

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWA Docket No. 15-0005
)	AWA Docket No. 15-0006
Phyllis J. Britz, an individual, d/b/a)	
Windy Ridge Kennels; and)	
Bruce Britz, an individual,)	
)	Order Denying Late Appeal
Respondents)	as to Bruce Britz

PROCEDURAL HISTORY

Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on October 9, 2014. The Administrator instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [Animal Welfare Act]; the regulations and standards issued pursuant to the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture Under Various Statutes (7 C.F.R. §§ 1.130-.151) [Rules of Practice].

The Administrator alleges, on or about March 31, 2010, and July 22, 2010, Phyllis J. Britz and Bruce Britz willfully violated the Animal Welfare Act and the Regulations.¹ The Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture [Hearing Clerk], served Mr. Britz with the Complaint, the Rules of Practice, and the Hearing Clerk's service

¹ Compl. ¶¶ 4-10 at 2-8. The proceeding as to Ms. Britz has concluded. *See* Britz, 74 Agric. Dec. 435 (U.S.D.A. 2015) (Decision and Order as to Phyllis J. Britz by Reason of Default).

letter on October 16, 2014.² Mr. Britz failed to file an answer to the Complaint within twenty days after the Hearing Clerk served Mr. Britz with the Complaint, as required by 7 C.F.R. § 1.136(a).

On July 18, 2016, the Administrator filed a Motion for Adoption of Decision and Order as to Bruce Britz by Reason of Default [Motion for Default Decision] and a proposed Decision and Order as to Bruce Britz by Reason of Default. Mr. Britz failed to file objections to the Administrator's Motion for Default Decision. On September 26, 2016, Administrative Law Judge Jill S. Clifton [ALJ], in accordance with 7 C.F.R. § 1.139, issued a Decision and Order as to Bruce Britz by Reason of Default [Decision and Order as to Bruce Britz]: (1) finding Mr. Britz willfully violated the Animal Welfare Act and the Regulations, as alleged in the Complaint; and (2) ordering Mr. Britz to cease and desist from violating the Animal Welfare Act and the Regulations.³ On November 1, 2016, the Hearing Clerk, by ordinary mail in accordance with 7 C.F.R. § 1.147(c)(1), served Mr. Britz with the ALJ's Decision and Order as to Bruce Britz and the Hearing Clerk's service letter.⁴

On December 7, 2016, Mr. Britz appealed the ALJ's Decision and Order as to Bruce Britz to the Judicial Officer. On December 12, 2016, the Administrator filed Complainant's Response to Respondent's Petition for Appeal, and the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

² United States Postal Service Domestic Return Receipt for article number 7012 3460 0003 3833 4399.

³ ALJ's Decision and Order as to Bruce Britz at the second unnumbered page through 13.

⁴ Memorandum to the File, dated November 1, 2016, signed by Caroline Hill, Assistant Hearing Clerk, Office of the Hearing Clerk.

CONCLUSIONS BY THE JUDICIAL OFFICER

The Rules of Practice provide that a party may appeal an administrative law judge's written decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk within thirty days after the Hearing Clerk serves that party with the written decision.⁵ The Hearing Clerk served Mr. Britz with the ALJ's Decision and Order as to Bruce Britz on November 1, 2016;⁶ therefore, Mr. Britz was required to file his appeal petition with the Hearing Clerk no later than December 1, 2016. Instead, Mr. Britz filed his appeal petition with the Hearing Clerk on December 7, 2016. Therefore, I find Mr. Britz's appeal petition is late-filed.

Moreover, the Judicial Officer has continuously and consistently held under the Rules of Practice that the Judicial Officer has no jurisdiction to hear an appeal that is filed after an administrative law judge's decision becomes final.⁷ The ALJ's Decision and Order as to Bruce

⁵ 7 C.F.R. § 1.145(a).

⁶ *See supra* note 4.

⁷ *See, e.g.*, Edwards, 75 Agric. Dec. 280 (U.S.D.A. 2016) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed three days after the chief administrative law judge's decision became final); Rosberg, 73 Agric. Dec. 551 (U.S.D.A. 2014) (Order Den. Late Appeal) (dismissing the respondents' appeal petition filed one day after the administrative law judge's decision became final); Piedmont Livestock, Inc., 72 Agric. Dec. 422 (U.S.D.A. 2013) (Order Den. Late Appeal) (dismissing Piedmont Livestock, Inc.'s appeal petition filed three days after the chief administrative law judge's decision became final and dismissing Joseph Ray Jones's appeal petition filed one day after the chief administrative law judge's decision became final); Custom Cuts, Inc., 72 Agric. Dec. 484 (U.S.D.A. 2013) (Order Den. Late Appeal) (dismissing the respondents' appeal petition filed one month twenty-seven days after the chief administrative law judge's decision became final); Self, 71 Agric. Dec. 1169 (U.S.D.A. 2012) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed eighteen days after the chief administrative law judge's decision became final); Mays, 69 Agric. Dec. 631 (U.S.D.A. 2010) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed one week after the administrative law judge's decision became final); Noble, 68 Agric. Dec. 1060 (U.S.D.A. 2009) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed one day after the administrative law judge's decision became final); Edwards, 66 Agric. Dec. 1362 (U.S.D.A. 2007) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed six days after the administrative law judge's decision became final); Tung Wan Co., 66 Agric. Dec. 939 (U.S.D.A.

Britz became final thirty-five days after the Hearing Clerk served Mr. Britz with the ALJ's Decision and Order as to Bruce Britz.⁸ Thus, the ALJ's Decision and Order as to Bruce Britz became final as to Mr. Britz on December 6, 2016. Mr. Britz filed his appeal petition on December 7, 2016. Therefore, I have no jurisdiction to hear Mr. Britz's appeal petition.

The Rules of Practice do not provide for an extension of time (for good cause or excusable neglect) for filing an appeal petition after an administrative law judge's decision has become final. The absence of such a provision in the Rules of Practice emphasizes that jurisdiction has not been granted to the Judicial Officer to extend the time for filing an appeal after an administrative law judge's decision has become final. Therefore, under the Rules of Practice, I cannot extend the time for Mr. Britz's filing an appeal petition after the ALJ's Decision and Order as to Bruce Britz became final. Accordingly, Mr. Britz's appeal petition must be denied.

For the foregoing reasons, the following Order is issued.

ORDER

1. Mr. Britz's appeal petition, filed December 7, 2016, is denied.

2007) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed forty-one days after the chief administrative law judge's decision became final); Gray, 64 Agric. Dec. 1699 (U.S.D.A. 2005) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed one day after the chief administrative law judge's decision became final); Mokos, 64 Agric. Dec. 1647 (U.S.D.A. 2005) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed six days after the chief administrative law judge's decision became final); Blackstock, 63 Agric. Dec. 818 (U.S.D.A. 2004) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed two days after the administrative law judge's decision became final); Gilbert, 63 Agric. Dec. 807 (U.S.D.A. 2004) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed one day after the administrative law judge's decision became final); Nunez, 63 Agric. Dec. 766 (U.S.D.A. 2004) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed on the day the administrative law judge's decision became final).

⁸ See 7 C.F.R. § 1.139; ALJ's Decision and Order as to Bruce Britz at 13.

2. The ALJ's Decision and Order as to Bruce Britz, filed September 26, 2016, is the final decision in this proceeding.

Done at Washington, DC

January 11, 2017

William G. Jenson
Judicial Officer