

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) A.Q. Docket No. 12-0092
)
John (Jack) Hennen,)
)
Respondent) **Decision and Order**

PROCEDURAL HISTORY

Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on November 30, 2011. The Administrator instituted the proceeding under sections 901-905 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. § 1901 note) [hereinafter the Commercial Transportation of Equine for Slaughter Act]; the regulations issued under the Commercial Transportation of Equine for Slaughter Act (9 C.F.R. pt. 88) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Administrator alleges that: (1) on or about February 8, 2007, John (Jack) Hennen commercially transported 33 horses to Cavel International, in DeKalb, Illinois [hereinafter Cavel], for slaughter without a properly completed owner-shipper certificate, in violation of 9 C.F.R. § 88.4(a)(3)(v)-(vi) (Compl. at 1-2 ¶ II(a)); (2) on or about February 8, 2007, Mr. Hennen commercially transported 33 horses to Cavel for slaughter and, during the transportation, unloaded and re-loaded the horses, but did not prepare a second owner-shipper certificate, in violation of 9 C.F.R. § 88.4(b)(4) (Compl. at 2 ¶ II(b)); (3) on or about February 8, 2007, Mr. Hennen commercially transported 33 horses to Cavel for slaughter, but at least seven horses in the shipment were missing United States Department of Agriculture backtags when they were unloaded at Cavel, in violation of 9 C.F.R. § 88.4(a)(2) (Compl. at 2 ¶ II(c)); (4) on or about February 8, 2007, Mr. Hennen commercially transported 33 horses to Cavel for slaughter and failed to obtain veterinary assistance for a downer horse from an equine veterinarian as soon as possible, in violation of 9 C.F.R. § 88.4(b)(2), and failed to handle the downer horse as expeditiously and carefully as possible in a manner that did not cause the horse unnecessary discomfort, stress, physical harm, or trauma, in violation of 9 C.F.R. § 88.4(c) (Compl. at 2 ¶ II(d)); (5) on or about March 6, 2007, Mr. Hennen commercially transported 26 horses to Cavel for slaughter and failed to maintain the animal cargo space of the conveyance used for the commercial transportation in a manner that at all times protected the health and well-being of the horses being transported, in violation of

9 C.F.R. § 88.3(a)(1), and failed to handle an injured horse as expeditiously and carefully as possible in a manner that did not cause the horse unnecessary discomfort, stress, physical harm, or trauma, in violation of 9 C.F.R. § 88.4(c) (Compl. at 2-3 ¶ III); and (6) on or about March 8, 2007, Mr. Hennen commercially transported 37 horses to Cavel for slaughter without a properly completed owner-shipper certificate, in violation of 9 C.F.R. § 88.4(a)(3)(vi) (Compl. at 3 ¶ IV). On December 27, 2011, Mr. Hennen filed an Answer in which he denied the material allegations of the Complaint.

On August 28, 2012, Administrative Law Judge Janice K. Bullard [hereinafter the ALJ] conducted a hearing, wherein testimony was taken by appearance in Washington, DC, by audio-visual connection with Minneapolis, Minnesota, and by telephone. Thomas N. Bolick, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Administrator. Mr. Hennen appeared pro se. At the hearing, the Administrator called four witnesses, and Mr. Hennen testified on his own behalf.¹ The Administrator introduced 22 exhibits identified as CX 1-CX 20 and CX 32-CX 33 which were received into evidence (Tr. at 9-11). Mr. Hennen did not introduce any exhibits at the hearing.

¹References to the transcript of the August 28, 2012, hearing are indicated as “Tr.” and the page number.

The Administrator withdrew the allegation in paragraph II(c) of the Complaint that on or about February 8, 2007, Mr. Hennen violated 9 C.F.R. § 88.4(a)(2) and the allegation in paragraph IV of the Complaint that on or about March 8, 2007, Mr. Hennen violated 9 C.F.R. § 88.4(a)(3)(vi) (Tr. at 9-10).

On December 6, 2012, the Administrator filed Complainant's Proposed Findings of Fact, Conclusions, and Brief and Order in Support Thereof, and on January 22, 2013, Mr. Hennen submitted correspondence which the ALJ identified as RX-1 and admitted to the record.

On February 21, 2013, the ALJ filed a Decision and Order in which she:

(1) concluded that on February 8, 2007, Mr. Hennen commercially transported 32 horses to Cavel for slaughter without a properly completed owner-shipper certificate, in violation of 9 C.F.R. § 88.4(a)(3)(v)-(vi); (2) concluded that Mr. Hennen failed to instruct the driver of the February 8, 2007, shipment of horses to prepare an owner-shipper certificate, when the horses were unloaded and reloaded on February 8, 2007, in St. Paul, Minnesota, in violation of 9 C.F.R. § 88.4(b)(4); (3) concluded that Mr. Hennen failed to obtain veterinary assistance for downer horses during the February 8, 2007, trip to Cavel, in violation of 9 C.F.R. § 88.4(b); (4) concluded that on or about February 8, 2007, Mr. Hennen failed to handle horses as expeditiously and carefully as possible in a manner that did not cause the horses unnecessary discomfort, stress, physical harm, or trauma, in violation of 9 C.F.R. § 88.4(c); (5) concluded

that on or about March 6, 2007, Mr. Hennen failed to maintain the animal cargo space of the conveyance used for the commercial transportation of horses to slaughter in a manner that at all times protected the health and well-being of the horses, in violation of 9 C.F.R.

§ 88.3(a)(1); (6) concluded that on or about March 6, 2007, Mr. Hennen failed to handle horses as expeditiously and carefully as possible in a manner that did not cause the horses unnecessary discomfort, stress, physical harm, or trauma, in violation of 9 C.F.R. § 88.4(c); (7) concluded that the imposition of sanctions is warranted; and (8) assessed Mr. Hennen a \$17,375 civil penalty.²

On March 20, 2013, Mr. Hennen appealed the ALJ's Decision and Order to the Judicial Officer. On April 3, 2013, the Administrator filed Complainant's Response to Respondent's Appeal, and on April 8, 2013, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

DECISION

Except for a reference to Mr. Hennen's e-mail address, Mr. Hennen's appeal petition states in its entirety:

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²ALJ's Decision and Order at 27-29.

I wish to appeal this decision on the grounds that were previously contended. I did not hire the truck. I did not pay the truck. I had nothing at all to do with the transportation of these animals once they left my farm were in the care and controll [sic] of the comercial [sic] trucking firm. Not me.

Jack Hennen

Mr. Hennen's appeal petition references the defenses he previously raised in this proceeding, all of which the ALJ considered and rejected. I have carefully reviewed the ALJ's Decision and Order particularly as it relates to the ALJ's rejection of Mr. Hennen's assertion that he was not responsible for the violations of the Commercial Transportation of Equine for Slaughter Act and the Regulations alleged in paragraphs II(a), II(b), II(d), and III of the Complaint. I affirm the ALJ's Decision and Order, and, based upon my review of the record, I find no change or modification of the ALJ's Decision and Order is warranted. The Rules of Practice provide that, under these circumstances, I may adopt an administrative law judge's decision and order as the final order in a proceeding, as follows:

§ 1.145 Appeal to Judicial Officer.

....

(i) *Decision of the judicial officer on 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.

For the foregoing reasons, the following Order is issued.

ORDER

The ALJ's February 21, 2013, Decision and Order is adopted as the final order in this proceeding.

Done at Washington, DC

June 7, 2013

William G. Jenson
Judicial Officer