

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	HPA Docket No. 17-0023
)	HPA Docket No. 17-0024
Trista Brown, an individual;)	HPA Docket No. 17-0025
Jordan Caudill, an individual; and)	
Kelly Peavy, an individual,)	
)	
Respondents)	Decision and Order as to Jordan Caudill

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 23, 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 that, on August 25, 2016, Jordan Caudill entered a horse known as That's My Luck, while That's My Luck was sore, for showing in class 29 in a horse show in Shelbyville, Tennessee, in violation of 15 U.S.C. § 1824(2)(B).¹

¹ Compl. ¶ 22 at the fourth and fifth unnumbered pages.

On March 28, 2017, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture [Hearing Clerk], by certified mail, served Mr. Caudill with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter, dated December 28, 2016.² Mr. Caudill failed to file an answer within 20 days after the Hearing Clerk served him with the Complaint, as required by 7 C.F.R. § 1.136(a). On April 24, 2017, Mr. Caudill filed a late-filed Answer to Complaint.

On May 9, 2017, Chief Administrative Law Judge Bobbie J. McCartney [Chief ALJ] filed an Order to Show Cause Why Default Should Not Be Entered. On May 25, 2017, the Administrator filed Complainant's Response to Order to Show Cause stating that a default decision and order should be entered as to Mr. Caudill in light of Mr. Caudill's failure to file a timely answer to the Complaint. On May 25, 2017, the Administrator also filed a Motion for Adoption of Decision and Order as to Respondent Jordan Caudill by Reason of Default [Motion for Default Decision] and a Proposed Decision and Order as to Respondent Jordan Caudill by Reason of Default [Proposed Default Decision]. On May 25, 2017, Mr. Caudill filed Respondent Response to Show Cause Order and Motion to Dismiss for Failure to State a Claim.

On June 20, 2017, in accordance with 7 C.F.R. § 1.139, the Chief ALJ filed a Default Decision and Order Denying Motion to Dismiss and Request to Accept Late-Filed Answer [Default Decision] in which the Chief ALJ: (1) denied Mr. Caudill's request to accept Mr. Caudill's late-filed Answer to Complaint; (2) denied Mr. Caudill's Motion to Dismiss; (3) concluded Mr. Caudill violated the Horse Protection Act, as alleged in the Complaint; (4) assessed Mr. Caudill a \$500 civil penalty; and (5) disqualified Mr. Caudill for one year from

² United States Postal Service Domestic Return Receipt for article number [REDACTED] 5709.

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

On June 30, 2017, Mr. Caudill appealed the Chief ALJ's Default Decision to the Judicial Officer.⁴ On July 10, 2017, the Administrator filed a response to Mr. Caudill's Appeal Petition,⁵ and, on July 27, 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. Caudill 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 to the complaint 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. Caudill are adopted as findings of fact. I issue this Decision and Order as to Jordan Caudill pursuant to 7 C.F.R. § 1.139.

Findings of Fact

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

³ Chief ALJ's Default Decision at 6-7.

⁴ Appeal to Judicial Officer/and/or Motion to Reconsider to Vacate and Set Aside Judgment [Appeal Petition].

⁵ Complainant's Response to Petition for Appeal Filed by Jordan Caudill.

2. The nature and circumstances of Mr. Caudill's prohibited conduct are that Mr. Caudill entered a horse (That's My Luck) in a horse show while the horse was "sore," as that term is defined in the Horse Protection Act and the Regulations. The extent and gravity of Mr. Caudill's prohibited conduct are 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.⁶

3. Mr. Caudill is culpable for the violation of the Horse Protection Act 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.⁷

4. The Animal and Plant Health Inspection Service, United States Department of Agriculture [APHIS], has issued two warning letters to Mr. Caudill.

⁶ "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, reproducing 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 Thornton 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).

⁷ 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).

5. APHIS issued an Official Warning (KY 09091) to Mr. Caudill with respect to his having entered a horse (Designer Original) in a horse show on July 3, 2009, which horse APHIS found was sore.

6. On November 13, 2012, APHIS issued an Official Warning (TN 130046) to Mr. Caudill with respect to his having entered a horse (A Magic Jazz Man) in a horse show on August 23, 2012, which horse APHIS found was sore.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. On August 25, 2016, Mr. Caudill entered a horse (That's My Luck), while That's My Luck was sore, for showing in class 29 in a horse show in Shelbyville, Tennessee, in violation of 15 U.S.C. § 1824(2)(B).

Mr. Caudill's Appeal Petition

Mr. Caudill raises six issues in his Appeal Petition. First, Mr. Caudill contends the Chief ALJ's statement that, "other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely filed answer," is error (Appeal Pet. ¶ II at 2).

The Rules of Practice provide that 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 and that, upon admission by answer of all the material allegations of fact in the complaint, the complainant shall file a proposed decision and a motion for adoption of the proposed decision.⁸ The respondent may file objections to the complainant's proposed decision and motion for

⁸ 7 C.F.R. §§ 1.136(c), .139.

adoption of the proposed decision, and, if the administrative law judge finds that the respondent has filed meritorious objections, the “complainant’s [m]otion shall be denied with supporting reasons.”⁹ Thus, under the Rules of Practice, the consequences of an untimely filed answer may be avoided by the administrative law judge’s finding that the respondent has filed meritorious objections to the complainant’s proposed decision and motion for adoption of the proposed decision,¹⁰ as well as by the entry of a consent decision.¹¹

The Chief ALJ determined that Mr. Caudill failed to file meritorious objections to the Administrator’s Motion for Default Decision and Proposed Default Decision;¹² therefore, the Chief ALJ’s statement that, “other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely filed answer,” is harmless error.

Second, Mr. Caudill contends that the United States Department of Agriculture’s determination that That’s My Luck was “sore,” as that term is defined in the Horse Protection Act, on August 25, 2016, is the product of the United States Department of Agriculture’s “inherently flawed inspection process” (Appeal Pet. ¶ III at 3).

Mr. Caudill failed to file a timely answer to the Complaint, and, in accordance with the Rules of Practice, Mr. Caudill is deemed, for the purposes of this proceeding, to have admitted the allegations in the Complaint.¹³ Therefore, Mr. Caudill is deemed, for the purposes of this

⁹ 7 C.F.R. § 1.139.

¹⁰ See *Arbuckle Adventures, LLC*, ___ Agric. Dec. ___ (U.S.D.A. Feb. 9, 2017) (affirming the administrative law judge’s ruling denying the Administrator’s motion for default decision and remanding the proceeding to the administrative law judge for further proceedings in accordance with the Rules of Practice).

¹¹ 7 C.F.R. § 1.138.

¹² Chief ALJ’s Default Decision at 3-4.

¹³ 7 C.F.R. § 1.136(c).

proceeding, to have admitted that, on August 25, 2016, That's My Luck was sore. Mr. Caudill's challenge in his Appeal Petition to the determination that That's My Luck was sore comes far too late to be considered.

Third, Mr. Caudill contends that the Hearing Clerk's use of the word "may" in the following sentence in the Hearing Clerk's December 28, 2016 service letter, which accompanied the Complaint, was not clear and was prejudicial to Mr. Caudill: "Failure to file a timely answer or filing an answer which does not deny the allegations of the Complaint may constitute an admission of those allegations and waive your right to an oral hearing." (Appeal Pet. ¶ III at 3).

The record does not support Mr. Caudill's contention that the Hearing Clerk's December 28, 2016 service letter was unclear or that the alleged lack of clarity in the Hearing Clerk's letter caused Mr. Caudill to file a late-filed answer to the Complaint. The Rules of Practice, a copy of which accompanied the Hearing Clerk's December 28, 2016 service letter, state the time within which an answer must be filed and the consequences of failing to file a timely answer.¹⁴ Moreover, the Complaint states that an answer must be filed with the Hearing Clerk in accordance with the Rules of Practice and that failure to file a timely answer shall constitute an admission of all the material allegations of the Complaint.¹⁵

Fourth, Mr. Caudill asserts APHIS bombarded him with meaningless warning letters to desensitize him, to confuse him, and to cause him to ignore any future-filed complaint (Appeal Pet. ¶ III at 4).

¹⁴ 7 C.F.R. §§ 1.136(a), (c), .139.

¹⁵ Compl. at the fifth unnumbered page.

APHIS issued two warning letters to Mr. Caudill prior to the date the Administrator filed the Complaint. The record does not contain any support for Mr. Caudill's contention that APHIS issued these warning letters to desensitize Mr. Caudill, to confuse Mr. Caudill, and to cause Mr. Caudill to ignore the Complaint. A presumption of regularity supports the official acts of public officers, and, in the absence of clear evidence to the contrary, I must presume that APHIS officials sent the warning letters to Mr. Caudill for the purpose of warning Mr. Caudill that APHIS believes that he had violated the Horse Protection Act and not for the purpose of desensitizing him, confusing him, or causing him to ignore the Complaint.¹⁶

¹⁶ See *National Archives and Records Admin. v. Favish*, 541 U.S. 157, 174 (2004) (holding, absent clear evidence to the contrary, there is a presumption of legitimacy accorded to the government's official conduct); *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926) (stating a presumption of regularity supports the official acts of public officers, and, in the absence of clear evidence to the contrary, courts presume public officers have properly discharged their official duties); *Sunday Lake Iron Co. v. Wakefield TP*, 247 U.S. 350, 353 (1918) (stating the good faith of taxing officers and the validity of their actions are presumed; when assailed, the burden of proof is on the complaining party); *Lawson Milk Co. v. Freeman*, 358 F.2d 647, 649 (6th Cir. 1966) (stating, without a showing that the action of the Secretary of Agriculture was arbitrary, his action is presumed to be valid); *Donaldson v. United States*, 264 F.2d 804, 807 (6th Cir. 1959) (stating the presumption of regularity supports official acts of public officers and, in the absence of clear evidence to the contrary, courts presume public officers have properly discharged their duties); *Greenville Packing Co.*, 59 Agric. Dec. 194, 220-22 (U.S.D.A. 2000) (stating, in the absence of evidence to the contrary, Food Safety and Inspection Service inspectors are presumed to have properly issued process deficiency records), *aff'd in part and transferred in part*, No. 00-CV-1054 (N.D.N.Y. Sept. 4, 2001), *appeal withdrawn*, No. 01-6214 (2d Cir. Apr. 30, 2002); *Shepherd*, 57 Agric. Dec. 242, 280-82 (U.S.D.A. 1998) (stating, in the absence of clear evidence to the contrary, United States Department of Agriculture inspectors and investigators are presumed to have properly discharged their duty to document violations of the Animal Welfare Act); *Auvil Fruit Co.*, 56 Agric. Dec. 1045, 1079 (U.S.D.A. 1997) (stating without a showing that the official acts of the Secretary of Agriculture are arbitrary, his actions are presumed to be valid); *Mil-Key Farm, Inc.*, 54 Agric. Dec. 26, 55 (U.S.D.A. 1995) (stating, without a showing that the official acts of the Secretary of Agriculture are arbitrary, his actions are presumed to be valid); *King Meat Co.*, 40 Agric. Dec. 1468, 1494 (U.S.D.A. 1981) (stating there is a presumption of regularity with respect to the issuance of instructions as to grading methods and procedures by the Chief of the Meat Grading Branch, Food Safety and Quality Service, United States Department of Agriculture), *aff'd*, No. CV 81-6485 (C.D. Cal. Oct. 20, 1982), *remanded*, No. CV 81-6485 (C.D. Cal. Mar. 25, 1983) (to consider newly discovered evidence), *order on remand*, 42 Agric. Dec. 726 (U.S.D.A. 1983), *aff'd*, No. CV 81-6485 (C.D. Cal. Aug. 11, 1983) (original order of Oct. 20, 1982, reinstated

Fifth, Mr. Caudill contends the Chief ALJ's Default Decision should be set aside because the Federal Rules of Civil Procedure "would apply in this instance" and Mr. Caudill's failure to file a timely answer was due to excusable neglect (Appeal Pet. ¶ III at 4-5).

The Federal Rules of Civil Procedure govern procedure in the United States district courts¹⁷ and are not applicable to administrative proceedings conducted before the Secretary of Agriculture under the Horse Protection Act and the Rules of Practice.¹⁸ Unlike the Federal Rules of Civil Procedure, the Rules of Practice do not provide that a default decision may be set aside for excusable neglect.

Sixth, Mr. Caudill contends the Chief ALJ's Default Decision should be set aside because the Rules of Practice do not provide due process and have not been updated since 1977 (Appeal Pet. ¶¶ III-IV at 4-6).

nunc pro tunc), *aff'd*, 742 F.2d 1462 (9th Cir. 1984) (unpublished) (not to be cited as precedent under 9th Circuit Rule 21); Gold Bell-I&S Jersey Farms, Inc., 37 Agric. Dec. 1336, 1361 (U.S.D.A. 1978) (rejecting the respondent's theory that United States Department of Agriculture shell egg graders switched cases of eggs to discredit respondent, in view of the presumption of regularity supporting acts of public officials), *aff'd*, No. 78-3134 (D.N.J. May 25, 1979), *aff'd mem.*, 614 F.2d 770 (3d Cir. 1980).

¹⁷ Fed. R. Civ. P. 1.

¹⁸ Heartland Kennels, Inc., 61 Agric. Dec. 492, 535 (U.S.D.A. 2002); Mitchell, 60 Agric. Dec. 91, 123 (U.S.D.A. 2001), *aff'd*, 42 F. App'x 991 (9th Cir. 2002); Noell, 58 Agric. Dec. 130, 147 (U.S.D.A. 1999), *appeal dismissed sub nom. The Chimp Farm, Inc. v. U.S. Dep't of Agric.*, No. 00-10608-A (11th Cir. July 20, 2000).

The default provisions of the Rules of Practice have long been held to provide respondents due process.¹⁹ Moreover, contrary to Mr. Caudill's assertion, the Rules of Practice have been amended five times since 1977.²⁰

For the foregoing reasons, the following Order is issued.

ORDER

1. Mr. Caudill is assessed a \$500 civil penalty. Mr. Caudill 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. Caudill's civil penalty payment shall be forwarded to, and received by USDA, APHIS, MISCELLANEOUS, within 60 days after service of this Order on Mr. Caudill. Mr. Caudill shall indicate on the certified check or money order that the payment is in reference to HPA Docket No. 17-0024.

2. Mr. Caudill is disqualified for one year from showing or exhibiting any horse in any horse show, horse exhibition, horse sale, or horse auction, directly or indirectly through any

¹⁹ See *United States v. Hulings*, 484 F. Supp. 562, 567-68 (D. Kan. 1980) (concluding a hearing was not required under the Fifth Amendment to the Constitution of the United States in a proceeding in which the respondent was notified that failure to deny the allegations of the complaint would constitute an admission of those allegations under the Rules of Practice and the respondent failed to deny the allegations). See also *Father & Sons Lumber and Building Supplies, Inc. v. NLRB*, 931 F.2d 1093, 1096 (6th Cir. 1991) (stating due process generally does not entitle parties to an evidentiary hearing in a proceeding in which the National Labor Relations Board has properly determined that a default summary judgment is appropriate due to a party's failure to file a timely response); *Kirk v. INS*, 927 F.2d 1106, 1108 (9th Cir. 1991) (rejecting the contention that the administrative law judge erred by issuing a default judgment based on a party's failure to file a timely answer).

²⁰ See 53 Fed. Reg. 7177 (Mar. 7, 1988); 55 Fed. Reg. 30673 (July 27, 1990); 60 Fed. Reg. 8455 (Feb. 14, 1995); 61 Fed. Reg. 11503 (Mar. 21, 1996); 68 Fed. Reg. 6340 (Feb. 7, 2003).


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. Caudill shall become effective on the 60th day after service of this Order on Mr. Caudill.

RIGHT TO SEEK JUDICIAL REVIEW

Mr. Caudill has the right to seek judicial review of the Order in this Decision and Order as to Jordan Caudill in the court of appeals of the United States for the circuit in which Mr. Caudill resides or has his place of business or in the United States Court of Appeals for the District of Columbia Circuit. Mr. Caudill 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.²¹ The date of this Order is August 2, 2017.

Done at Washington, DC

August 2, 2017


William G. Jensen
Judicial Officer

²¹ 15 U.S.C. § 1825(b)(2), (c).