

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	HPA Docket No. 01-C022
)	
Sand Creek Farms, Inc.,)	
a Tennessee corporation,)	
)	
Respondent)	Remand Order

Bobby R. Acord, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on June 28, 2001. Complainant instituted the proceeding under the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) [hereinafter the Horse Protection Act]; 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 on or about May 27, 2000, Sand Creek Farms, Inc. [hereinafter Respondent], entered a horse known as “JFK All Over” in the 30th Annual Spring Fun Show in Shelbyville, Tennessee, as entry number 252 in class number 34, while JFK All Over was sore, for the purpose of showing the horse, in violation of section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)) (Compl. ¶ 7).

On July 27, 2001, Respondent filed an Answer in which Respondent denies violating the Horse Protection Act as alleged in the Complaint. On February 2, 2004, Respondent filed a motion to file an amended answer and “First Amended Answer of Sand Creek Farms, Inc.” [hereinafter First Amended Answer], in which Respondent denies it showed JFK All Over in the 30th Annual Spring Fun Show in Shelbyville, Tennessee, as entry number 252 in class number 34, while JFK All Over was sore, in violation of section 5(2)(A) of the Horse Protection Act (15 U.S.C. § 1824(2)(A)) (First Amended Answer ¶ 7). On February 27, 2004, Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] granted Respondent’s motion to file its First Amended Answer (Order Granting Respondents’ Motions to File First Amended Answers; and Directive Regarding Any Sanction Witnesses at 1).

On March 3, 2005, Complainant filed “Complainant’s Motion for Adoption of Proposed Decision and Order as to Respondent Sand Creek Farms, Inc.” [hereinafter Motion for Default Decision], contending Respondent’s First Amended Answer fails to deny the material allegations of the Complaint. On March 22, 2005, Respondent filed a response opposing Complainant’s Motion for Default Decision, a motion to file a second amended answer, and “Second Amended Answer of Sand Creek Farms, Inc.” [hereinafter Second Amended Answer], in which Respondent denies it entered JFK All Over in the 30th Annual Spring Fun Show in Shelbyville, Tennessee, as entry number 252 in class number 34, while JFK All Over was sore, in violation of section 5(2)(A) of the Horse

Protection Act (15 U.S.C. § 1824(2)(A)). On April 4, 2005, Complainant filed Complainant's Opposition to Respondent's Motion to File Second Amended Answer.

On April 7, 2005, the ALJ issued a Ruling Denying Motion to Amend First Amended Answer stating, although Respondent's Second Amended Answer denies Respondent entered JFK All Over in the 30th Annual Spring Fun Show in Shelbyville, Tennessee, while JFK All Over was sore, Respondent persists in denying a statutory section which was not alleged in the Complaint.

On April 11, 2005, the ALJ issued a Decision and Order Upon Admission of Facts: (1) concluding Respondent's First Amended Answer fails to deny the material allegations of the Complaint; (2) concluding Respondent violated section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)); and (3) imposing sanctions against Respondent for its violation of the Horse Protection Act (Initial Decision at 2-4).

On July 1, 2005, Respondent appealed to the Judicial Officer. On July 5, 2005, Complainant filed a response to Respondent's appeal petition. On July 12, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

I agree with the ALJ that Respondent persists in denying that it violated section 5(2)(A) of the Horse Protection Act (15 U.S.C. § 1824(2)(A)) despite the allegation in the Complaint that Respondent violated section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)). Nonetheless, I find Respondent put Complainant on notice that

Respondent denies that it entered JFK All Over in the 30th Annual Spring Fun Show in Shelbyville, Tennessee, while JFK All Over was sore.

The Judicial Officer has long held technical defects, including incorrect citations to statutes and regulations, are not fatal to a complaint in an administrative proceeding before the Secretary of Agriculture, as long as the respondent is reasonably apprised of the issues in controversy.¹ Similarly, technical defects should not be fatal to an answer as long as the complainant is not misled.² I find Respondent's citation in Respondent's Second Amended Answer to section 5(2)(A) of the Horse Protection Act (15 U.S.C. § 1824(2)(A)), rather than to section 5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)), is a technical pleading defect, and I find nothing on the record before me indicating Complainant was misled by this technical pleading defect. Therefore, I conclude the ALJ's Ruling Denying Motion to Amend First Amended Answer is error.

¹*In re J. Wayne Shaffer*, 60 Agric. Dec. 444, 445 n.1, n.2 (2001) (inferring incorrect references in the complaint to 7 U.S.C. § 2.4 and 9 C.F.R. § 2.1(1)(1) are merely harmless typographical errors); *In re Samuel Zimmerman*, 56 Agric. Dec. 1458, 1460 n.1 (1997) (Order Denying Pet. for Recons.) (finding complainant's incorrect reference in the complaint to 7 U.S.C. § 2141 to be a harmless typographical error), *aff'd*, 173 F.3d 422 (3d Cir. 1998) (Table), printed in 57 Agric. Dec. 869 (1998); *In re Micheal McCall*, 52 Agric. Dec. 986, 1001 (1993) (finding incorrect Code of Federal Regulations citations in the complaint to be harmless technical errors); *In re SSG Boswell, II*, 49 Agric. Dec. 210, 212 (1990) (finding the failure to cite the statute authorizing the civil penalty in the complaint, harmless error).

²*Bowman v. United States Dep't of Agric.*, 352 F.2d 281, 284 (5th Cir. 1965). See also *Local 802, Associated Musicians of Greater New York v. Parker Meridien Hotel*, 145 F.3d 85, 90 (2d Cir. 1998) (stating justice weighs heavily in favor of permitting correction of a typographical error in an answer); *In re Riggan*, 102 B.R. 677, 679 (Bankr. W.D. Tenn. 1989) (holding a timely responsive pleading, which controverted the issues and placed the creditors on notice, to be an answer despite technical defects).

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

ORDER

1. Administrative Law Judge Jill S. Clifton's April 7, 2005, Ruling Denying Motion to Amend First Amended Answer is vacated.
2. Administrative Law Judge Jill S. Clifton's April 11, 2005, Decision and Order Upon Admission of Facts is vacated.
3. Respondent's March 22, 2005, motion to file its Second Amended Answer is granted.
4. Respondent's March 22, 2005, Second Amended Answer is accepted as filed, except that Administrative Law Judge Jill S. Clifton shall provide Respondent a reasonable period within which to correct citations to the Horse Protection Act in Respondent's Second Amended Answer.
5. This proceeding is remanded to Administrative Law Judge Jill S. Clifton for further proceedings in accordance with the Rules of Practice.

Done at Washington, DC

August 11, 2005

William G. Jenson
Judicial Officer