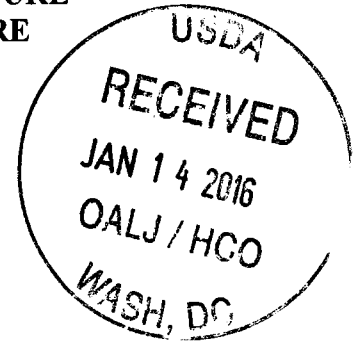


**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

Docket No. 15-0150 HPA



In re:

TERRY WAYNE SIMS,

Respondent.

DECISION WITHOUT HEARING BY REASON OF ADMISSIONS

I. PRELIMINARY STATEMENT

The instant matter involves allegations by the Administrator, Animal and Plant Health Inspection Service (“APHIS”) of the United States Department of Agriculture (“USDA”; “Complainant”) that Terry Wayne Sims (“Respondent”) violated provisions of the Horse Protection Act as amended and supplemented, 15 U.S.C. §§ 18121-1831 (“the Act”).

II. ISSUES

1. Whether entry of default Decision and Order is appropriate, and if so;
2. Whether Complainant’s recommended sanctions should be imposed.

III. PROCEDURAL HISTORY

On July 20, 2015, Complainant filed a complaint with the Hearing Clerk, Office of Administrative Law Judges (“OALJ”; “Hearing Clerk”), alleging that Respondent had violated the Act. On the same date, the Hearing Clerk sent the complaint to Respondent by certified and regular mail, and informed Respondent that an Answer should be filed pursuant to the Rules of Practice Governing Formal Adjudications before the Secretary of USDA (“the Rules of Practice”). Tracking records maintained by the United States Postal Service (“USPS”) reflect that the certified mail was delivered on July 29, 2015. The regular mail was not returned as “undelivered”.

Respondent did not file an answer. By Order issued October 21, 2015, I directed Respondent to show cause why a Decision and Order by reason of default should not be entered against him. Respondent did not file a response to my Order. On November 16, 2015, Complainant filed a motion for a decision on the record by reason of default. The motion was sent to Respondent, who sent correspondence dated December 10, 2015, which acknowledged receipt of the motion on December 9, 2015.

IV. AUTHORITIES

Pursuant to the Rules of Practice, a respondent is required to file an Answer within twenty (20) days after service of a Complaint. 7 C.F.R. § 1.136(a). The Rules of Practice also provide that an Answer “shall . . . [c]learly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent.” 7 C.F.R. § 1.136(b)(1). The failure to timely file an Answer or failure to deny or otherwise respond to an allegation proffered in the Complaint shall be deemed admission of all the material allegations in the Complaint; in such situation, default shall be appropriate. 7 C.F.R. § 1.136(c).

The Rules of Practice also state that a document sent by the Hearing Clerk “shall be deemed to be received by any party to a proceeding . . . on the date of delivery by certified or registered mail. . .” 7 C.F.R. § 1.147(c)(1). The Rules of Practice further provide that “[t]he failure to file an answer . . . shall constitute a waiver of the hearing. Upon such . . . failure to file, complainant shall file a proposed decision along. . . Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto.” 7 C.F.R. § 1.139

V. DISCUSSION

The record reflects that Respondent received a copy of the complaint filed against him, and also received notice of the requirement to file a timely answer to the complaint. Accordingly,

service was properly effected. Respondent failed to file an answer. The record further reflects that Respondent failed to file a response to my Order of October 21, 2015. On December 17, 2015, Respondent filed a correspondence dated December 10, 2015, which states in the entirety:

To Whom It May Concern:

Yesterday I received a letter from you stating I had to complete a two year suspension for an infraction I have just completed a three year suspension for. I feel this letter was sent in error.

Please remove the additional two years and contact me. Thank you for your time and attention.

Sincerely,

Terry W. Sims

I construe Respondent's December 17, 2015, filing to constitute his opposition to Complainant's motion for default judgment. Respondent provides no specifics about the infraction for which he contends he was suspended. By failing to file an Answer to the complaint, Respondent has waived his right to a hearing, and pursuant to 7 C.F.R. § 1.136 (c), Respondent is hereby deemed to have admitted the allegations set forth in the complaint, regardless of his contentions. Entry of Decision and Order by reason of admissions is appropriate, pursuant to 7 C.F.R. §1.139. Complainant's proposed sanctions are warranted.

VI. FINDINGS OF FACT

1. Terry Wayne Sims is an individual with a mailing address in Louisville, Kentucky.
2. Respondent failed to file an answer to Complainant's complaint.
3. On August 24, 2012, Terry Wayne Sims entered a horse known as "The Spooky Spook" as Entry No. 526, Class no. 53, at the 74th Annual Tennessee Walking Horse National Celebration in Shelbyville, Tennessee.

4. On August 24, 2012, the horse "The Spooky Spook" entered by Terry Wayne Sims at the 74th Annual Tennessee Walking Horse National Celebration in Shelbyville, Tennessee was found to be sore upon inspection.
5. On July 29, 2009, Respondent signed a consent decision to resolve allegations contained in Docket No. 08-0111.
6. On July 20, 2012, Administrative Law Judge Peter M. Davenport issued a default Decision and Order against Respondent in Docket No. 12-0192.

VII. CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. Default Decision and Order is appropriate, and Respondent is deemed to have admitted the allegations set forth in the complaint.
3. Respondent violated the Act (15 U.S.C. § 1824(2)(B)) by entering for the purposes of showing or exhibiting the horse known as "The Spooky Spook" as Entry No. 526, Class No. 53, at the 74th Annual Tennessee Walking Horse National Celebration in Shelbyville, Tennessee while the horse was sore.
4. Respondent's violation of the Act supports the imposition of sanctions.

ORDER

1. Respondent Terry Wayne Sims is disqualified for five uninterrupted years from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or other device, and from judging, managing or otherwise participating in any horse show, horse exhibition, or horse sale of auction. "Participating" means engaging in any activity beyond that of a spectator, and includes, without limitation, transporting or arranging for the transportation of horses to or from equine events, personally giving instructions to exhibitors, being present in the warm-up or inspection areas, or in any area where spectators are not allowed, and financing the


participation of others in equine events. The disqualification shall continue after the end of the five year disqualification period until the civil penalty assessed in this order is paid in full. The disqualification shall start on January 1, 2016.

2. Respondent Terry Wayne Sims is assessed a civil penalty of \$2,200.00.

Pursuant to the Rules of Practice, this Decision becomes final without further proceedings 35 days after service, in accordance with 7 C.F.R. §§ 1.142 and 1.145. The provisions of this Order shall become effective on the first day of the month after this Decision shall become final.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk.

So ORDERED this 14th day of January, 2016, at Washington, D.C.


Janice K. Bullard
Administrative Law Judge