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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	HPA Docket No. 17-0119
	)	HPA Docket No. 17-0120
Beth Beasley, an individual;	)	HPA Docket No. 17-0121
Jarrett Bradley, an individual;	)	HPA Docket No. 17-0122
Jeffrey Page Bronnenberg, an individual;	)	HPA Docket No. 17-0123
Dr. Michael Coleman, an individual;	)	HPA Docket No. 17-0124
Joe Fleming, an individual doing	)	HPA Docket No. 17-0125
business as Joe Fleming Stables;	)	HPA Docket No. 17-0126
Shawn Fulton, an individual;	)	HPA Docket No. 17-0127
Jimmy Grant, an individual;	)	HPA Docket No. 17-0128
Justin Harris, an individual;	)	HPA Docket No. 17-0129
Amelia Haselden, an individual;	)	HPA Docket No. 17-0130
Sam Perkins, an individual;	)	HPA Docket No. 17-0131
Amanda Wright, an individual;	)	
G. Russell Wright, an individual;	)	
and Charles Yoder, an individual,	)	
	)	**Decision and Order As To**
Respondents	)	**Jarrett Bradley**

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 January 11, 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: (1) on or about August 25, 2016, Jarrett Bradley entered a

horse known as "Gambling for Glory," while Gambling for Glory was sore, for showing in class 26B in a horse show in Shelbyville, Tennessee, in violation of 15 U.S.C. § 1824(2)(B); (2) on August 28, 2016, Mr. Bradley showed a horse known as "I'm a Mastermind," while I'm a Mastermind was sore, for showing in class 94A in a horse show in Shelbyville, Tennessee, in violation of 15 U.S.C. § 1824(2)(A); and (3) on September 1, 2016, Mr. Bradley showed a horse known as "Inception," while Inception was sore, for showing in class 148 in a horse show in Shelbyville, Tennessee, in violation of 15 U.S.C. § 1824(2)(A).[1]

On January 26, 2017, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture [Hearing Clerk], by certified mail, served Mr. Bradley with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter.[2] Mr. Bradley failed to file an answer within twenty days after the Hearing Clerk served him with the Complaint, as required by 7 C.F.R. § 1.136(a).

On February 17, 2017, the Administrator filed a Motion for Adoption of Decision and Order by Reason of Default [Motion for Default Decision] and a proposed Decision and Order by Reason of Default [Proposed Default Decision]. On February 21, 2017, Mr. Bradley filed a late-filed Answer of Respondents, and on March 6, 2017, Mr. Bradley filed Respondents' Opposition to Petitioner's Motion for Adoption of Decision and Order by Reason of Default [Opposition to the Motion for Default Decision]. Mr. Bradley included in the Opposition to the Motion for Default Decision a request that the case be dismissed or abated based upon Mr. Bradley's contention that no United States Department of Agriculture administrative law

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[1] Compl. ¶¶ 72-74 at 12-13.

[2] United States Postal Service domestic return receipt for article number [redacted] 4856.

judge can preside over this proceeding because none has been appointed an officer of the United States, as required by the Appointments Clause of the Constitution of the United States.[3] On March 10, 2017, the Administrator requested that the administrative law judge assigned to the proceeding certify the following question to the Judicial Officer:[4]

> Should the U.S. Department of Agriculture's Administrative Law Judges continue to preside over administrative proceedings before the Secretary of Agriculture unless and until such time as there is a final determination by the federal courts that they lack authority to do so?

Complainant's Motion to Certify Question to the Judicial Officer at 1.

On April 5, 2017, Chief Administrative Law Judge Bobbie J. McCartney [Chief ALJ] issued an Order Denying Respondents' Motion to Dismiss or Abate Proceedings and Complainant's Motion to Certify Question to the Judicial Officer. On April 11, 2017, in accordance with 7 C.F.R. § 1.139, the Chief ALJ filed a Default Decision and Order [Default Decision] in which the Chief ALJ: (1) concluded Mr. Bradley violated the Horse Protection Act, as alleged in the Complaint; (2) assessed Mr. Bradley a $6,600 civil penalty; and (3) disqualified Mr. Bradley for three 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.[5]

On May 10, 2017, Mr. Bradley appealed the Chief ALJ's Default Decision to the Judicial

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[3] Opposition to the Mot. for Default Decision ¶¶ 21, 27 at 5-6.

[4] The Rules of Practice authorize administrative law judges to certify questions to the Judicial Officer (7 C.F.R. § 1.143(e)).

[5] Chief ALJ's Default Decision at the fifth unnumbered page.

Officer.[6] On June 30, 2017, the Administrator filed a response to Mr. Bradley's Appeal Petition,[7] and, on August 11, 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.

MR. BRADLEY'S APPEAL PETITION

Mr. Bradley raises thirteen issues in his Appeal Petition. First, Mr. Bradley contends this case must be dismissed because the Chief ALJ has not been appointed an inferior officer, as required by the Appointments Clause of the Constitution of the United States, and, therefore, is not authorized to adjudicate this proceeding (Appeal Pet. at 8-37).

The federal courts have made no final determination that administrative law judges generally -- or United States Department of Agriculture administrative law judges specifically -- lack constitutional authority to preside over administrative disciplinary proceedings instituted by the Secretary of Agriculture in accordance with the Administrative Procedure Act. The United States Department of Agriculture's administrative law judges should continue to preside over administrative proceedings before the Secretary of Agriculture unless and until there is a final determination by the federal courts that they lack the authority to do so. The authority of United States Department of Agriculture administrative law judges to preside over administrative proceedings is a matter of great importance, as these proceedings are an essential part of the United States Department of Agriculture's mission. The Rules of Practice provide for appeals of the initial

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[6] Respondent Jarrett Bradley Appeal Petition and Supporting Brief [Appeal Petition].

[7] Complainant's Response to Petitions for Appeal Filed by Jarrett Bradley, Shawn Fulton, and Sam Perkins.

decisions of administrative law judges[8] and the Horse Protection Act provides for judicial review of the decisions of the Secretary of Agriculture.[9] Based upon the provisions for judicial review in the Horse Protection Act, I find challenges to the constitutionality of the United States Department of Agriculture's administrative law judges and the administrative process should be raised in an appropriate United States Court of Appeals.[10] Moreover, Mr. Bradley cannot avoid or enjoin this administrative proceeding by raising constitutional issues.[11] As the United States Court of Appeals for the Seventh Circuit stated:

> This point is fundamental to administrative law. Every person hoping to enjoin an ongoing administrative proceeding could make this argument, yet courts consistently require plaintiffs to use the administrative review schemes established by Congress. See *Thunder Basin Coal*, 510 U.S. at 216, 114 S. Ct. 771 ("Nothing in the language and structure of the Act or its legislative history suggests that Congress intended to allow mine operators to evade the statutory-review process by enjoining the Secretary from commencing enforcement proceedings, as petitioner sought to do here."); *Sturm Ruger & Co. v. Chao*, 300 F.3d 867, 876 (D.C. Cir. 2002) ("Our obligation to respect the review process established by Congress bars us from permitting Sturm Ruger to make this end run, and requires dismissal of its district court complaint."); *USAA Federal Savings Bank v. McLaughlin*, 849 F.2d 1505, 1510 (D.C. Cir. 1988) ("Where, as here, the

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[8] 7 C.F.R. § 1.145(a).

[9] 15 U.S.C. § 1825(b)-(c).

[10] See Bennett v. SEC, 844 F.3d 174, 188 (4th Cir. 2016) ("From the text and structure of the statute, it is fairly discernible that Congress intended to channel all objections to such orders-including challenges rooted in the Appointments Clause-through the administrative adjudication and judicial review process set forth in the statute."); Bebo v. SEC, 799 F.3d 765, 774 (7th Cir. 2015) ("After the pending enforcement action has run its course, [the plaintiff] can raise her objections in a circuit court of appeals established under Article III."), *cert. denied*, 136 S. Ct. 1500 (2016).

[11] See FTC v. Standard Oil Co. of California, 449 U.S. 232, 244-45 (1980) (refusing to enjoin an allegedly unlawful administrative proceeding where the court of appeals would be able to review alleged unlawfulness after the agency proceeding had concluded); Jarkesy v. SEC, 803 F.3d 9, 27 (D.C. Cir. 2015) (refusing to enjoin proceedings before an administrative law judge based on an Appointments Clause challenge because the plaintiff had "no inherent right to avoid an administrative proceeding at all" even if his arguments were correct).

> 'injury' inflicted on the party seeking review is the burden of going through an agency proceeding, [*Standard Oil Co.*] teaches that the party must patiently await the denouement of proceeding within the Article II branch."); *Chau v. SEC,* 72 F. Supp.3d 417, 425 (S.D.N.Y. 2014), ("This Court's jurisdiction is not an escape hatch for litigants to delay or derail an administrative action when statutory channels of review are entirely adequate."). . . .
>
> We see no evidence from the statute's text, structure, and purpose that Congress intended for plaintiffs like Bebo who are already subject to ongoing administrative enforcement proceedings to be able to stop those proceedings by challenging the constitutionality of the enabling legislation or the structural authority of the SEC.

Bebo v. SEC, 799 F.3d 765, 774-75 (7th Cir. 2015), *cert. denied*, 136 S. Ct. 1500 (2016).

To disqualify administrative law judges and dismiss administrative proceedings in advance of a final determination by the federal judiciary as to the authority of those administrative law judges to preside over administrative proceedings would be premature. Therefore, I reject Mr. Bradley's contention that this case must be dismissed because the Chief ALJ has not been appointed an inferior officer, as required by the Appointments Clause of the Constitution of the United States.

Second, Mr. Bradley contends the Judicial Officer is not lawfully appointed, as required by the Appointments Clause of the Constitution of the United States (Appeal Pet. at 37-65).

Congress authorized the Secretary of Agriculture to administer the Horse Protection Act and authorized the Secretary of Agriculture to delegate his regulatory functions to an officer or employee of the United States Department of Agriculture.[12] Pursuant to the authority to delegate regulatory functions, the Secretary of Agriculture established the position of "Judicial Officer"[13]

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[12] 7 U.S.C. §§ 450c-450g.

[13] Originally the position was designated "Assistant to the Secretary." In 1945, as a result of a United States Department of Agriculture reorganization, the position was redesignated "Judicial Officer" (10 Fed. Reg. 13769 (Nov. 9, 1945)).

and delegated authority to the Judicial Officer to act as the final deciding officer, in lieu of the Secretary of Agriculture, in adjudicatory proceedings identified in 7 C.F.R. § 2.35. These adjudicatory proceedings include all proceedings subject to the Rules of Practice, including proceedings instituted under the Horse Protection Act.[14] Secretary of Agriculture Daniel R. Glickman first appointed me as the Judicial Officer in January 1996 and, on June 6, 2017, Secretary of Agriculture Sonny Perdue reappointed me as the Judicial Officer.[15] Therefore, I reject Mr. Bradley's contention that I have not been lawfully appointed an inferior officer to act as the deciding officer in adjudicatory proceedings under the Horse Protection Act.

Mr. Bradley further contends the Judicial Officer is a principal officer that must be appointed by the President and confirmed by the Senate because no principal officer in the United States Department of Agriculture supervises the Judicial Officer's exercise of decision making authority (Appeal Pet. at 47-54).

The Judicial Officer serves at the pleasure of the Secretary of Agriculture, who can remove the Judicial Officer at any time. Moreover, the Secretary of Agriculture can, at any time prior to issuance of a decision by the Judicial Officer, instruct the Judicial Officer regarding the disposition of the proceeding. Further still, beginning in August 2015, the Judicial Officer became subject to a performance plan. During the period August 2015 through May 2017, the Judicial Officer was subject to appraisal by the United States Department of Agriculture's Assistant Secretary for Administration and, since May 2017, by the Deputy Secretary of Agriculture. Therefore, I reject Mr. Bradley's contention that the Judicial Officer is a principal officer that must be appointed by

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[14] 7 C.F.R. § 2.35(a)(2).

[15] Attach. 1.

the President and confirmed by the Senate because no principal officer in the United States Department of Agriculture supervises the Judicial Officer's exercise of decision making authority.

Third, Mr. Bradley asserts he was not provided with notice of this proceeding and an opportunity for a hearing before the Secretary of Agriculture (Appeal Pet. at 65-66).

The record establishes that the Hearing Clerk served Mr. Bradley with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter on January 26, 2017.[16] The Complaint states the nature of the proceeding, the identification of the complainant and the respondents, the legal authority and jurisdiction under which the proceeding is instituted, the allegations of fact and provisions of law which constitute a basis for the proceeding, and the nature of the relief sought. The Complaint and the Hearing Clerk's January 12, 2017 service letter also state that the Rules of Practice govern the proceeding and that Mr. Bradley has an opportunity for a hearing.[17] Moreover, the Rules of Practice, the Hearing Clerk's January 12, 2017 service letter, and the Complaint state that failure to file a timely answer to the Complaint shall be deemed an admission of the allegations in the Complaint and a waiver of hearing.[18] Therefore, I reject Mr. Bradley's assertion that he was not provided with notice of this proceeding and an opportunity for a hearing.

Fourth, Mr. Bradley contends the Chief ALJ's issuance of the Default Decision, based upon Mr. Bradley's failure to file a timely response to the Complaint, is an abuse of discretion, violates the Administrative Procedure Act, and is not in accord with the Horse Protection Act and United States Department of Agriculture practice (Appeal Pet. at 66).

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[16] See note 2.

[17] Compl. at 15; Hearing Clerk's January 12, 2017 service letter at 1.

[18] 7 C.F.R. §§ 1.136(c), .139; Compl. at 15; Hearing Clerk's January 12, 2017 service letter at 1.

The Rules of Practice provide that within twenty days after service of a complaint the respondent shall file an answer with the Hearing Clerk[19] and the failure to file a timely answer shall be deemed, for the purposes of the proceeding, an admission of the allegations in the complaint and a waiver of hearing.[20] The Hearing Clerk served Mr. Bradley with the Complaint on January 26, 2017.[21] Twenty days after the Hearing Clerk served Mr. Bradley with the Complaint was February 15, 2017. Mr. Bradley did not file the Answer of Respondents until February 21, 2017, six days after Mr. Bradley's answer was required to be filed with Hearing Clerk. Therefore, the Chief ALJ's issuance of the Default Decision comports with the Rules of Practice. Mr. Bradley does not cite, and I cannot locate, any provision of the Administrative Procedure Act or the Horse Protection Act or any United States Department of Agriculture practice that supports Mr. Bradley's contentions that the Chief ALJ's issuance of the Default Decision violates the Administrative Procedure Act and that the Chief ALJ's issuance of the Default Decision is not in accord with the Horse Protection Act and United States Department of Agriculture practice.

Fifth, citing the four-month period between Mr. Bradley's alleged violations of the Horse Protection Act and the date the Administrator issued the Complaint and the number of complaints filed by the Administrator in 2016 and 2017, Mr. Bradley questions the adequacy of the investigation that resulted in the Administrator's issuance of the Complaint and the Administrator's motivation for filing the Complaint (Appeal Pet. at 67-75).

A presumption of regularity supports the official acts of public officers, and, in the absence

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[19] 7 C.F.R. § 1.136(a).

[20] 7 C.F.R. §§ 1.136(c), .139.

[21] See note 2.

of clear evidence to the contrary, I must presume the Administrator filed the Complaint in this proceeding based upon his belief that the investigation of Mr. Bradley's violations of the Horse Protection Act was properly conducted and the evidence supports the allegations in the Complaint.[22]

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[22] 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 *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).

Sixth, Mr. Bradley contends the Hearing Clerk failed to serve him with the Complaint because the Hearing Clerk sent the Complaint to Mr. Bradley's place of business rather than his residence (Appeal Pet. at 75-81).

Mr. Bradley raises the argument that the Hearing Clerk was required to serve him with the Complaint at his residence rather than his place of business for the first time on appeal to the Judicial Officer. New arguments cannot be raised for the first time on appeal to the Judicial Officer.[23] Therefore, I conclude Mr. Bradley has waived his argument regarding the Hearing Clerk's failure to serve him with the Complaint at his residence.

Even if I were to find that Mr. Bradley has not waived his argument that the Hearing Clerk was required to serve him with the Complaint at his residence, I would reject his argument. The Rules of Practice provide that a complaint shall be deemed to be received by a party to the proceeding on the date of delivery by certified mail to (1) the last known principal place of business of the party, (2) the last known principal place of business of the attorney or representative of record of the party, or (3) the last known residence of the party, if that party is an individual.[24] The Hearing Clerk served Mr. Bradley with the Complaint by certified mail at Mr. Bradley's last known principal place of business.[25] Mr. Bradley admits that Joe Fleming received the Complaint for him, but states Mr. Fleming "mistakenly" signed the United States Postal Service domestic

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[23] Essary, 75 Agric. Dec. 204, 207 (U.S.D.A. 2016); ZooCats, Inc. (Order Den. Respondents' Pet. to Reconsider and Administrator's Pet. to Reconsider), 68 Agric. Dec. 1072, 1074 n.1 (U.S.D.A. 2009); Schmidt (Order Den. Pet. to Reconsider), 66 Agric. Dec. 596, 599 (U.S.D.A. 2007); Reinhart (Order Den. William J. Reinhart's Pet. for Recons.), 60 Agric. Dec. 241, 257 (U.S.D.A. 2001).

[24] 7 C.F.R. § 1.147(c)(1).

[25] See note 2.

return receipt attached to the envelope containing the Complaint.[26] Mr. Bradley's contention that Mr. Fleming mistakenly signed the United States Postal Service domestic return receipt is irrelevant because service is effective when a complaint is delivered to a party's last known principal place of business and someone signs for the complaint.[27]

Seventh, Mr. Bradley contends the Chief ALJ erroneously failed to rule on Mr. Bradley's request for an extension of time to file an answer to the Complaint (Appeal Pet. at 82-84).

On February 21, 2017, Mr. Bradley filed a late-filed Answer of Respondents, which included a request for "additional time to answer the Complaint."[28] I find nothing in the record indicating that the Chief ALJ ruled on Mr. Bradley's motion to enlarge the time to respond to the Complaint. Nonetheless, I decline to remand this proceeding to the Chief ALJ for a ruling on Mr. Bradley's motion. Instead, I find the Chief ALJ's issuance of the April 11, 2017 Default Decision and failure to rule on Mr. Bradley's request for additional time to file an answer operate as an implicit denial of Mr. Bradley's motion to extend the time to respond to the Complaint.[29]

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[26] Opposition to the Mot. for Default Decision ¶ 7 at 2.

[27] McCulloch (Decision as to Phillip Trimble), 62 Agric. Dec. 83, 95 (U.S.D.A. 2003), *aff'd sub nom.* Trimble v. U.S. Dep't of Agric., 87 Fed. App'x 456 (6th Cir. 2003); Carter, 46 Agric. Dec. 207, 211 (U.S.D.A. 1987); Cuttone, 44 Agric. Dec. 1573, 1576 (U.S.D.A. 1985), *aff'd per curiam*, 804 F.2d 153 (D.C. Cir. 1986) (unpublished); Buzun, 43 Agric. Dec. 751, 754-56 (U.S.D.A. 1984).

[28] Answer of Respondents ¶ 11 at 3.

[29] See Esso Standard Oil Co. v. Lopez-Freytes, 522 F.3d 136, 144 (1st Cir. 2008) (stating general principles of administrative law provide that an agency's failure to act on a pending matter is treated as a denial of the relief sought); Hernandez v. Reno, 238 F.3d 50, 55 (1st Cir. 2001) (treating the Board of Immigration Appeal's failure to act on the petitioner's motion to reopen for more than three years as a denial of that motion); United States v. Stefan, 784 F.2d 1093, 1100 (11th Cir. 1986) (concluding the United States District Court for the Southern District of Florida's failure to rule on appellant's motion for mistrial constitutes an implicit denial of the motion), *cert. denied*, 479 U.S. 1009 (1986); Dabone v. Karn, 763 F.2d 593, 597 n.2 (3d Cir. 1985) (stating the Board of Immigration Appeal's failure to act within a reasonable time period on a motion to reopen constitutes effective denial of that motion); Toronto-Dominion Bank v. Central Nat'l Bank & Trust Co., 753 F.2d 66, 68 (8th Cir. 1985) (stating the failure to rule on a motion to intervene can be

Parenthetically, I note Mr. Bradley's motion for an extension of time to file a response to the Complaint was moot when he filed the motion because Mr. Bradley simultaneously filed the Answer of Respondents.

Eighth, Mr. Bradley contends the Chief ALJ's Default Decision must be vacated because the Administrator failed to file a response to Mr. Bradley's Opposition to the Motion for Default Decision and the Chief ALJ failed to address the merits of Mr. Bradley's Opposition to the Motion for Default Decision (Appeal Pet. at 84-97).

The Rules of Practice do not require a complainant to file a response to a respondent's objections to a proposed default decision and motion for adoption of that proposed default decision.[30] Therefore, I reject Mr. Bradley's contention that the Chief ALJ's Default Decision must be vacated because the Administrator failed to file a response to Mr. Bradley's Opposition to the Motion for Default Decision.

Similarly, the Rules of Practice do not require the Chief ALJ to address the merits of Mr. Bradley's objections to the Administrator's Proposed Default Decision and Motion for Default Decision. The Rules of Practice provide, if the administrative law judge finds the respondent has filed meritorious objections to the complainant's motion for a default decision and proposed default decision, the administrative law judge shall deny the complainant's motion for a default

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interpreted as an implicit denial of that motion); Agri-Sales, Inc., 73 Agric. Dec. 612, 621 (U.S.D.A. 2014) (stating the administrative law judge's issuance of a decision and order and failure to rule on the respondent's motion for an extension of time operate as an implicit denial of the respondent's motion for an extension of time), *appeal dismissed*, No. 14-3180 (7th Cir. Oct. 14, 2014); Greenly, 72 Agric. Dec. 586, 595-96 (U.S.D.A. 2013) (stating the administrative law judge's issuance of a decision and order and failure to rule on the complainant's motion for summary judgment operate as an implicit denial of the complainant's motion for summary judgment), *aff'd per curiam*, 576 Fed. App'x 649 (8th Cir. 2014).

[30] See 7 C.F.R. § 1.139.

decision with supporting reasons; however, if the administrative law judge finds the respondent has not filed meritorious objections to the complainant's motion for a default decision and proposed default decision, the administrative law judge is merely required to issue a decision without further procedure or hearing.[31] The Chief ALJ found Mr. Bradley's objections to the Administrator's Motion for Default Decision and Proposed Default Decision were not meritorious and, therefore, issued the April 11, 2017 Default Decision without further procedure or hearing, as required by the Rules of Practice.

Ninth, Mr. Bradley contends, even if he is deemed to have admitted the allegations of the Complaint, those allegations do not justify the sanctions imposed by the Chief ALJ (Appeal Pet. at 97-101).

The Administrator alleges that Mr. Bradley violated the Horse Protection Act and Mr. Bradley is deemed to have admitted that he violated the Horse Protection Act, as follows:

> 72. On or about August 25, 2016, Mr. Bradley entered a horse (Gambling for Glory) while the horse was sore, for showing in class 26B in a horse show in Shelbyville, Tennessee, in violation of the Act (15 U.S.C. § 1824(2)(B)).
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> 73. On August 28, 2016, Mr. Bradley showed a horse (I'm a Mastermind) while the horse was sore, for showing in class 94A in a horse show in Shelbyville, Tennessee, in violation of the Act (15 U.S.C. § 1824(2)(A)).
>
> 74. On September 1, 2016, Mr. Bradley showed a horse (Inception) while the horse was sore, in class 148 in a horse show in Shelbyville, Tennessee, in violation of the Act (15 U.S.C. § 1824(2)(A)).

Complaint ¶¶ 72-74 at 12-13 (footnotes omitted). Therefore, Mr. Bradley is subject to the statutory penalties set forth in the Horse Protection Act and imposed by the Chief ALJ, namely, assessment of a civil penalty of up to $2,200 for each violation of the Horse Protection Act and disqualification

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[31] Id.

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 for not less than one year for each violation of the Horse Protection Act.[32]

Tenth, Mr. Bradley contends the allegations in the Complaint are merely legal conclusions in the guise of allegations of fact that cannot be deemed to have been admitted by his failure to file a timely answer to the Complaint (Appeal Pet. at 97, 99).

The formalities and technicalities of court pleading are not applicable in administrative proceedings.[33] A complaint in an administrative proceeding must reasonably apprise the litigant of the issues in controversy; a complaint is adequate and satisfies due process in the absence of a showing that some party was misled.[34] Therefore, in order to comply with the Administrative Procedure Act and the Rules of Practice, the complaint must include allegations of fact and provisions of law that constitute a basis for the proceeding, and, in order to comply with the Due Process Clause of the Fifth Amendment to the Constitution of the United States, the complaint must apprise the respondent of the issues in controversy. The Complaint apprises Mr. Bradley of the issues in controversy and sets forth allegations of fact and provisions of law that constitute a basis for the proceeding.

Eleventh, Mr. Bradley contends, when determining the sanction to be imposed for Mr. Bradley's violations of the Horse Protection Act, the Chief ALJ erroneously failed to consider

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[32] 15 U.S.C. § 1825(b)-(c).

[33] Wallace Corp. v. NLRB, 323 U.S. 248, 253 (1944); FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 142-44 (1940).

[34] NLRB v. Mackay Radio & Telegraph Co., 304 U.S. 333, 350-51 (1938); Hickey, Jr., 53 Agric. Dec. 1087, 1097 (U.S.D.A. 1994), *aff'd*, 878 F.2d 385 (9th Cir. 1989) (not to be cited as precedent under 9th Circuit Rule 36-3), *printed in* 48 Agric. Dec. 107 (1989); Petty, 43 Agric. Dec. 1406, 1434-35 (U.S.D.A. 1984), *aff'd*, No. 3-84-2200-R (N.D. Tex. June 5, 1986).

the fact that the Animal and Plant Health Inspection Service, United States Department of Agriculture [APHIS], has not issued a warning letter to Mr. Bradley regarding potential violations of the Horse Protection Act (Appeal Pet. at 98).

The Horse Protection Act authorizes assessment of a civil penalty of not more than $2,000 for each violation of 15 U.S.C. § 1824.[35] Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), the Secretary of Agriculture adjusted the civil monetary penalty that may be assessed under 15 U.S.C. § 1825(b)(1) for each violation of 15 U.S.C. § 1824 by increasing the maximum civil penalty from $2,000 to $2,200.[36] The Horse Protection Act provides, when determining the amount of the civil penalty, the Secretary of Agriculture shall take into account all factors relevant to such determination, including the nature, circumstances, extent, and gravity of the prohibited conduct and, with respect to the person found to have engaged in the prohibited conduct, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.[37]

The United States Department of Agriculture's sanction policy is set forth in *S.S. Farms Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (U.S.D.A. 1991), *aff'd*, 991 F.2d 803 (9th Cir. 1993) (not to be cited as precedent under the 9th Circuit Rule 36-3), as follows:

> [T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

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[35] 15 U.S.C. § 1825(b)(1).

[36] 7 C.F.R. § 3.91(b)(2)(viii).

[37] 15 U.S.C. § 1825(b)(1).

In most Horse Protection Act cases, the maximum civil penalty per violation is justified by the facts.[38] Based on the factors that are required to be considered when determining the amount of the civil penalty to be assessed, including the fact that APHIS has not previously issued a Horse Protection Act warning letter to Mr. Bradley, I find the Chief ALJ's assessment of the maximum civil penalty justified by the facts. The Administrator, an administrative official charged with responsibility for achieving the congressional purpose of the Horse Protection Act, requests assessment of the maximum civil penalty.[39] Therefore, I affirm the Chief ALJ's assessment of a $2,200 civil penalty for each of Mr. Bradley's three violations of the Horse Protection Act.

The Horse Protection Act provides that any person assessed a civil penalty under 15 U.S.C. § 1825(b) may be disqualified from showing or exhibiting any horse and from judging or managing any horse show, horse exhibition, horse sale, or horse auction for a period of not less than one year for the first violation of the Horse Protection Act and for a period of not less than five years for any subsequent violation of the Horse Protection Act.[40]

The purpose of the Horse Protection Act is to prevent the practice of soring horses. Congress amended the Horse Protection Act in 1976 to enhance the Secretary of Agriculture's ability to end soring of horses. Among the most notable devices to accomplish the purpose of the

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[38] Sims, 75 Agric. Dec. 184, 190 (U.S.D.A. 2016); Jenne, 74 Agric. Dec. 358, 373 (U.S.D.A. 2015); Jenne, 74 Agric. Dec. 118, 128 (U.S.D.A. 2015); Back, 69 Agric. Dec. 448, 463 (U.S.D.A. 2010), *aff'd*, 445 Fed. App'x 826 (6th Cir. 2011); Beltz (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. 1487, 1504 (U.S.D.A. 2005), *aff'd sub nom. Zahnd v. Sec'y of Agric.*, 479 F.3d 767 (11th Cir. 2007); Turner, 64 Agric. Dec. 1456, 1475 (U.S.D.A. 2005), *aff'd*, 217 Fed. App'x 462 (6th Cir. 2007); McConnell, 64 Agric. Dec. 436, 490 (U.S.D.A. 2005), *aff'd*, 198 Fed. App'x 417 (6th Cir. 2006); McCloy, Jr., 64 Agric. Dec. 173, 208 (U.S.D.A. 2002), *aff'd*, 351 F.3d 447 (10th Cir. 2003), *cert. denied*, 543 U.S. 810 (2004).

[39] Administrator's Mot. for Default Decision at the second unnumbered page; Administrator's Proposed Default Decision at the third unnumbered page.

[40] 15 U.S.C. § 1825(c).

Horse Protection Act is the authorization for disqualification which Congress specifically added to provide a strong deterrent to violations of the Horse Protection Act by those persons who have the economic means to pay civil penalties as a cost of doing business.[41]

The Horse Protection Act specifically provides that disqualification is in addition to any civil penalty assessed under 15 U.S.C. § 1825(b).[42] While 15 U.S.C. § 1825(b)(1) requires that the Secretary of Agriculture consider specified factors when determining the amount of the civil penalty to be assessed for a violation of the Horse Protection Act, the Horse Protection Act contains no such requirement with respect to the imposition of a disqualification period.

While disqualification is discretionary with the Secretary of Agriculture, the Administrator has recommended the imposition of a one-year disqualification period for each of Mr. Bradley's three violations of the Horse Protection Act, in addition to the assessment of a civil penalty,[43] and I have held that disqualification, in addition to the assessment of a civil penalty, is appropriate in almost every Horse Protection Act case, including those cases in which a respondent is found to have violated the Horse Protection Act for the first time.[44]

Congress has provided the United States Department of Agriculture with the tools needed to eliminate the practice of soring Tennessee Walking Horses, but those tools must be used to be

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[41] See H.R. Rep. No. 94-1174, at 11 (1976), *reprinted in* 1976 U.S.C.C.A.N. 1696, 1705-06.

[42] 15 U.S.C. § 1825(c).

[43] Administrator's Mot. for Default Decision at the third and fourth unnumbered pages; Administrator's Proposed Default Decision at the fourth unnumbered page.

[44] Back, 69 Agric. Dec. 448, 464 (U.S.D.A. 2010), *aff'd*, 445 Fed. App'x 826 (6th Cir. 2011); Beltz (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. 1487, 1505-06 (U.S.D.A. 2005), *aff'd sub nom. Zahnd v. Sec'y of Agric.*, 479 F.3d 767 (11th Cir. 2007); Turner, 64 Agric. Dec. 1456, 1476 (U.S.D.A. 2005), *aff'd*, 217 Fed. App'x 462 (6th Cir. 2007); McConnell, 64 Agric. Dec. 436, 492 (U.S.D.A. 2005), *aff'd*, 198 Fed. App'x 417 (6th Cir. 2006); McCloy, Jr., 61 Agric. Dec. 173, 209 (U.S.D.A. 2002), *aff'd*, 351 F.3d 447 (10th Cir. 2003), *cert. denied*, 543 U.S. 810 (2004).

effective. In order to achieve the congressional purpose of the Horse Protection Act, I generally find necessary the imposition of at least the minimum disqualification provisions of the 1976 amendments on any person who violates 15 U.S.C. § 1824.

Circumstances in a particular case might justify a departure from this policy. Since, under the 1976 amendments, intent and knowledge are not elements of a violation, few circumstances warrant an exception from this policy, but the facts and circumstances of each case must be examined to determine whether an exception to this policy is warranted. An examination of the record does not lead me to believe that an exception from the usual practice of imposing the minimum disqualification period for Mr. Bradley's violations of the Horse Protection Act, in addition to the assessment of a civil penalty, is warranted. Therefore, I affirm the Chief ALJ's imposition of a three-year period of disqualification on Mr. Bradley, in addition to the assessment of a $6,600 civil penalty.

Twelfth, Mr. Bradley contends the Complaint does not provide him with sufficient notice to apprise him of the sanctions sought by the Administrator (Appeal Pet. at 100).

The Rules of Practice require that the complaint state briefly and clearly "the nature of the relief sought."[45] The Complaint does just that, namely, the Administrator requests issuance of "such order or orders with respect to sanctions...as are authorized by the Act (15 U.S.C. § 1825) and warranted under the circumstances."[46] The specific sanctions authorized by the Horse Protection Act are set forth in 15 U.S.C. § 1825. Therefore, I reject Mr. Bradley's contention that the Complaint does not provide him with sufficient notice to apprise him of the sanctions sought by the Administrator.

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[45] 7 C.F.R. § 1.135(a).

[46] Compl. at 15-16.

Thirteenth, Mr. Bradley contends the Chief ALJ lacked jurisdiction to assess a penalty of disqualification pursuant to the Horse Protection Act because there was no pleading or proof that Mr. Bradley had paid a fine assessed under 15 U.S.C. § 1825(b) or was subject to a final order issued by the Secretary of Agriculture assessing a penalty under 15 U.S.C. § 1825(b) (Appeal Pet. at 101-15).

The Horse Protection Act authorizes the Secretary of Agriculture to disqualify persons from "showing or exhibiting any horse, judging or managing any horse show, horse exhibition, or horse sale or auction for a period of not less than one year for the first violation and not less than five years for any subsequent violation."[47] The Secretary of Agriculture is authorized to disqualify persons, as provided in the Horse Protection Act, whether or not the complaint "pleads" a prior violation of the Horse Protection Act.

DECISION

Statement of the Case

Mr. Bradley 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. Bradley are adopted as findings of fact. I issue this Decision and Order as to Jarrett Bradley pursuant to 7 C.F.R. § 1.139.

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[47] 15 U.S.C. § 1825(c).

Findings of Fact

1. Mr. Bradley is an individual whose business mailing address is [redacted].

2. At all times material to this proceeding, Mr. Bradley was a "person" and an "exhibitor," as those terms are defined in the Regulations.

3. The nature and circumstances of Mr. Bradley's prohibited conduct are that Mr. Bradley entered one horse in a horse show and showed two horses in a horse show, while the horses were "sore," as that term is defined in the Horse Protection Act and the Regulations. The extent and gravity of Mr. Bradley'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 to gain an unfair competitive advantage during performances at horse shows.[48]

4. Mr. Bradley is culpable for the violations 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.[49]

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[48] "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).

[49] 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).

Conclusions of Law

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

2. On or about August 25, 2016, Mr. Bradley entered a horse known as "Gambling for Glory," while Gambling for Glory was sore, for showing in class 26B in a horse show in Shelbyville, Tennessee, in violation of 15 U.S.C. § 1824(2)(B).

3. On August 28, 2016, Mr. Bradley showed a horse known as "I'm a Mastermind," while I'm a Mastermind was sore, in class 94A in a horse show in Shelbyville, Tennessee, in violation of 15 U.S.C. § 1824(2)(A).

4. On September 1, 2016, Mr. Bradley showed a horse known as "Inception," while Inception was sore, in class 148 in a horse show in Shelbyville, Tennessee, in violation of 15 U.S.C. § 1824(2)(A).

For the foregoing reasons, the following Order is issued.

ORDER

1. Mr. Bradley is assessed a $6,600 civil penalty. Mr. Bradley 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. Bradley's civil penalty payment shall be forwarded to, and received by USDA, APHIS, MISCELLANEOUS, within sixty days after service of this Order on Mr. Bradley. Mr. Bradley shall indicate on the certified check or money order that the payment is in reference to HPA Docket No. 17-0120.

2. Mr. Bradley is disqualified for three 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. Bradley shall become effective on the 60th day after service of this Order on Mr. Bradley.

RIGHT TO SEEK JUDICIAL REVIEW

Mr. Bradley has the right to seek judicial review of the Order in this Decision and Order as to Jarrett Bradley in the court of appeals of the United States for the circuit in which Mr. Bradley resides or has his place of business or in the United States Court of Appeals for the District of Columbia Circuit. Mr. Bradley must file a notice of appeal in such court within thirty 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.[50] The date of this Order is November 1, 2017.

Done at Washington, DC

November 1, 2017

[redacted]

William G. Jenson
Judicial Officer

[50] 15 U.S.C. § 1825(b)(2), (c).

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

Appointment of William G. Jenson as Judicial Officer

I, Sonny Perdue, as the Secretary of Agriculture and pursuant to the Act of April 4, 1940, as amended (7 U.S.C. § 450c – 450g) and Reorganization Plan No. 2 of 1953 (5 U.S.C. app), on this day do hereby reappoint William G. Jenson the Judicial Officer for the United States Department of Agriculture, and recognize and reaffirm the 1996, appointment made by then Secretary of Agriculture Daniel R. Glickman of William G. Jenson as the Judicial Officer.

Signed this 6th day of June 2017, in Washington, D.C.

[redacted]

SONNY PERDUE
Secretary

Attachment 1