted the allegations in the Complaint and waived the right to hearing.⁷

Second, Mr. Rader and Mrs. Rader assert Mrs. Rader called the Hearing Clerk's office and inquired about an extension of time within which to file responses to the Complaint. Mr. Rader and Mrs. Rader state Mrs. Rader was informed that the person she

⁶See note 2.

⁷7 C.F.R. §§ 1.136(c), .139.

needed to talk to was out for 1 week and, during the following week, Mrs. Rader was away from her home and had no means by which to contact the Hearing Clerk. Mr. Rader and Mrs. Rader state these events “made for a late response.” (Appeal Pet. at 1.)

The Rules of Practice provide that the time for filing any document or paper required or authorized to be filed under the Rules of Practice may be extended, as follows:

§ 1.147 Filing; service; extensions of time; and computation of time.

....

(f) *Extensions of time.* The time for the filing of any document or paper required or authorized under the rules in this part to be filed may be extended by the Judge or the Judicial Officer as provided in § 1.143, if, in the judgment of the Judge or the Judicial Officer, as the case may be, there is good reason for the extension. In all instances in which time permits, notice of the request for extension of time shall be given to the other party with opportunity to submit views concerning the request.

7 C.F.R. § 1.147(f). Moreover, the Rules of Practice set forth the manner by which to request an extension of time to file a document or paper, as follows:

§ 1.143 Motions and requests.

(a) *General.* All motions and requests shall be filed with the Hearing Clerk. . . . The Judge shall rule upon all motions and requests filed or made prior to the filing of an appeal of the Judge’s decision pursuant to § 1.145, except motions directly relating to the appeal. Thereafter, the Judicial Officer will rule on any motions and requests, as well as the motions directly relating to the appeal.

(b) *Motions entertained.* (1) Any motion will be entertained other than a motion to dismiss on the pleading.

(2) All motions and request[s] concerning the complaint must be made within the time allowed for filing an answer.

(c) *Contents.* All written motions and requests shall state the particular order, ruling, or action desired and the grounds therefor.

7 C.F.R. § 1.143(a)-(c). The Hearing Clerk served Mr. Rader and Mrs. Rader with the Rules of Practice on June 9, 2011.⁸ Therefore, I find Mr. Rader and Mrs. Rader knew, or should have known, that they could request an extension of time within which to file their responses to the Complaint and how to request that extension of time. Mr. Rader and Mrs. Rader's inability to discuss an extension of time with a United States Department of Agriculture employee did not impede Mr. Rader's or Mrs. Rader's filing a request for an extension of time.

Third, Mr. Rader and Mrs. Rader assert Mrs. Rader called to obtain an extension of time within which to file an appeal petition and was told her request for an extension would have to be "in writing and approved." (Appeal Pet. at 1.)

Mr. Rader and Mrs. Rader's Appeal Petition was timely-filed with the Hearing Clerk; therefore, I find the details of any discussion Mrs. Rader had with a United States Department of Agriculture employee regarding an extension of time to file Mr. Rader and Mrs. Rader's Appeal Petition, irrelevant.

Fourth, Mr. Rader and Mrs. Rader assert much of the correspondence which they have received from the United States Department of Agriculture in the instant proceeding references times and dates that are incorrect. Mr. Rader and Mrs. Rader posit the question: "Why are we held to a higher standard [than] the USDA?" (Appeal Pet. at 1.)

⁸See note 2.

The issue before me is the timeliness of Mr. Rader's and Mrs. Rader's responses to the Complaint. The record establishes that the Hearing Clerk served Mr. Rader and Mrs. Rader with the Complaint on June 9, 2011,⁹ and that Mr. Rader and Mrs. Rader filed their responses to the Complaint 26 days later, on July 5, 2011. Mr. Rader's and Mrs. Rader's responses to the Complaint are late-filed; therefore, Mr. Rader and Mrs. Rader are deemed, for the purposes of this proceeding, to have admitted the allegations of the Complaint and waived the right to hearing.¹⁰

Fifth, Mr. Rader and Mrs. Rader assert the incident which gave rise to the Complaint occurred in 2009, but the Administrator failed to file the Complaint for 2 years. Mr. Rader and Mrs. Rader assert the Administrator failed to file the Complaint timely. (Appeal Pet. at 1.)

The "incident" that gave rise to the Administrator's filing the Complaint occurred on July 2, 2009. The Administrator filed the Complaint on May 26, 2011, 1 year 10 months 24 days after the "incident." An action on behalf of the United States in its governmental capacity is subject to no time limitation absent enactment of a limitation. Mr. Rader and Mrs. Rader do not direct me to any enactment which establishes a time limitation on the institution of an administrative disciplinary proceeding under the Horse Protection Act. Even assuming, for the sake of argument, that the statute of limitations in

⁹See note 2.

¹⁰7 C.F.R. §§ 1.136(c), .139.

28 U.S.C. § 2462 applies to the instant proceeding, this proceeding is not barred by 28 U.S.C. § 2462, as the Administrator brought the action within the 5-year period set forth in 28 U.S.C. § 2462. Also, laches is not applicable to actions of the government.¹¹ Therefore, I reject Mr. Rader and Mrs. Rader's unsupported contention that the Administrator failed to file the Complaint timely.

Mr. Rader and Mrs. Rader's November 14, 2011, Filing

On November 14, 2011, Mr. Rader and Mrs. Rader filed an undated letter with the Hearing Clerk, which is addressed to "To Whom This May Concern." The letter appears to be Mr. Rader and Mrs. Rader's second response to the Complaint. The Hearing Clerk served Mr. Rader and Mrs. Rader with the Complaint on June 9, 2011.¹² The Rules Practice require that any response to a complaint must be filed with the Hearing Clerk within 20 days after the complaint is served by the Hearing Clerk;¹³ therefore, Mr. Rader and Mrs. Rader's response to the Complaint was required to be filed with the Hearing Clerk no later than June 29, 2011. Mr. Rader and Mrs. Rader's November 14, 2011, response to the Complaint comes far too late to be considered.

For the foregoing reasons, the following Order is issued.

¹¹*United States v. Mack*, 295 U.S. 480, 489 (1935); *United States v. Verdier*, 164 U.S. 213, 219 (1896); *German Bank v. United States*, 148 U.S. 573, 579-80 (1893); *Gausson v. United States*, 97 U.S. 584, 590 (1878); *Cooke v. United States*, 91 U.S. 389, 398 (1875); *United States v. Kirkpatrick*, 22 U.S. (9 Wheat.) 720, 735-36 (1824).

¹²See note 2.

¹³7 C.F.R. § 1.136(a).

ORDER

1. Jack L. Rader and Barbara L. Rader are each assessed a \$2,200 civil penalty. The civil penalties shall be paid by certified checks or money orders, made payable to the "Treasurer of the United States" and sent to:

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

Mr. Rader's civil penalty payment shall be forwarded to, and received by, Ms. Deskins within 60 days after service of this Order on Mr. Rader. Mrs. Rader's civil penalty payment shall be forwarded to, and received by, Ms. Deskins within 60 days after service of this Order on Mrs. Rader. Mr. Rader and Mrs. Rader shall indicate on the certified checks or money orders that the payments are in reference to Docket Nos. 11-0256 and 11-0257.

2. Jack L. Rader and Barbara L. Rader are disqualified for 1 uninterrupted year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, corporation, partnership, or other device, and from judging, managing, 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: (1) transporting, or arranging for the transportation of,

horses to or from equine events; (2) personally giving instructions to exhibitors; (3) being present in the warm-up or inspection areas or in any area where spectators are not allowed; and (4) financing the participation of others in equine events. Mr. Rader's disqualification shall continue until the \$2,200 civil penalty assessed against him in paragraph 1 of this Order is paid in full. Mrs. Rader's disqualification shall continue until the \$2,200 civil penalty assessed against her in paragraph 1 of this Order is paid in full. The disqualification of Mr. Rader shall become effective on the 60th day after service of this Order on Mr. Rader. The disqualification of Mrs. Rader shall become effective on the 60th day after service of this Order on Mrs. Rader.

RIGHT TO JUDICIAL REVIEW

Jack L. Rader and Barbara L. Rader 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. Mr. Rader and Mrs. Rader 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 any notice of appeal by certified mail to the Secretary of Agriculture.¹⁴ The date of this Order is November 17, 2011.

Done at Washington, DC

November 17, 2011

William G. Jenson
Judicial Officer

¹⁴15 U.S.C. § 1825(b)(2), (c).