

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) A.Q. Docket No. 06-0007
)
Mitchell Stanley, d/b/a)
Stanley Brothers,)
)
Respondent) **Decision and Order**

PROCEDURAL HISTORY

W. Ron DeHaven, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on January 18, 2006. Complainant instituted the proceeding under the Animal Health Protection Act (7 U.S.C. §§ 8301-8321 (Supp. IV 2004)); the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note); regulations issued under the Animal Health Protection Act (9 C.F.R. pt. 75); regulations issued under the Commercial Transportation of Equine for Slaughter Act (9 C.F.R. pt. 88); 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 October 20, 2003, Mitchell Stanley, d/b/a Stanley Brothers [hereinafter Respondent], shipped horses in commercial transportation from Louisiana to Dallas Crown in Kaufman, Texas, for slaughter, without a permit for movement of restricted animals, in violation of 9 C.F.R. § 75.4(b), and without a completed owner-shipper certificate, in violation of 9 C.F.R. § 88.4(a)(3)(iv)-(v), (vii) (Compl. ¶ III). The Hearing Clerk served Respondent with the Complaint, the Rules of Practice, and a service letter on January 23, 2006.¹ Respondent failed to file an answer to the Complaint within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). In a letter dated February 23, 2006, the Hearing Clerk informed Respondent that he had failed to file a timely answer and that he would be informed of any future action taken in the proceeding.

On April 4, 2006, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a Motion for Adoption of Proposed Default Decision and Order [hereinafter Motion for Default Decision] and a Proposed Default Decision and Order [hereinafter Proposed Default Decision]. The Hearing Clerk served Respondent with Complainant's Motion for Default Decision, Complainant's Proposed Default Decision, and a service letter on April 19, 2006.² Respondent failed to

¹United States Postal Service Domestic Return Receipt for Article Number 7003 1010 0003 0642 2261.

²United States Postal Service Domestic Return Receipt for Article Number 7003 3110 0003 7112 2724.

file objections to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision within 20 days after service, as required by section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). In a letter dated May 16, 2006, the Hearing Clerk informed Respondent that he had failed to file timely objections to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision and that the file would be referred to an administrative law judge for consideration and decision.

On June 14, 2006, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued a Default Decision and Order [hereinafter Initial Decision]: (1) finding Respondent violated 9 C.F.R. §§ 75.4(b) and 88.4(a)(3)(iv)-(v), and (vii), as alleged in the Complaint; and (2) assessing Respondent a \$12,800 civil penalty (Initial Decision at 2-4).

On August 15, 2006, Respondent appealed the ALJ's Initial Decision to the Judicial Officer. On August 30, 2006, Complainant filed a response to Respondent's appeal petition. On October 20, 2006, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision. Based upon a careful review of the record, I affirm the ALJ's Initial Decision.

APPLICABLE STATUTORY AND REGULATORY PROVISIONS

7 U.S.C.:

TITLE 7—AGRICULTURE

....

CHAPTER 48—HUMANE METHODS OF LIVESTOCK SLAUGHTER

§ 1901. Findings and declaration of policy

....

COMMERCIAL TRANSPORTATION OF EQUINE FOR SLAUGHTER

Pub. L. 104-127, title IX, subtitle A, Apr. 4, 1996, 110 Stat. 1184, provided that:

SEC. 901. FINDINGS.

Because of the unique and special needs of equine being transported to slaughter, Congress finds that it is appropriate for the Secretary of Agriculture to issue guidelines for the regulation of the commercial transportation of equine for slaughter by persons regularly engaged in that activity within the United States.

SEC. 902. DEFINITIONS.

In this subtitle:

(1) **COMMERCIAL TRANSPORTATION.**—The term “commercial transportation” means the regular operation for profit of a transport business that uses trucks, tractors, trailers, or semitrailers, or any combination thereof, propelled or drawn by mechanical power on any highway or public road.

(2) **EQUINE FOR SLAUGHTER.**—The term “equine for slaughter” means any member of the Equidae family being transferred to a slaughter facility, including an assembly point, feedlot, or stockyard.

(3) **PERSON.**—The term “person”—

(A) means any individual, partnership, corporation, or cooperative association that regularly engages in the commercial transportation of equine for slaughter; but

(B) does not include any individual or other entity referred to in subparagraph (A) that occasionally transports equine for slaughter incidental to the principal activity of the individual or other entity in production agriculture.

SEC. 903. REGULATION OF COMMERCIAL TRANSPORTATION OF EQUINE FOR SLAUGHTER.

(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary of Agriculture may issue guidelines for the regulation of the commercial transportation of equine for slaughter by persons regularly engaged in that activity within the United States.

(b) ISSUES FOR REVIEW.—In carrying out this section, the Secretary of Agriculture shall review the food, water, and rest provided to equine for slaughter in transit, the segregation of stallions from other equine during transit, and such other issues as the Secretary considers appropriate.

(c) ADDITIONAL AUTHORITY.—In carrying out this section, the Secretary of Agriculture may—

- (1) require any person to maintain such records and reports as the Secretary considers necessary;
- (2) conduct such investigations and inspections as the Secretary considers necessary; and
- (3) establish and enforce appropriate and effective civil penalties.

SEC. 904. LIMITATION OF AUTHORITY TO EQUINE FOR SLAUGHTER.

Nothing in this subtitle authorizes the Secretary of Agriculture to regulate the routine or regular transportation, to slaughter or elsewhere, of—

- (1) livestock other than equine; or
- (2) poultry.

SEC. 905. EFFECTIVE DATE.

This subtitle shall become effective on the first day of the first month that begins 30 days or more after the date of enactment of this Act [Apr. 4, 1996].

CHAPTER 109—ANIMAL HEALTH PROTECTION

§ 8301. Findings

Congress finds that—

- (1) the prevention, detection, control, and eradication of diseases and pests of animals are essential to protect—
 - (A) animal health;
 - (B) the health and welfare of the people of the United States;
 - (C) the economic interests of the livestock and related industries of the United States;
 - (D) the environment of the United States; and
 - (E) interstate commerce and foreign commerce of the United States in animals and other articles;
- (2) animal diseases and pests are primarily transmitted by animals and articles regulated under this chapter;
- (3) the health of animals is affected by the methods by which animals and articles are transported in interstate commerce and foreign commerce;
- (4) the Secretary must continue to conduct research on animal diseases and pests that constitute a threat to the livestock of the United States; and
- (5)
 - (A) all animals and articles regulated under this chapter are in or affect interstate commerce or foreign commerce; and
 - (B) regulation by the Secretary and cooperation by the Secretary with foreign countries, States or other jurisdictions, or persons are necessary—
 - (i) to prevent and eliminate burdens on interstate commerce and foreign commerce;
 - (ii) to regulate effectively interstate commerce and foreign commerce; and
 - (iii) to protect the agriculture, environment, economy, and health and welfare of the people of the United States.

§ 8305. Interstate movement

The Secretary may prohibit or restrict—

(1) the movement in interstate commerce of any animal, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or dissemination of any pest or disease of livestock; and

(2) the use of any means of conveyance or facility in connection with the movement in interstate commerce of any animal or article if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or dissemination of any pest or disease of livestock.

§ 8313. Penalties

....

(b) Civil penalties

(1) In general

Except as provided in section 8309(d) of this title, any person that violates this chapter, or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided under this chapter may, after notice and opportunity for a hearing on the record, be assessed a civil penalty by the Secretary that does not exceed the greater of—

(A)(i) \$50,000 in the case of any individual, except that the civil penalty may not exceed \$1,000 in the case of an initial violation of this chapter by an individual moving regulated articles not for monetary gain;

(ii) \$250,000 in the case of any other person for each violation; and

(iii) \$500,000 for all violations adjudicated in a single proceeding; or

(B) twice the gross gain or gross loss for any violation or forgery, counterfeiting, or unauthorized use, alteration, defacing or destruction of a certificate, permit, or other document provided under this chapter that results in the

person's deriving pecuniary gain or causing pecuniary loss to another person.

(2) Factors in determining civil penalty

In determining the amount of a civil penalty, the Secretary shall take into account the nature, circumstance, extent, and gravity of the violation or violations and the Secretary may consider, with respect to the violator—

- (A) the ability to pay;
- (B) the effect on ability to continue to do business;
- (C) any history of prior violations;
- (D) the degree of culpability; and
- (E) such other factors the Secretary considers to be appropriate.

....

(4) Finality of orders

(A) Final order

The order of the Secretary assessing a civil penalty shall be treated as a final order reviewable under chapter 158 of title 28.

(B) Review

The validity of the order of the Secretary may not be reviewed in an action to collect the civil penalty.

(C) Interest

Any civil penalty not paid in full when due under an order assessing the civil penalty shall thereafter accrue interest until paid at the rate of interest applicable to civil judgments of the courts of the United States.

§ 8315. Regulations and orders

The Secretary may promulgate such regulations, and issue such orders, as the Secretary determines necessary to carry out this chapter.

7 U.S.C. § 1901 note; 7 U.S.C. §§ 8301, 8305, 8313(b)(1)-(2), (4), 8315 (Supp. IV 2004).

9 C.F.R.:

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

**CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE,
DEPARTMENT OF AGRICULTURE**

....

**SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS
(INCLUDING POULTRY) AND ANIMAL PRODUCTS**

....

**PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES,
PONIES, MULES, AND ZEBRAS**

EQUINE INFECTIOUS ANEMIA (SWAMP FEVER)

**§ 75.4 Interstate movement of equine infectious anemia reactors and
approval of laboratories, diagnostic facilities, and research
facilities.**

....

(b) *Interstate movement.* No reactor may be moved interstate unless the reactor is officially identified, is accompanied by a certificate, and meets the conditions of either paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section: *Provided*, That official identification is not necessary if the reactor is moved directly to slaughter under a permit and in a conveyance sealed with an official seal[.]

**PART 88—COMMERCIAL TRANSPORTATION OF EQUINES
FOR SLAUGHTER**

....

§ 88.4 Requirements for transport.

(a) Prior to the commercial transportation of equines to a slaughtering facility, the owner/shipper must:

....

(3) Complete and sign an owner-shipper certificate for each equine being transported. The owner-shipper certificate for each equine must accompany the equine throughout transit to the slaughtering facility and must include the following information, which must be typed or legibly completed in ink:

....

(iv) A description of the conveyance, including the license plate number;

(v) A description of the equine's physical characteristics, including such information as sex, breed, coloring, distinguishing markings, permanent brands, tattoos, and electronic devices that could be used to identify the equine; [and]

....

(vii) A statement of fitness to travel at the time of loading, which will indicate that the equine is able to bear weight on all four limbs, able to walk unassisted, not blind in both eyes, older than 6 months of age, and not likely to give birth during the trip[.]

88.6 Violations and penalties.

(a) The Secretary is authorized to assess civil penalties of up to \$5,000 per violation of any of the regulations in this part.

(b) Each equine transported in violation of the regulations of this part will be considered a separate violation.

DECISION

Statement of the Case

Respondent failed to file an answer to the Complaint within the time prescribed in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides the failure to file an answer within the time provided in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) shall be deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the failure to file an answer or the admission by the answer of all the material allegations of fact contained in the complaint, constitutes a waiver of hearing. Accordingly, the material allegations in the Complaint are adopted as findings of fact. This Decision and Order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent is an individual who resides at 747 Highway 8 West, Hamburg, Arkansas 71646. Respondent engages in the commercial transportation of equines to slaughter under the name of Stanley Brothers. Respondent handles more than 20 horses per year in interstate commerce.

2. On or about October 20, 2003, Respondent shipped horses in commercial transportation from Louisiana to Dallas Crown in Kaufman, Texas, for slaughter. Two horses in the shipment, USDA backtag numbers USAU 3602 and USAU 3616, bore a

brand on the left side of their necks, 72A, which identified the horses as positive reactors for equine infectious anemia, but the horses were not accompanied by the required permit for movement of restricted animals, VS Form 1-27, in violation of 9 C.F.R. § 75.4(b).

3. On or about October 20, 2003, Respondent shipped horses in commercial transportation from Louisiana to Dallas Crown in Kaufman, Texas, for slaughter, but Respondent did not complete the required owner-shipper certificate, VS Form 10-13. The owner-shipper certificate, VS Form 10-13, had the following deficiencies: (1) the license plate number of the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(iv); (2) the 72A brands on the two positive reactors for equine infectious anemia were not listed, in violation of 9 C.F.R. § 88.4(a)(3)(v); and (3) the boxes indicating the fitness of the horses to travel at the time of loading were not marked, in violation of 9 C.F.R. § 88.4(a)(3)(vii).

Conclusions of Law

By reason of the findings of fact:

1. Respondent violated the Animal Health Protection Act (7 U.S.C. §§ 8301-8321 (Supp. IV 2004));

2. Respondent violated the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note);

3. Respondent violated regulations issued under the Animal Health Protection Act (9 C.F.R. § 75.4(b)); and

4. Respondent violated regulations issued under the Commercial Transportation of Equine for Slaughter Act (9 C.F.R. § 88.4(a)(3)(iv)-(v), (vii)).

Respondent's Appeal Petition

Respondent raises two issues in his August 15, 2006, filing [hereinafter Appeal Petition]. First, Respondent contends he filed a timely response to the Complaint. In support of his contention, Respondent attached to his Appeal Petition a letter dated February 2, 2006, from Respondent to Regina Paris, Office of the Hearing Clerk. (Respondent's Appeal Pet. and Attach.)

The Hearing Clerk served Respondent with the Complaint, the Rules of Practice, and a service letter on January 23, 2006.³ Section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) provides that, within 20 days after service of the complaint, the respondent shall file an answer with the Hearing Clerk. Thus, Respondent's answer was required to be filed with the Hearing Clerk no later than February 13, 2006.⁴

³See note 1.

⁴Twenty days after January 23, 2006, was February 12, 2006. However, February 12, 2006, was a Sunday. Section 1.147(h) of the Rules of Practice provides that when the time for filing a document or paper expires on a Sunday, the time for filing shall be extended to the next business day, as follows:

§ 1.147 Filing; service; extensions of time; and computation of time.

....

(h) *Computation of time.* Saturdays, Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided, That, when such time expires on a Saturday,*

(continued...)

Respondent's answer, dated February 2, 2006, does not establish that Respondent filed his answer on February 2, 2006.⁵

Section 1.147(g) of the Rules of Practice provides that the effective date of filing a document is the date the document reaches the Hearing Clerk, as follows:

§ 1.147 Filing; service; extensions of time; and computation of time.

....

(g) *Effective date of filing.* Any document or paper required or authorized under the rules in this part to be filed shall be deemed to be filed at the time when it reaches the Hearing Clerk; or, if authorized to be filed with another officer or employee of the Department it shall be deemed to be filed at the time when it reaches such officer or employee.

7 C.F.R. § 1.147(g).

Generally, the Hearing Clerk's date and time stamp establishes the date and time a document reaches the Hearing Clerk. The Hearing Clerk's date and time stamp indicates

⁴(...continued)

Sunday, or Federal holiday, such period shall be extended to include the next following business day.

7 C.F.R. § 1.147(h).

The next business day after Sunday, February 12, 2006, was Monday, February 13, 2006. Therefore, Respondent was required to file his answer no later than February 13, 2006.

⁵*See In re Anna Mae Noell*, 58 Agric. Dec. 130, 140 n.2 (1999) (stating the date typed on a pleading by a party filing the pleading does not constitute the date the pleading is filed with the Hearing Clerk; instead, the date a pleading is filed with the Hearing Clerk is the date the document reaches the Hearing Clerk), *appeal dismissed sub nom. The Chimp Farm, Inc. v. United States Dep't of Agric.*, No. 00-1068-A (11th Cir. July 20, 2000).

Respondent filed his answer at 9:47 a.m., on August 15, 2006, 6 months 2 days after Respondent's answer was due. Therefore, I reject Respondent's contention that he filed a timely response to the Complaint. Respondent's failure to file a timely answer is deemed an admission of the allegations of the Complaint (7 C.F.R. § 1.136(a), (c)) and constitutes a waiver of hearing (7 C.F.R. §§ 1.139, .141(a)).

Second, Respondent contends he did not intend to violate the Animal Health Protection Act, the Commercial Transportation of Equine for Slaughter Act, and regulations issued under the Animal Health Protection Act and the Commercial Transportation of Equine for Slaughter Act (Respondent's Appeal Pet.).

Respondent admits in Respondent's late-filed answer and in Respondent's Appeal Petition that he committed the violations alleged in the Complaint, but contends the violations were not intentional. Respondent's contention that he did not intentionally violate the Animal Health Protection Act, the Commercial Transportation of Equine for Slaughter Act, and regulations issued under the Animal Health Protection Act and the Commercial Transportation of Equine for Slaughter Act is not relevant in an administrative proceeding for the assessment of a civil penalty.

The plain language of section 10414 of the Animal Health Protection Act (7 U.S.C. § 8313 (Supp. IV 2004)) establishes that intent is not an element of a violation of a regulation issued under the Animal Health Protection Act in a disciplinary administrative proceeding for the assessment of a civil penalty. The term *knowingly* in

section 10414 of the Animal Health Protection Act (7 U.S.C. § 8313 (Supp. IV 2004)) is only used in connection with criminal proceedings. Similarly, under the Commercial Transportation of Equine for Slaughter Act, intent is not an element of a violation in a disciplinary administrative proceeding for the assessment of a civil penalty. Therefore, even if I were to find Respondent's violations of 9 C.F.R. §§ 75.4(b) and 88.4(a)(3) were unintentional, as Respondent contends, that finding would not constitute a basis for my reversing the ALJ's conclusion that Respondent violated the Animal Health Protection Act, the Commercial Transportation of Equine for Slaughter Act, and regulations issued under the Animal Health Protection Act and the Commercial Transportation of Equine for Slaughter Act.

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

ORDER

Respondent is assessed a \$12,800 civil penalty. The civil penalty shall be paid by certified check or money order payable to the Treasurer of the United States and sent to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Payment of the civil penalty shall be sent to, and received by, the United States Department of Agriculture, APHIS Field Servicing Office, Accounting Section, within 60 days after service of this Order on Respondent. Respondent shall indicate on the certified check or money order that payment is in reference to A.Q. Docket No. 06-0007.

Done at Washington, DC

October 26, 2006

William G. Jenson
Judicial Officer