

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) HPA Docket No. 99-0013
)
William J. Reinhart, d/b/a)
Reinhart Stables,) **Rulings Denying: (1) Motion to Set**
) **Aside Order Lifting Stay; (2) Motion**
) **for Permanent Stay; and (3) Motion**
Respondent) **for Taking Depositions**

PROCEDURAL HISTORY

On November 9, 2000, pursuant to 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], 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.¹ Respondent filed a petition for reconsideration, which I denied on January 23, 2001.² 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.

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

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

for Recons.), pending the outcome of proceedings for judicial review. On June 20, 2001, I granted Respondent's request for a stay.³

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

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. 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. On September 8, 2003, I issued an "Order Lifting Stay, Ruling Denying Motion for Permanent Stay, and Ruling Granting Motion to Amend Case Caption."⁶ On September 30, 2003, Respondent filed "Petition for Reconsideration of Order Lifting Stay, Ruling Denying Motion for Permanent Stay, and Ruling Granting Motion to Amend Case Caption."⁷ On October 7, 2003, Complainant filed "Complainant's

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

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

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

⁶*In re William J. Reinhart*, 62 Agric. Dec. ____ (Sept. 8, 2003) (Order Lifting Stay, Ruling Denying Motion for Permanent Stay, and Ruling Granting Motion to Amend Case Caption).

⁷The title of Respondent's September 30, 2003, filing indicates that Respondent

Reply to Respondent's Petition for Reconsideration of Order Lifting Stay." On October 8, 2003, the Hearing Clerk transmitted the record of the proceeding to the Judicial Officer for a ruling on Respondent's Petition for Reconsideration of Order Lifting Stay, Ruling Denying Motion for Permanent Stay, and Ruling Granting Motion to Amend Case Caption.

As an initial matter, I find Respondent's Petition for Reconsideration of Order Lifting Stay, Ruling Denying Motion for Permanent Stay, and Ruling Granting Motion to Amend Case Caption cannot be considered pursuant to section 1.146 of the Rules of Practice (7 C.F.R. § 1.146), which provides that a party to a proceeding under the Rules of Practice may file a petition for reconsideration of the decision of the Judicial Officer.

Section 1.132 of the Rules of Practice defines the word *decision* as follows:

§ 1.132 Definitions.

As used in this subpart, the terms as defined in the statute under which the proceeding is conducted and in the regulations, standards, instructions, or orders issued thereunder, shall apply with equal force and effect. In addition and except as may be provided otherwise in this subpart:

....

Decision means: (1) The Judge's initial decision made in accordance with the provisions of 5 U.S.C. 556 and 557, and includes the Judge's (i) findings and conclusions and the reasons or basis therefor on all material issues of fact, law or discretion, (ii) order, and (iii) rulings on proposed findings, conclusions and orders submitted by the parties; and
 (2) The decision and order by the Judicial Officer upon appeal of the Judge's decision.

⁷(...continued)

requests reconsideration of the September 8, 2003, ruling granting Respondent's request to amend the case caption. However, the body of Respondent's September 30, 2003, filing does not include a request for reconsideration of the ruling granting Respondent's request to amend the case caption.

7 C.F.R. § 1.132.

In re William J. Reinhart, 62 Agric. Dec. ____ (Sept. 8, 2003) (Order Lifting Stay, Ruling Denying Motion for Permanent Stay, and Ruling Granting Motion to Amend Case Caption), is not a decision and order by the Judicial Officer upon appeal of an administrative law judge's decision. Therefore, the September 8, 2003, Order Lifting Stay, Ruling Denying Motion for Permanent Stay, and Ruling Granting Motion to Amend Case Caption is not a *decision* as defined in section 1.132 of the Rules of Practice (7 C.F.R. § 1.132), and section 1.146 of the Rules of Practice (7 C.F.R. § 1.146), which provides that a party may file a petition for reconsideration of the Judicial Officer's *decision*, is not the proper section of the Rules of Practice under which to request reconsideration of the September 8, 2003, Order Lifting Stay, Ruling Denying Motion for Permanent Stay, and Ruling Granting Motion to Amend Case Caption. However, I find Respondent may request reconsideration of the September 8, 2003, Order Lifting Stay, Ruling Denying Motion for Permanent Stay, and Ruling Granting Motion to Amend Case Caption pursuant to section 1.143(b)(1) of the Rules of Practice (7 C.F.R. § 1.143(b)(1)), which provides that any motion will be entertained other than a motion to dismiss on the pleading. Therefore, I treat Respondent's Petition for Reconsideration of Order Lifting Stay, Ruling Denying Motion for Permanent Stay, and Ruling Granting Motion to Amend Case Caption as motions filed pursuant to section 1.143 of the Rules of Practice (7 C.F.R. § 1.143).

RESPONDENT'S MOTION TO SET ASIDE ORDER LIFTING STAY

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.⁸ Proceedings for judicial review are concluded and the time for filing further requests for judicial review has expired. Therefore, Respondent's motion to set aside the September 8, 2003, order lifting stay is denied.

RESPONDENT'S MOTION FOR PERMANENT STAY

Respondent asserts the Office of the Hearing Clerk's delay in mailing Respondent a copy of the Order Denying William J. Reinhart's Petition for Reconsideration is the sole cause for his untimely appeal to the United States Court of Appeals for the Sixth Circuit and deprived him of the right to judicial review. Respondent requests the issuance of a permanent stay based upon the Office of the Hearing Clerk's alleged deprivation of his right to judicial review. (Respondent's Petition for Reconsideration of Order Lifting Stay, Ruling Denying Motion for Permanent Stay, and Ruling Granting Motion to Amend Case Caption at 3-8.)

As an initial matter, Respondent presents no argument that the appropriate remedy for the Office of the Hearing Clerk's purported deprivation of Respondent's right to judicial review, is my granting Respondent's motion for a permanent stay of an order that is warranted in law and justified by the facts.

⁸See note 3.

Moreover, the United States Court of Appeals for the Sixth Circuit considered and rejected Respondent's contention that the Office of the Hearing Clerk's delay in mailing Respondent a copy of the Order Denying William J. Reinhart's Petition for Reconsideration was the sole cause for his untimely appeal and dismissed Respondent's untimely appeal for lack of jurisdiction.⁹ Respondent reiterates the argument that he made to the United States Court of Appeals for the Sixth Circuit in Respondent's Petition for Reconsideration of Order Lifting Stay, Ruling Denying Motion for Permanent Stay, and Ruling Granting Motion to Amend Case Caption. Respondent presents no basis for my disagreeing with the Sixth Circuit's finding in *Reinhart v. United States Dep't of Agric.* that the Office of the Hearing Clerk's delay in mailing Respondent a copy of the Order Denying William J. Reinhart's Petition for Reconsideration does not excuse Respondent's untimely appeal. Therefore, I deny Respondent's motion for a permanent stay.

MOTION FOR TAKING DEPOSITIONS

Respondent moves to take the depositions of the Hearing Clerk, the legal technician in the Office of the Hearing Clerk who mailed Respondent a copy of the Order Denying William J. Reinhart's Petition for Reconsideration, and Complainant's attorney (Respondent's Petition for Reconsideration of Order Lifting Stay, Ruling Denying Motion for Permanent Stay, and Ruling Granting Motion to Amend Case Caption at 5).

⁹See note 4.

As an initial matter, the salient facts regarding the Office of the Hearing Clerk's delay in mailing Respondent a copy of Order Denying William J. Reinhart's Petition for Reconsideration are not in dispute. Moreover, Respondent's motion for taking depositions does not comply with the requirements for motions for taking depositions in section 1.148 of the Rules of Practice (7 C.F.R. § 1.148). Therefore, Respondent's motion for taking depositions must be denied.

Done at Washington, DC

October 10, 2003

William G. Jenson
Judicial Officer