

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 02-0004
)
Heartland Kennels, Inc., a)
South Dakota Corporation; and)
Halvor Skaarhaug, an individual,)
) **Order Denying Second**
Respondents) **Petition for Reconsideration**

PROCEDURAL HISTORY

Bobby R. Acord, 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 3, 2001. Complainant instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations and standards issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations and Standards]; 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 Heartland Kennels, Inc., and Halvor Skaarhaug [hereinafter Respondents] committed numerous willful violations of the Animal Welfare

Act and the Regulations and Standards on March 24, 1998, October 21, 1998, February 9, 1999, October 19, 1999, and January 10, 2000 (Compl. ¶¶ 4-9).

The Hearing Clerk served Respondents with the Complaint, the Rules of Practice, and a service letter on October 15, 2001.¹ Respondents failed to answer the Complaint within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). On December 4, 2001, the Hearing Clerk sent a letter to Respondents informing them that their answer to the Complaint had not been received within the time required in the Rules of Practice.² On January 24, 2002, Respondents filed a late-filed answer to the Complaint, which does not deny or otherwise respond to the allegations in the Complaint.

On May 15, 2002, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a “Motion for Adoption of Proposed Decision and Order” [hereinafter Motion for Default Decision] and a proposed “Decision and Order as to Heartland Kennels, Inc., and Halvor Skaarhaug By Reason of Admission of Facts” [hereinafter Proposed Default Decision]. The Hearing Clerk served Respondents with

¹United States Postal Service Domestic Return Receipts for Article Number 7099 3400 0014 4584 8479 and Article Number 7099 3400 0014 4584 8462.

²Letter dated December 4, 2001, from Joyce A. Dawson, Hearing Clerk, to Respondent Halvor Skaarhaug.

Complainant's Motion for Default Decision, Complainant's Proposed Default Decision, and a service letter on May 24, 2002.³

On June 13, 2002, Respondents requested an extension of time within which to file objections to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision. Chief Administrative Law Judge James W. Hunt [hereinafter the Chief ALJ] granted Respondents' request by extending Respondents' time for filing objections to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision to July 1, 2002.⁴ On July 3, 2002, Respondents requested a second extension of time to file objections to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision, which the Chief ALJ denied.⁵

On July 15, 2002, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the Chief ALJ issued a "Decision and Order as to Heartland Kennels, Inc., and Halvor Skaarhaug By Reason of Admission of Facts" [hereinafter Initial Decision and Order]: (1) concluding that Respondents willfully violated the Animal Welfare Act and the Regulations and Standards as alleged in the Complaint; (2) directing Respondents to cease and desist from violating the Animal Welfare Act and the Regulations and Standards; (3) assessing Respondents jointly and severally a \$54,642.50 civil penalty; and

³United States Postal Service Domestic Return Receipts for Article Number 7099 3400 0014 4581 8212 and Article Number 7099 3400 0014 4584 7878.

⁴Order Extending Time to File Response filed June 14, 2002.

⁵Order Denying Extension of Time to File Objections to Complainant's Motion for Adoption of Proposed Decision filed July 5, 2002.

(4) revoking Respondent Halvor Skaarhaug's Animal Welfare Act license (Animal Welfare Act license number 46-B-0062).

On September 16, 2002, Respondents appealed to the Judicial Officer. On October 1, 2002, Complainant filed "Complainant's Response to Respondents' Motion to Set Aside Default Judgment." On October 3, 2002, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision. On October 8, 2002, I issued a Decision and Order in which I adopted, with minor modifications, the Chief ALJ's Initial Decision and Order as the final Decision and Order. *In re Heartland Kennels, Inc.*, 61 Agric. Dec. ____ (Oct. 8, 2002).

On October 15, 2002, the Hearing Clerk served Respondents with the Decision and Order.⁶ On October 29, 2002, Respondents filed a "Petition for Reconsideration of Judicial Officer's Decision." On November 7, 2002, Complainant filed "Complainant's Response to Respondents' Petition for Reconsideration of Judicial Officer's Decision." On November 7, 2002, the Hearing Clerk transmitted the record to the Judicial Officer for reconsideration of the October 8, 2002, Decision and Order. On November 13, 2002, I issued an Order Denying Petition for Reconsideration in which I denied Respondents' Petition for Reconsideration of Judicial Officer's Decision. *In re Heartland Kennels, Inc.*, 61 Agric. Dec. ____ (Nov. 13, 2002) (Order Denying Pet. for Recons.).

⁶United States Postal Service Domestic Return Receipt for Article Number 7000 1670 0011 8982 7487.

On December 4, 2002, Respondents filed a second “Petition for Reconsideration of Judicial Officer’s Decision” [hereinafter Second Petition for Reconsideration]. On December 12, 2002, Complainant filed “Complainant’s Response to Respondents’ Second Petition for Reconsideration of Judicial Officer’s Decision.” On December 12, 2002, the Hearing Clerk transmitted the record to the Judicial Officer for a second reconsideration of the October 8, 2002, Decision and Order.

**CONCLUSIONS BY THE JUDICIAL OFFICER ON
SECOND PETITION FOR RECONSIDERATION**

Section 1.146(a)(3) of the Rules of Practice provides that a petition for reconsideration of the Judicial Officer’s decision must be filed within 10 days after service of the decision, as follows:

§ 1.146 Petitions for reopening hearing; for rehearing or reargument of proceeding; or for reconsideration of the decision of the Judicial Officer.

(a) *Petition requisite. . . .*

. . . .

(3) *Petition to rehear or reargue proceeding, or to reconsider the decision of the Judicial Officer.* A petition to rehear or reargue the proceeding or to reconsider the decision of the Judicial Officer shall be filed within 10 days after the date of service of such decision upon the party filing the petition. Every petition must state specifically the matters claimed to have been erroneously decided and alleged errors must be briefly stated.

7 C.F.R. § 1.146(a)(3).

Respondents’ Second Petition for Reconsideration, which Respondents filed 50 days after the date the Hearing Clerk served the Decision and Order on Respondents,

was filed too late, and, accordingly, Respondents' Second Petition for Reconsideration must be denied.⁷

⁷See *In re David Finch*, 61 Agric. Dec. ____ (Dec. 16, 2002) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition for reconsideration filed 15 days after the Hearing Clerk served the respondent with the decision and order); *In re JSG Trading Corp.*, 61 Agric. Dec. ____ (May 1, 2002) (Rulings as to JSG Trading Corp. Denying: (1) Motion to Vacate; (2) Motion to Reopen; (3) Motion for Stay; and (4) Request for Pardon or Lesser Sanction) (denying, as late-filed, a petition for reconsideration filed 2 years 2 months 26 days after the date the Hearing Clerk served the respondent with the decision and order on remand); *In re Jerry Goetz*, 61 Agric. Dec. ____ (Jan. 17, 2002) (Order Lifting Stay) (denying, as late-filed, a petition for reconsideration filed 4 years 2 months 4 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Beth Lutz*, 60 Agric. Dec. 68 (2001) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition for reconsideration filed 2 months 2 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Mary Meyers*, 58 Agric. Dec. 861 (1999) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition for reconsideration filed 2 years 5 months 20 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Anna Mae Noell*, 58 Agric. Dec. 855 (1999) (Order Denying the Chimp Farm Inc.'s Motion to Vacate) (denying, as late-filed, a petition for reconsideration filed 6 months 11 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Paul W. Thomas*, 58 Agric. Dec. 875 (1999) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition for reconsideration filed 19 days after the date the Hearing Clerk served the applicants with the decision and order); *In re Nkiambi Jean Lema*, 58 Agric. Dec. 302 (1999) (Order Denying Pet. for Recons. and Mot. to Transfer Venue) (denying, as late-filed, a petition for reconsideration filed 35 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Kevin Ackerman*, 58 Agric. Dec. 349 (1999) (Order Denying Pet. for Recons. as to Kevin Ackerman) (denying, as late-filed, a petition for reconsideration filed 17 days after the date the Hearing Clerk served the respondent with the order denying late appeal as to Kevin Ackerman); *In re Marilyn Shepherd*, 57 Agric. Dec. 1280 (1998) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition for reconsideration filed 11 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Jack Stepp*, 57 Agric. Dec. 323 (1998) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition for reconsideration filed 16 days after the date the Hearing Clerk served the respondents with the decision and order); *In re Billy Jacobs, Sr.*, 55 Agric. Dec. 1057 (1996) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition for

(continued...)

Moreover, under the Rules of Practice, a party may not file more than one petition for reconsideration of a decision of the Judicial Officer.⁸ On October 29, 2002, Respondents filed a Petition for Reconsideration of Judicial Officer's Decision, and on November 13, 2002, I issued an order denying Respondents' Petition for Reconsideration of Judicial Officer's Decision. *In re Heartland Kennels, Inc.*, 61 Agric. Dec. ____

⁷(...continued)

reconsideration filed 13 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Jim Fobber*, 55 Agric. Dec. 74 (1996) (Order Denying Respondent Jim Fobber's Pet. for Recons.) (denying, as late-filed, a petition for reconsideration filed 12 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Robert L. Heywood*, 53 Agric. Dec. 541 (1994) (Order Dismissing Pet. for Recons.) (dismissing, as late-filed, a petition for reconsideration filed approximately 2 months after the date the Hearing Clerk served the respondent with the decision and order); *In re Christian King*, 52 Agric. Dec. 1348 (1993) (Order Denying Pet. for Recons.) (dismissing, as late-filed, a petition for reconsideration, since it was not filed within 10 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Charles Crook Wholesale Produce & Grocery Co.*, 48 Agric. Dec. 1123 (1989) (Order Dismissing Untimely Pet. for Recons.) (dismissing, as late-filed, a petition for reconsideration filed more than 4 months after the date the Hearing Clerk served the respondent with the decision and order); *In re Toscony Provision Co.*, 45 Agric. Dec. 583 (1986) (Order Denying Pet. for Recons. and Extension of Time) (dismissing a petition for reconsideration because it was not filed within 10 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Charles Brink*, 41 Agric. Dec. 2147 (1982) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition for reconsideration filed 17 days after the date the Hearing Clerk served the respondent with the decision and order).

⁸*In re Jerry Goetz, d/b/a Jerry Goetz and Sons*, 61 Agric. Dec. ____, slip op. at 5-6 (Jan. 17, 2002) (Order Lifting Stay); *Cf. In re Fitchett Bros., Inc.*, 29 Agric. Dec. 2, 3 (1970) (Dismissal of Pet. for Recons.) (dismissing a second petition for reconsideration on the basis that the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders do not provide for more than one petition for reconsideration of a final decision and order).

(Nov. 13, 2002) (Order Denying Pet. for Recons.). Accordingly, Respondents' Second Petition for Reconsideration, filed December 4, 2002, must be denied.

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

ORDER

Respondents' Second Petition for Reconsideration is denied.

Done at Washington, DC

December 17, 2002

William G. Jenson
Judicial Officer