

2015 JUL 16 AM 10: 42

RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) [AHPA]  
 ) Docket No. **15-0046**  
 Jose G. Jimenez )  
 )  
 Respondent ) **Default Decision and Order**

Appearances:

Tracy M. McGowan, Esq. with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant (APHIS);<sup>1</sup> and

Jose G. Jimenez, the Respondent, a resident of Texas, who represents himself and failed to file anything in this case.

1. The Complaint, filed on December 16, 2014, alleged that the Respondent Jose G. Jimenez (“Respondent Jimenez” or “Respondent”) violated the Animal Health Protection Act (7 U.S.C. § 8301 *et seq.*), and regulations promulgated under the Act (specifically, 9 C.F.R. § 93.101(c)(4)(i)).

2. Respondent Jimenez has been served more than once with a copy of the Complaint accompanied by instructions in a Hearing Clerk letter to file an answer. Respondent Jimenez talked with counsel for APHIS by telephone about this case, and on May 6, 2015 he

---

1. The Complainant is the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (“APHIS” or “Complainant”).

received a proposed Consent Decision. Respondent Jimenez has chosen not to respond. Respondent Jimenez did not file an answer; he did not respond to counsel for APHIS regarding the proposed Consent Decision.

3. The time for Respondent Jimenez to file an answer to the Complaint expired. 7 C.F.R. § 1.136(a). By failing to file an answer, Respondent Jimenez is in default, and his default is deemed to be an admission of the allegations in the Complaint. 7 C.F.R. § 1.136(c).

4. Failing to file an answer constitutes a waiver of hearing, and the material facts alleged in the Complaint are admitted. 7 C.F.R. § 1.139.

5. On June 6, 2015 by certified mail with return receipt, tracking number 7012 3460 0003 3833 8083, Respondent Jimenez was again served with documents in this case. The documents included in that mailing (and sent also by ordinary mail) were “Complainant’s Supplemental Response to Order to Show Cause and Renewed Motion for Adoption of Proposed Default Decision and Order” filed June 1, 2015; and the accompanying “Proposed Default Decision and Order”. Respondent Jimenez filed no response to that Motion.

6. The material allegations in the Complaint are adopted and set forth in this Default Decision as the Findings of Fact, and this Default Decision is issued pursuant to the Rules of Practice. 7 C.F.R. § 1.139. *See* 7 C.F.R. §1.130 *et seq.*

#### **Findings of Fact and Conclusions**

7. The Secretary of Agriculture has jurisdiction over Jose G. Jimenez, the Respondent, and the subject matter involved herein.

8. Respondent Jimenez is an individual residing in Texas.
9. On or about March 10, 2013, Respondent Jimenez attempted to bring two pet birds from Mexico into the territorial limits of the United States while crossing the border at Eagle Pass Port of Entry in Eagle Pass, Texas, without a veterinary health certificate accompanying the movement as required by 9 C.F.R. § 93.101(c)(4)(i).
10. Respondent Jimenez violated the Animal Health Protection Act (7 U.S.C. § 8301 *et seq.*), and the regulation 9 C.F.R. § 93.101(c)(4)(i), on or about March 10, 2013.
11. The civil penalty is limited to \$1,100.00 in the case of an initial violation of the Animal Health Protection Act (AHPA) by an individual moving regulated articles not for monetary gain. Animal Health Protection Act, 7 U.S.C. § 8313(b)(1)(A)(i); and *see* 7 C.F.R. § 3.91(b)(2)(vi) for adjusted civil monetary penalties.
12. The remedy requested by APHIS is payment of a \$1,100.00 civil penalty. APHIS requests that a \$1,100.00 civil penalty be imposed as warranted and appropriate considering the nature, circumstance, extent, and gravity of Respondent Jimenez's violation, including the serious risk of spreading avian disease from the unauthorized entry of birds into the United States.
13. The factors to be used in determining civil penalties are enumerated in 7 U.S.C. § 8313(b)(2).
14. I conclude that a \$1,100.00 civil penalty is in accordance with 7 U.S.C. § 8313(b) and is warranted and appropriate and proportionate and will achieve the remedial purposes of the Animal Health Protection Act. I conclude further that the \$1,100.00 civil penalty is

adequate to deter Respondent Jimenez and others from committing like violations.

**Order**

15. Respondent Jimenez is assessed a civil penalty of **\$1,100.00**. Respondent shall pay the \$1,100.00 by cashier's check(s) or certified check(s) or money order(s), made payable to the order of the "**Treasurer of the United States**" and forwarded, within **90** days from the date this Default Decision and Order is final, to:

United States Department of Agriculture  
APHIS Accounts Receivable  
P.O. Box 979043  
St. Louis, MO 63197-9000

Respondent Jimenez shall indicate that payment is in reference to [AHPA] Docket No. **15-0046 (AQ)**.

**Finality**

16. This Default Decision and Order shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix A).

Copies of this Default Decision and Order shall be served by the Hearing Clerk upon each of the parties (to Respondent by certified mail; to APHIS's counsel by in-person delivery to an Office of the General Counsel representative).

Done at Washington, D.C.  
this 16<sup>th</sup> day of July 2015



Jill S. Clifton  
Administrative Law Judge

Hearing Clerk's Office  
U.S. Department of Agriculture  
Stop 9203 South Building Room 1031  
1400 Independence Ave SW  
Washington, DC 20250-9203  
202-720-4443  
FAX 202-720-9776  
[OALJHearingClerks@ocio.usda.gov](mailto:OALJHearingClerks@ocio.usda.gov)

**APPENDIX A**

**7 C.F.R.:**

**TITLE 7—AGRICULTURE**

**SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE**

**PART 1—ADMINISTRATIVE REGULATIONS**

....

**SUBPART H—RULES OF PRACTICE GOVERNING FORMAL**

**ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER**

**VARIOUS STATUTES**

...

**§ 1.145 Appeal to Judicial Officer.**

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145