

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	HPA Docket No. 17-0195
	)	HPA Docket No. 17-0196
Christopher Alexander, an individual;	)	HPA Docket No. 17-0197
Alias Family Investments, LLC,	)	HPA Docket No. 17-0198
a Mississippi limited liability company;	)	HPA Docket No. 17-0199
Margaret Anne Alias, an individual;	)	HPA Docket No. 17-0200
Kelsey Andrews, an individual;	)	HPA Docket No. 17-0201
Tammy Barclay, an individual;	)	HPA Docket No. 17-0202
Ray Beech, an individual;	)	HPA Docket No. 17-0203
Noel Botsch, an individual;	)	HPA Docket No. 17-0204
Lynsey Denney, an individual;	)	HPA Docket No. 17-0205
Mikki Eldridge, an individual;	)	HPA Docket No. 17-0206
Formac Stables, Inc., a Tennessee	)	HPA Docket No. 17-0207
corporation; Jeffrey Green, an individual;	)	HPA Docket No. 17-0208
William Ty Irby, an individual;	)	HPA Docket No. 17-0209
James Dale McConnell, an individual;	)	HPA Docket No. 17-0210
Joyce Meadows, an individual;	)	HPA Docket No. 17-0211
Joyce H. Myers, an individual;	)	
Libby Stephens, an individual; and	)	
Taylor Walters, an individual,	)	
	)	
Respondents	)	<b>Decision and Order as to Ray Beech</b>

**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 February 3, 2017. 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 or about September 3, 2016, Ray Beech allowed the entry of a horse he owned known as Our Commander in Chief, while Our Commander in Chief was sore, for showing in class 187 in a horse show in Shelbyville, Tennessee, in violation of 15 U.S.C. § 1824(2)(D).<sup>1</sup>

On February 16, 2017, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture [Hearing Clerk], by certified mail, served Mr. Beech with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter, dated February 8, 2017.<sup>2</sup> Mr. Beech failed to file an answer with the Hearing Clerk within twenty days after the Hearing Clerk served him with the Complaint, as required by 7 C.F.R. § 1.136(a). On March 9, 2017, Mr. Beech filed a late-filed Answer to Complaint [Answer].

On March 20, 2017, the Administrator filed a Motion for Adoption of Decision and Order as to Respondent Ray Beech by Reason of Default [Motion for Default Decision] and a Proposed Decision and Order as to Respondent Ray Beech by Reason of Default [Proposed Default Decision]. On March 30, 2017, Mr. Beech filed a response to the Administrator's Motion for Default Decision and the Administrator's Proposed Default Decision.

On May 9, 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 [Chief ALJ's Default Decision] in which the Chief ALJ concluded that Mr. Beech violated the Horse Protection Act as

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<sup>1</sup> Compl. ¶ 84 at 15.

<sup>2</sup> United States Postal Service Domestic Return Receipt for article number [REDACTED] 4641.

alleged in the Complaint and assessed Mr. Beech a \$100 civil penalty.<sup>3</sup>

On June 9, 2017, Mr. Beech appealed the Chief ALJ's Default Decision to the Judicial Officer.<sup>4</sup> On August 7, 2017, the Administrator filed a response to Mr. Beech's Appeal Petition,<sup>5</sup> and, on August 8, 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. Beech 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 a 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. Beech, are adopted as findings of fact. I issue this Decision and Order as to Ray Beech pursuant to 7 C.F.R. § 1.139.

### **Findings of Fact**

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

2. The nature and circumstances of Mr. Beech's prohibited conduct are that

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<sup>3</sup> Chief ALJ's Default Decision at 6.

<sup>4</sup> Respondent's Objection to Decision and Order [Appeal Petition].

<sup>5</sup> Complainant's Response to Pet. for Appeal Filed by Ray Beech.

Mr. Beech allowed the entry of a horse he owned (Our Commander in Chief) 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. Beech’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.<sup>6</sup>

3. Mr. Beech is culpable for the violation of the Horse Protection Act set forth in the Conclusions of Law. Owners 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.<sup>7</sup>

#### **Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. On or about September 3, 2016, Mr. Beech allowed the entry of a horse he owned (Our Commander in Chief), while Our Commander in Chief was sore, for showing in class 187 in a horse show in Shelbyville, Tennessee, in violation of 15 U.S.C. § 1824(2)(D).

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<sup>6</sup> “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).

<sup>7</sup> 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).

### Mr. Beech's Appeal Petition

Mr. Beech raises six issues in his Appeal Petition. First, Mr. Beech contends the Hearing Clerk's service of the Complaint was defective because the Hearing Clerk mailed the Complaint to 407 Turnberry Circle, Oxford, Mississippi, rather than to Mr. Beech's correct mailing address in Tennessee (Appeal Pet. at 1-2).

On February 8, 2017, the Hearing Clerk sent the Complaint to Mr. Beech by ordinary and certified mail to [REDACTED].<sup>8</sup> The Administrator asserts this address was derived from the address on the entry form used to register Mr. Beech's horse, Our Commander in Chief, to participate on September 3, 2016, in class 187, in a horse show in Shelbyville, Tennessee.<sup>9</sup> The United States Postal Service tracking information establishes that the United States Postal Service delivered the Complaint by certified mail to an individual at the [REDACTED] address on February 16, 2017,<sup>10</sup> and Mr. Beech concedes that he received the "letter" on February 16, 2017.<sup>11</sup>

The Rules of Practice provide that a complaint initially served on a person to make that person a party respondent in a proceeding shall be deemed to be received by the party respondent on the date of delivery by certified mail to the last known residence of the party respondent, if the party respondent is an individual.<sup>12</sup> Under the circumstances in this proceeding, I find 407 Turnberry Circle, Oxford, Mississippi, was Mr. Beech's last known residence and the Hearing

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<sup>8</sup> Certificate of Service signed by Caroline Hill, Assistant Hearing Clerk.

<sup>9</sup> Administrator's Mot. for Default Decision at 2 n.2.

<sup>10</sup> Administrator's Mot. for Default Decision at 2.

<sup>11</sup> Mr. Beech's response to the Administrator's Motion for Default Decision and the Administrator's Proposed Default Decision.

<sup>12</sup> 7 C.F.R. § 1.147(c)(1).

Clerk properly served Mr. Beech with the Complaint on February 16, 2017.

Second, Mr. Beech contends the Chief ALJ's Default Decision should be reversed because he mailed his Answer "in time to meet the deadline" and the United States Postal Service caused his Answer to be late-filed (Appeal Pet. at 2).

The Hearing Clerk served Mr. Beech with the Complaint on February 16, 2017.<sup>13</sup> The Rules of Practice require that a respondent file an answer with the Hearing Clerk within twenty days after service of the complaint;<sup>14</sup> therefore, Mr. Beech was required to file his Answer with the Hearing Clerk no later than March 8, 2017. Mr. Beech deposited his Answer with the United States Postal Service on Saturday, March 4, 2017, for delivery to the Hearing Clerk, and the United States Postal Service delivered Mr. Beech's Answer to the Hearing Clerk on Thursday, March 9, 2017.<sup>15</sup>

A document required or authorized to be filed under the Rules of Practice is deemed to be filed at the time the document reaches the Hearing Clerk,<sup>16</sup> and the Judicial Officer has consistently held that the mailbox rule is not applicable to proceedings under the Rules of Practice.<sup>17</sup> Therefore,

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<sup>13</sup> See note 2.

<sup>14</sup> 7 C.F.R. § 1.136(a).

<sup>15</sup> Mr. Beech's Appeal Pet. Exs. 4-6.

<sup>16</sup> 7 C.F.R. § 1.147(g).

<sup>17</sup> *Agric. Sales, Inc.*, 73 Agric. Dec. 612, 620 (U.S.D.A. 2014) (stating the Judicial Officer has consistently held that the mailbox rule is not applicable to proceedings under the Rules of Practice); *Amarillo Wildlife Refuge, Inc.*, 68 Agric. Dec. 77, 86 (U.S.D.A. 2009) (stating the argument that the mailbox rule applies to proceedings 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 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).

the date Mr. Beech posted his Answer with the United States Postal Service is not relevant to the timeliness of Mr. Beech's Answer. Moreover, the failure of the United States Postal Service to deliver Mr. Beech's Answer to the Hearing Clerk within the time Mr. Beech expected the delivery to occur is not a basis for setting aside the Chief ALJ's Default Decision. Mr. Beech could have filed his Answer by email or by facsimile. In addition, Mr. Beech could have requested an extension of time within which to file his Answer.<sup>18</sup> Instead, Mr. Beech chose to bear the risk that the United States Postal Service would deliver his March 4, 2017 mailing to the Hearing Clerk no later than March 8, 2017.

Third, Mr. Beech contends that the Hearing Clerk's use of the word "may" in the following sentence in the Hearing Clerk's February 8, 2017 service letter, which accompanied the Complaint, is misleading: "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. at 2-3).

The record does not support Mr. Beech's contention that the Hearing Clerk's February 8, 2017 service letter was misleading or that the Hearing Clerk's letter caused Mr. Beech to file a late-filed Answer. The Rules of Practice, a copy of which accompanied the Hearing Clerk's February 8, 2017 service letter, state the time within which an answer must be filed and the consequences of failing to file a timely answer.<sup>19</sup> 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.<sup>20</sup>

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<sup>18</sup> 7 C.F.R. §§ 1.143, .147(f).

<sup>19</sup> 7 C.F.R. §§ 1.136(a), (c), .139.

<sup>20</sup> Compl. at 19.

Fourth, Mr. Beech contends the Federal Rules of Civil Procedure should apply in this proceeding because application of the Rules of Practice deprives Mr. Beech of due process (Appeal Pet. at 4-5).

The Federal Rules of Civil Procedure govern procedure in the United States district courts<sup>21</sup> and are not applicable to administrative proceedings conducted before the Secretary of Agriculture under the Horse Protection Act and the Rules of Practice.<sup>22</sup> However, the default provisions of the Rules of Practice have long been held to provide respondents due process.<sup>23</sup>

Fifth, Mr. Beech contends the Chief ALJ's Default Decision should be reversed because denial of the Administrator's Motion for Default Decision and acceptance of Mr. Beech's late-filed answer would not have prejudiced the Administrator (Appeal Pet. at 5).

Prejudice to the complainant is not a prerequisite for the issuance of a default decision.<sup>24</sup>

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<sup>21</sup> Fed. R. Civ. P. 1.

<sup>22</sup> 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).

<sup>23</sup> 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).

<sup>24</sup> McCoy (Order Den. Pet. for Recons.), 75 Agric. Dec. 193, 200-01 (U.S.D.A. 2016) (stating lack of prejudice to the complainant is not a basis for denying the complainant's motion for a default decision); Heartland Kennels, Inc., 61 Agric. Dec. 492, 538-39 (U.S.D.A. 2002) (stating the lack of prejudice to the complainant would not constitute a basis for setting aside the administrative



Therefore, I reject Mr. Beech's contention that the Chief ALJ's Default Decision should be reversed because the Administrator would not be prejudiced if the Chief ALJ's Default Decision were set aside and Mr. Beech's late-filed Answer were accepted as timely filed.

Sixth, Mr. Beech contends the Chief ALJ's finding that Mr. Beech's mailing address is in Mississippi, is error (Appeal Pet. at 5).

Mr. Beech failed to file a timely answer to the Complaint. Therefore, Mr. Beech is deemed, for the purposes of this proceeding, to have admitted the allegations in the Complaint.<sup>25</sup> One of the allegations in the Complaint is that Mr. Beech is an individual with a mailing address in Mississippi.<sup>26</sup> Therefore, I reject Mr. Beech's contention that the Chief ALJ's finding that Mr. Beech's mailing address is in Mississippi, is error.

For the foregoing reasons, the following Order is issued.

#### **ORDER**

Mr. Beech is assessed a \$100 civil penalty. Mr. Beech shall pay the civil penalty by check made payable to "USDA, APHIS" and send the check to:

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

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law judge's default decision and remanding the proceeding to the administrative law judge for a hearing); Noell 58 Agric. Dec. 130, 146 (U.S.D.A. 1999) (stating, even if the complainant would not be prejudiced by allowing the respondents to file a late answer, the lack of prejudice would not be a basis for setting aside the administrative law judge's default decision), *appeal dismissed sub nom. The Chimp Farm, Inc. v. United States Dep't of Agric.*, No. 00-10608-A (11th Cir. July 20, 2000); Byard, 56 Agric. Dec. 1543, 1560-61 (U.S.D.A. 1997) (stating the Rules of Practice do not require, as a prerequisite to the issuance of a default decision, that the complainant prove the respondent's failure to file a timely answer has prejudiced the complainant's ability to present its case).

<sup>25</sup> 7 C.F.R. § 1.136(c).

<sup>26</sup> Compl. ¶ 6 at 2.


Mr. Beech's civil penalty payment shall be forwarded to, and received by, USDA, APHIS, MISCELLANEOUS, within 60 days after service of this Order on Mr. Beech. Mr. Beech shall indicate on the check that the payment is in reference to HPA Docket No. 17-0200.

**RIGHT TO SEEK JUDICIAL REVIEW**

Mr. Beech has the right to seek judicial review of the Order in this Decision and Order as to Ray Beech in the court of appeals of the United States for the circuit in which Mr. Beech resides or has his place of business or in the United States Court of Appeals for the District of Columbia Circuit. Mr. Beech 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.<sup>27</sup> The date of this Order is August 17, 2017.

Done at Washington, DC

August 17, 2017

  
William G. Jenson  
Judicial Officer

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<sup>27</sup> 15 U.S.C. § 1825(b)(2), (c).