

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	HPA Docket No. 13-0308
	)	
Justin Jenne,	)	
	)	
Respondent	)	Decision and Order

PROCEDURAL HISTORY

On August 2, 2013, Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [Administrator], initiated this administrative disciplinary proceeding against Justin Jenne by filing a Complaint. The Administrator alleges: (1) Mr. Jenne, at all times material to this proceeding, was the owner of a horse known as “Led Zeppelin”;¹ and (2) on or about August 27, 2012, Mr. Jenne entered and allowed the entry of Led Zeppelin as entry number 542, class number 110A, at the 74th Annual Tennessee Walking Horse National Celebration Show in Shelbyville, Tennessee, for the purpose of showing or exhibiting Led Zeppelin while Led Zeppelin was sore, in violation of the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) [Horse Protection Act].² On September 6, 2013, Mr. Jenne filed an answer in which Mr. Jenne: (1) admitted he was the owner of Led Zeppelin;³

¹Compl. ¶ I(1) at 1.

²Compl. ¶ II(1) at 1.

³Answer of Justin R. Jenne ¶ I(1) at 1.

(2) admitted that, on or about August 27, 2012, he entered and allowed the entry of Led Zeppelin as entry number 542, class number 110A, at the 74th Annual Tennessee Walking Horse National Celebration Show in Shelbyville, Tennessee, for the purpose of showing or exhibiting Led Zeppelin;⁴ and (3) denied that Led Zeppelin was sore when he entered and allowed the entry of Led Zeppelin as entry number 542, class number 110A, at the 74th Annual Tennessee Walking Horse National Celebration Show in Shelbyville, Tennessee.⁵

Administrative Law Judge Janice K. Bullard [ALJ] conducted a hearing on March 11, 2014, by an audio-visual connection between Washington, DC, and Nashville, Tennessee.⁶ Thomas Neil Bolick, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Administrator. Mr. Jenne appeared pro se.⁷ Three witnesses testified and seven exhibits were identified and received into evidence at the March 11, 2014, hearing.⁸

⁴Answer of Justin R. Jenne ¶ II(1) at 1.

⁵Answer of Justin R. Jenne ¶ II(1) at 1.

⁶References to the transcript of the March 11, 2014, hearing are designated as “Tr.” and the page number.

⁷Prior to the March 11, 2014, hearing, Dudley W. Taylor, Taylor & Knight, Knoxville, Tennessee, represented Mr. Jenne, but, in a conference call with the ALJ and Mr. Bolick on March 6, 2014, Mr. Taylor withdrew his representation of Mr. Jenne.

⁸The exhibits received in evidence are designated as “CX” and the exhibit number.

On July 29, 2014, the ALJ issued a Decision and Order: (1) concluding Mr. Jenne entered Led Zeppelin as entry number 542, class number 110A, at the 74th Annual Tennessee Walking Horse National Celebration Show in Shelbyville, Tennessee, for the purpose of showing or exhibiting Led Zeppelin while Led Zeppelin was sore, in willful violation of the Horse Protection Act; (2) assessing Mr. Jenne a \$2,200 civil penalty; and (3) disqualifying Mr. Jenne for one year from showing, exhibiting, or entering any horse and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction.⁹

On September 8, 2014, Mr. Jenne filed a timely appeal of the ALJ's Decision and Order,¹⁰ along with a petition to reopen the hearing to take additional evidence.¹¹ On October 30, 2014, the Administrator filed Complainant's response to Mr. Jenne's Appeal Petition and Mr. Jenne's Petition to Reopen Hearing.¹²

On November 7, 2014, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision. Based upon a careful review of the record that was before the ALJ, I agree with the ALJ's Decision and Order.

DECISION

Pertinent Statutory Provisions

⁹ALJ's Decision and Order at 10-12.

¹⁰Appeal to Judicial Officer [Appeal Petition].

¹¹Petition to Re-Open Hearing for Submission of Additional Evidence [Petition to Reopen Hearing].

¹²Complainant's Response to Respondent's Appeal to Judicial Officer and Petition to Re-open Hearing for Submission of Additional Evidence [Complainant's Response to Appeal Petition].

Congress enacted the Horse Protection Act to end the cruel practice of deliberately soring Tennessee Walking Horses for the purpose of altering their natural gait and improving their performance at horse shows. When a horse's front feet are deliberately made sore, usually by using chains or chemicals, "the intense pain which the horse suffers when placing his forefeet on the ground causes him to lift them up quickly and thrust them forward, reproducing exactly" the distinctive high-stepping gait that spectators and show judges look for in a champion Tennessee Walking Horse. (H.R. Rep. No. 91-1597, at 2 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4870, 4871.)

Congress' reasons for prohibiting soring were twofold. First, soring inflicts great pain on the animals. Second, trainers who sore horses gain an unfair competitive advantage over trainers who rely on skill and patience. In 1976, Congress significantly strengthened the Horse Protection Act by amending it to make clear that intent to sore the horse is not a necessary element of a violation.¹³ See *Thornton v. U.S. Dep't of Agric.*, 715 F.2d 1508, 1511-12 (11th Cir. 1983).

The Horse Protection Act defines the term "sore," as follows:

§ 1821. Definitions

As used in this chapter unless the context otherwise requires:

....

(3) The term "sore" when used to describe a horse means that—

(A) an irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse,

(B) any burn, cut, or laceration has been inflicted by a person on

¹³The Horse Protection Act also provides for criminal penalties for "knowingly" violating the Horse Protection Act (15 U.S.C. § 1825(a)). This provision of the Horse Protection Act is not at issue in this proceeding.

any limb of a horse,

(C) any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse, or

(D) any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse,

and, as a result of such application, infliction, injection, use, or practice,

such horse suffers, or can reasonably be expected to suffer, physical pain

or distress, inflammation, or lameness when walking, trotting, or otherwise

moving

15 U.S.C. § 1821(3). The Horse Protection Act creates a presumption that a horse with abnormal, bilateral sensitivity is sore, as follows:

§ 1825. Violations and penalties

. . . .

(d) Production of witnesses and books, papers, and documents; depositions; fees; presumptions; jurisdiction

. . . .

(5) In any civil or criminal action to enforce this chapter or any regulation under this chapter a horse shall be presumed to be a horse which is sore if it manifests abnormal sensitivity or inflammation in both of its forelimbs or both of its hindlimbs.

15 U.S.C. § 1825(d)(5). The Horse Protection Act prohibits certain conduct, including:

§ 1824. Unlawful acts

The following conduct is prohibited:

. . . .

(2) The (A) showing or exhibiting, in any horse show or horse exhibition, of any horse which is sore, (B) entering for the purpose of showing or exhibiting in any horse show or horse exhibition, any horse which is sore, (C) selling, auctioning, or offering for sale, in any horse sale or auction, any horse which is sore, and (D) allowing any activity described in clause (A), (B), or (C) respecting a horse which is sore by the owner of such horse.

15 U.S.C. § 1824(2). Violators of the Horse Protection Act are subject to civil and criminal

sanctions. Civil sanctions include both civil penalties (15 U.S.C. § 1825(b)(1)) and disqualification for a specified period from “showing or exhibiting any horse, judging or managing any horse show, horse exhibition, or horse sale or auction” (15 U.S.C. § 1825(c)). The maximum civil penalty for each violation is \$2,200 (15 U.S.C. § 1825(b)(1)).¹⁴ In making the determination concerning the amount of the monetary penalty, the Secretary of Agriculture must “take into account all factors relevant to such determination, including the nature, circumstances, extent, and gravity of the prohibited conduct and, with respect to the person found to have engaged in such conduct, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.” (15 U.S.C. § 1825(b)(1).)

As to disqualification, the Horse Protection Act further provides, as follows:

§ 1825. Violations and penalties

....
(c) Disqualification of offenders; orders; civil penalties applicable; enforcement procedures

In addition to any . . . civil penalty authorized under this section, any person . . . who paid a civil penalty assessed under subsection (b) of this section or is subject to a final order under such subsection assessing a civil penalty for any violation of any provision of this chapter or any regulation issued under this chapter may be disqualified by order of the Secretary . . . from showing or exhibiting any horse, judging or managing any horse show, horse exhibition, or horse sale or auction for a period of not less than one year for the first violation

¹⁴Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), the Secretary of Agriculture, by regulation, is authorized to adjust the civil monetary penalty that may be assessed under 15 U.S.C. § 1825(b)(1) for each violation of 15 U.S.C. § 1824. The maximum civil penalty for violations of the Horse Protection Act occurring after May 7, 2010, is \$2,200 (7 C.F.R. § 3.91(b)(2)(viii)).

and not less than five years for any subsequent violation.

15 U.S.C. § 1825(c).

**Mr. Jenne Failed to Rebut the Statutory Presumption
That Led Zeppelin Was Sore**

On August 27, 2012, Mr. Jenne, who, at all times material to this proceeding, was the owner and trainer of Led Zeppelin, presented Led Zeppelin, as entry number 542, class number 110A, to a Designated Qualified Person [DQP]¹⁵ for inspection at the 74th Annual Tennessee Walking Horse National Celebration Show in Shelbyville, Tennessee (Answer of Justin R. Jenne ¶¶ I(1) at 1, II(1) at 1, III(3) at 2; Tr. at 131; CX 1B, CX 4B-CX 5B). The DQP did not find that Led Zeppelin was sore (Answer of Justin R. Jenne ¶ III(3) at 2; Tr. at 153-54, 159-60); however, Bart Sutherland, DVM, a United States Department of Agriculture veterinary medical officer, conducted a pre-show examination of Led Zeppelin after the DQP's examination and found that Led Zeppelin reacted consistently to blanching his thumb along the horse's feet (Tr. at 120-21).¹⁶

¹⁵A DQP is a person meeting the requirements of 9 C.F.R. § 11.7 who has been licensed as a DQP by a horse industry organization or association having a DQP program certified by the United States Department of Agriculture and who may be appointed and delegated authority by the management of any horse show, horse exhibition, horse sale, or horse auction under 15 U.S.C. § 1823 to detect or diagnose horses which are sore or to otherwise inspect horses and any records pertaining to such horses for the purpose of enforcing the Horse Protection Act. See 9 C.F.R. § 11.1.

¹⁶Routinely, DQP examinations are found to be less probative than United States Department of Agriculture examinations and the Judicial Officer has accorded less credence to DQP examinations than to United States Department of Agriculture examinations. C.M. Oppenheimer (Decision as to C.M. Oppenheimer), 54 Agric. 221, 269 (U.S.D.A. 1995); Sparkman (Decision as to Sparkman and McCook), 50 Agric. Dec. 602, 610 (U.S.D.A. 1991); Edwards, 49 Agric. Dec. 188, 200 (U.S.D.A. 1990), *aff'd per*

Dr. Sutherland described his inspection of Led Zeppelin, as follows:

I noticed no gait deficits as the horse was being led to demonstrate its gait. I approached the horse and began my inspection. I began by inspecting the left pastern. I palpated the posterior pastern area and the horse made repeated and consistent pain withdrawal responses. The withdrawal locations on the pastern were the lateral posterior portions of the pastern. These reactions were both consistent in location and repeatable.

Next I examined the right pastern. I palpated the anterior pastern area and the horse made repeated and consistent pain withdrawal responses. The withdrawal locations on the pastern were the lateral to medial anterior portions of the pastern. These reactions were both consistent and repeatable.

I found the horse to be bilaterally sore.

CX 2B. Dr. Sutherland stated that, in his professional opinion, Led Zeppelin was sore using chemical and/or action devices (CX 2B).

Pursuant to 15 U.S.C. § 1825(d), Led Zeppelin must be presumed to be sore based upon Dr. Sutherland's finding that Led Zeppelin manifested abnormal sensitivity in both of his

curiam, 943 F.2d 1318 (11th Cir. 1991) (unpublished), *cert. denied*, 503 U.S. 937 (1992).

Mr. Jenne did not call the DQP who examined Led Zeppelin as a witness or introduce any report of the results of the DQP's examination of Led Zeppelin. On the other hand, the Administrator called Dr. Sutherland as a witness. Dr. Sutherland testified extensively regarding his examination of Led Zeppelin and his finding that Led Zeppelin was bilaterally sore (Tr. at 113-44, 156-82). In addition, the Administrator introduced Dr. Sutherland's affidavit which Dr. Sutherland prepared shortly after his examination of Led Zeppelin and which describes Dr. Sutherland's examination of Led Zeppelin and the basis for his finding that Led Zeppelin was bilaterally sore (CX 2B). Further still, the Administrator introduced Dr. Sutherland's written report documenting his finding that Led Zeppelin was bilaterally sore (CX 1B). A review of the record does not lead me to believe that I should deviate from my usual practice of according less credence to the DQP examination and findings than to the United States Department of Agriculture examination and findings in this proceeding. I accord Dr. Sutherland's examination of and findings regarding Led Zeppelin more credence than the DQP's examination of and findings regarding Led Zeppelin.

forelimbs. Once the statutory presumption is established, the burden of persuasion shifts to the respondent to provide proof that the horse was not sore or that soreness was due to natural causes.

Mr. Jenne contends on appeal that the results of an examination of Led Zeppelin by his veterinarian, Richard Wilhelm, DVM, on August 27, 2012, rebuts the statutory presumption that Led Zeppelin was sore (Appeal Pet. ¶ 4 at 2). Mr. Jenne did not call Dr. Wilhelm as a witness, but testified that Dr. Wilhelm recorded the results of his examination of Led Zeppelin.

Mr. Jenne did not have a copy of Dr. Wilhelm's report of his examination of Led Zeppelin to offer into evidence at the March 11, 2014, hearing, but, instead, stated he would have Mr. Taylor, Mr. Jenne's former attorney, forward Dr. Wilhelm's report to the ALJ (Tr. at 150-51). The ALJ informed Mr. Jenne that she would hold the record open until May 16, 2014, to receive Dr. Wilhelm's report of his examination of Led Zeppelin (Tr. at 186-87); however, Mr. Jenne failed to provide the ALJ with Dr. Wilhelm's written report prior to the close of the record on May 16, 2014.¹⁷

On September 8, 2014, Mr. Jenne filed a Petition to Reopen Hearing, attached to which is an Affidavit of Richard Wilhelm, dated September 5, 2014, in which Dr. Wilhelm states he examined Led Zeppelin on August 27, 2012, he found no evidence that Led Zeppelin was sore, and a true and correct copy of the report of his August 27, 2012, examination of Led Zeppelin is attached to the affidavit. On April 10, 2015, I denied Mr. Jenne's Petition to Reopen Hearing as evidence of Dr. Wilhelm's August 27, 2012, examination of Led Zeppelin could have been

¹⁷ALJ's Decision and Order at 2 n.3.

adduced at the March 11, 2014, hearing or at anytime prior to the close of the record on May 16, 2014. Moreover, I note Dr. Wilhelm's written report of his August 27, 2012, examination of Led Zeppelin is not attached to the Affidavit of Richard Wilhelm, as stated in that affidavit. Therefore, I reject Mr. Jenne's contention that he presented sufficient evidence to rebut the presumption that Led Zeppelin was sore, and I find Mr. Jenne entered and allowed the entry of Led Zeppelin as entry number 542, class number 110A, on August 27, 2012, at the 74th Annual Tennessee Walking Horse National Celebration Show in Shelbyville, Tennessee, for the purpose of showing or exhibiting Led Zeppelin while Led Zeppelin was sore, in violation of 15 U.S.C. §§ 1824(2)(B) and 1824(2)(D).

Sanction

The Horse Protection Act (15 U.S.C. § 1825(b)(1)) authorizes the assessment of a civil penalty of not more than \$2,000 for each violation of 15 U.S.C. § 1824. However, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), the Secretary of Agriculture adjusted the civil monetary penalty that may be assessed under 15 U.S.C. § 1825(b)(1) for each violation of 15 U.S.C. § 1824 by increasing the maximum civil penalty from \$2,000 to \$2,200 (7 C.F.R. § 3.91(b)(2)(viii)). The Horse Protection Act also authorizes the disqualification of any person assessed a civil penalty from showing or exhibiting any horse or judging or managing any horse show, horse exhibition, horse sale, or horse auction. The Horse Protection Act provides minimum periods of disqualification of not less than one year for a first violation of the Horse Protection Act and not less than five years for any subsequent violation of the Horse Protection Act (15 U.S.C. § 1825(c)).

The United States Department of Agriculture's sanction policy is set forth in *S.S. Farms*

Linn County, Inc. (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), *aff'd*, 991 F.2d 803 (9th Cir. 1993) (not to be cited as precedent under the 9th Circuit Rule 36-3), as follows:

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

The Horse Protection Act (15 U.S.C. § 1825(b)(1)) provides, in determining the amount of the civil penalty, the Secretary of Agriculture shall take into account all factors relevant to such determination, including the nature, circumstances, extent, and gravity of the prohibited conduct and, with respect to the person found to have engaged in such conduct, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

The Administrator recommends that I assess Mr. Jenne a \$2,200 civil penalty (Complainant's Response to Appeal Pet. at 4-9). The extent and gravity of Mr. Jenne's violations of the Horse Protection Act are great. A United States Department of Agriculture veterinary medical officer found Led Zeppelin sore. Dr. Sutherland found palpation of Led Zeppelin's front forelimbs elicited consistent, repeatable pain responses.

Mr. Jenne contends on appeal that he is unable to pay the \$2,200 civil penalty assessed by the ALJ, but admits that he failed to present any argument or evidence in mitigation of the civil penalty at the March 11, 2014, hearing (Appeal Pet. ¶ 5 at 2).

I agree with Mr. Jenne that he failed to present any evidence of his inability to pay a civil penalty at the March 11, 2014, hearing. I have consistently held that “the burden is on the respondent to come forward with some evidence indicating an inability to pay the civil penalty or inability to continue to conduct business if the civil penalty is assessed.”¹⁸ On September 8, 2014, Mr. Jenne filed a Petition to Reopen Hearing, attached to which is an Affidavit of Justin R. Jenne, dated September 5, 2014, and supporting attachments, in which Mr. Jenne asserts he is unable to pay a civil penalty. On April 10, 2015, I denied Mr. Jenne’s Petition to Reopen Hearing as evidence of Mr. Jenne’s inability to pay a civil penalty could have been adduced at the March 11, 2014, hearing. As Mr. Jenne failed to present evidence indicating an inability to pay the civil penalty, I reject Mr. Jenne’s contention that he is not able to pay a \$2,200 civil penalty.

In most Horse Protection Act cases, the maximum civil penalty per violation has been warranted.¹⁹ Based on the factors that are required to be considered when determining the amount of the civil penalty to be assessed, I do not find a maximum penalty in this case to be

¹⁸Clark (Decision as to Coleman), 59 Agric. Dec. 701, 710 (U.S.D.A. 2000); Stepp, 57 Agric. Dec. 297, 318 (U.S.D.A. 1998), *aff’d*, 188 F.3d 508 (Table), 1999 WL 646138 (6th Cir. 1999) (not to be cited as precedent under 6th Circuit Rule 206), *printed in* 58 Agric. Dec. 820 (U.S.D.A. 1999); C.M. Oppenheimer (Decision as to C.M. Oppenheimer), 54 Agric. Dec. 221, 321 (U.S.D.A. 1995); Armstrong, 53 Agric. Dec. 1301, 1324 (U.S.D.A. 1994), *aff’d per curiam*, 113 F.3d 1249 (11th Cir. 1997) (unpublished); Burks, 53 Agric. Dec. 322, 346 (U.S.D.A. 1994).

¹⁹Back, 69 Agric. Dec. 448, 463 (U.S.D.A. 2010), *aff’d*, 445 F. App’x 826 (6th Cir. 2011); Beltz (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. 1487, 1504 (U.S.D.A. 2005), *aff’d sub nom. Zahnd v. Sec’y of Agric.*, 479 F.3d 767 (11th Cir. 2007); Turner, 64 Agric. Dec. 1456, 1475 (U.S.D.A. 2005), *aff’d*, 217 F. App’x 462 (6th Cir. 2007); McConnell, 64 Agric. Dec. 436, 490 (U.S.D.A. 2005), *aff’d*, 198 F. App’x 417 (6th Cir. 2006); McCloy, Jr., 61 Agric. Dec. 173, 208 (U.S.D.A. 2002), *aff’d*, 351 F.3d 447 (10th Cir. 2003), *cert. denied*, 543 U.S. 810 (2004).

inappropriate. The Administrator, an administrative official charged with responsibility for achieving the congressional purpose of the Horse Protection Act, requests a maximum civil penalty; therefore, I assess Mr. Jenne the \$2,200 civil penalty recommended by the Administrator.

The Horse Protection Act (15 U.S.C. § 1825(c)) provides that any person assessed a civil penalty under 15 U.S.C. § 1825(b) may be disqualified from showing or exhibiting any horse and from judging or managing any horse show, horse exhibition, horse sale, or horse auction for a period of not less than one year for the first violation of the Horse Protection Act and for a period of not less than five years for any subsequent violation of the Horse Protection Act.

The purpose of the Horse Protection Act is to prevent the cruel practice of soring horses. Congress amended the Horse Protection Act in 1976 to enhance the Secretary of Agriculture's ability to end soring of horses. Among the most notable devices to accomplish the purpose of the Horse Protection Act is the authorization for disqualification which Congress specifically added to provide a strong deterrent to violations of the Horse Protection Act by those persons who have the economic means to pay civil penalties as a cost of doing business.²⁰

The Horse Protection Act (15 U.S.C. § 1825(c)) specifically provides that disqualification is in addition to any civil penalty assessed under 15 U.S.C. § 1825(b). While 15 U.S.C. § 1825(b)(1) requires that the Secretary of Agriculture consider specified factors when determining the amount of the civil penalty to be assessed for a violation of the Horse Protection Act, the Horse Protection Act contains no such requirement with respect to the imposition of a

²⁰See H.R. Rep. No. 94-1174, at 11 (1976), *reprinted in* 1976 U.S.C.C.A.N. 1696, 1705-06.

disqualification period.

While disqualification is discretionary with the Secretary of Agriculture, the imposition of a disqualification period, in addition to the assessment of a civil penalty, has been recommended by administrative officials charged with responsibility for achieving the congressional purpose of the Horse Protection Act and I have held that disqualification, in addition to the assessment of a civil penalty, is appropriate in almost every Horse Protection Act case, including those cases in which a respondent is found to have violated the Horse Protection Act for the first time.²¹

Congress has provided the United States Department of Agriculture with the tools needed to eliminate the practice of soring Tennessee Walking Horses, but those tools must be used to be effective. In order to achieve the congressional purpose of the Horse Protection Act, I generally find necessary the imposition of at least the minimum disqualification provisions of the 1976 amendments on any person who violates 15 U.S.C. § 1824.

Circumstances in a particular case might justify a departure from this policy. Since, under the 1976 amendments, intent and knowledge are not elements of a violation, few circumstances warrant an exception from this policy, but the facts and circumstances of each case must be examined to determine whether an exception to this policy is warranted. An

²¹Back, 69 Agric. Dec. 448, 464 (U.S.D.A. 2010), *aff'd*, 445 F. App'x 826 (6th Cir. 2011); Beltz (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. 1487, 1505-06 (U.S.D.A. 2005), *aff'd sub nom. Zahnd v. Sec'y of Agric.*, 479 F.3d 767 (11th Cir. 2007); Turner, 64 Agric. Dec. 1456, 1476 (U.S.D.A. 2005), *aff'd*, 217 F. App'x 462 (6th Cir. 2007); McConnell, 64 Agric. Dec. 436, 492 (U.S.D.A. 2005), *aff'd*, 198 F. App'x 417 (6th Cir. 2006); McCloy, Jr., 61 Agric. Dec. 173, 209 (U.S.D.A. 2002), *aff'd*, 351 F.3d 447 (10th Cir. 2003), *cert. denied*, 543 U.S. 810 (2004).

examination of the record does not lead me to believe that an exception from the usual practice of imposing the minimum disqualification period for Mr. Jenne's violations of the Horse Protection Act, in addition to the assessment of a civil penalty, is warranted.

Findings of Fact

1. Mr. Jenne is a resident of Tennessee.
2. At all times material to this proceeding, Mr. Jenne was the trainer of Led Zeppelin.
3. At all times material to this proceeding, Mr. Jenne was the owner of Led Zeppelin.
4. On August 27, 2012, Mr. Jenne entered Led Zeppelin as entry number 542, class number 110A, in the 74th Annual Tennessee Walking Horse National Celebration Show in Shelbyville, Tennessee, for the purpose of showing or exhibiting Led Zeppelin.
5. On August 27, 2012, Mr. Jenne allowed the entry of Led Zeppelin as entry number 542, class number 110A, in the 74th Annual Tennessee Walking Horse National Celebration Show in Shelbyville, Tennessee, for the purpose of showing or exhibiting Led Zeppelin.
6. Dr. Sutherland, a United States Department of Agriculture veterinary medical officer, inspected horses participating in the 74th Annual Tennessee Walking Horse National Celebration Show in Shelbyville, Tennessee, in August and September 2012, for compliance with the Horse Protection Act.
7. On August 27, 2012, Mr. Jenne's employee, Roberto Ricardo, presented Led Zeppelin for inspection at the 74th Annual Tennessee Walking Horse National Celebration Show in Shelbyville, Tennessee.
8. On August 27, 2012, Dr. Sutherland conducted a pre-show examination of Led Zeppelin.
9. Based upon his August 27, 2012, examination of Led Zeppelin, Dr. Sutherland concluded that Led Zeppelin was "sore" within the meaning of the Horse Protection Act.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. On the basis of the evidence in the record, I conclude Led Zeppelin was “sore,” as that term is defined in the Horse Protection Act, when entered on August 27, 2012, at the 74th Annual Tennessee Walking Horse National Celebration Show in Shelbyville, Tennessee.
3. On August 27, 2012, Mr. Jenne entered Led Zeppelin as entry number 542, class number 110A, at the 74th Annual Tennessee Walking Horse National Celebration Show in Shelbyville, Tennessee, for the purpose of showing or exhibiting Led Zeppelin while Led Zeppelin was sore, in violation of 15 U.S.C. § 1824(2)(B).
4. On August 27, 2012, Mr. Jenne allowed the entry of Led Zeppelin as entry number 542, class number 110A, at the 74th Annual Tennessee Walking Horse National Celebration Show in Shelbyville, Tennessee, for the purpose of showing or exhibiting Led Zeppelin while Led Zeppelin was sore, in violation of 15 U.S.C. § 1824(2)(D).

For the foregoing reasons, the following Order is issued.

ORDER

1. Mr. Jenne 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:

Mr. Thomas Bolick
United States Department of Agriculture
Office of the General Counsel
Marketing, Regulatory, and Food Safety Division
1400 Independence Avenue, SW
Room 2343-South Building
Washington, DC 20250-1417

Mr. Jenne’s payment of the civil penalty shall be forwarded to, and received by,

Mr. Bolick within six months after service of this Order on Mr. Jenne. Mr. Jenne shall indicate on the certified check or money order that payment is in reference to HPA Docket No. 13-0308.

2. Mr. Jenne is disqualified for a period of one 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 Mr. Jenne shall become effective on the 60th day after service of this Order on Mr. Jenne.

RIGHT TO JUDICIAL REVIEW

Mr. Jenne has the right to obtain review of the Order in this Decision and Order in the court of appeals of the United States for the circuit in which Mr. Jenne resides or has his place of business or in the United States Court of Appeals for the District of Columbia Circuit. Mr. Jenne must file a notice of appeal in such court within 30 days from the date of the Order in this Decision and Order and must simultaneously send a copy of such notice by certified mail to the Secretary of Agriculture.²² The date of the Order in this Decision and Order is April 13, 2015.

Done at Washington, DC

April 13, 2015

William G. Jenson
Judicial Officer

²²15 U.S.C. § 1825(b)(2), (c).