

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P.Q. Docket No. D-17-0215
	)	
David R. Moore, d/b/a	)	
Big Carp Tackle, LLC,	)	
	)	
Respondent	)	<b>Decision and Order</b>

**PROCEDURAL HISTORY**

Michael C. Gregoire, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on February 7, 2017. The Administrator instituted this proceeding under the Plant Protection Act, as amended and supplemented (7 U.S.C. §§ 7701-7786) [Plant Protection Act]; the Animal Health Protection Act, as amended and supplemented (7 U.S.C. §§ 8301-8321) [Animal Health Protection Act]; regulations issued under the Plant Protection Act (7 C.F.R. § 360.400); regulations issued under the Animal Health Protection Act (9 C.F.R. pts. 95 and 122); 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: (1) on or about February 17, 2012, David R. Moore imported into the United States from the United Kingdom regulated articles containing *Guizotia abyssinica* (niger seed), in violation of 7 C.F.R. § 360.400; and (2) on or about July 29, 2012, Mr. Moore imported into the United States from the United Kingdom fishing bait and aquaculture

products containing regulated articles, in violation of the permit to import the regulated articles issued pursuant to 9 C.F.R. § 95.4 and 9 C.F.R. pt. 122.<sup>1</sup>

On February 25, 2017, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture [Hearing Clerk], by certified mail, served Mr. Moore with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter.<sup>2</sup> On March 10, 2017, Mr. Moore filed with the Hearing Clerk a letter, which does not respond to the allegations in the Complaint, but which states Mr. Moore "would actually prefer to get a hearing so we can clarify it is what we do and get a final resolution from someone that can make a decision." On March 24, 2017, the Administrator filed a Motion for a Default Decision and Order and a Proposed Default Decision and Order requesting issuance of a default decision based upon Mr. Moore's purported failure to file a timely answer in response to the Complaint. On April 5, 2017, the Administrator filed a Notice of Withdrawal of Motion for a Default Decision and Order conceding that Mr. Moore's March 10, 2017 filing was a timely response to the Complaint.

On April 24, 2017, the Administrator filed a Second Motion for a Default Decision and Order and a Second Proposed Default Decision and Order requesting issuance of a default decision based upon Mr. Moore's failure to file an answer that denies, or otherwise responds to, the allegations of the Complaint. On April 27, 2017, the Hearing Clerk served Mr. Moore with the Administrator's Second Motion for a Default Decision and Order, the Administrator's Second Proposed Default Decision and Order, and the Hearing Clerk's service letter.<sup>3</sup> Mr. Moore failed to file any objections to the Administrator's Second Motion for a Default Decision and Order and

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<sup>1</sup> Compl. ¶ II at 2-3.

<sup>2</sup> United States Postal Service Domestic Return receipt for article number [REDACTED] 5211.

<sup>3</sup> Certificate of Service signed by Caroline Hill, Assistant Hearing Clerk.

Second Proposed Default Decision and Order, and, on June 19, 2017, Administrative Law Judge Jill S. Clifton [ALJ] issued a Ruling Denying in part and Granting in part APHIS's Second Motion for Default Decision [ALJ's June 19, 2017 Ruling] in which the ALJ treated the Administrator's Second Motion for a Default Decision and Order as a motion for a decision on the written record and ordered the Administrator and Mr. Moore to exchange and to file with the Hearing Clerk documents that would provide the ALJ a basis for a decision on the written record.<sup>4</sup>

On July 12, 2017, the Administrator appealed the ALJ's June 19, 2017 Ruling to the Judicial Officer.<sup>5</sup> On July 26, 2017, Mr. Moore filed a response to the Administrator's Appeal Petition, and on July 27, 2017, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

#### **The Administrator's Appeal Petition**

The Administrator contends the ALJ erroneously denied the Administrator's Second Motion for a Default Decision and Order (Appeal Pet. ¶ II at 5).

The ALJ captioned the ALJ's June 19, 2017 Ruling "Ruling Denying in part and Granting in part APHIS's Second Motion for Default Decision"; however, I find nothing in the ALJ's June 19, 2017 Ruling which grants any part of the Administrator's Second Motion for a Default Decision and Order. Instead, the ALJ states the Administrator's Second Motion for a Default Decision and Order "will be treated as a Motion for a Decision on the Written Record" and orders the Administrator and Mr. Moore to exchange and to file with the Hearing Clerk proposed exhibits, declarations, and affidavits in order to provide the ALJ a basis for a decision on the written record.<sup>6</sup>

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<sup>4</sup> ALJ's June 19, 2017 Ruling ¶¶ 4-6 at 2.

<sup>5</sup> Appeal of Ruling Denying in part and Granting in part APHIS' Second Motion for a Default Decision [Appeal Petition].

<sup>6</sup> ALJ's June 19, 2017 Ruling ¶¶ 4-6 at 2.

However, the Administrator's Second Motion for a Default Decision and Order does not request a decision on the written record. To the contrary, the Administrator states "[p]ursuant to [s]ection 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant respectfully requests that the attached Proposed Default Decision and Order be adopted."<sup>7</sup> The proposed decision which the Administrator attached to the Second Motion for a Default Decision and Order is a proposed default decision based upon Mr. Moore's failure to deny, or otherwise respond to, the allegations in the Complaint. Therefore, I find the ALJ erroneously treated the Administrator's Second Motion for a Default Decision and Order as a motion for a decision on the written record, and I find the ALJ's June 19, 2017 Ruling constitutes a denial of the Administrator's Second Motion for a Default Decision and Order.

The Rules of Practice provide, if a respondent fails to file with the Hearing Clerk meritorious objections to a motion for a default decision within twenty days after service of the motion for a default decision and proposed default decision, the administrative law judge shall issue a decision without further procedure or hearing, as follows:

**§ 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.

7 C.F.R. § 1.139. The Hearing Clerk served Mr. Moore with the Administrator's Second Motion

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<sup>7</sup> Second Mot. for a Default Decision and Order at 3.

for a Default Decision and Order and Second Proposed Default Decision and Order on April 27, 2017.<sup>8</sup> Mr. Moore failed to file any objections to the Administrator's Second Motion for a Default Decision and Order and Second Proposed Default Decision and Order within twenty days after the Hearing Clerk served Mr. Moore with the Second Motion for a Default Decision and Order and Second Proposed Default Decision and Order. Therefore, I reverse the ALJ's June 19, 2017 Ruling and adopt, with minor changes, the proposed findings of fact and proposed conclusions of law in the Administrator's Second Proposed Default Decision and Order.

### **The Administrator's Request for a Stay**

The Administrator requests a stay of the effectiveness of the ALJ's June 19, 2017 Ruling (Appeal Pet. ¶ III at 6). The Administrator's request for a stay is denied as the issuance of this Decision and Order renders moot the Administrator's request for a stay of the effectiveness of the ALJ's June 19, 2017 Ruling.

## **DECISION**

### **Decision Summary**

Mr. Moore's response to the Complaint does not deny, or otherwise respond to, the allegations in the Complaint. The Rules of Practice (7 C.F.R. § 1.136(c)) provide the failure to deny, or otherwise respond to, an allegation in a complaint shall be deemed, for purposes of the proceeding, an admission of that allegation. Further, pursuant to 7 C.F.R. § 1.139, the admission by the answer of all the material allegations of fact contained in a complaint, constitutes a waiver of hearing. Accordingly, the material allegations in the Complaint are adopted as findings of fact. I issue this Decision and Order pursuant to 7 C.F.R. § 1.139.

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<sup>8</sup> See note 3.

### Findings of Fact

1. Big Carp Tackle, LLC, is a limited liability corporation incorporated under the laws of the State of Oklahoma, with a principal place of business and business mailing address of 3820 SE Kentucky, Suite #6, Bartlesville, Oklahoma 74006.

2. At all times material to this proceeding, Big Carp Tackle, LLC, under the direction, management, and control of Mr. Moore, was:

- a. Engaged in the business of selling bait and tackle in a store and online;
- b. Engaged in the business of importing regulated articles into the United States containing materials from the United Kingdom subject to import permit requirements.

3. Mr. Moore is an individual with a business mailing address of [REDACTED]

4. At all times material to this proceeding, Mr. Moore was:

- a. The sole owner, president, and registered agent of Big Carp Tackle, LLC;
- b. Responsible for the direction, management, and control of Big Carp Tackle, LLC;
- c. Engaged in the business of importing regulated articles into the United States from the United Kingdom subject to regulatory restrictions.

5. At all times material to this proceeding, Mr. Moore held a “United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors #C107472 for fish bait containing ingredients of fish/shell fish origin material (May also contain vitamins and/or minerals derived from other animal origin tissue)” for imports from

Dynamite Baits Limited in the United Kingdom issued pursuant to 9 C.F.R. § 95.4 and 9 C.F.R. pt. 122.

6. On or about February 17, 2012, a shipment identified by entry number ARV [REDACTED] from the United Kingdom arrived at Koga Transport in Oklahoma City, Oklahoma, for Mr. Moore containing regulated articles from Dynamite Baits Limited and CC Moore, both corporations in the United Kingdom. In this shipment, Mr. Moore imported regulated articles from CC Moore containing *Guizotia abyssinica* (niger seed), in violation of 7 C.F.R. § 360.400.

7. On or about July 29, 2012, a shipment identified by entry number EAY [REDACTED] from the United Kingdom arrived in Houston, Texas Sea Port, for Mr. Moore containing regulated articles from Dynamite Baits Limited, a corporation located in the United Kingdom. Mr. Moore imported fishing bait and aquaculture products containing regulated articles from shipper Dynamite Baits Limited, in violation of the permit to import such regulated articles issued pursuant to 9 C.F.R. § 95.4 and 9 C.F.R. pt. 122.

#### **Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. By reason of the Findings of Fact, Mr. Moore has violated the Plant Protection Act (7 U.S.C. §§ 7701-7786) and the Animal Health Protection Act (7 U.S.C. §§ 8301-8321).

For the foregoing reasons, the following Order is issued.

#### **ORDER**

Mr. Moore is assessed a \$12,500 civil penalty. Mr. Moore 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:



United States Department of Agriculture, APHIS  
U.S. Bank  
P.O. Box 979043  
St. Louis, MO 63197-9000


Mr. Moore's civil penalty payment shall be forwarded to, and received by, the United States Department of Agriculture within 60 days after service of this Order on Mr. Moore. Mr. Moore shall state on the certified check or money order that payment is in reference to P.Q. Docket No. D-17-0215.

### **RIGHT TO JUDICIAL REVIEW**

The Order assessing Mr. Moore a civil penalty is a final order reviewable under 28 U.S.C. §§ 2341-2351.<sup>9</sup> Mr. Moore must seek judicial review within 60 days after entry of the Order.<sup>10</sup> The date of entry of the Order is August 14, 2017.

Done at Washington, DC

August 14, 2017

  
William G. Jensen  
Judicial Officer

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<sup>9</sup> 7 U.S.C. §§ 7734(b)(4), 8313(b)(4)(A).

<sup>10</sup> 28 U.S.C. § 2344.