

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) HPA Docket No. 04-0003
)
 Robert Raymond Black, II,)
 an individual; Christopher B.)
 Warley, an individual; Black)
 Gold Farm, Inc., a Texas)
 corporation; Robbie J. Warley,)
 an individual d/b/a Black Gold)
 Farms; Herbert Derickson and)
 Jill Derickson, individuals d/b/a)
 Herbert Derickson Training)
 Facility, a/k/a Herbert Derickson)
 Stables, a/k/a Herbert Derickson)
 Breeding and Training Facility,)
)
 Respondents) **Decision and Order**

PROCEDURAL HISTORY

On August 19, 2004, Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], initiated this disciplinary proceeding by filing a Complaint. The Administrator 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]. The Administrator alleges: (1) on or about March 21, 2002, Herbert Derickson, Jill Derickson, and Robert Raymond Black, II, violated section 5(1) of the Horse Protection Act (15 U.S.C. § 1824(1)), by transporting a horse named “Just American Magic” to the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, while the horse was sore, with reason to believe the horse, while sore, may be entered for the purpose of his being shown in that horse show; (2) on or about March 21, 2002, Christopher B. Warley, Herbert Derickson, Jill Derickson, and Robert Raymond Black, II, violated section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)), by entering Just American Magic as entry number 425 in class number 25 in the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, while the horse was sore; and (3) on or about March 21, 2002, Robbie J. Warley and Black Gold Farm, Inc., violated section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)), by allowing Christopher B. Warley, Herbert Derickson, Jill Derickson, and Robert Raymond Black, II, to enter Just American Magic, owned by Robbie J. Warley and Black Gold Farm, Inc., in the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, for the purpose of showing that horse, which was sore (Compl. ¶¶ 11-13).

All parties, except Robert Raymond Black, II, filed answers denying the material allegations of the Complaint. Mr. Black’s copy of the Complaint, sent by the Hearing Clerk, certified mail return receipt requested, could not be delivered by the United States

Postal Service, which returned the envelope containing the Complaint to the Hearing Clerk marked "Not deliverable as addressed/Unable to Forward/Return to Sender." On September 13, 2004, the Hearing Clerk remailed a copy of the Complaint to the same address by regular mail. Mr. Black did not file his answer, and the Administrator filed a motion seeking a Decision and Order as to Robert Raymond Black, II, By Reason of Admission of Facts. Counsel for Mr. Black entered an appearance and opposed the motion. Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] deferred a decision on the motion. The Administrator appealed the ALJ's deferral of the decision to the Judicial Officer. On May 3, 2005, I remanded the case to the ALJ finding that, because there was no decision on the motion, the appeal was premature and that interlocutory appeals are not authorized under the Rules of Practice. *In re Robert Raymond Black, II* (Order Dismissing Interlocutory Appeal as to Robert Raymond Black, II, and Remanding the Proceeding to the ALJ), 64 Agric. Dec. 681 (2005).

The ALJ conducted an oral hearing on June 26 and 27, 2006, in Shelbyville, Tennessee. Colleen A. Carroll, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Administrator; Jack G. Heffington, Christiana, Tennessee, represented Robert Raymond Black, II; L. Thomas Austin, Austin, Davis & Mitchell, Dunlap, Tennessee, represented Christopher B. Warley, Black Gold Farm, Inc., and Robbie J. Warley; and S. Todd Bobo, Bobo, Hunt & White, Shelbyville, Tennessee, represented Herbert Derickson and Jill Derickson.

Eleven witnesses testified during the hearing. The Administrator called nine witnesses, including both veterinary medical officers, who examined Just American Magic on March 21, 2002, at the 34th Annual National Walking Horse Trainers Show. The Administrator also called as witnesses the executive vice president of the National Horse Show Commission, the executive secretary of the Walking Horse Trainers Association, and numerous United States Department of Agriculture investigators. Robert Raymond Black, II, and his wife Amanda Black were the only two witnesses called by any of the Respondents.

On October 3, 2006, the ALJ issued his Decision and Order [hereinafter Initial Decision]. The ALJ dismissed the Complaint against Robert Raymond Black, II, Christopher B. Warley, and Jill Derickson. The ALJ found Herbert Derickson violated section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)) by entering Just American Magic in the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 21, 2002, while the horse was sore. However, the ALJ dismissed the allegation that Mr. Derickson violated section 5(1) of the Horse Protection Act (15 U.S.C. § 1824(1)) by transporting the horse, while the horse was sore, with reason to believe the horse, while sore, may be entered for the purpose of his being shown in that horse show. Finally, the ALJ found Black Gold Farm, Inc., and Robbie J. Warley violated section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)) by allowing the entry of Just American Magic in the 34th Annual National Walking Horse

Trainers Show in Shelbyville, Tennessee, on March 21, 2002, for the purpose of showing the horse, which was sore.

The ALJ assessed Mr. Derickson a \$2,200 civil penalty and disqualified him for 2 years from showing, exhibiting, or entering any horse and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction; however, the ALJ suspended 1 year of Mr. Derickson's 2-year disqualification. The ALJ assessed Robbie J. Warley and Black Gold Farm, Inc., jointly and severally, a \$2,200 civil penalty. In addition, the ALJ disqualified Robbie J. Warley and Black Gold Farm, Inc., for 1 year from showing, exhibiting, or entering any horse and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction.

Herbert Derickson appealed the ALJ's decision. He argues that the decision of the National Horse Show Commission, under the guidelines of the 2001 APHIS Horse Protection Operating Plan, imposing a fine and a suspension for his actions, bars the United States Department of Agriculture from bringing an enforcement action for violations of the Horse Protection Act. For the reasons set forth below, I deny Mr. Derickson's appeal.

The Administrator appealed the ALJ's decision. First, the Administrator argues the ALJ erred in deferring a ruling on the Administrator's motion for a Decision and Order as to Robert Raymond Black, II, By Reason of Admission of Facts. The

Administrator next challenges the ALJ's dismissal of the "entering" violations against Christopher B. Warley, Jill Derickson, and Robert Raymond Black, II. The Administrator further challenges the ALJ's dismissal of the "transporting" violations against Herbert Derickson, Jill Derickson, and Robert Raymond Black, II. Finally, the Administrator argues the ALJ erred in the sanctions he imposed on Mr. Derickson, Ms. Warley, and Black Gold Farm, Inc.

Christopher B. Warley, Herbert Derickson, Jill Derickson, and Robert Raymond Black, II, each filed a response to the Administrator's appeal petition. Although the Administrator appealed the sanction imposed on Robbie J. Warley and Black Gold Farm, Inc., neither Ms. Warley nor Black Gold Farm, Inc., filed a response to the appeal.

For the reasons set forth below, I grant in part and deny in part the Administrator's appeal petition.

FINDINGS OF FACT

Just American Magic was a 7-year-old Tennessee Walking Horse owned by Black Gold Farm, Inc., and Robbie J. Warley (CX 3). Ms. Warley is a director, the president, and sole shareholder of Black Gold Farm, Inc. (CX 9). Ms. Warley retained Herbert and Jill Derickson, doing business as Herbert Derickson Training Facility or Herbert Derickson Stables, to train Just American Magic and other horses to perform in horse shows and exhibitions and to show Just American Magic in horse shows. Billing records indicate Ms. Warley retained the Dericksons at least since September 2000. (CX 24.)

Just American Magic was entered as entry number 425 in class 25 in the 34th Annual National Walking Horse Trainers Show held in Shelbyville, Tennessee, on March 21, 2002 (CX 2). The entry form for the show indicates Mr. Derickson was Just American Magic's trainer (CX 2). Mr. Derickson does business under a number of trade names including Herbert Derickson Training Facility, Herbert Derickson Stables, and Herbert Derickson Breeding and Training Facility (Dericksons' Answer ¶ 5). Jill Derickson is married to Herbert Derickson. She also does business under the same trade names as Mr. Derickson including Herbert Derickson Training Facility, Herbert Derickson Stables, and Herbert Derickson Breeding and Training Facility (Dericksons' Answer ¶ 6). Mrs. Derickson signed the check that paid for Just American Magic's entry in the 34th Annual National Walking Horse Trainers Show (CX 10 at 8). She also completed the National Walking Horse Trainers Show Entry Blank identifying Just American Magic as an entry in the show (CX 2).¹

¹Although the signature block on the entry blank states "Herbert Derickson," the writing is similar in style to Jill Derickson's signature on the entry payment check (CX 10 at 8), an entry payment check for the 2003 National Walking Horse Trainers Show (CX 19 at 41), and an entry blank for the 2003 National Walking Horse Trainers Show (CX 19 at 13). The signature on the entry blank for the 2002 National Walking Horse Trainers Show (CX 2) is very different from Mr. Derickson's signature as seen on other documents in the record, including acknowledgment of receipt of a letter from Black Gold Farm, Inc. (RX 1W); the DQP Ticket issued September 30, 2000, dismissing Just American Magic from the 2000 International Show (CX 14); and the DQP Ticket issued May 10, 2002, dismissing another horse from the 4th Annual Children's Classic Horse Show (CX 20 at 5).

Christopher B. Warley was scheduled to ride Just American Magic in the 34th Annual National Walking Horse Trainers Show (CX 2). Mr. Warley is a director and vice president of Black Gold Farm, Inc. (CX 9 at 17-19).

On the evening of March 21, 2002, Mr. Derickson led Just American Magic to the pre-show inspection. Designated Qualified Persons [hereinafter DQPs]² Bob Flynn and Charles Thomas inspected Just American Magic. The DQPs found the horse was bilateral sore and did not comply with the scar rule. (RX 1D.) The DQPs issued National Horse Show Commission DQP Ticket number 23130 disqualifying the horse from showing (RX 1D). After the DQPs disqualified Just American Magic from showing, Mr. Derickson had his employee, Robert Raymond Black, II, take control of the horse (CX 12). Mr. Derickson then left the inspection area. Lynn P. Bourgeois and Clement Dussault, veterinary medical officers employed by the United States Department of Agriculture, inspected Just American Magic (CX 1b-CX 1c). Each veterinarian found the horse had strong, repeatable, reproducible pain responses when palpated on each front foot (CX 1b-CX 1c). In addition, Dr. Bourgeois and Dr. Dussault each found an area of raised scar tissue on each front foot (CX 1b-CX 1c). The veterinary medical officers

²The management of a horse show employs DQPs, and United States Department of Agriculture veterinarians monitor their performance (9 C.F.R. §§ 11.7, .21). The Horse Protection Act provides that the management of a horse show may be held liable if it fails to utilize a DQP and a sore horse participates in the show (15 U.S.C. § 1824(3); 9 C.F.R. § 11.20). Therefore, use of a DQP protects the show's management from liability under the Horse Protection Act and indicates management has made a conscientious and concerted effort to see that sore horses are not entered, exhibited, or shown (H.R. Rep. No. 91-1597, at 4 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4870, 4873).

conferred agreeing the horse was sore and did not comply with the scar rule. The veterinary medical officers then completed the bottom portion of APHIS Form 7077, Summary of Alleged Violations, indicating the locations of the scar tissue and the locations where they elicited pain responses when palpating Just American Magic (CX 1a).

DISCUSSION

I first address an issue that has become more prevalent in recent Horse Protection Act cases and was raised before me in this case: the interaction between the various horse industry organizations and the Animal and Plant Health Inspection Service, along with the role each plays in the enforcement of the Horse Protection Act. Individuals appearing before me continue to argue that a document entitled “Horse Protection Program Operating Plan” binds the Animal and Plant Health Inspection Service in its enforcement of the Horse Protection Act. That argument fails. Under the Horse Protection Program Operating Plan, the Animal and Plant Health Inspection Service allows a horse industry organization that has signed the plan³ to address Horse Protection Act violations at shows managed by that horse industry organization. Although the Animal and Plant Health Inspection Service grants horse industry organizations this opportunity, the Animal and

³I note the copy of the Horse Protection Program Operating Plan entered into record does not contain a signature page (RX 4D). Therefore, based on the evidence before me, I cannot determine whether the Horse Protection Program Operating Plan applied to the 34th Annual National Walking Horse Trainers Show. However, the applicability of the Horse Protection Program Operating Plan (RX 4D) to the 34th Annual National Walking Horse Trainers Show has no impact on my decision.

Plant Health Inspection Service retains full authority to enforce the Horse Protection Act.

The Horse Protection Program Operating Plan leaves no doubt that the Animal and Plant Health Inspection Service retains authority to enforce the Horse Protection Act after the Horse Protection Program Operating Plan is implemented:

Nothing in this Operating Plan is intended to indicate that APHIS has relinquished any of its authority under the Act or Regulations (RX 4 at 2 (footnote omitted)).

It is not the purpose or intent of this Operating Plan to limit in any way the Secretary's authority. It should be clearly understood that the Secretary has the ultimate administrative authority in the interpretation and enforcement of the Act and the Regulations. This authority can only be curtailed or removed by an act of Congress, and not by this Plan. (RX 4 at 2 n.1.)

The Department retains the authority to initiate enforcement proceedings against any violator when it feels such action is necessary to fulfill the purposes of the HPA (RX 4 at 4 n.8).

Nothing in this section is intended to limit APHIS's disciplinary authority under the Act and the Regulations (RX 4 at 7 n.10).

APHIS has the inherent authority to pursue a federal case whenever it determines the purposes of the HPA have not been fulfilled (RX 4 at 25 n.25).

A decision issued by a horse industry organization after a proceeding to enforce the guidelines in the Horse Protection Program Operating Plan does not limit the Animal and Plant Health Inspection Service's authority to initiate an action under the Horse Protection Act against an individual for the activities that were the subject of that horse industry organization's decision. A horse industry organization's decision does not limit the Animal and Plant Health Inspection Service's authority to impose sanctions against an

individual for the activities which resulted in the horse industry organization's sanctions, when the Secretary of Agriculture finds those activities violated the Horse Protection Act. In addition, I hold the Animal and Plant Health Inspection Service's issuance of the Horse Protection Program Operating Plan does not make a horse industry organization, which signs the plan, an agent of the Animal and Plant Health Inspection Service or the United States Department of Agriculture for any purpose, including enforcement of the Horse Protection Act. Furthermore, I hold the United States Department of Agriculture is not a party to any horse industry organization proceeding instituted by a horse industry organization under the Horse Protection Program Operating Plan or the horse industry organization's own rules. Therefore, defenses raised in proceedings before the Secretary of Agriculture that rely on decisions issued by a horse industry organization under authority of the Horse Protection Program Operating Plan will generally fail. I have previously considered these arguments and found that horse industry organization proceedings do not bar the Secretary of Agriculture from enforcing the Horse Protection Act. *In re Jackie McConnell*, 64 Agric. Dec. 436 (2005), aff'd, 198 F. App'x 417 (6th Cir. 2006) (unpublished).

Respondents have asserted a number of affirmative defenses including laches, res judicata, collateral estoppel, and double jeopardy. Respondents assert the violations were the subject of proceedings before the National Horse Show Commission against certain of the Respondents and, because the Horse Protection Program Operating Plan was in place,

those proceedings, resulting in exoneration of Robbie J. Warley by the National Horse Show Commission Board of Directors and sanctions imposed against Herbert Derickson, preclude relitigation by the United States Department of Agriculture in the instant proceeding. Even if all the requisite elements necessary to trigger these defenses were present, and they are not, a detailed discussion of the doctrines of res judicata, collateral estoppel, and double jeopardy is not necessary. For the reasons discussed above, these defenses presented by Respondents fail.

The ALJ correctly held the defense of laches does not apply. Laches, a defense based upon undue delay in asserting a legal right or privilege, has long been held to be inapplicable to actions of the government. *United States v. Kirkpatrick*, 22 U.S. (9 Wheat.) 720, 735-36 (1824). See also *United States v. Mack*, 295 U.S. 480, 489 (1935); *United States v. Verdier*, 164 U.S. 213, 219 (1896); *German Bank v. United States*, 148 U.S. 573, 579-80 (1893); *Gaussin v. United States*, 97 U.S. 584, 590 (1878).

However, before discussing the specific violations, I briefly address the Dericksons' statement that they "have been previously tried in a criminal hearing by the National Horse Show Commission" (Respondents' Response to Pet. for Appeal Filed by the Complainant at 3). Such a statement is without merit. Criminal proceedings are actions by a state or federal government body, not proceedings by a private organization, such as the National Horse Show Commission. No proceedings before any horse industry organization can be considered criminal for purposes of double jeopardy. While the

Horse Protection Act makes certain actions “criminal” (15 U.S.C. § 1825(a)), the proceedings before me are civil in nature.

Although not discussed in detail in their response to the Administrator’s appeal petition, the Dericksons suggest Just American Magic was not sore (Memorandum in Support of Respondents’ Response at 5 ¶ 5).

§ 1821. Definitions

....

(3) The term “sore” when used to describe a horse means that—

- (A) an irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse,
- (B) any burn, cut, or laceration has been inflicted by a person on any limb of a horse,
- (C) any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse, or
- (D) any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse,

and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving . . .

15 U.S.C. § 1821(3). Furthermore, the Horse Protection Act creates a presumption that a horse with abnormal, bilateral sensitivity is sore, as follows:

§ 1825. Violations and penalties**....
(d) Production of witnesses and books, papers, and documents; depositions; fees; presumptions; jurisdiction**

....
(5) In any civil or criminal action to enforce this chapter or any regulation under this chapter a horse shall be presumed to be a horse which is sore if it manifests abnormal sensitivity or inflammation in both of its forelimbs or both of its hindlimbs.

15 U.S.C. § 1825(d)(5).

The evidence demonstrates Just American Magic was sore when he was entered in the 34th Annual National Walking Horse Trainers Show on March 21, 2002. The evidence includes: (1) National Horse Show Commission DQP Ticket number 23130 (RX 1D) signed by both DQPs who examined the horse, indicating the horse was “bilateral sore” and did not comply with the scar rule; (2) APHIS Form 7077, Summary of Alleged Violations (CX 1a) signed by both United States Department of Agriculture veterinary medical officers who examined the horse, indicating the horse was sore, further indicating the horse did not comply with the scar rule, and showing on the illustration in block number 31 of the form where the veterinary medical officers elicited pain responses when palpating the horse, as well as where the veterinary medical officers found scaring; (3) affidavits from each veterinary medical officer (CX 1b-CX 1c) discussing the veterinary medical officers’ observations of the horse that led to the conclusion that the horse was sore on March 21, 2002; and (4) the videotape of the examinations by the DQPs and veterinary medical officers on March 21, 2002 (CX 12), showing Just

American Magic's reaction to palpation.⁴ Therefore, I conclude Just American Magic was sore when entered in the 34th Annual National Walking Horse Trainers Show. Furthermore, based on the testimony of the two veterinary medical officers, I find Just American Magic was sore well prior to March 21, 2002 (Tr. 46-47, 255). Therefore, I conclude Just American Magic was sore when transported to the 34th Annual National Walking Horse Trainers Show. Dr. Dussault testified scar tissue develops over time: "You know, I'm not going to put a day on it, but we're talking something weeks, months. This is just a constant irritation, some type of insult to the tissue. It's not something that occurs in a day." (Tr. 255.)

VIOLATIONS

Robert Raymond Black, II

The Administrator alleges that, on or about March 21, 2002, Mr. Black violated section 5(1) of the Horse Protection Act (15 U.S.C. § 1824(1)) by transporting Just American Magic to the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, while the horse was sore, with reason to believe the horse, while sore, may be entered for the purpose of his being shown in that horse show (Compl. ¶ 11). The Horse Protection Act prohibits transportation of a sore horse, as follows:

⁴I have viewed numerous videotapes of horses being examined prior to entry at horse shows. Even when found to be sore, in most cases, the horse's reaction on the videotape appears subtle. Here, the videotape shows Just American Magic had a demonstrable and repeated reaction to palpation. Just American Magic's reaction to palpation is one of the most severe that I have seen.

§ 1824. Unlawful acts

The following conduct is prohibited:

- (1) The shipping, transporting, moving, delivering, or receiving of any horse which is sore with reason to believe that such horse while it is sore may be shown, exhibited, entered for the purpose of being shown or exhibited, sold, auctioned, or offered for sale, in any horse show, horse exhibition, or horse sale or auction.

15 U.S.C. § 1824(1). The Administrator further alleges that, on or about March 21, 2002, Mr. Black violated section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)) by entering Just American Magic as entry number 425 in class number 25 in the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, while the horse was sore (Compl. ¶ 12). The Horse Protection Act also prohibits:

§ 1824. Unlawful acts

The following conduct is prohibited:

....

- (2) The (A) showing or exhibiting, in any horse show or horse exhibition, of any horse which is sore, (B) entering for the purpose of showing or exhibiting in any horse show or horse exhibition, any horse which is sore.

15 U.S.C. § 1824(2)(A)-(B).

Before addressing the substantive allegations against Mr. Black, I should clarify whether Mr. Black was properly served with the Complaint. I draw a bright line regarding filing deadlines. Close does not count.

Here, if service were proper, Mr. Black failed to file a timely answer to the Complaint and the ALJ should have granted the Administrator's motion seeking a Decision and Order as to Robert Raymond Black, II, By Reason of Admission of Facts. The Rules of Practice provides:

§ 1.147 Filing; service; extensions of time; and computation of time.

. . .

(c) *Service on party other than the Secretary.* (1) Any complaint . . . shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the date of delivery by certified or registered mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, *Provided that*, if any such document or paper is sent by certified or registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address.

7 C.F.R. § 1.147(c)(1). While I give respondents no leeway on filing deadlines, I am equally strict in interpreting the government's requirements for service of process. The Hearing Clerk mailed the Complaint to Mr. Black on August 20, 2004, by certified mail, return receipt requested. The United States Postal Service returned the Complaint to the Hearing Clerk marked "Not deliverable as addressed/Unable to Forward/Return to Sender." The Hearing Clerk remailed a copy of the Complaint to the same address, by regular mail, on September 13, 2004. The Rules of Practice allows remailing by regular mail to effectuate service only if a document or paper is "returned marked by the postal service as unclaimed or refused." (7 C.F.R. § 1.147(c)(1).) The August 20, 2004,

certified mailing of the Complaint was not returned marked by the postal service as “unclaimed” or “refused.” Therefore, the remailing on September 13, 2004, by regular mail, did not meet the requirement in the Rules of Practice to effectuate service.

The ALJ dismissed the case against Mr. Black. The Administrator appealed that dismissal. For the reasons set forth below, I affirm the ALJ’s dismissal of the case against Mr. Black. The Administrator’s argument that Mr. Black transported Just American Magic is based on an entry on APHIS Form 7077, Summary of Alleged Violations (CX 1a). Block number 27 of the form asks for the “Name and Address of Person(s) Responsible for Transportation.” The entry for block number 27 is: “same as #11.” Mr. Black is identified in block number 11. Having examined the testimony regarding the collection of information used to complete APHIS Form 7077 and compared other entries on the form with other evidence in the case (Tr. 161-65, 176-89), I must agree with the ALJ that there are inconsistencies that raise questions about the accuracy of some information. These questions, along with the testimony, credited as believable by the ALJ, of Mr. Black and his wife that they traveled to the show together (Tr. 477, 499), cause me to conclude there is not sufficient evidence to find that Mr. Black violated section 5(1) of the Horse Protection Act (15 U.S.C. § 1824(1)).

I have long held that the entering of a horse is a continuing process, not an event, and includes all activities required to be completed before a horse can actually be shown

or exhibited. *In re William Dwaine Elliott* (Decision as to William Dwaine Elliott), 51 Agric. Dec. 334 (1992). The United States Court of Appeals for the Fourth Circuit concluded “the USDA’s interpretation of ‘entering’ is reasonable and not contrary to Congressional intent and thus we are bound to give it effect.” *Elliott v. Administrator, Animal and Plant Health Inspection Service*, 990 F.2d 140, 145 (4th Cir.), *cert. denied*, 510 U.S. 867 (1993), citing *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984). Part of the entry process includes presenting the horse for inspection prior to showing. There is no dispute that Mr. Black was the custodian of Just American Magic when the United States Department of Agriculture veterinary medical officers examined the horse. The videotape of the inspection shows Mr. Black became custodian of the horse between the inspection by the DQPs and the inspection by the United States Department of Agriculture veterinary medical officers (CX 12).

In his affidavit, Dr. Bourgeois stated:

At approximately 6:45 PM on the evening of March 21, 2002 a horse identified as entry # 425 in class 25 was presented to DQP Bob Flynn for pre-show inspection. This horse led very slowly and reluctantly to and around cone. Mr. Flynn’s digital palpation of both fore pasterns elicited severe pain responses. Mr. Flynn then referred horse to Charles Thomas for inspection. Mr. Thomas’ findings were similar to Mr. Flynn’s. They conferred with Mr. Messick and issued ticket # 23130 for bilateral sore and scar rule noncompliance.

I then requested and received permission from custodian to examine horse.

Affidavit of Lynn P. Bourgeois (CX 1b at 1-2).

The critical part of this statement is that the DQP ticket was issued prior to Dr. Bourgeois beginning his examination. The issuance of the DQP ticket disqualified Just American Magic from showing. Therefore, when Mr. Black became custodian and presented Just American Magic to Dr. Bourgeois for examination, the horse already was disqualified from showing. Mr. Black could not be “entering” Just American Magic for the purpose of showing him in the 34th Annual National Walking Horse Trainers Show because, at the time Mr. Black became the custodian and presented Just American Magic to the veterinary medical officers, the DQPs had already disqualified the horse from showing. Therefore, I dismiss the Complaint against Mr. Black.

Christopher B. Warley

The Administrator alleges Christopher B. Warley violated section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)) by entering Just American Magic as entry number 425 in class number 25 in the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 21, 2002, while the horse was sore (Compl. ¶ 12). Mr. Warley was scheduled to ride Just American Magic in the 34th Annual National Walking Horse Trainers Show (CX 2). The ALJ dismissed the Complaint against Mr. Warley holding “extension of liability to a designated rider whose mount is excused at a pre-show inspection appears unwarranted if the rider is neither an owner of the horse nor presented the horse for inspection.” (Initial Decision at 9.)

The ALJ dismissed, as dicta, the discussion in *In re Bowtie Stables, LLC*, 62 Agric. Dec. 580, 594-95 (2003), which indicates that being the designated rider is sufficient to support a violation of the Horse Protection Act for “entering” if the horse is found to be sore. Even if the ALJ was correct that in *Bowtie Stables* the proposition was dicta, I now hold that being the designated rider on the entry form, or other horse show documentation, is sufficient evidence to find that the individual participated in the entry of the horse in the show.

The Administrator challenged the ALJ’s dismissal of the Complaint against Mr. Warley (Complainant’s Appeal Pet. at 34-37). Mr. Warley’s response raised no questions regarding the Administrator’s appeal:

This Respondent hereby states that the Administrative Law Judge observed the demeanor of the witnesses, heard the testimony for two (2) days and concluded in favor of the Respondent, Christopher B. Warley, and the evidence sustains this Respondent’s position.

In conclusion, the Appeal filed by the Complainant should be dismissed.

Respondent Christopher B. Warley’s Response to Petition for Appeal Filed by the Complainant at 1.

I have examined the record and found evidence supporting the allegation that Mr. Warley violated section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)). There is evidence that he was scheduled to ride Just American Magic on March 21, 2002 (CX 2). This evidence that Mr. Warley was scheduled to ride Just

American Magic was confirmed in an interview with Robbie J. Warley conducted on July 11, 2002, by an Animal and Plant Health Inspection Service investigator (CX 7). The evidence also establishes that Mr. Warley is the vice president and a director of Black Gold Farm, Inc., one of the co-owners of Just American Magic (CX 9 at 16-19). Mr. Warley presented no evidence or argument to rebut this evidence. More important, Mr. Warley made no attempt to rebut the claim that he would have been the rider showing Just American Magic had the horse not been disqualified from showing.

Based on the record, I find Mr. Warley was the scheduled rider of Just American Magic on March 21, 2002, and, therefore, entered the horse in the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee. As discussed above, I also find that Just American Magic was sore when entered. Therefore, I conclude Christopher B. Warley violated section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)) by entering Just American Magic as entry number 425 in class number 25 in the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 21, 2002, while the horse was sore.

Robbie J. Warley and Black Gold Farm, Inc.

The Administrator alleges Robbie J. Warley and Black Gold Farm, Inc., violated section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)) by allowing the entry of Just American Magic, owned by Robbie J. Warley and Black Gold Farm, Inc., in the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on

March 21, 2002, for the purpose of showing that horse when the horse was sore (Compl. ¶ 13).

Ms. Warley and Black Gold Farm, Inc., rely upon a letter to Herbert Derickson directing him to fully comply with the Horse Protection Act (RX 1W) as a defense to the Complaint. Under *Baird v. U.S. Dep't of Agric.*, 39 F.3d 131 (6th Cir. 1994), an owner may avoid a violation of section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)) if the owner takes affirmative steps in an effort to prevent the soring of the owner's horse. These steps include a letter of instruction to the trainer such as the one provided to Mr. Derickson (RX 1W). The letter advised Mr. Derickson that should he fail to comply with the directions, any horse placed at his facility would be removed. Mr. Derickson acknowledged the instructions by signing the letter and returning the signed letter to Ms. Warley (RX 1W).

However, the Court in *Baird* allows the government to prove that the instructions given by the owner to the trainer concerning the soring of the owner's horses constituted merely a pretext or a self-serving ruse designed to mask what in actuality was conduct violative of the Horse Protection Act. *Baird*, 39 F.3d at 137. The Administrator demonstrated the instructions to Mr. Derickson were a pretext. On September 30, 2000, while being trained by Herbert Derickson, Just American Magic had been entered in the International Show at Murfreesboro, Tennessee, but was found to be in violation of the Horse Protection Act and was disqualified by the DQPs from showing (CX 14).

Notwithstanding this earlier Horse Protection Act violation by Mr. Derickson (CX 14) and contrary to the written intent expressed in the letter to Mr. Derickson that the horse would be removed from the trainer for non-compliance with the Horse Protection Act (RX 1W), Robbie J. Warley and Black Gold Farm, Inc., allowed Just American Magic to remain at the Herbert Derickson Training Facility. In fact, Mr. Derickson trained Just American Magic for the 34th Annual National Walking Horse Trainers Show at which the horse was again found to be sore. The ALJ correctly found that Robbie J. Warley and Black Gold Farm, Inc., violated section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)) by allowing the entry of Just American Magic, owned by Robbie J. Warley and Black Gold Farm, Inc., in the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 21, 2002, for the purpose of showing that horse when the horse was sore. Neither Robbie J. Warley nor Black Gold Farm, Inc., appealed the ALJ's decision.

Herbert Derickson and Jill Derickson

The Administrator alleges that, on or about March 21, 2002, Herbert Derickson and Jill Derickson violated section 5(1) of the Horse Protection Act (15 U.S.C. § 1824(1)) by transporting Just American Magic to the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, while the horse was sore, with reason to believe the horse, while sore, may be entered for the purpose of his being shown in that horse show; and, that, on or about March 21, 2002, Herbert Derickson and Jill Derickson

violated section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)) by entering Just American Magic as entry number 425 in class number 25 in the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, while the horse was sore (Compl. ¶¶ 11-12).

The ALJ dismissed both the entry and transporting charges against Mrs. Derickson and dismissed the transporting charge against Mr. Derickson. The ALJ found Mr. Derickson violated the Horse Protection Act by entering Just American Magic in the 34th Annual National Walking Horse Trainers Show while the horse was sore. The ALJ assessed Mr. Derickson a \$2,200 civil penalty and disqualified him for 2 years from showing, exhibiting, or entering any horse and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction; however, the ALJ suspended 1 year of Mr. Derickson's 2-year disqualification. Mr. Derickson appealed the ALJ's decision finding he violated the Horse Protection Act and imposing a sanction against him, while the Administrator appealed the dismissal of both claims against Mrs. Derickson and the transporting claim against Mr. Derickson.

The nature of the business run by the Dericksons is not addressed by the parties or the ALJ. Mr. and Mrs. Derickson each admit in their answer that each was an individual doing business as Herbert Derickson Training Facility, a/k/a Herbert Derickson Stables, a/k/a Herbert Derickson Breeding and Training Facility (Dericksons' Answer ¶¶ 5-6). Invoices issued by the Dericksons include statements "Thank you, we appreciate your

business!” and “Thanks, Herbert and Jill Derickson.” (CX 24.) Based on the record before me, I find Herbert Derickson and Jill Derickson were partners that operated under various names including Herbert Derickson Training Facility, Herbert Derickson Stables, and Herbert Derickson Breeding and Training Facility. *Bass v. Bass*, 814 S.W.2d 38 (Tenn. 1991).

Herbert Derickson Stables, one of the names of the partnership operated by Herbert Derickson and Jill Derickson, sent invoice #945 to Black Gold Farm and Robbie Warley dated March 30, 2002 (CX 24 at 22). One line item included an entry for “Class entry fees Trainers Show” for Just American Magic. Right below that line item is a line item for “Hauling>Show Prep/Stall.” Although this item is marked “no charge,” I interpret it to indicate that Herbert Derickson Stables transported Just American Magic to the 34th Annual National Walking Horse Trainers Show. The partnership, Herbert Derickson Stables, operates through its partners. Because Herbert Derickson Stables transported Just American Magic to the 34th Annual National Walking Horse Trainers Show, I conclude that its two partners, Herbert Derickson and Jill Derickson, transported the horse to the 34th Annual National Walking Horse Trainers Show.

As discussed above, and based on the testimony of the two United States Department of Agriculture veterinary medical officers, I find Just American Magic was sore well prior to March 21, 2002 (Tr. 46-47, 255). Therefore, I conclude Just American Magic was sore when transported to the 34th Annual National Walking Horse Trainers

Show. Finding that Herbert Derickson and Jill Derickson transported Just American Magic to the 34th Annual National Walking Horse Trainers Show and that Just American Magic was sore when transported to the 34th Annual National Walking Horse Trainers Show, I conclude that, on or about March 21, 2002, Herbert Derickson and Jill Derickson violated section 5(1) of the Horse Protection Act (15 U.S.C. § 1824(1)) by transporting Just American Magic to the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, while the horse was sore, with reason to believe the horse, while sore, may be entered for the purpose of his being shown in that horse show.

It is well established that an individual who presents a horse for inspection may be found to be participating in “entering” a horse. *Elliott v. Administrator, Animal and Plant Health Inspection Service*, 990 F.2d 140, 145 (4th Cir.), cert. denied, 510 U.S. 867 (1993); *Gray v. U.S. Dep’t of Agric.*, 39 F.3d 670, 676 (6th Cir. 1994). The videotape of the inspection of Just American Magic (CX 12) shows Herbert Derickson presenting Just American Magic to the DQPs for inspection. Therefore, I find Herbert Derickson entered Just American Magic in the 34th Annual National Walking Horse Trainers Show. As I found above, Just American Magic was sore when entered in the 34th Annual National Walking Horse Trainers Show. Therefore, I find Mr. Derickson violated section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)) by entering Just American Magic as entry number 425 in class number 25 in the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 21, 2002, while the horse was sore.

Jill Derickson did not escort Just American Magic to be inspected; however, she is equally responsible for entering the horse in the show. I have long held that “entry” is a process, not a distinct event, which includes among other items, paying the entry fee, registering the horse with the show management, and presenting the horse for the mandatory pre-show inspection. *Elliott v. Administrator, Animal and Plant Health Inspection Service*, 990 F.2d 140, 145 (4th Cir.), cert. denied, 510 U.S. 867 (1993). The United States Court of Appeals for the Sixth Circuit adopted my view holding that entry of a horse, for purposes of the Horse Protection Act, is a process, which consists of, among other steps, paying the entry fee and presenting the horse for inspection. *Gray v. U.S. Dep’t of Agric.*, 39 F.3d 670, 676 (6th Cir. 1994), citing with approval *Elliott*, 990 F.2d at 145. I have repeatedly held that any individual who participates in, or completes any part of, the entry process is liable for the Horse Protection Act violation should the horse be found to be sore. See *In re Derwood Stewart*, 60 Agric. Dec. 570, 605 (2001), aff’d, 64 F. App’x 941 (6th Cir. 2003).

Jill Derickson paid the entry fee for Just American Magic to enter the 34th Annual National Walking Horse Trainers Show (CX 10 at 8). Furthermore, I find Jill Derickson completed the entry blank for the 34th Annual National Walking Horse Trainers Show identifying Just American Magic as an entry in the show⁵ (CX 2). This evidence is sufficient to find that Jill Derickson entered Just American Magic in the 34th Annual

⁵See note 1.

National Walking Horse Trainers Show. Therefore, because Just American Magic was sore when entered in the 34th Annual National Walking Horse Trainers Show, I find Mrs. Derickson violated section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)) by entering Just American Magic as entry number 425 in class number 25 in the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 21, 2002, while the horse was sore.

SANCTIONS

Introduction

Section 6(b)(1) of the Horse Protection Act (15 U.S.C. § 1825(b)(1)) authorizes the assessment of a civil penalty of not more than \$2,000 for each violation of section 5 of the Horse Protection Act (15 U.S.C. § 1824).⁶ Section 6(b)(1) of the Horse Protection Act (15 U.S.C. § 1825(b)(1)) provides, in 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 such 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. In most Horse Protection Act

⁶Pursuant 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 section 6(b)(1) of the Horse Protection Act (15 U.S.C. § 1825(b)(1)) for each violation of section 5 of the Horse Protection Act (15 U.S.C. § 1824) by increasing the maximum civil penalty from \$2,000 to \$2,200 (7 C.F.R. § 3.91(b)(2)(vii) (2005)).

cases, the maximum civil penalty per violation has been warranted.⁷ The Horse Protection Act also provides that any person assessed a civil penalty under section 6(b) of the Horse Protection Act (15 U.S.C. § 1825(b)) may be disqualified from showing or exhibiting any horse or judging or managing any horse show, horse exhibition, horse sale, or horse auction. The Horse Protection Act provides minimum periods of disqualification of not less than 1 year for a first violation and not less than 5 years for any subsequent violation (15 U.S.C. § 1825(c)). Section 6(c) of the Horse Protection Act (15 U.S.C. § 1825(c)) specifically provides that disqualification is in addition to any civil penalty assessed under section 6(b) of the Horse Protection Act (15 U.S.C. § 1825(b)).

The United States Department of Agriculture's sanction policy is set forth in *In re S.S. Farms Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), *aff'd*, 991 F.2d 803, 1993 WL 128889 (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.

While disqualification is discretionary with the Secretary of Agriculture, the imposition of a disqualification period, in addition to the assessment of a civil penalty,

⁷See *In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. 1487, 1504 (2005), *aff'd sub nom. Zahnd v. Sec'y of Agric.*, 479 F.3d 767 (11th Cir. 2007).

has been recommended by administrative officials charged with responsibility for achieving the congressional purpose of the Horse Protection Act and the Judicial Officer has 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.⁸

Christopher B. Warley

In determining Mr. Warley's sanction, I have examined the United States Department of Agriculture's sanction policy and the factors in the Horse Protection Act that must be considered before imposing a sanction (15 U.S.C. § 1825(b)(1)). Without articulating my thoughts on each factor, I found two most relevant. These two factors, at first glance, appear to create a counter balance. There is no evidence in the record indicating that Mr. Warley participated in the soring of Just American Magic; however, there is evidence indicating that Mr. Warley has a prior history of violating the Horse Protection Act. The National Horse Show Commission found Mr. Warley committed a violation of the Horse Protection Act on May 26, 2001, and suspended Mr. Warley from participating in horse shows, horse exhibitions, horse sales, and horse auctions for 2 weeks (CX 24 at 7).

Riders and individuals designated as riders have the same responsibility as any other participant in the entry process to ensure the horse is in compliance with all the

⁸*In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. at 1505-06.

requirements of the Horse Protection Act. Their failure to ensure compliance with the Horse Protection Act will subject these individuals to the same sanction as other violators.

Mr. Warley has not presented any evidence indicating he is unable to pay a civil penalty. Considering the record before me, the statutory factors, Mr. Warley's disregard of the mandates of the Horse Protection Act, and Mr. Warley's failure to present exculpatory evidence, I find no justification to impose a civil penalty less than the maximum. Therefore, I assess Mr. Warley a civil penalty of \$2,200. In addition, because disqualification, as well as the assessment of a civil penalty, is appropriate in almost every Horse Protection Act case, and Mr. Warley has presented no evidence demonstrating disqualification is inappropriate, Mr. Warley is disqualified for a period of 1 year from showing, exhibiting, or entering any horse and from managing, judging, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction.

Robbie J. Warley and Black Gold Farm, Inc.

The ALJ assessed Robbie J. Warley and Black Gold Farm, Inc., jointly and severally, a \$2,200 civil penalty (Initial Decision at 14). The ALJ provides no explanation regarding his decision to provide a single civil penalty for two distinct "persons." Robbie J. Warley and Black Gold Farm, Inc., each have a distinct legal existence and are treated as two persons for the purpose of the Horse Protection Act. The Horse Protection Act authorizes the assessment of a civil penalty on "[a]ny person who violates section 1824" of the Horse Protection Act (15 U.S.C. § 1825(b)(1)). Robbie J.

Warley and Black Gold Farm, Inc., each violated section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)) by allowing the entry of Just American Magic, which Robbie J. Warley and Black Gold Farm, Inc., owned, in the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 21, 2002, for the purpose of showing that horse when the horse was sore. Therefore, I assess Robbie J. Warley a civil penalty of \$2,200 and I assess Black Gold Farm, Inc., a civil penalty of \$2,200.

The ALJ disqualified Robbie J. Warley, and Black Gold Farm, Inc., for 1 year from showing, exhibiting, or entering any horse and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction. I affirm the disqualification imposed by the ALJ.

Herbert Derickson and Jill Derickson

I found Herbert Derickson and Jill Derickson each committed two violations of the Horse Protection Act. I examined the statutory factors as they apply to each violation. First, regarding Mr. Derickson's violations, the soring found on Just American Magic's feet is one of the worst cases of soring I have seen. Usually, when watching the videotape of an examination of a horse, the reactions of the horse to palpation are subtle – here, Just American Magic unquestionably felt pain when palpated, demonstrated by visibly strong withdrawal of his feet when palpated by both the DQPs and the United States Department of Agriculture veterinary medical officers (CX 12). In addition, Just

American Magic has significant scaring, indicating the injury to the horse occurred over a period of time. Dr. Dussault testified scar tissue develops over time: "You know, I'm not going to put a day on it, but we're talking something weeks, months. This is just a constant irritation, some type of insult to the tissue. It is not something that occurs in a day." (Tr. 255.) As Dr. Dussault's testimony indicates, Just American Magic was sore for a considerable period of time prior to the show, allowing me to conclude the horse was sore when transported. Based on the record before me and an examination of the statutory factors to be considered in determining the appropriate sanction, I find appropriate the assessment of the maximum civil penalty. Therefore, I assess Herbert Derickson a civil penalty of \$2,200 for each violation for a total civil penalty of \$4,400. In addition, because disqualification, as well as the assessment of a civil penalty, is appropriate in almost every Horse Protection Act case, and Mr. Derickson has presented no evidence demonstrating a disqualification is inappropriate, I disqualify Mr. Derickson for 1 year for each violation of the Horse Protection Act. Therefore, Mr. Derickson is disqualified for a period of 2 years from showing, exhibiting, or entering any horse and from managing, judging, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction.

Although there is no evidence that she was involved with the training of Just American Magic, Jill Derickson's violations of the Horse Protection Act demonstrate that individuals other than the trainers have a responsibility to assure compliance with the

Horse Protection Act. She paid the bills, she filled out the forms, she entered the horse, but there is no evidence that she made any effort to stop the significant and multiple violations of the Horse Protection Act occurring in the business she admits she owns. The evidence in the record (CX 10, CX 24) demonstrates the Herbert Derickson Training Facility had significant cash flow, sufficient to pay the civil penalties. Therefore, I assess Jill Derickson a \$2,200 civil penalty for each violation for a total civil penalty of \$4,400. In addition, because disqualification, as well as the assessment of a civil penalty, is appropriate in almost every Horse Protection Act case, and Mrs. Derickson has presented no evidence demonstrating a disqualification is inappropriate, I disqualify Mrs. Derickson for 1 year for each violation of the Horse Protection Act. Therefore, Mrs. Derickson is disqualified for a period of 2 years from showing, exhibiting, or entering any horse and from managing, judging, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction.

I find important the clarification of the impact of the disqualifications of Mr. and Mrs. Derickson on the partnership operated by the Dericksons. The partnership – Herbert Derickson Training Facility, a/k/a Herbert Derickson Stables, a/k/a Herbert Derickson Breeding and Training Facility, or any other non-incorporated enterprise, however named, run by the Dericksons, together, individually, or with one or more individuals not a party to this action – is disqualified for a period of 2 years 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, transporting or arranging for the transportation of horses to or from equine events, personally giving instructions to exhibitors, being present in the warm up or inspection areas, or in any area where spectators are not allowed, and financing the participation of others in equine events.

As a specific example, counsel for the National Horse Show Commission, in a letter to the United States Department of Agriculture, identifies “21 entries at the 2003 Trainer’s Show,” attributable to Herbert Derickson Stables (CX 19 at 2, 7-8). These entries are examples of activities that would be deemed participation, directly or indirectly, that would violate the disqualification order, should such activities occur during the disqualification period.

CONCLUSIONS OF LAW

1. On or about March 21, 2002, Christopher B. Warley violated section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)) by entering Just American Magic as entry number 425 in class number 25 in the 34th Annual National Walking Horse Trainers Show held in Shelbyville, Tennessee, while the horse was sore.

2. On or about March 21, 2002, Robbie J. Warley violated section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)) by allowing the entry by others of Just American Magic, a horse owned by Ms. Warley and Black Gold Farm, Inc., as entry

number 425 in class number 25 in the 34th Annual National Walking Horse Trainers Show held in Shelbyville, Tennessee, for the purpose of showing that horse, which was sore.

3. On or about March 21, 2002, Black Gold Farm, Inc., violated section 5(2)(D) of the Horse Protection Act (15 U.S.C. § 1824(2)(D)) by allowing the entry by others of Just American Magic, a horse owned by Black Gold Farm, Inc., and Robbie J. Warley, as entry number 425 in class number 25 in the 34th Annual National Walking Horse Trainers Show held in Shelbyville, Tennessee, for the purpose of showing that horse, which was sore.

4. On or about March 21, 2002, Herbert Derickson violated section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)) by entering Just American Magic as entry number 425 in class number 25 in the 34th Annual National Walking Horse Trainers Show held in Shelbyville, Tennessee, while the horse was sore.

5. On or about March 21, 2002, Herbert Derickson violated section 5(1) of the Horse Protection Act (15 U.S.C. § 1824(1)) by transporting Just American Magic to the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, while the horse was sore, with reason to believe the horse, while sore, may be entered for the purpose of his being shown in that horse show.

6. On or about March 21, 2002, Jill Derickson violated section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)) by entering Just American Magic as entry

number 425 in class number 25 in the 34th Annual National Walking Horse Trainers Show held in Shelbyville, Tennessee, while the horse was sore.

7. On or about March 21, 2002, Jill Derickson violated section 5(1) of the Horse Protection Act (15 U.S.C. § 1824(1)) by transporting Just American Magic to the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, while the horse was sore, with reason to believe the horse, while sore, may be entered for the purpose of his being shown in that horse show.

8. Service of the Complaint on Robert Raymond Black, II, did not meet the requirements of the Rules of Practice for service by regular mail.

For the foregoing reasons, the following Order is issued.

ORDER

1. Christopher B. Warley is assessed \$2,200 civil penalty. The civil penalty shall be paid by certified check or money order payable to the Treasurer of the United States of America, within 60 days after service of this Order on Mr. Warley. Mr. Warley shall indicate on the certified check or money order that payment is in reference to HPA Docket No. 04-0003. Furthermore, Mr. Warley is disqualified for 1 year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, family member, or other device, and from judging, managing, or otherwise participating

in any horse show, horse exhibition, horse sale, or horse auction, directly or indirectly through any agent, employee, family member, or other device. The disqualification of Mr. Warley shall become effective on the 60th day after service of this Order on Mr. Warley. After the conclusion of the disqualification period, Mr. Warley will continue to be disqualified indefinitely so long as the civil penalty remains unpaid.

2. Robbie J. Warley is assessed a \$2,200 civil penalty. The civil penalty shall be paid by certified check or money order payable to the Treasurer of the United States of America, within 60 days after service of this Order on Ms. Warley. Ms. Warley shall indicate on the certified check or money order that payment is in reference to HPA Docket No. 04-0003. Furthermore, Ms. Warley is disqualified for 1 year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, family member, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction, directly or indirectly through any agent, employee, family member, or other device. The disqualification of Ms. Warley shall become effective on the 60th day after service of this Order on Ms. Warley. After the conclusion of the disqualification period, Ms. Warley will continue to be disqualified indefinitely so long as the civil penalty remains unpaid.

3. Black Gold Farm, Inc., is assessed a \$2,200 civil penalty. The civil penalty shall be paid by certified check or money order payable to the Treasurer of the United States of America, within 60 days after service of this Order on Black Gold Farm, Inc.

Black Gold Farm, Inc., shall indicate on the certified check or money order that payment is in reference to HPA Docket No. 04-0003. Furthermore, Black Gold Farm, Inc., is disqualified for 1 year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction, directly or indirectly through any agent, employee, or other device. The disqualification of Black Gold Farm, Inc., shall become effective on the 60th day after service of this Order on Black Gold Farm, Inc. After the conclusion of the disqualification period, Black Gold Farm, Inc., will continue to be disqualified indefinitely so long as the civil penalty remains unpaid.

4. Herbert Derickson is assessed a \$4,400 civil penalty. The civil penalty shall be paid by certified check or money order payable to the Treasurer of the United States of America, within 60 days after service of this Order on Mr. Derickson. Mr. Derickson shall indicate on the certified check or money order that payment is in reference to HPA Docket No. 04-0003. Furthermore, Mr. Derickson is disqualified for 2 years from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, family member, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction, directly or indirectly through any agent, employee, family member, or other device. The disqualification of Mr. Derickson shall become effective on the 60th day after service of

this Order on Mr. Derickson. After the conclusion of the disqualification period, Mr. Derickson will continue to be disqualified indefinitely so long as the civil penalty remains unpaid.

5. Jill Derickson is assessed a \$4,400 civil penalty. The civil penalty shall be paid by certified check or money order payable to the Treasurer of the United States of America, within 60 days after service of this Order on Mrs. Derickson. Mrs. Derickson shall indicate on the certified check or money order that payment is in reference to HPA Docket No. 04-0003. Furthermore, Mrs. Derickson is disqualified for 2 years from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, family member, or other device, and from judging, managing or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction, directly or indirectly through any agent, employee, family member, or other device. The disqualification of Mrs. Derickson shall become effective on the 60th day after service of this Order on Mrs. Derickson. After the conclusion of the disqualification period, Mrs. Derickson will continue to be disqualified indefinitely so long as the civil penalty remains unpaid.

6. The payments of the civil penalties shall be sent to:

Colleen A. Carroll
Office of the General Counsel
United States Department of Agriculture
1400 Independence Avenue, SW
Room 2343-South Building
Mail Stop 1417
Washington, DC 20250-1417

7. The allegations of violations of the Horse Protection Act brought against Robert Raymond Black, II, are dismissed.

RIGHT TO JUDICIAL REVIEW

Christopher B. Warley, Robbie J. Warley, Black Gold Farm, Inc., Herbert Derickson, and Jill Derickson have the right to obtain review of the Order in this Decision and Order in the court of appeals of the United States for the circuit in which they reside or have their place of business or in the United States Court of Appeals for the District of Columbia Circuit. A notice of appeal must be filed in such court within 30 days from the date of the Order in this Decision and Order and a copy of such notice of appeal must simultaneously be sent by certified mail to the Secretary of Agriculture.⁹ The date of the Order in this Decision and Order is August 30, 2007.

Done at Washington, DC

August 30, 2007

William G. Jenson
Judicial Officer

⁹15 U.S.C. § 1825(b)(2), (c).