

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 07-0119
)
Susan Biery Sergiojan,)
an individual,)
)
Respondent) **Order Denying Late Appeal**

PROCEDURAL HISTORY

Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this administrative proceeding by filing a Complaint on May 23, 2007. The Administrator alleges that Susan Biery Sergiojan committed violations of the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; and the regulations and standards issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations]. On July 16, 2007, Ms. Sergiojan filed a timely answer denying the allegations in the Complaint.

On April 15-18, 2008, Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] conducted a hearing in Olympia, Washington. The Administrator filed a post-hearing brief on February 19, 2009. Ms. Sergiojan did not file a post-hearing brief,

and on March 18, 2010, after the time for filing post-hearing briefs had expired, the ALJ issued a Decision and Order in which she: (1) found Ms. Sergiojan committed violations of the Animal Welfare Act and the Regulations; (2) ordered Ms. Sergiojan to cease and desist from violations of the Animal Welfare Act and the Regulations; and (3) assessed Ms. Sergiojan a \$10,000 civil penalty.

The Hearing Clerk served Ms. Sergiojan with the ALJ's Decision and Order on March 23, 2010.¹ On April 20, 2010, Ms. Sergiojan requested, and I granted, an extension to May 20, 2010, within which to file Ms. Sergiojan's appeal petition.² On May 20, 2010, Ms. Sergiojan requested an extension to June 21, 2010, within which to file an appeal petition, which I also granted.³ On June 22, 2010, Ms. Sergiojan filed "Respondent's Notice of Appeal and Declaration in Support Thereof" [hereinafter Appeal Petition]. On June 28, 2010, the Administrator filed "Complainant's Response to Respondent's Notice of Appeal and Declaration in Support Thereof." On June 30, 2010, the Hearing Clerk transmitted the record to me for consideration and decision.

¹United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3860 9115.

²Order Extending Time To File Respondent's Appeal Petition filed April 20, 2010.

³Order Extending Time To File Respondent's Appeal Petition And Ruling Denying Respondent's Request To Extend Time To File Petition To Reconsider filed May 21, 2010.

CONCLUSION BY THE JUDICIAL OFFICER

The rules of practice applicable to the instant proceeding⁴ provide that a party must appeal an administrative law judge's written decision to the Judicial Officer within 30 days after that party receives service of the written decision, as follows:

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, . . . a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk.

7 C.F.R. § 1.145(a). The Hearing Clerk served Ms. Sergiojan with the ALJ's written decision on March 23, 2010;⁵ therefore, Ms. Sergiojan was originally required to file her Appeal Petition with the Hearing Clerk no later than April 22, 2010. I granted Ms. Sergiojan extensions of time to June 21, 2010, within which to file her Appeal Petition. Ms. Sergiojan filed the Appeal Petition 1 day late, on June 22, 2010; therefore, Ms. Sergiojan's Appeal Petition is denied as untimely.

For the foregoing reasons, the following Order is issued.

⁴The 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) [hereinafter the Rules of Practice].

⁵See note 1.

ORDER

1. Ms. Sergiojan's Appeal Petition, filed June 22, 2010, is denied.
2. The ALJ's Decision, filed March 18, 2010, is the final decision in the instant proceeding.

Done at Washington, DC

June 30, 2010

William G. Jenson
Judicial Officer