UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	HPA Docket No. 13-0053
	)	
Randall Jones,	)	
	)	
Respondent	)	**Decision and Order**

PROCEDURAL HISTORY

Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on October 23, 2012. The Administrator instituted the proceeding under the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) [Horse Protection Act]; the regulations issued under the Horse Protection Act (9 C.F.R. pt. 11); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [Rules of Practice].

The Administrator alleges, on May 29, 2010, Randall Jones, in violation of 15 U.S.C. § 1824(2)(A) and § 1824(2)(D), exhibited and allowed the exhibition of a horse known as "Jammin The Blues" as entry number 336, in class number 47, at the 40th Annual Spring Fun Show, in Shelbyville, Tennessee, while the horse was sore by virtue of being scarred, as defined in 9 C.F.R. § 11.3.[1]

[1] Compl. ¶ IIB at 2.

On October 25, 2012, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture [Hearing Clerk], by certified mail, sent Mr. Jones the Complaint, the Rules of Practice, and the Hearing Clerk's service letter, dated October 25, 2012. The United States Postal Service returned the October 25, 2012, mailing to the Hearing Clerk marked "unclaimed."[2] On December 18, 2012, in accordance with 7 C.F.R. § 1.147(c)(1), the Hearing Clerk, by ordinary mail, served Mr. Jones with the Complaint, the Rules of Practice, and the Hearing Clerk's October 25, 2012, service letter.[3] Mr. Jones failed to file an answer to the Complaint within 20 days after the Hearing Clerk served Mr. Jones with the Complaint, as required by 7 C.F.R. § 1.136(a).

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[2]United States Postal Service Product & Tracking Information for article number 7005 1160 0002 7836 2208.

[3]Memorandum to the File, dated December 18, 2012, signed by Carla M. Andrews for L. Eugene Whitfield, Hearing Clerk.

On March 7, 2014, Administrative Law Judge Janice K. Bullard [ALJ] filed an Order to Show Cause Why Default Should Not Be Entered [Order to Show Cause] in which the ALJ provided Mr. Jones and the Administrator 20 days to show cause why an order of default should not be entered in favor of the Administrator due to Mr. Jones' failure to file an answer. On March 10, 2014, the Hearing Clerk sent the ALJ's Order to Show Cause to Mr. Jones.[4] On March 10, 2014, in response to the ALJ's Order to Show Cause, the Administrator filed a Motion for Adoption of Proposed Decision and Order [Motion for Default Decision] and a Proposed Decision and Order Upon Admission of Facts by Reason of Default [Proposed Default Decision]. On March 13, 2014, the Hearing Clerk served Mr. Jones with the Administrator's Motion for Default Decision, the Administrator's Proposed Default Decision, and the Hearing Clerk's service letter dated March 10, 2014.[5] On March 27, 2014, Mr. Jones filed a letter in response to the Administrator's Motion for Default Decision, which response states in its entirety, as follows:

03-14-2014

Janice K. Bullard
Administrative Law Judge

Re: Docket No. 13-0053

Dear Hearing Clerk:

I have not received any info concerning this issue and have no knowledge of any deliveries to my address. Please forward any info concerning issue at hand and I

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[4]Office of Administrative Law Judges, Hearing Clerk's Office, Document Distribution Form stating the Hearing Clerk sent the ALJ's Order to Show Cause to Mr. Jones by regular mail, on March 10, 2014.

[5]United States Postal Service Domestic Return Receipt for article number 7003 1010 0001 7367 4398.

will respond in a timely manner.

/s/
Randall Jones

Letter from Randall Jones to the Hearing Clerk, dated March 14, 2014.

On April 9, 2014, in accordance with 7 C.F.R. § 1.139, the ALJ filed a Decision Without Hearing by Entry of Default Against Respondent [Default Decision]: (1) concluding Mr. Jones violated the Horse Protection Act, as alleged in the Complaint; (2) assessing Mr. Jones a $4,400 civil penalty; and (3) disqualifying Mr. Jones for four years 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.[6]

On May 29, 2015, Mr. Jones appealed the ALJ's Default Decision to the Judicial Officer. The Administrator failed to file a timely response to Mr. Jones' appeal petition, and on June 23, 2015, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision. Based upon a careful consideration of the record, I adopt, with minor changes, the ALJ's Default Decision as the final agency decision.

DECISION

Statement of the Case

[6] ALJ's Default Decision at 4-5.

Mr. Jones failed to file an answer to the Complaint within the time prescribed in 7 C.F.R. § 1.136(a). The Rules of Practice (7 C.F.R. § 1.136(c)) provide the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, pursuant to 7 C.F.R. § 1.139, the failure to file a timely answer constitutes a waiver of hearing. Accordingly, the material allegations of the Complaint that relate to Mr. Jones are adopted as findings of fact.[7] I issue this Decision and Order pursuant to 7 C.F.R. § 1.139.

Findings of Fact

1. Mr. Jones is an individual whose mailing address is in the State of North Carolina.

2. On December 18, 2012, the Hearing Clerk served Mr. Jones at the address acknowledged by Mr. Jones to be his address with the Complaint alleging Mr. Jones violated the Horse Protection Act.[8]

3. Mr. Jones did not file an answer in response to the Complaint.

4. On March 7, 2014, the ALJ filed an Order to Show Cause why an order of default should not be entered in favor of the Administrator due to Mr. Jones' failure to file an answer.

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[7]The Complaint contains allegations related to Jeanette Baucom, as well as allegations that relate to Mr. Jones. The allegations that relate solely to Ms. Baucom are not relevant to this Decision and Order.

[8]See note 3.

5. On March 10, 2014, the Hearing Clerk served Mr. Jones at the address acknowledged by Mr. Jones to be his address with the ALJ's Order to Show Cause.[9]

6. Mr. Jones did not file a response to the ALJ's Order to Show Cause.

7. On March 10, 2014, the Administrator filed a Motion for Default Decision and a Proposed Default Decision.

8. On March 13, 2014, the Hearing Clerk served Mr. Jones at the address acknowledged by Mr. Jones to be his address with the Administrator's Motion for Default Decision and the Administrator's Proposed Default Decision.[10]

9. On March 27, 2014, Mr. Jones filed a letter in response to the Administrator's Motion for Default Decision. Mr. Jones' March 27, 2014, filing does not address the Administrator's Motion for Default Decision or the allegations in the Complaint.

10. At all times material to this proceeding, Mr. Jones was the owner of a horse known as "Jammin The Blues."

11. On May 29, 2010, Mr. Jones exhibited and allowed the exhibition of a horse known as "Jammin The Blues" as entry number 336, in class number 47, at the 40th Annual Spring Fun Show, in Shelbyville, Tennessee, while the horse was sore by virtue of being scarred.

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[9] See note 4.

[10] See note 5.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.

2. By reason of the findings of fact, Mr. Jones has violated the Horse Protection Act (15 U.S.C. § 1824(2)(A), (2)(D)).

3. The Order in this Decision and Order is authorized by the Horse Protection Act and justified under the circumstances described in this Decision and Order.

Mr. Jones' Appeal Petition

Mr. Jones raises two issues in his letter, dated May 19, 2015, which serves as his appeal petition. First, Mr. Jones contends he did not receive any notification of this proceeding until February 2014 and he diligently responded to all filings of which he was aware (Appeal Pet. ¶¶ 1-4).

The Rules of Practice provide for service of a complaint on a party other than the Secretary of Agriculture, as follows:

> **§ 1.147 Filing; service; extensions of time; and computation of time.**
>
> . . . .
> (c) *Service on party other than the Secretary*. (1) Any complaint or other document initially served on a person to make that person a party respondent in a proceeding . . . shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the date of delivery by certified or registered mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, *Provided that*, if any such document or paper is sent by certified or registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address.

7 C.F.R. § 1.147(c)(1). The record establishes that, on October 25, 2012, the Hearing Clerk

mailed the Complaint to Mr. Jones by certified mail.[11] The United States Postal Service returned the Complaint to the Hearing Clerk marked "unclaimed."[12] On December 18, 2012, the Hearing Clerk remailed the Complaint to Mr. Jones by ordinary mail using the same address as the Hearing Clerk used when mailing the Complaint by certified mail.[13] Therefore, I conclude that, on December 18, 2012, the Hearing Clerk served Mr. Jones with the Complaint in accordance with 7 C.F.R. § 1.147(c)(1).

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[11] See note 3.

[12] See note 2.

[13] See note 3.

To meet the requirement of due process of law, it is only necessary that notice of a proceeding be sent in a manner "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).[14] As held in *Stateside Machinery Co., Ltd. v. Alperin*, 591 F.2d 234, 241-42 (3d Cir. 1979):

> Whether a method of service of process accords an intended recipient with due process depends on "whether or not the form of . . . service [used] is *reasonably calculated* to give him actual notice of the proceedings and an opportunity to be heard." *Milliken*, 311 U.S. at 463, 61 S. Ct. at 343 (emphasis added); *see Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315, 70 S. Ct. 652, 94 L.Ed. 865 (1950). As long as a method of service is reasonably certain to notify a person, the fact that the person nevertheless fails to receive process does not invalidate the service on due process grounds. In this case, Alperin attempted to deliver process by registered mail to defendant's last known address. That procedure is a highly reliable means of providing notice of pending legal proceedings to an adverse party. That Speigel nevertheless failed to receive service is irrelevant as a matter of constitutional law. [Omission and emphasis in original.]

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[14]See also Trimble v. United States Dep't of Agric., 87 F. App'x 456, 2003 WL 23095662 (6th Cir. 2003) (holding that sending a complaint to the respondent's last known business address by certified mail is a constitutionally adequate method of notice and lack of actual receipt of the certified mailing does not negate the constitutional adequacy of the attempt to accomplish actual notice); DePiero v. City of Macedonia, 180 F.3d 770, 788-89 (6th Cir. 1999) (holding service of a summons at the plaintiff's last known address is sufficient where the plaintiff is not incarcerated and where the city had no information about the plaintiff's whereabouts that would give the city reason to suspect the plaintiff would not actually receive the notice mailed to his last known address), *cert. denied*, 528 U.S. 1105 (2000); Weigner v. City of New York, 852 F.2d 646, 649-51 (2d Cir. 1988) (stating the reasonableness and hence constitutional validity of any chosen method of providing notice may be defended on the ground that it is in itself reasonably certain to inform those affected; the state's obligation to use notice "reasonably certain to inform those affected" does not mean that all risk of non-receipt must be eliminated), *cert. denied*, 488 U.S. 1005 (1989); NLRB v. Clark, 468 F.2d 459, 463-65 (5th Cir. 1972) (stating due process does not require receipt of actual notice in every case).

Similarly, in *Fancher v. Fancher*, 8 Ohio App. 3d 79, 455 N.E.2d 1344, 1346 (Ohio Ct. App. 1982), the court held:

> It is immaterial that the certified mail receipt was signed by the defendant's brother, and that his brother was not specifically authorized to do so. The envelope was addressed to the defendant's address and was there received; this is sufficient to comport with the requirements of due process that methods of service be reasonably calculated to reach interested parties. *See Mullane v. Central Hanover Bank & Trust Co.* (1950), 339 U.S. 306, 314, 70 S. Ct. 652, 94 L.Ed. 865. [Footnote omitted.]

Even if I were to find that Mr. Jones did not receive actual notice of this proceeding until February 2014, as he asserts, I would conclude Mr. Jones was properly served with the Complaint on December 18, 2012.

The Rules of Practice state the time within which an answer must be filed and the consequences of failing to file a timely answer, as follows:

§ 1.136 Answer.

> (a) *Filing and service*. Within 20 days after the service of the complaint . . . , the respondent shall file with the Hearing Clerk an answer signed by the respondent or the attorney of record in the proceeding.
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> . . . .
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> (c) *Default*. Failure to file an answer within the time provided under paragraph (a) of this section shall be deemed, for purposes of the proceeding, an admission of the allegations in the Complaint, and failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation, unless the parties have agreed to a consent decision pursuant to § 1.138.

§ 1.139 Procedure upon failure to file an answer or admission of facts.

> The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.

§ 1.141 Procedure for hearing.

> (a) *Request for hearing*. Any party may request a hearing on the facts by including such request in the complaint or answer, or by a separate request, in writing, filed with the Hearing Clerk within the time in which an answer may be filed . . . . Failure to request a hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing.

7 C.F.R. §§ 1.136(a), (c), .139, .141(a).

Moreover, the Complaint informs Mr. Jones of the consequences of failing to file a timely answer, as follows:

> The respondents shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.).

> Failure to file an answer shall constitute an admission of all the material allegations of this complaint.

Compl. at 2.

Mr. Jones' answer was due no later than 20 days after the Hearing Clerk served Mr. Jones with the Complaint,[15] namely, January 7, 2013. Mr. Jones filed his first document in this proceeding on March 27, 2014, 1 year 2 months 20 days after Mr. Jones' answer was due. Moreover, Mr. Jones' March 27, 2014, filing does not respond to the allegations in the Complaint. Therefore, in accordance with the Rules of Practice, Mr. Jones is deemed, for purposes of this proceeding, to have admitted the allegations in the Complaint and waived opportunity for hearing.

Second, Mr. Jones asserts he has no legal training and may not clearly understand the procedures applicable to this proceeding (Appeal Pet. ¶ 5).

On December 18, 2012, the Hearing Clerk served Mr. Jones with the Rules of Practice which set forth the procedures applicable to this proceeding.[16] Mr. Jones fails to identify any provision in the Rules of Practice which he does not understand. I find Mr. Jones' possible lack of understanding of the procedures applicable to this proceeding and Mr. Jones' lack of legal training are not excuses for Mr. Jones' failure to file a timely answer or bases for setting aside the ALJ's Default Decision.[17]

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[15]7 C.F.R. § 1.136(a).

[16]See note 3.

[17]Arends, 70 Agric. Dec. 839, 857 (U.S.D.A. 2011) (stating pro se status is not relevant to whether a party filed a timely answer or whether a motion for default decision should be granted); Vigne (Order Denying Pet. to Reconsider), 68 Agric. Dec. 362, 364 (U.S.D.A. 2009)

(stating the Rules of Practice do not distinguish between persons who appear pro se and persons represented by counsel; Ms. Vigne's status as a pro se litigant is not a basis on which to set aside her waiver of the right to an oral hearing); Octagon Sequence of Eight, Inc. (Order Denying Pet. for Rehearing as to Lancelot Kollman Ramos), 66 Agric. Dec. 1283, 1286 (U.S.D.A. 2007) (holding the respondent's status as a pro se litigant is not a basis on which to grant his petition for rehearing or set aside the default decision); Knapp, 64 Agric. Dec. 253, 299 (U.S.D.A. 2005) (stating the respondent's decision to proceed pro se does not operate as an excuse for the respondent's failure to file a timely answer to the complaint); Noell, 58 Agric. Dec. 130, 146 (U.S.D.A. 1999) (stating lack of representation by counsel is not a basis for setting aside the default decision), *appeal dismissed sub nom.* The Chimp Farm, Inc. v. U.S. Dep't of Agric., No. 00-10608-A (11th Cir. July 20, 2000); Byard (Decision as to Dean Byard), 56 Agric. Dec. 1543, 1559 (U.S.D.A. 1997) (stating the respondent's decision to proceed pro se does not operate as an excuse for the respondent's failure to file an answer).

For the foregoing reasons, the following Order is issued.

ORDER

1. Mr. Jones is assessed a $4,400 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:

Buren W. Kidd
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. Jones' civil penalty payment shall be forwarded to, and received by, Mr. Kidd within 60 days after service of this Order on Mr. Jones. Mr. Jones shall indicate on the certified check or money order that the payment is in reference to HPA Docket No. 13-0053.

2. Mr. Jones is disqualified for four uninterrupted years from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, corporation, partnership, or other device, and from judging, managing, 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: (1) transporting, or arranging for the transportation of, horses to or from equine events; (2) personally giving instructions to exhibitors; (3) being present in the warm-up or inspection areas or in any area where spectators are not allowed; and (4) financing the participation of others in equine events. The disqualification of Mr. Jones shall become effective on the 60th day after service of this Order on Mr. Jones.

RIGHT TO JUDICIAL REVIEW

Mr. Jones has the right to obtain judicial review of this Order in the court of appeals of the United States for the circuit in which he resides or has his place of business or in the United States Court of Appeals for the District of Columbia Circuit. Mr. Jones must file a notice of appeal in such court within 30 days from the date of this Order and must simultaneously send a copy of any notice of appeal by certified mail to the Secretary of Agriculture.[18] The date of this Order is June 29, 2015.

Done at Washington, DC

June 29, 2015

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William G. Jenson
Judicial Officer

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[18] 15 U.S.C. § 1825(b)(2), (c).