

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	HPA Docket No. 02-0001
)	
Ronald Beltz, an individual; and)	
Christopher Jerome Zahnd, an individual,)	Order Denying Motion
)	for Reconsideration as to
Respondents)	Christopher Jerome Zahnd

PROCEDURAL HISTORY

William R. DeHaven, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on October 25, 2001. Complainant instituted the proceeding under the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) [hereinafter the Horse Protection Act]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

Complainant alleges that on May 25, 2000, Christopher Jerome Zahnd [hereinafter Respondent] entered a horse known as “Lady Ebony’s Ace” as entry number 15 in class number 13 at the 30th Annual Spring Fun Show Preview “S.H.O.W. Your Horses” in Shelbyville, Tennessee, for the purpose of showing or exhibiting Lady Ebony’s Ace,

while Lady Ebony's Ace was sore, in violation of section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)) (Compl. ¶ II.1).¹ On December 4, 2001, Respondent filed an answer denying the material allegations of the Complaint, and on May 6, 2004, Respondent filed an amended answer denying the material allegations of the Complaint.

On December 1, 2004, the Chief ALJ presided at a hearing in Huntsville, Alabama. Brian T. Hill, Office of the General Counsel, United States Department of Agriculture, represented Complainant. Greg L. Shelton, Shelton & Shelton, Decatur, Alabama, represented Respondent. After the hearing, the parties filed post-hearing briefs.

On September 6, 2005, the Chief ALJ issued a "Decision as to Christopher J. Zahnd" [hereinafter Initial Decision as to Christopher J. Zahnd]: (1) concluding Complainant failed to prove by a preponderance of the evidence that Lady Ebony's Ace was sore on May 25, 2000, when Respondent entered Lady Ebony's Ace as entry number 15 in class number 13 at the 30th Annual Spring Fun Show Preview "S.H.O.W. Your Horses" in Shelbyville, Tennessee, for the purpose of showing or exhibiting Lady Ebony's Ace; and (2) dismissing the Complaint (Initial Decision as to Christopher J. Zahnd at 11).

¹Complainant also alleged that Ronald Beltz violated the Horse Protection Act (Compl. ¶¶ II.1, II.2). Complainant and Ronald Beltz agreed to a consent decision which Chief Administrative Law Judge Marc R. Hillson [hereinafter the Chief ALJ] entered on January 18, 2005. *In re Ronald Beltz*, 64 Agric. Dec. ____ (Jan. 18, 2005) (Consent Decision as to Ronald Beltz).

On October 24, 2005, Complainant appealed to the Judicial Officer. On November 16, 2005, Respondent filed a response to Complainant's appeal petition. On November 23, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision. On December 28, 2005, I issued a Decision and Order as to Christopher Jerome Zahnd reversing the Chief ALJ and concluding Respondent entered Lady Ebony's Ace as entry number 15 in class number 13 at the 30th Annual Spring Fun Show Preview "S.H.O.W. Your Horses" in Shelbyville, Tennessee, for the purpose of showing or exhibiting Lady Ebony's Ace, while Lady Ebony's Ace was sore, in violation of section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)).²

On January 12, 2006, Respondent filed a "Motion for Reconsideration" of *In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. ____ (Dec. 28, 2005). On February 2, 2006, Complainant filed "Opposition to Motion for Reconsideration." On February 3, 2006, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Respondent's Motion for Reconsideration.

CONCLUSIONS BY THE JUDICIAL OFFICER ON RECONSIDERATION

Respondent raises three issues in the Motion for Reconsideration. First, Respondent contends the findings of fact in *In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. ____ (Dec. 28, 2005), are not supported by the record.

²*In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. ____ (Dec. 28, 2005).

I have reviewed each of the 15 findings of fact in *In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. ____ (Dec. 28, 2005). I find each of the findings of fact are supported by the record. *In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. ____ (Dec. 28, 2005), contains numerous citations to the portions of the record that support the findings of fact.

Second, Respondent contends the conclusions of law in *In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. ____ (Dec. 28, 2005), are not supported by the record, the Horse Protection Regulations, or the Rules of Practice.

I have reviewed the conclusions of law in *In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. ____ (Dec. 28, 2005). I find the conclusions of law are supported by the record. Moreover, *In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. ____ (Dec. 28, 2005), does not contain a conclusion that Respondent violated the Horse Protection Regulations (9 C.F.R. pt. 11) and does not cite the Rules of Practice as support for the conclusion that Respondent violated the Horse Protection Act.

Third, Respondent contends the Order in *In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. ____ (Dec. 28, 2005), is not supported by the record.

I have reviewed the Order in *In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. ____ (Dec. 28, 2005). I find the Order is supported by the record. *In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec.

___ (Dec. 28, 2005), contains a detailed discussion of the evidentiary basis for, and purpose of, the Order. A repetition of that discussion here would serve no useful purpose.

For the foregoing reasons and the reasons set forth in *In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. ___ (Dec. 28, 2005), Respondent's Motion for Reconsideration is denied.

Section 1.146(b) of the Rules of Practice (7 C.F.R. § 1.146(b)) provides that the decision of the Judicial Officer shall automatically be stayed pending the determination to grant or deny a timely-filed petition to reconsider. Respondent's Motion for Reconsideration was timely filed and automatically stayed *In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. ___ (Dec. 28, 2005). Therefore, since Respondent's Motion for Reconsideration is denied, I hereby lift the automatic stay, and the Order in *In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. ___ (Dec. 28, 2005), is reinstated; except that the effective date of the Order is the date indicated in the Order in this Order Denying Motion for Reconsideration as to Christopher Jerome Zahnd.

For the foregoing reasons, the following Order should be issued.

ORDER

1. Respondent is assessed a \$2,200 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the "Treasurer of the United States" and sent to:

Brian T. Hill
United States Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Room 2343-South Building, Stop 1417
Washington, DC 20250-1417

Respondent's payment of the civil penalty shall be forwarded to, and received by, Mr. Hill within 60 days after service of this Order on Respondent. Respondent shall indicate on the certified check or money order that payment is in reference to HPA Docket No. 02-0001.

2. Respondent is disqualified for a period of 1 year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or device, and from managing, judging, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction. "Participating" means engaging in any activity beyond that of a spectator, and includes, without limitation: (a) transporting or arranging for the transportation of horses to or from any horse show, horse exhibition, horse sale, or horse auction; (b) personally giving instructions to exhibitors; (c) being present in the warm-up areas, inspection areas, or other areas where spectators are not allowed at any horse show, horse exhibition, horse sale, or horse auction; and (d) financing the participation of others in any horse show, horse exhibition, horse sale, or horse auction.

The disqualification of Respondent shall become effective on the 60th day after service of this Order on Respondent.

RIGHT TO JUDICIAL REVIEW

Respondent has the right to obtain review of the Order in this Order Denying Motion for Reconsideration as to Christopher Jerome Zahnd in the court of appeals of the United States for the circuit in which he resides or has his place of business or in the United States Court of Appeals for the District of Columbia Circuit. Respondent must file a notice of appeal in such court within 30 days from the date of the Order in this Order Denying Motion for Reconsideration as to Christopher Jerome Zahnd and must simultaneously send a copy of such notice by certified mail to the Secretary of Agriculture.³ The date of the Order in this Order Denying Motion for Reconsideration as to Christopher Jerome Zahnd is February 6, 2006.

Done at Washington, DC

February 6, 2006

William G. Jenson
Judicial Officer

³15 U.S.C. § 1825(b)(2), (c).