

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	HPA Docket No. 03-0005
)	
Chad Way, an individual,)	
and Chad Way Stables, Inc.,)	
a Tennessee corporation,)	
)	
Respondents)	Remand Order

The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on January 10, 2003. Complainant instituted the proceeding under the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) [hereinafter the Horse Protection Act]; the regulations issued under the Horse Protection Act (9 C.F.R. pt. 11) [hereinafter the Horse Protection Regulations]; 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]. On May 9, 2003, Complainant filed an Amended Complaint.

On April 11, 2005, I issued a Decision and Order: (1) finding Chad Way and Chad Way Stables, Inc. [hereinafter Respondents], failed to file a timely answer to the Amended Complaint; (2) holding Respondents are deemed, based on their failure to file a

timely answer, to have admitted the allegations of the Amended Complaint; (3) concluding Respondents violated the Horse Protection Act and the Horse Protection Regulations as alleged in the Amended Complaint; and (4) assessing Respondents a civil penalty and disqualifying Respondents 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.¹

Respondents sought judicial review of *In re Chad Way*, 64 Agric. Dec. ____ (Apr. 11, 2005). On July 8, 2005, the United States Court of Appeals for the Sixth Circuit remanded the proceeding to me based upon the Secretary of Agriculture's certification that he would accept jurisdiction from the court to proceed with an administrative hearing sought by the parties (Attach. A).²

As the United States Court of Appeals for the Sixth Circuit has remanded the case to me for further proceedings, the April 11, 2005, Decision and Order should be vacated and the proceeding should be remanded to the administrative law judge to whom the case was previously assigned for further proceedings in accordance with the Rules of Practice.

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

¹*In re Chad Way*, 64 Agric. Dec. ____ (Apr. 11, 2005).

²*Chad Way v. United States Dep't of Agric.*, No. 05-3536 (6th Cir. July 8, 2005) (Order) (Attach. B).

ORDER

1. The Judicial Officer's April 11, 2005, Decision and Order is vacated.
2. This proceeding is remanded to Administrative Law Judge Peter M.

Davenport for further proceedings in accordance with the Rules of Practice.

Done at Washington, DC

July 15, 2005

William G. Jenson
Judicial Officer

ATTACHMENT A

June 28, 2005

Ms. Jill Colyer
Office of the Clerk
United States Court of Appeals
for the Sixth Circuit
532 Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, OH 45202-3988

Subject: Chad Way v. United States Department of Agriculture,
No. 05-3536 (6th Cir).

I have been delegated authority by the Secretary of the United States Department of Agriculture (USDA), to act as the final deciding officer in USDA's adjudicatory proceedings subject to 5 U.S.C. §§ 556 and 557. 7 C.F.R. § 2.35. The position of Judicial Officer was established pursuant to the Act of April 4, 1940 (7 U.S.C. §§ 450c-450g); section 4(a) of Reorganization Plan No. 2 of 1953, 18 Fed. Reg. 3219, 3221 (1953), reprinted in, 5 U.S.C. app. § 4(a) at 1491 (1994); and section 212(a)(1) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6912(a)(1)).

In accordance with the agreement reached between the parties to the above-captioned case, I certify that the Secretary will accept jurisdiction from the United States Court of Appeals for the Sixth Circuit to proceed with an administrative hearing on the merits in the case captioned In re Chad Way, an individual and Chad Way Stables, Inc., a Tennessee Corporation, HPA Docket No. 03-0005.

Sincerely,

William G. Jenson
Judicial Officer

cc: Aubrey B. Harwell, III, Esq.
Leslie K. Lagomarcino, Esq.

ATTACHMENT B

FILED
JUL 08 2005
LEONARD GREEN, Clerk

No. 05-3536

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHAD WAY and CHAD WAY STABLES, INC.)	
)	
Petitioners,)	
v.)	ORDER
)	
UNITED STATES DEPARTMENT OF)	
AGRICULTURE,)	
)	
Respondent.)	

The parties in this appeal move jointly for a remand of this case to the Secretary, United States Department of Agriculture for further proceedings, the remand made pursuant to *First Nat'l Bank of Salem, OH. Hirsch*, 535 F.2d 343 (6th Cir. 1976). The Secretary, acting through the USDA Judicial Officer, has certified that he' will accept jurisdiction from this court to proceed with an administrative hearing sought by the parties. Accordingly this case is ORDERED remanded to the Secretary for such further proceedings as appropriate.

The parties further seek to voluntarily dismiss this appeal pursuant to Rule 42(b), Federal Rules of Appellate Procedure. There being no further action necessary in this appeal, the appeal is ORDERED dismissed; each party to bear its own costs.

ENTERED PURSUANT TO RULE 33(d)
RULES OF THE SIXTH CIRCUIT

Leonard Green, Clerk