

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) HPA Docket No. 99-0013  
)  
William J. Reinhart, d/b/a ) **Order Lifting Stay, Ruling Denying**  
Reinhart Stables, ) **Motion for Permanent Stay, and**  
) **Ruling Granting Motion to Amend**  
Respondent ) **Case Caption**

**PROCEDURAL HISTORY**

On November 9, 2000, I issued a Decision and Order concluding William J. Reinhart, d/b/a Reinhart Stables [hereinafter Respondent], violated the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) [hereinafter the Horse Protection Act].<sup>1</sup> On November 27, 2000, Respondent filed a petition for reconsideration, which I denied on January 23, 2001.<sup>2</sup> On May 30, 2001, Respondent requested a stay of the Order in *In re William J. Reinhart*, 60 Agric. Dec. 241 (2001) (Order Denying William J. Reinhart's Pet. for Recons.), pending the outcome of proceedings for judicial review. On June 20, 2001, I granted Respondent's request for a stay.<sup>3</sup>

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<sup>1</sup>*In re William J. Reinhart*, 59 Agric. Dec. 721 (2000).

<sup>2</sup>*In re William J. Reinhart*, 60 Agric. Dec. 241 (2001) (Order Denying William J. Reinhart's Pet. for Recons.).

<sup>3</sup>*In re William J. Reinhart*, 60 Agric. Dec. 267 (2001) (Stay Order).

Respondent appealed to the United States Court of Appeals for the Sixth Circuit which dismissed Respondent's late-filed appeal petition for lack of jurisdiction.<sup>4</sup> On April 21, 2003, the Supreme Court of the United States denied Respondent's petition for writ of certiorari.<sup>5</sup>

On July 22, 2003, Complainant requested that I lift the June 20, 2001, Stay Order on the ground that proceedings for judicial review have concluded (Complainant's Second Motion to Lift Stay Order). On August 15, 2003, Respondent filed a response to Complainant's motion to lift the stay order, a motion for a permanent stay, and a motion to amend the case caption (Response to Complainant's Second Motion to Lift Stay Order, and Motion for Permanent Stay). I provided Complainant 10 days within which to file a response to Respondent's motion for a permanent stay and Respondent's motion to amend the case caption. On September 2, 2003, 14 days after the Hearing Clerk served Complainant with Respondent's motion for a permanent stay and Respondent's motion to amend the case caption, Complainant filed "Complainant's Response to Respondent's Motion for Permanent Stay."<sup>6</sup> On September 3, 2003, the Hearing Clerk transmitted the record of the proceeding to the Judicial Officer for a ruling on Complainant's Second

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<sup>4</sup>*Reinhart v. United States Dep't of Agric.*, 39 Fed. Appx. 954, 2002 WL 1492097 (6th Cir. 2002).

<sup>5</sup>*Reinhart v. Department of Agric.*, 123 S. Ct. 1802 (2003).

<sup>6</sup>Complainant filed Complainant's Response to Respondent's Motion for Permanent Stay 4 days late. Therefore, I have not considered Complainant's Response to Respondent's Motion for Permanent Stay, and Complainant's Response to Respondent's Motion for Permanent Stay forms no part of the record in this proceeding.

Motion to Lift Stay Order, a ruling on Respondent's motion for a permanent stay, and a ruling on Respondent's motion to amend the case caption.

### **COMPLAINANT'S SECOND MOTION TO LIFT STAY ORDER**

I issued the June 20, 2001, Stay Order to postpone the effective date of the Order issued in *In re William J. Reinhart*, 60 Agric. Dec. 241 (2001) (Order Denying William J. Reinhart's Pet. for Recons.), pending the outcome of proceedings for judicial review.

Respondent does not dispute Complainant's contention that proceedings for judicial review are concluded.

I find proceedings for judicial review are concluded and the time for filing further requests for judicial review has expired. Therefore, Complainant's Second Motion to Lift Stay Order is granted; the June 20, 2001, Stay Order is lifted; and the Order issued in *In re William J. Reinhart*, 60 Agric. Dec. 241 (2001) (Order Denying William J. Reinhart's Pet. for Recons.), is effective, as set forth in the Order, *infra*.

### **RESPONDENT'S MOTION FOR PERMANENT STAY**

Respondent raises five issues in support of his motion for a permanent stay. First, Respondent contends "Double Pride Lady," the horse in question in the instant proceeding, was not sore on October 28, 1998, when Respondent entered Double Pride Lady for the purpose of showing or exhibiting Double Pride Lady at the National Walking Horse Trainers Show in Shelbyville, Tennessee (Response to Complainant's Second Motion to Lift Stay Order, and Motion for Permanent Stay at 1).

As fully explicated in the November 9, 2000, Decision and Order and the January 23, 2001, Order Denying William J. Reinhart's Petition for Reconsideration, Complainant proved by a preponderance of the evidence<sup>7</sup> that on October 28, 1998,

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<sup>7</sup>The proponent of an order has the burden of proof in proceedings conducted under the Administrative Procedure Act (5 U.S.C. § 556(d)), and the standard of proof by which the burden of persuasion is met is the preponderance of the evidence standard. *Herman & MacLean v. Huddleston*, 459 U.S. 375, 387-92 (1983); *Steadman v. SEC*, 450 U.S. 91, 92-104 (1981). The standard of proof in an administrative proceeding conducted under the Horse Protection Act is preponderance of the evidence. *In re Robert B. McCloy, Jr.*, 61 Agric. Dec. 173, 195 n.6 (2002), *appeal docketed*, No. 02-9543 (10th Cir. July 19, 2002); *In re William J. Reinhart*, 60 Agric. Dec. 241, 258 n.7 (2001) (Order Denying William J. Reinhart's Pet. for Recons.); *In re Carl Edwards & Sons Stables* (Decision as to Carl Edwards & Sons Stables, Gary R. Edwards, Larry E. Edwards, and Etta Edwards), 56 Agric. Dec. 529, 539 (1997), *aff'd per curiam*, 138 F.3d 958 (11th Cir. 1998) (Table), *printed in* 57 Agric. Dec. 296 (1998); *In re Gary R. Edwards* (Decision as to Gary R. Edwards, Larry E. Edwards, and Carl Edwards & Sons Stables), 55 Agric. Dec. 892, 903 (1996), *dismissed*, No. 96-9472 (11th Cir. Aug. 15, 1997); *In re John T. Gray* (Decision as to Glen Edward Cole), 55 Agric. Dec. 853, 857 n.2 (1996); *In re Jim Singleton*, 55 Agric. Dec. 848, 850 n.2 (1996); *In re Keith Becknell*, 54 Agric. Dec. 335, 343-44 (1995); *In re C.M. Oppenheimer* (Decision as to C.M. Oppenheimer), 54 Agric. Dec. 221, 245-46 (1995); *In re Eddie C. Tuck* (Decision as to Eddie C. Tuck), 53 Agric. Dec. 261, 285 (1994), *appeal voluntarily dismissed*, No. 94-1887 (4th Cir. Oct. 6, 1994); *In re William Earl Bobo*, 53 Agric. Dec. 176, 197 (1994), *aff'd*, 52 F.3d 1406 (6th Cir. 1995); *In re Jack Kelly*, 52 Agric. Dec. 1278, 1286 (1993), *appeal dismissed*, 38 F.3d 999 (8th Cir. 1994); *In re Charles Sims* (Decision as to Charles Sims), 52 Agric. Dec. 1243, 1253-54 (1993); *In re Paul A. Watlington*, 52 Agric. Dec. 1172, 1186-87 (1993); *In re Jackie McConnell* (Decision as to Jackie McConnell), 52 Agric. Dec. 1156, 1167 (1993), *aff'd*, 23 F.3d 407, 1994 WL 162761 (6th Cir. 1994), *printed in* 53 Agric. Dec. 174 (1994); *In re A.P. Holt* (Decision as to Richard Polch and Merrie Polch), 52 Agric. Dec. 233, 242-43 (1993), *aff'd per curiam*, 32 F.3d 569, 1994 WL 390510 (6th Cir. 1994) (citation limited under 6th Circuit Rule 24); *In re Steve Brinkley*, 52 Agric. Dec. 252, 262 (1993); *In re John Allan Callaway*, 52 Agric. Dec. 272, 284 (1993); *In re Linda Wagner* (Decision as to Roy E. Wagner and Judith E. Rizio), 52 Agric. Dec. 298, 307 (1993), *aff'd*, 28 F.3d 279 (3d Cir. 1994), *reprinted in* 53 Agric. Dec. 169 (1994); *In re William Dwaine Elliott* (Decision as to William Dwaine Elliott), 51 Agric. Dec. 334, 341 (1992), *aff'd*, 990 F.2d 140 (4th Cir.), *cert. denied*, 510 U.S. 867 (1993); *In re Pat Sparkman* (Decision as to Pat

(continued...)

Respondent violated section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)) by entering Double Pride Lady for the purpose of showing or exhibiting Double Pride Lady at the National Walking Horse Trainers Show in Shelbyville, Tennessee, while Double Pride Lady was sore.<sup>8</sup> Moreover, the United States Court of Appeals for the Sixth Circuit states, even if it had jurisdiction to hear William J. Reinhart's appeal, it "would not have been inclined to set aside the Secretary's order" because "[t]he Secretary's finding that Reinhart violated the [Horse Protection Act] appears to be supported by substantial evidence, particularly in light of the fact that this court has specifically held that a finding of soreness for the purposes of the [Horse Protection Act] may be based solely upon the results of palpation."<sup>9</sup> Therefore, I reject Respondent's contention that Double Pride Lady was not sore when Respondent entered her in the National Walking Horse Trainers Show on October 28, 1998.

Second, Respondent contends he followed every procedure prescribed by the United States Department of Agriculture "to have this matter favorably reviewed within the USDA system" and "filed all appropriate briefs and responses to motions numbering nearly

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<sup>7</sup>(...continued)

Sparkman and Bill McCook), 50 Agric. Dec. 602, 612 (1991); *In re Albert Lee Rowland*, 40 Agric. Dec. 1934, 1941 n.5 (1981), *aff'd*, 713 F.2d 179 (6th Cir. 1983); *In re Steve Beech*, 37 Agric. Dec. 1181, 1183-85 (1978).

<sup>8</sup>*In re William J. Reinhart*, 60 Agric. Dec. 241 (2001) (Order Denying William J. Reinhart's Pet. for Recons.); *In re William J. Reinhart*, 59 Agric. Dec. 721 (2000).

<sup>9</sup>*Reinhart v. United States Dep't of Agric.*, 39 Fed. Appx. 954, 957 (6th Cir. 2002).

200 documents.” (Response to Complainant’s Second Motion to Lift Stay Order, and Motion for Permanent Stay at 1, 3.)

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], which are applicable to this proceeding, are designed to promote the efficient and orderly conduct of adjudicatory proceedings. However, a party’s observance of the Rules of Practice, by itself, does not entitle that party to prevail on the merits and does not provide a basis for the issuance of a permanent stay of an order.

Third, Respondent contends a United States Department of Agriculture mailing error made Respondent’s compliance with the statutory deadline for filing an appeal impossible (Response to Complainant’s Second Motion to Lift Stay Order, and Motion for Permanent Stay at 1-2).

The United States Court of Appeals for the Sixth Circuit found the United States Department of Agriculture’s mailing error did not completely excuse Respondent’s untimely appeal because Respondent had an affirmative duty to monitor the United States Department of Agriculture’s docket to determine if the Judicial Officer had ruled on Respondent’s petition for reconsideration. The Court held that had Respondent monitored the docket, he could have filed a timely appeal.<sup>10</sup> Therefore, I reject Respondent’s

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<sup>10</sup>*Reinhart v. United States Dep’t of Agric.*, 39 Fed. Appx. 954, 956-57 (6th Cir. 2002).

contention that the United States Department of Agriculture made Respondent's compliance with the statutory deadline for filing an appeal impossible.

Fourth, Respondent contends the attorney for the United States Department of Agriculture had a legal responsibility to inform the United States Court of Appeals for the Sixth Circuit that the United States Department of Agriculture does not maintain a published docket of its cases where parties can check the status of cases (Response to Complainant's Second Motion to Lift Stay Order, and Motion for Permanent Stay at 2).

Respondent cites no basis for his contention that a party to a United States Department of Agriculture adjudicatory proceeding cannot determine the status of the proceeding. As the United States Court of Appeals for the Sixth Circuit indicated, Respondent could have, but did not, call the Office of the Hearing Clerk to determine the status of his petition for reconsideration.<sup>11</sup>

Fifth, Respondent contends the United States Department of Agriculture will not accept responsibility for its failure to serve Respondent with the January 23, 2001, Order Denying William J. Reinhart's Petition for Reconsideration prior to the expiration of the time for Respondent's appeal to the United States Court of Appeals for the Sixth Circuit (Response to Complainant's Second Motion to Lift Stay Order, and Motion for Permanent Stay at 3).

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<sup>11</sup>*Reinhart v. United States Dep't of Agric.*, 39 Fed. Appx. 954, 956-57 (6th Cir. 2002).

Respondent cites no basis for his contention that the United States Department of Agriculture failed to take responsibility for the failure to serve him with the January 23, 2001, Order Denying William J. Reinhart's Petition for Reconsideration prior to the expiration of the time for appeal. Contrary to Respondent's contention, the United States Court of Appeals for the Sixth Circuit states the United States Department of Agriculture conceded error in connection with the mailing of the January 23, 2001, Order Denying William J. Reinhart's Petition for Reconsideration, as follows:

The USDA, however, concedes that a clerical error on its part contributed to Reinhart's delay in filing his notice of appeal. Specifically, the USDA's Office of the Hearing Clerk mistakenly sent Reinhart a decision from a totally unrelated case rather than the order denying his petition for reconsideration. The record does not indicate when Reinhart received this decision, but the USDA acknowledges that Reinhart notified it of the mistake and that the decision from his case was then sent out to him on February 15, 2001. Reinhart did not receive this order until February 26, 2001, 34 days after the order was issued and 4 days after the time period for appealing that order had expired.

*Reinhart v. United States Dep't of Agric.*, 39 Fed. Appx. 954, 955-56 (6th Cir. 2002).

Therefore, I reject Respondent's contention that the United States Department of Agriculture failed to take responsibility for the failure to serve Respondent with the January 23, 2001, Order Denying William J. Reinhart's Petition for Reconsideration prior to the expiration of the time for appeal.

**RESPONDENT'S MOTION TO AMEND CASE CAPTION**

Respondent “takes exception to Complainant’s repeated attempts to include Reinhart Stables as a party to these proceedings.” (Response to Complainant’s Second Motion to Lift Stay Order, and Motion for Permanent Stay at 3.)

I found Reinhart Stables was merely a name under which William J. Reinhart did business and concluded that “William J. Reinhart, doing business as Reinhart Stables,” violated the Horse Protection Act.<sup>12</sup> Based on the finding that Reinhart Stables was merely a name under which William J. Reinhart was doing business, I conclude Reinhart Stables is not a proper party in this proceeding. Therefore, I amend the caption of this proceeding to read “In re: William J. Reinhart, d/b/a Reinhart Stables.”

### **ORDER**

1. William J. Reinhart is assessed a \$2,000 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:

Colleen A. Carroll  
United States Department of Agriculture  
Office of the General Counsel  
Marketing Division  
Room 2343 South Building  
Washington, DC 20250-1417

William J. Reinhart’s payment of the civil penalty shall be forwarded to, and received by, Ms. Carroll within 60 days after service of this Order on William J. Reinhart.

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<sup>12</sup>*In re William J. Reinhart*, 59 Agric. Dec. 721, 731, 738, 766-68 (2000).

William J. Reinhart shall indicate on the certified check or money order that payment is in reference to HPA Docket No. 99-0013.

2. William J. Reinhart is disqualified for a period of 5 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: (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.

This 5-year period of disqualification is to be served consecutive to the disqualification of William J. Reinhart ordered in *In re Jack Stepp*, 57 Agric. Dec. 297 (1998), *aff'd*, 188 F.3d 508 (Table), 1999 WL 646138 (6th Cir. 1999) (not to be cited as precedent under 6th Circuit Rule 206). The disqualification shall become effective on the 60th day after service of this Order on William J. Reinhart.

Done at Washington, DC

September 8, 2003

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William G. Jenson  
Judicial Officer