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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

RECEIVED

Docket No. 15-0104 (PQ)
Docket No. 15-0105 (PQ)

In re:

REDLAND NURSERY, and
JOHN DEMOTT,

Respondents.

ORDER DENYING RESPONDENTS' PETITION FOR REHEARING

For the reasons set forth herein below, Respondents' Petition for Rehearing or to Reopen Hearing filed July 20, 2016 is hereby **DENIED**.

The Order Setting Hearing, filed March 2, 2016 was issued by Administrative Law Judge Janice Bullard following a telephone conference call on February 26, 2016 with Administrative Law Judge Janice Bullard, Mr. John DeMott, and Counsel for the Complainant. The Order Setting Hearing set the date of the hearing for July 12, 2016 and the specific time for the hearing as 9:00 a.m. local time in Dade County, Florida.

On June 9, 2016, I personally conducted a second telephone conference with the parties wherein I advised the parties that Respondents' request for a continuance of the July 12th hearing date was **denied** based on the age of violations alleged in the Administrator's April 28, 2015 Complaint in this case (some dating back as early as May of 2011); the nature and severity of the alleged violations (including among other things, that Respondents moved regulated articles actually infested with imported fire ants interstate, from Homestead, Florida, a quarantined area,

through and into Rehoboth, Delaware, an area that was not quarantined, without a certificate or limited permit that sufficiently identified the regulated articles); and allegations that Respondents have committed repeated, flagrant and willful violations of a Consent Decision issued by Administrative Law Judge Janice Bullard against the Respondents in *In re Redland Nursery, Inc., and John C. Demott*, P.Q. Docket No. I0-0331 which became effective October 11, 2011.

A second NOTICE OF HEARING confirming yet again the date and time of the hearing with the specific hearing location was issued on July 7, 2016. The attached CERTIFICATE OF SERVICE from the Hearing Clerk's Office reflects that the Respondents were served with the second Notice of Hearing by **regular mail and email** that same date. Further, this information simply confirmed the information that was previously provided to the parties by email communications on June 29, 2016 from both Counsel for the Complainant as well as from me which were copied to Mr. DeMott at his email address of record. As stated in my Order Denying Respondents' Request for Rescheduled Hearing, the Notice that Mr. DeMott received in the mail on July 11, 2016, but now alleges that he failed to open until July 12, 2016, was just a hard copy follow-up to the information that was provided to him earlier. (See ORDER DENYING RESPONDENTS' REQUEST FOR RESCHEDULED HEARING issued in this proceeding on July 14, 2016).

Given the above recited procedural history of this case, and the fact that the record is replete with numerous pleadings and emails providing detailed contact information for OALJ/HCO as well as for Counsel for the Complainant, Respondents' contentions that they were unaware of how to contact anyone at USDA for assistance is simply not credible. For example, the Complaint, served on Respondents on May 4, 2015, was accompanied by a letter from the Assistant Hearing Clerk which


included the address, phone, and fax number for the Hearing Clerk's office, as well as the contact information for my Executive Assistant Diane Green and Legal Secretary Marilyn Kennedy. The letter also included a link to the USDA Office of the Administrative Law Judges website where additional contact information is available.

For these reasons, Respondents' Petition for Rehearing or to Reopen Hearing filed July 20, 2016 is hereby **DENIED**. Respondents, after being duly notified, failed to appear at the hearing without good cause and, therefore, Respondents are deemed to have **WAIVED** the right to an oral hearing in this proceeding and to have admitted any facts which were presented at the hearing. Further, Respondents' failure to appear without good cause shall also constitute an admission of all of the material allegations of fact contained in the complaint.

Respondents' shall be served with a copy of my Decision in this proceeding when issued and shall have the right to appeal and request oral argument before the Judicial Officer with respect thereto in the manner provided in 7 C.F.R. Part 1, §1.145.

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

So ORDERED this 2nd day of August, 2016 in Washington, D.C.


Bobbie J. McCartney
Chief Administrative Law Judge

Attachments

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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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Docket No. PQ-15-0104; 15-0105

In re: Redland Nursery, Inc.

and

John C. Demott

Respondents

NOTICE OF HEARING

The hearing will be held as follows:

Date: July 12 – July 15, 2016

Location: U.S. Tax Court
Claude Pepper Federal Bldg.
51 S.W. 1st Avenue
Miami, FL 33130

The hearing is now scheduled for 4 days (unless completed sooner): **July 12 – July 15 (Tue-Fri) 2016**, going on record **9:00** Eastern time.

Exhibits are to be pre-marked, on the lower right corner, as CX-1, CX-2, *et seq.* (for Complainant's exhibits) and RX-1, RX-2, *et seq.* (for Respondent's exhibits). Multi-page exhibits are to be paginated. Please place numbers on the bottom of the pages. At least two copies of a party's proposed exhibits should be brought to the hearing.

Hearing testimony will be transcribed by Anderson Court Reporting. A copy of the transcript may be purchased by making arrangements with the reporter at the hearing.

Copies of this Order will be served upon the parties by the Hearing Clerk.

So Ordered this 7th day of July, 2016 at Washington, D.C.



Bobbie J. McCartney
Chief Administrative Law Judge

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