

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) HPA Docket No. 01-C022
)
Sand Creek Farms, Inc.,)
a Tennessee corporation,)
) **Ruling Denying Motion**
) **to Stay Sanctions**
Respondent)

PROCEDURAL HISTORY

On April 11, 2005, Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] issued a Decision and Order Upon Admission of Facts concluding Sand Creek Farms, Inc. [hereinafter Respondent], violated the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) and imposing sanctions on Respondent for its violation. The ALJ issued the Decision and Order Upon Admission of Facts in accordance with 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] and, more specifically, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

On July 1, 2005, Respondent appealed the ALJ's Decision and Order Upon Admission of Facts to the Judicial Officer pursuant to section 1.145 of the Rules of

Practice (7 C.F.R. § 1.145) and filed a Motion to Stay Sanctions Pending Appeal. On July 5, 2005, the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], filed a response to Respondent's appeal petition and a response to Respondent's Motion to Stay Sanctions Pending Appeal. On July 11, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Respondent's Motion to Stay Sanctions Pending Appeal.

CONCLUSION BY THE JUDICIAL OFFICER

The Rules of Practice provide that an administrative law judge's decision issued in accordance with section 1.139 the Rules of Practice (7 C.F.R. § 1.139) becomes final and effective without further proceedings 35 days after the date the decision is served on the respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145). Moreover, the ALJ expressly states that the Decision and Order Upon Admission of Facts is not final if appealed to the Judicial Officer, as follows:

This Decision and Order shall have the same force and effect as if entered after a full hearing. The Decision shall be final thirty five (35) days after service, unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (30) days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145 . . .). The Order shall be effective on the first day after the Decision becomes final.

Decision and Order Upon Admission of Facts at 4.

Respondent appealed the ALJ's Decision and Order Upon Admission of Facts to the Judicial Officer pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Consequently, the ALJ's April 11, 2005, Decision and Order Upon Admission of Facts is not final or effective. As the sanctions imposed by the ALJ on Respondent are not final or effective, Respondent's Motion to Stay Sanctions Pending Appeal is premature and should be denied.

For the foregoing reason, the following Ruling should be issued.

RULING

Respondent's July 1, 2005, Motion to Stay Sanctions Pending Appeal is denied.

Done at Washington, DC

August 2, 2005

William G. Jenson
Judicial Officer