

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) A.Q. Docket No. 09-0033
)
David L. Noble,)
d/b/a Noble Farms,)
) **Order Denying Motion**
) **for Reconsideration**
Respondent)

PROCEDURAL HISTORY

On October 14, 2009, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued a Decision and Order: (1) concluding David L. Noble violated the Animal Health Protection Act, as amended (7 U.S.C. §§ 8301-8321) [hereinafter the Animal Health Protection Act], and the regulations promulgated under the Animal Health Protection Act (9 C.F.R. §§ 77.1-.41), as alleged in the Complaint; and (2) assessing Mr. Noble a \$5,000 civil penalty (Decision and Order at 2). The Hearing Clerk served Mr. Noble with the ALJ's Decision and Order on October 19, 2009.¹

On November 23, 2009, the Assistant Hearing Clerk issued a Notice of Effective Date of Default Decision and Order informing Mr. Noble and the Administrator that the

¹United States Postal Service Domestic Return Receipt for article number 7004 2510 0003 7022 7480.

ALJ's Decision and Order became effective on November 23, 2009. On November 24, 2009, Mr. Noble filed an appeal to the Judicial Officer. On December 14, 2009, the Administrator filed a Response to Appeal Petition. On December 17, 2009, I issued an Order denying the late appeal filed by Mr. Noble. *In re David L. Noble* (Order Denying Late Appeal), __ Agric. Dec. ____ (Dec. 17, 2009).

On January 11, 2010, Mr. Noble filed a "Motion for Reconsideration" of *In re David L. Noble* (Order Denying Late Appeal), __ Agric. Dec. ____ (Dec. 17, 2009). On January 14, 2010, Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], filed a "Response to Motion for Reconsideration" in which the Administrator opposed Mr. Noble's Motion for Reconsideration. On January 19, 2010, the Hearing Clerk transmitted the record to me for a ruling on Mr. Noble's Motion for Reconsideration.

CONCLUSION BY THE JUDICIAL OFFICER

Section 1.146(a)(3) of the rules of practice applicable to the instant proceeding² provides that a party to a proceeding must file a petition to reconsider the Judicial Officer's decision within 10 days after service of the decision, as follows:

²The rules of practice applicable to the instant proceeding are the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) and the Rules of Practice Governing Proceedings Under Certain Acts (9 C.F.R. pt. 99) [hereinafter the Rules of Practice].

§ 1.146 Petitions for reopening hearing; for rehearing or reargument of proceeding; or for reconsideration of 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 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). The Hearing Clerk served Mr. Noble with *In re David L. Noble* (Order Denying Late Appeal), ___ Agric. Dec. ____ (Dec. 17, 2009), on December 23, 2009.³ Therefore, Mr. Noble's Motion for Reconsideration was required to be filed no later than January 4, 2010; instead, Mr. Noble filed the Motion for Reconsideration on January 11, 2010, 19 days after the Hearing Clerk served Mr. Noble with *In re David L. Noble* (Order Denying Late Appeal), ___ Agric. Dec. ____ (Dec. 17, 2009). Accordingly, Mr. Noble's Motion for Reconsideration is late-filed and denied.⁴

³United States Postal Service Domestic Return Receipt for article number 7005 1160 0001 3559 9051.

⁴*See In re Mitchell Stanley* (Order Denying Pet. for Recons.), 65 Agric. Dec. 1171 (2006) (denying, as late-filed, a petition to reconsider filed 13 days after the date the Hearing Clerk served the respondents with the decision and order); *In re Heartland Kennels, Inc.* (Order Denying Second Pet. for Recons.), 61 Agric. Dec. 562 (2002) (denying, as late-filed, a petition to reconsider filed 50 days after the date the Hearing Clerk served the respondents with the decision and order); *In re David Finch* (Order Denying Pet. for Recons.), 61 Agric. Dec. 593 (2002) (denying, as late-filed, a petition to reconsider filed 15 days after the date the Hearing Clerk served the respondent with the decision and order).

For the foregoing reasons, the following Order is issued.

ORDER

1. David L. Noble's Motion for Reconsideration, filed January 11, 2010, is denied.
2. Administrative Law Judge Peter M. Davenport's Decision and Order, filed October 14, 2009, is the final decision in this proceeding.

Done at Washington, DC

January 20, 2010

William G. Jenson
Judicial Officer