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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	HPA Docket No. 17-0056
)	HPA Docket No. 17-0057
Jerry Beaty, an individual;)	HPA Docket No. 17-0058
Mike Dukes, an individual; and)	Decision and Order
Bill Garland, an individual,)	As to Mike Dukes

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 December 28, 2016. 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 pursuant to the Horse Protection Act (9 C.F.R. pt. 11) [Regulations]; 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: (1) on or about August 31, 2016, Mike Dukes entered a horse known as Line of Cash, while Line of Cash was sore, for showing in class 136 in a horse show in Shelbyville, Tennessee, in violation of 15 U.S.C. § 1824(2)(B); and (2) on August 31, 2016, Mr. Dukes entered Line of Cash, while Line of Cash was bearing a prohibited substance, for

showing in class 136 in a horse show in Shelbyville, Tennessee, in violation of 15 U.S.C. § 1824(7).¹

On March 21, 2017, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture [Hearing Clerk], by certified mail, served Mr. Dukes with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter, dated January 6, 2017.² Mr. Dukes failed to file an answer within 20 days after the Hearing Clerk served Mr. Dukes with the Complaint, as required by 7 C.F.R. § 1.136(a).

On April 19, 2017, the Administrator filed a Motion for Adoption of Decision and Order as to Mike Dukes by Reason of Default [Motion for Default Decision] and a Proposed Decision and Order as to Mike Dukes by Reason of Default [Proposed Default Decision]. On April 24, 2017, Mr. Dukes filed a response to the Administrator's Motion for Default Decision and Proposed Default Decision.

On May 30, 2017, in accordance with 7 C.F.R. § 1.139, Chief Administrative Law Judge Bobbie J. McCartney [Chief ALJ] filed a Default Decision and Order as to Mike Dukes [Default Decision]: (1) concluding Mr. Dukes violated the Horse Protection Act, as alleged in the Complaint; (2) assessing Mr. Dukes a \$4,400 civil penalty; and (3) disqualifying Mr. Dukes for two years from showing or exhibiting any horse in any horse show, horse exhibition, horse sale, or horse auction and from judging or managing any horse show, horse exhibition, horse sale, or horse auction.³

¹ Compl. ¶¶ 16-17 at the fourth unnumbered page.

² United States Postal Service Domestic Return Receipt for article number [REDACTED] 3446.

³ Chief ALJ's Default Decision at 6.

On June 13, 2017, Mr. Dukes filed a letter [Appeal Petition] in which he appealed the Chief ALJ's Default Decision to the Judicial Officer. On July 5, 2017, the Administrator filed Complainant's Response to Petition for Appeal Filed by Mike Dukes. On July 7, 2017, 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 affirm the Chief ALJ's Default Decision.

DECISION

Statement of the Case

Mr. Dukes 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 that the failure to file an answer within the time prescribed in 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 as they relate to Mr. Dukes are adopted as findings of fact. I issue this Decision and Order as to Mike Dukes pursuant to 7 C.F.R. § 1.139.

Findings of Fact

1. Mr. Dukes is an individual whose business mailing address is [REDACTED] [REDACTED] At all times material to this proceeding, Mr. Dukes was a "person" and an "exhibitor," as those terms are defined in the Regulations.

2. The nature, circumstances, and extent of the prohibited conduct are that Mr. Dukes entered a horse (Line of Cash) in a horse show while the horse was "sore" (as that term is defined in the Horse Protection Act and the Regulations) and bearing a prohibited substance. The extent and gravity of Mr. Dukes' prohibited conduct is great. Congress enacted the Horse Protection Act to end the practice of making gaited horses, including Tennessee Walking Horses, "sore" for the

purpose of altering their natural gait to achieve a higher-stepping gait and gaining an unfair competitive advantage during performances at horse shows.⁴

3. Mr. Dukes is culpable for the violations set forth in the Conclusions of Law. Exhibitors of horses are absolute guarantors that those horses will not be sore within the meaning of the Horse Protection Act when they are entered or shown.⁵

4. On November 27, 2012, the Animal and Plant Health Inspection Service issued an Official Warning (TN 130086) to Mr. Dukes with respect to his having entered a horse (I Be Stoned) in a horse show on August 2, 2012, which horse the Animal and Plant Health Inspection Service found was sore.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. On or about August 31, 2016, Mr. Dukes entered a horse (Line of Cash), while Line of Cash was sore, for showing in class 136 in a horse show in Shelbyville, Tennessee, in violation of 15 U.S.C. § 1824(2)(B).

⁴ “When the front limbs of a horse have been deliberately made ‘sore,’ usually by using chains or chemicals, ‘the intense pain which the animal suffered when placing his forefeet on the ground would cause him to lift them up quickly and thrust them forward, producing exactly [the distinctive high-stepping gait of a champion Walker].’ H.R. Rep. No. 91-1597, 91st Cong., 2d Sess. 2 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4870, 4871. Congress’ reasons for prohibiting this practice were twofold. First, it inflicted unnecessary pain on the animals; and second, those who made their animal ‘sore’ gained an unfair competitive advantage over those who relied on skill and patience. In 1976, Congress significantly strengthened the Act by amending it to make clear that intent to make a horse ‘sore’ is not a necessary element of a violation. *See Thorton v. U.S.D.A.*, 715 F.2d 1508, 1511-12 (11th Cir. 1983).” Edwards, 55 Agric. Dec. 892, 950 (U.S.D.A. 1996), *dismissed*, No. 96-9472 (11th Cir. Aug. 15, 1997).

⁵ Carl Edwards & Sons Stables, 56 Agric. Dec. 529, 588-89 (U.S.D.A. 1997), *aff’d per curiam*, 138 F.3d 958 (11th Cir. 1998) (Table), *printed in* 57 Agric. Dec. 296 (1998); Edwards, 55 Agric. Dec. 892, 979 (U.S.D.A. 1996), *dismissed*, No. 96-9472 (11th Cir. Aug. 15, 1997).

3. On or about August 31, 2016, Mr. Dukes entered a horse (Line of Cash), while Line of Cash was bearing a prohibited substance, for showing in class 136 in a horse show in Shelbyville, Tennessee, in violation of 15 U.S.C. § 1824(7).

MR. DUKES' APPEAL PETITION

Mr. Dukes raises three issues in his Appeal Petition. First, Mr. Dukes asserts his answer to the Complaint is dated April 6, 2017, and he mailed his answer on April 7, 2017.

The Hearing Clerk, by certified mail, served Mr. Dukes with the Complaint on March 21, 2017.⁶ The Rules of Practice require that an answer must be filed with the Hearing Clerk within twenty days after service of the complaint.⁷ Therefore, Mr. Dukes was required to file his answer with the Hearing Clerk no later than April 10, 2017, and record does not contain an answer filed by Mr. Dukes with the Hearing Clerk on or before April 10, 2017.

The Rules of Practice provide that a document is deemed to be filed at the time the document reaches the Hearing Clerk.⁸ Thus, Mr. Dukes' dating his answer April 6, 2017, is not relevant to the timeliness of Mr. Dukes' answer.⁹ Moreover, the mailbox rule is not applicable to

⁶ See note 2.

⁷ 7 C.F.R. § 1.136(a).

⁸ 7 C.F.R. § 1.147(g).

⁹ Stanley, 65 Agric. Dec. 822, 832 (U.S.D.A. 2006) (stating the respondent's dating his answer February 2, 2006, does not establish the date the respondent filed his answer with the Hearing Clerk); Noell, 58 Agric. Dec. 130, 140 n.2 (U.S.D.A. 1999) (stating the date typed on a pleading by a party filing the pleading does not establish the date the pleading is filed with the Hearing Clerk; instead, the date a pleading is filed with the Hearing Clerk is the date the document reaches the Hearing Clerk), *appeal dismissed sub nom. The Chimp Farm, Inc. v. U.S. Dep't of Agric.*, No. 00-10608-A (11th Cir. July 20, 2000).

proceedings conducted under the Rules of Practice.¹⁰ Thus, the date Mr. Dukes mailed his answer to the Hearing Clerk also is not relevant to the timeliness of his answer.

Second, Mr. Dukes asserts his wife was in the hospital “during this time” and he “was not at home most of the time.” I infer Mr. Dukes contends his wife’s hospitalization and his resulting absence from his home interfered with Mr. Dukes’ ability to file a timely answer to the Complaint.

While Mr. Dukes’ wife’s hospitalization is unfortunate, hospitalization of a spouse is not a basis for setting aside an administrative law judge’s default decision, even if a spouse’s hospitalization causes the respondent long absences from the respondent’s home.¹¹ Therefore, I reject Mr. Dukes’ contention that his wife’s hospitalization constitutes a sufficient basis for setting aside the Chief ALJ’s Default Decision.

¹⁰ *Agri-Sales, Inc.*, 2014 WL 4311071 *5 (U.S.D.A. 2014) (stating the Judicial Officer has consistently held that the mailbox rule is not applicable to proceedings conducted under the Rules of Practice), *appeal dismissed*, No. 14-3180 (7th Cir. Oct. 14, 2014); *Amarillo Wildlife Refuge, Inc.*, 68 Agric. Dec. 77, 86 (U.S.D.A. 2009) (stating the argument that the mailbox rule applies to proceedings conducted under the Rules of Practice has been consistently rejected by the Judicial Officer); *Knapp*, 64 Agric. Dec. 253, 302 (U.S.D.A. 2005) (stating the mailbox rule does not apply in proceedings conducted under the Rules of Practice); *Reinhart*, 59 Agric. Dec. 721, 742 (U.S.D.A. 2000) (rejecting the respondent’s contention that the Secretary of Agriculture must adopt the mailbox rule to determine the effective date of filing in proceedings conducted under the Rules of Practice), *aff’d per curiam*, 39 F. App’x 954 (6th Cir. 2002), *cert. denied*, 538 U.S. 979 (2003); *Peterson*, 57 Agric. Dec. 1304, 1310 n.3 (stating the applicants’ act of mailing their appeal petition does not constitute filing with the Hearing Clerk).

¹¹ See *Arends*, 70 Agric. Dec. 839, 857 (U.S.D.A. 2011) (stating, generally, physical incapacity is not a basis for setting aside an administrative law judge’s default decision); *Williams* (Order Denying Pet. to Reconsider as to Deborah Ann Milette), 64 Agric. Dec. 1673, 1678 (U.S.D.A. 2005) (stating, generally, physical and mental incapacity are not bases for setting aside an administrative law judge’s default decision); *Aron*, 58 Agric. Dec. 451, 462 (U.S.D.A. 1999) (stating the respondent’s automobile accident and loss of memory are not bases for setting aside the administrative law judge’s default decision); *Noell*, 58 Agric. Dec. 130, 146 (U.S.D.A. 1999) (stating the respondent’s age, ill health, and hospitalization are not bases for setting aside the administrative law judge’s 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); *Everhart*, 56 Agric. Dec. 1400, 1417 (U.S.D.A. 1997) (holding the respondent’s disability forms no basis for setting aside the administrative law judge’s default decision).

Third, Mr. Dukes asserts his only involvement with the entry of Line of Cash was that he led Line of Cash “up to inspection.”

“Entering,” within the meaning of the Horse Protection Act, is a continuing process, not an event, and includes all activities required to be completed before a horse can actually be shown or exhibited. The process usually begins with the payment of the fee for entering a horse in a horse show or horse exhibition and includes the submission of a horse for pre-show inspection.¹² Therefore, I reject Mr. Dukes’ contention that he did not enter Line of Cash in the horse show in Shelbyville, Tennessee, as alleged in paragraphs 16 and 17 of the Complaint, because he only led Line of Cash “up to inspection.”

For the foregoing reasons, the following Order is issued.

¹² Stepp, 57 Agric. Dec. 297, 309 (U.S.D.A. 1998) (stating “entering,” within the meaning of the Horse Protection Act, is a process that begins with the payment of the entry fee and which includes pre-show examination by the Designated Qualified Person or Animal and Plant Health Inspection Service veterinarian), *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 (1999); Burks, 53 Agric. Dec. 322, 334 (U.S.D.A. 1994) (rejecting the respondent’s argument that the mere act of submitting a horse for pre-show inspection does not constitute “entering” as that term is used in the Horse Protection Act); Callaway, 52 Agric. Dec. 272, 293 (U.S.D.A. 1993) (stating entering a horse in a horse show is a continuing process, not an event, and includes all activities required to be completed before a horse can actually be shown or exhibited); Watlington, 52 Agric. Dec. 1172, 1183 (U.S.D.A. 1993) (stating that entry is a process that gives a status of being entered to a horse and it includes filling out forms and presenting the horse for inspection); Crowe, 52 Agric. Dec. 1132, 1146-47 (U.S.D.A. 1993) (stating that “entering,” within the meaning of the Horse Protection Act, is a process that begins with the payment of the entry fee); Elliott (Decision as to William Dwaine Elliott), 51 Agric. Dec. 334, 344 (U.S.D.A. 1992) (stating that “entering,” within the meaning of the Horse Protection Act, is a process that begins with the payment of the entry fee and which includes pre-show examination by Designated Qualified Persons or United States Department of Agriculture veterinarians), *aff’d*, 990 F.2d 140 (4th Cir.), *cert. denied*, 510 U.S. 867 (1993).

ORDER

1. Mr. Dukes is assessed a \$4,400 civil penalty. Mr. Dukes shall pay the civil penalty by certified check or money order, made payable to the "Treasurer of the United States" and send the certified check or money order to:

USDA, APHIS, MISCELLANEOUS
P.O. Box 979043
St. Louis, Missouri 63197-9000

Mr. Dukes' civil penalty payment shall be forwarded to, and received by USDA, APHIS, MISCELLANEOUS, within 60 days after service of this Order on Mr. Dukes. Mr. Dukes shall indicate on the certified check or money order that the payment is in reference to HPA Docket No. 17-0057.

2. Mr. Dukes is disqualified for two years from showing or exhibiting any horse in any horse show, horse exhibition, horse sale, or horse auction, directly or indirectly through any agent, employee, corporation, partnership, or other device, and from judging or managing any horse show, horse exhibition, horse sale, or horse auction. The disqualification of Mr. Dukes shall become effective on the 60th day after service of this Order on Mr. Dukes.

RIGHT TO SEEK JUDICIAL REVIEW

Mr. Dukes has the right to seek judicial review of the Order in this Decision and Order as to Mike Dukes in the court of appeals of the United States for the circuit in which Mr. Dukes resides or has his place of business or in the United States Court of Appeals for the District of Columbia Circuit. Mr. Dukes 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.¹³ The date of this Order is July 13, 2017.

Done at Washington, DC

July 13, 2017

A solid black rectangular box redacting the signature of William G. Jenson.

William G. Jenson
Judicial Officer

¹³ 15 U.S.C. § 1825(b)(2), (c).