

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) HPA Docket No. 02-0003
)
Gwain Wilson, d/b/a Dream)
Stables; William Russell)
Hyneman; and John R.)
LeGate, Sr., and Justin LeGate,)
d/b/a Gateway Farms,)
) **Remand Order as to**
Respondents) **William Russell Hyneman**

PROCEDURAL HISTORY

The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on September 5, 2002. Complainant instituted the proceeding under the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) [hereinafter the Horse Protection Act]; the regulations issued under the Horse Protection Act (9 C.F.R. pt. 11); 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 March 24, 2001, William Russell Hyneman [hereinafter Respondent Hyneman] violated the Horse Protection Act. Respondent

Hyneman failed to file a timely answer to the Complaint. On December 15, 2004, in accordance section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a Motion for Adoption of a Proposed Decision and Order and a proposed Decision and Order Upon Admission of Facts by Reason of Default.

On June 8, 2005, in accordance section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] filed a Decision and Order Upon Admission of Facts by Reason of Default: (1) concluding Respondent Hyneman violated the Horse Protection Act as alleged in the Complaint; (2) assessing Respondent Hyneman a \$2,200 civil penalty; and (3) disqualifying Respondent Hyneman from showing, exhibiting, or entering any horse and from participating in any horse show, horse exhibition, horse sale, or horse auction for 1 year.

On July 29, 2005, Respondent Hyneman appealed to the Judicial Officer. On September 21, 2005, Complainant and Respondent Hyneman filed a Joint Motion and Request for Remand requesting that I: (1) remand the proceeding to the ALJ for the purpose of vacating the June 8, 2005, Decision and Order Upon Admission of Facts by Reason of Default as it relates to Respondent Hyneman and entering the proposed Consent Decision and Order as to William Russell Hyneman attached to the Joint Motion and Request for Remand; and (2) dismiss Respondent Hyneman's appeal petition as moot, upon the ALJ's entry of the proposed Consent Decision and Order as to William Russell Hyneman. On September 23, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on the Joint Motion and Request for Remand.

CONCLUSION BY THE JUDICIAL OFFICER

Voluntary settlements are highly favored in proceedings instituted under the Rules of Practice. Therefore, I conclude that Complainant's and Respondent Hyneman's proposed Consent Decision and Order as to William Russell Hyneman should be entered by the ALJ, unless the ALJ finds an error is apparent on the face of the proposed Consent Decision and Order as to William Russell Hyneman. Section 1.138 of the Rules of Practice (7 C.F.R. § 1.138) provides that the parties may agree to the entry of a consent decision at any time before the administrative law judge files a decision. Therefore, prior to the ALJ's entry of the proposed Consent Decision and Order as to William Russell Hyneman, the ALJ must vacate his June 8, 2005, Decision and Order Upon Admission of Facts by Reason of Default as it relates to Respondent Hyneman.

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

ORDER

1. a. This proceeding is remanded to Administrative Law Judge Peter M. Davenport for entry of Complainant's and Respondent Hyneman's proposed Consent Decision and Order as to William Russell Hyneman, unless the ALJ finds an error is apparent on the face of the proposed Consent Decision and Order as to William Russell Hyneman. Prior to entry of the Consent Decision and Order as to William Russell Hyneman, the ALJ shall vacate the June 8, 2005, Decision and Order Upon Admission of Facts by Reason of Default as it relates to Respondent Hyneman.

b. As soon as practicable after Administrative Law Judge Peter M. Davenport files a Consent Decision and Order as to William Russell Hyneman, Complainant and Respondent Hyneman shall provide a copy of the Consent Decision and Order as to William Russell Hyneman to the Judicial Officer, at which time I will consider Complainant's and Respondent Hyneman's request that I dismiss Respondent Hyneman's appeal petition.

2. If Administrative Law Judge Peter M. Davenport finds an error is apparent on the face of the proposed Consent Decision and Order as to William Russell Hyneman: the ALJ shall issue a ruling denying Complainant's and Respondent Hyneman's request that the ALJ enter the Consent Decision and Order as to William Russell Hyneman; the Hearing Clerk shall transmit the record to the Judicial Officer; and jurisdiction of this proceeding shall revert to the Judicial Officer.

Done at Washington, DC

September 27, 2005

William G. Jenson
Judicial Officer