

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) HPA Docket No. 99-0028
)
Derwood Stewart and Rhonda)
Stewart, d/b/a Stewart's Nursery,)
a/k/a Stewart's Farm, Stewart's)
Farm & Nursery, The Derwood)
Stewart Family, and Stewart's)
Nursery Farm Stables,)
) **Order Lifting Stay Order**
Respondents) **as to Derwood Stewart**

PROCEDURAL HISTORY

On September 6, 2001, I issued a Decision and Order as to Derwood Stewart concluding Derwood Stewart [hereinafter Respondent] violated the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831).¹ On February 22, 2002, Respondent requested a stay of the Order in *In re Derwood Stewart* (Decision as to Derwood Stewart), 60 Agric. Dec. 570 (2001), pending the outcome of proceedings for judicial review. On March 4, 2002, I granted Respondent's request for a stay.²

¹*In re Derwood Stewart* (Decision as to Derwood Stewart), 60 Agric. Dec. 570 (2001).

²*In re Derwood Stewart*, 61 Agric. Dec. 291 (2002) (Stay Order as to Derwood Stewart).

Respondent filed a petition for review with the United States Court of Appeals for the Sixth Circuit which issued an opinion denying Respondent's petition for review.³ The time for filing a petition for a writ of certiorari with the Supreme Court of the United States has expired.

On April 19, 2004, Complainant requested that I lift the March 4, 2002, Stay Order as to Derwood Stewart on the ground that proceedings for judicial review have concluded.⁴ The Hearing Clerk served Respondent with Complainant's Motion to Lift Stay Order on April 26, 2004.⁵ Respondent failed to file a response to Complainant's Motion to Lift Stay Order within 20 days after service, as required by the rules of practice applicable to this proceeding.⁶ On May 19, 2004, the Hearing Clerk transmitted the record of the proceeding to the Judicial Officer for a ruling on Complainant's Motion to Lift Stay Order.

³*Stewart v. United States Dep't of Agric.*, 64 Fed. Appx. 941, 2003 WL 21147808 (6th Cir. May 15, 2003).

⁴Complainant's Motion to Lift Stay Order.

⁵United States Postal Service Domestic Return Receipt for Article Number 7000 1670 0003 5453 1235.

⁶See 7 C.F.R. §§ 1.130-.151 and, in particular, 7 C.F.R. § 1.143(d).

CONCLUSION BY THE JUDICIAL OFFICER

I issued the March 4, 2002, Stay Order as to Derwood Stewart to postpone the effective date of the Order issued in *In re Derwood Stewart* (Decision as to Derwood Stewart), 60 Agric. Dec. 570 (2001), pending the outcome of proceedings for judicial review. Proceedings for judicial review are concluded and the time for filing further requests for judicial review has expired. Therefore, Complainant's Motion to Lift Stay Order is granted; the March 4, 2002, Stay Order as to Derwood Stewart is lifted; and the Order issued in *In re Derwood Stewart* (Decision as to Derwood Stewart), 60 Agric. Dec. 570 (2001), is effective, as set forth in the following Order.

ORDER

1. Respondent is assessed a \$2,200 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
Room 2343-South Building
Washington, DC 20250-1417

Respondent's payment of the civil penalty shall be forwarded to, and received by, Ms. Carroll within 60 days after service of this Order on Respondent. Respondent shall indicate on the certified check or money order that payment is in reference to HPA Docket No. 99-0028.

2. Respondent is 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 Respondent shall become effective on the 60th day after service of this Order on Respondent.

Done at Washington, DC

May 21, 2004

William G. Jenson
Judicial Officer