UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	AWA Docket No. 19-J-0075
Lee Marvin Greenly, an individual doing business as MN WILDLIFE and/or Minnesota Wildlife Connection, Inc.,	)	
	)	
Respondent.	)	

ORDER DENYING RESPONDENTS' PETITION FOR APPEAL AND TO SET ASIDE THE DEFAULT DECISION AND ORDER OF JULY 24, 2019

Appearances:

John V. Rodriguez, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Administrator of the Animal and Plant Health Inspection Service ("APHIS ")
and
Matthew E. Anderson, Esq., of St. Paul, MN, for the Respondent, Lee Marvin Greenly and MN WILDLIFE and/or Minnesota Wildlife Connection, Inc.

On Petition for Appeal to the Judicial Officer, Judge Bobbie J. McCartney.

SUMMARY OF PROCEDURAL BACKGROUND AND ISSUES IN DISPUTE

On July 24, 2019, Chief Administrative Law Judge ("Chief ALJ") Channing D. Strother issued a Decision and Order ("DO") Without Hearing By Reason of Default in this disciplinary enforcement proceeding, initiated on April 19, 2019 by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service ("APHIS"), United States Department of

Agriculture ("Complainant").[1] The Complaint alleged that Lee Marvin Greenly and MN Wildlife and/or Minnesota Wildlife Connection, Inc. ("Respondent"), willfully violated the Animal Welfare Act (7 U.S.C. §§ 2131 – 2159) ("AWA" or "Act") and the regulations promulgated thereunder (9 C.F.R. §§ 1.1 – 3.142) ("Regulations") on multiple occasions between July 2015 and July 2017.

On May 2, 2019, the Hearing Clerk properly served Respondent with a copy of the Complaint. However, Respondent did not file an answer within the twenty (20) day period in accordance with section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). In this case, Respondent's answer was due on or before May 22, 2019.[2] As discussed more fully below, even assuming *arguendo* that Respondent's Petition for Appeal were to be construed as an Answer, it would nevertheless have been filed 92 days late. Response at 4.

On May 29, 2019, Complainant filed a Motion for Default ("Motion for Default Decision") and a Proposed Decision and Order ("Proposed Default Decision") in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). On May 30, 2019, the Hearing Clerk mailed a copy of the Motion for Default Decision and a copy of the Proposed Default Decision via certified mail.[3] On June 26, 2019, the Motion for Default Decision and the Proposed Default Decision were returned as "unclaimed."[4] On June 26, 2019, the Motion for Default Decision and

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[1] While I recognize the Administrator is a person, I will use the pronoun "it" when referring to the "Complainant" herein.

[2] United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on May 2, 2019. Respondent had twenty days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent's answer was due on or before May 22, 2019.

[3] United States Postal Service Domestic Return Receipt for Article Number [redacted]

[4] United States Postal Service Domestic Return Receipt for Article Number [redacted]

Proposed Default Decision were then re-mailed via regular mail in accordance with section 1.147(c) of the Rules of Practice (7 C.F.R. § 1.147(c)). Respondent was properly served with a copy of the Motion for Default Decision and a copy of the Proposed Default Decision and did not file any objections within the twenty (20) day period in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

On July 24, 2019, the Chief ALJ issued the Default Decision, finding that, as alleged in the Complaint, Respondent, on four (4) occasions, operated as an exhibitor, as that term is defined in the Act and the Regulations, without holding a valid license, during a period of revocation, in willful violation of section 2134 of the Act (7 U.S.C. § 2134) and section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)); on one (1) occasion operated as a dealer, as that term is defined in the Act and the Regulations, without holding a valid license, during a period of revocation, in willful violation of section 2134 of the Act (7 U.S.C. § 2134) and section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)); and on those five (5) occasions also failed to obey the Secretary's cease and desist order in *In re Lee Marvin Greenly*, et al., 72 Agric. Dec. 603 (U.S.D.A. 2013) (AWA Docket No. 11-0072).

The Chief ALJ ordered twenty-four thousand eight hundred seventy-five dollars ($24,875.00) in civil penalties as requested by the Complainant. *See* Findings, below. On July 29, 2019, the Hearing Clerk served the Respondent with a copy of the Default Decision via certified mail.

The Chief ALJ's July 24, 2019 Default Decision ("DD") is now before me, in my capacity as USDA's Judicial Officer (JO), for consideration by reason of Respondent's Petition for Appeal and to Set Aside the Default Decision, with supporting Memorandum ("Memo") filed on August 22, 2019, contending as follows:

1. The USDA lacks jurisdiction when the Respondent operates a game farm[5] entirely within the State of Minnesota;
2. The facts stated in the Complaint do not establish a willful violation of the Animal Welfare Act; and
3. Good cause exists to set aside the judgement when Respondent relied on the State of Minnesota's assurances that a federal license was not required for his operation and the overwhelming evidence will prove that Respondent did not need federal licensure.

On September 9, 2019, Complainant filed its Response to Appeal of Decision and Order ("Response"), addressing Respondent's arguments as to jurisdiction, the question of willfulness, and good cause. Complainant fully addressed the Regulations concerning the issue of default, noting that the Respondent failed to timely file an Answer, and that his Petition for Appeal, even if construed as an Answer, would nevertheless be 92 days late. Response at 4.

Discussion and Findings

I. Respondent Failed to File an Answer to the Complaint

It is undisputed that the Respondent failed to file an Answer within the time prescribed in 7 C.F.R. § 1.136(a). The Complaint was properly served along with a letter from the Hearing Clerk stating, "[P]lease refer to the rules of practice which govern the conduct of these proceedings found at 7 C.F.R. Part 1, §§1.130 through 1.151 ("the Rules")" and "The rules specify that you have 20 days from the receipt of this letter to file with the Hearing Clerk your written Answer to the Complaint signed by you or your attorney of record." The Complaint was properly served on May 2, 2019.[6] There was no Answer received within the 20 days, nor at any other time. In this case, Respondent's answer was due on or before May

[5] The complaint does not state nor does the Complainant stipulate the Respondent operates as a "game farm and fur farm" nor that it operates as a wholly local business.

[6] United States Postal Service Domestic Return Receipt for Article Number [redacted].

22, 2019.[7] As discussed more fully below, even assuming *arguendo* that Respondent's Petition for Appeal were to be construed as an Answer, it would nevertheless have been filed 92 days late. Response at 4.

Further, the Hearing Clerk's accompanying letter makes very clear that under the Rules of Practice (7 C.F.R. § 1.136(c)) the failure to file an answer to the complaint within the time prescribed in 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. The Hearing Clerk's letter also provided Respondent with a number of different means to file an Answer, including by email or fax to the Hearing Clerk's Office.

In addition, the agency's Motion for Default was filed on May 29, 2019, and, on May 30, 2019, the Hearing Clerk mailed a copy of the Motion for Default Decision and a copy of the Proposed Default Decision via certified mail. On June 26, 2019, the Motion for Default Decision and the Proposed Default Decision were returned as "unclaimed."[8] On June 26, 2019, the Motion for Default Decision and Proposed Default Decision were then re-mailed via regular mail in accordance with section 1.147(c) of the Rules of Practice (7 C.F.R. § 1.147(c)). Respondent was properly served with a copy of the Motion for Default Decision and a copy of the Proposed Default Decision, and did not file any objections within the twenty (20) day period in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

As previously explained, the Rules of Practice (7 C.F.R. § 1.136(c)) provide that the

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[7] United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on May 2, 2019. Respondent had twenty days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent's answer was due on or before May 22, 2019.

[8] United States Postal Service Domestic Return Receipt for Article Number [redacted]

failure to file an answer to the complaint within the time prescribed in 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, pursuant to 7 C.F.R. § 1.139, the failure to file a timely answer constitutes a waiver of hearing. Accordingly, the material allegations of the Complaint in this case were properly adopted as findings of fact in the Chief ALJ's July 24, 2019, Default Decision which is fully supported by the record and is hereby affirmed.

II. Respondent has Not Shown Good Cause for his Default

Respondent is certainly familiar with the Rules and Regulations that pertain to his business, as this is not the first time he has been faced with similar adverse actions by USDA, including monetary penalties and the revocation of his license. Beginning in 2013, Respondent was fined, and his license revoked, for similar offenses as in the present case. *Greenly*, 72 Agric. Dec. 603 (U.S.D.A. 2013) (AWA Docket No. 11-0072). That case made its way to the 8th Circuit Court of Appeals, where the Court affirmed the decision below. *See Greenly v. U.S. Dep't of Agric.*, 576 Fed. Appx. 649 (8th Cir. 2014). At that time, the revocation of Respondent's license went back into effect. Respondent's current violations revolve around his continued defiance of cease and desist orders, and his continuation of business operations despite having no license.

Respondent's present argument as to good cause[9] purports to be based on advice given to him by the Minnesota Department of Resources. This novel argument, not advanced in the prior action, does not serve to explain why Respondent continued to violate the cease

[9] Good cause is rare and there is no general basis for setting aside a default decision based upon the Respondent's failure to file a timely answer. See In re H. Schnell & Co., 57 Agric. Dec. 1722 (1998); In re Nancy M. Kutz (Decision as to Nancy M. Kutz), 58 Agric. Dec. 744 (1999).

and desist orders which have been in place since 2013, and affirmed by the 8th Circuit Court of Appeals. Respondent is experienced in the business of sales and exhibition of game and other animals, and is not unsophisticated in his awareness of the Rules and Regulations which pertain to him. His arguments as to good cause, still notably lacking an explanation as to why he failed to answer the Complaint, are unpersuasive.

Assuming *arguendo* that the Respondent was given the assurances by the State of Minnesota as purported, it must be noted that "[I]t is well-settled that individuals are bound by federal statutes and regulations, irrespective of the advice, findings, or compliance determinations of federal employees."[10] Therefore, pursuant to the Supremacy Clause,[11] even if the Respondent was given erroneous advice by an employee of the State of Minnesota, Respondent was bound by federal law, and knew or reasonably should have known that a proceeding could be instituted against the Respondent for violations of the Act and the Regulations.

III. The Secretary Has Jurisdiction in this Case

It is well settled the Secretary of Agriculture ("Secretary") has jurisdiction under the Act and Regulations when intrastate transactions affect interstate commerce.[12] Respondent maintains that the United States Department of Agriculture lacks jurisdiction over his

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[10] *In re David M. Zimmerman*, 57 Agric. Dec. 1038 (1998) citing *In re John D. Davenport*, 57 Agric. Dec. 189 (1998).

[11] *Constitution of the United States*, Article VI, Clause 2 (Federal law constitutes the "supreme Law of the Land," taking priority over any conflicting state laws.

[12] 7 U.S.C. § 2131; *In re Marilyn Shepard*, 61 Agric. Dec. 478, 482 (2002) *citing, inter alia*, 3 Att'y Gen. Mem. 326); *see also In re Lloyd A. Good, Jr.*, 49 Agric. Dec. 156, 168-169 (1990).

business operations because he operates a "game farm" exclusively within the State of Minnesota and therefore does not engage in interstate commerce.[13]

As previously explained, Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that 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.

Paragraph 3 of the Complaint notified the Respondent, "At all times material herein, the Respondent operated as either an exhibitor and/or a dealer as those terms are defined in the Act and the Regulations."[14] Section 2132(f) of the Act defines dealer as:

> Any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet....

Section 2132(h) of the Act defines exhibitor as:

> Any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary, and such term includes carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not....

Specifically, the Complaint notified the Respondent that he operated as an exhibitor; he exhibited animals; the exhibitions affected commerce; and he exhibited to the public for compensation.[15] The Respondent, as noted in paragraph 11, also operated as a dealer; who sold

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[13] Though the Respondent asserts USDA does not have jurisdiction in this case; he stipulates the Secretary does have jurisdiction in intrastate transactions that affect interstate commerce in his Memo in Support at p. 2.

[14] *See* Complaint at p. 1.

[15] *See* Complaint at pp. 1, 3, 4.

animals; in commerce; for compensation or profit.[16]

Further, the Respondent performed these business activities while his license was under revocation from a previous order. In Paragraphs 7-8of the Complaint, the Respondent was reminded of the previous decisions and orders, specifically Judicial Officer (JO) William G. Jenson's Decision and Order as to the Respondent in *In re Lee Marvin Greenly*, 72 Agric. Dec. 586 (U.S.D.A. 2013) (AWA Docket No. 11-0073), and *In re Lee Marvin Greenly, et al.,* 72 Agric. Dec. 603 (U.S.D.A. 2013) (AWA Docket No. 11-0072).[17] As it pertains to the violations of the cease and desist order in *In re Lee Marvin Greenly, et al.,* 72 Agric. Dec. 603 paragraph 9 notified the Respondent, "At all times material herein, the Respondent knowingly failed to obey the cease and desist order made by the Secretary under section 2149(b) of the Act (7 U.S.C. § 2149(b)), in the above captioned case."[18]

As a result, the Complaint repeatedly notified the Respondent he operated as a dealer; that sold animals; in commerce; for compensation or profit; in commerce, providing the specific dates, locations, types of animals, and section numbers of the violations. The Complaint thereby set forth the elements of the Act, and showed how the Respondent was in violation.

In addition to Respondent's admissions of these Complaint allegations by reason of his failure to file an Answer, Respondent admits he operated a business[19] located at 1894 Old Military Rd., Sandstone, MN, 55072;[20] Respondent admits that he exhibited animals across the

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[16] *In re Marilyn Shepard,* 61 Agric. Dec. 478, 490 (2002).
[17] *See* Complaint at p. 2.

[18] *See* Complaint at p. 3.

[19] The inference that the Respondent conducted business activities for compensation whether for profit or not is reasonable.

[20] *See* Memo in Support at p. 1 and p. 4.

state line in Danbury, Wisconsin in reference to paragraph 12;[21] and, perhaps most importantly, Respondent has yet to specifically deny that he engaged in the conduct alleged to be prohibited.

Based on the foregoing, it is my determination that Complainant has established sufficient facts to establish that Respondent's intrastate transactions affect interstate commerce, and that he admitted to operating in another state; accordingly, the Secretary of Agriculture has jurisdiction under the Act and Regulations.[22]

IV. The Facts Stated in the Complaint are Sufficient to Establish Willful Violations of the Animal Welfare Act

The Complaint alleges that the Respondent's violations were willful. Based on Respondent's failure to file an Answer to the Complaint, the Chief ALJ's Default Decision found the Respondent willfully violated, on five occasions, section 2134 of the Act (7 U.S.C. § 2134) and section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)). Respondent appears to believe, erroneously, that "willful" connotes evil intent. It does not. "A willful act is an act in which the violator intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice, or acts with careless disregard of statutory requirements."[23]

Moreover, Respondent is certainly familiar with the Rules and Regulations that pertain to his

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[21] *See* Memo in Support at p. 6.

[22] 7 U.S.C. § 2131; *In re Marilyn Shepard*, 61 Agric. Dec. 478, 482 (2002) *citing, inter alia*, 3 Att'y Gen. Mem. 326); *see also In re Lloyd A. Good, Jr.*, 49 Agric. Dec. 156, 168-169, (1990).

[23] *In re Bodie S. Knapp*, 72 Agric. Dec. 766 (2013) *citing Terranova Enters., Inc.*, No. 09-0155, 71 Agric. Dec. 876, slip op. at 6 (U.S.D.A. July 19, 2012) (Decision as to Craig Perry and Perry's Wilderness Ranch & Zoo, Inc.); *Bauck*, 68 Agric. Dec. 853, 860-61 (U.S.D.A. 2009), appeal dismissed, No. 10-1138 (8th Cir. Feb. 24, 2010); *D&H Pet Farms, Inc.*, No. 07-0083, 68 Agric. Dec. 798, 812-13, 2009 WL 8382862 (U.S.D.A. Oct. 19, 2009); *Bond*, 65 Agric. Dec. 92, 107 (U.S.D.A. 2006), aff'd per curium, 275 F. App'x 547 (8th Cir. 2008); *Stephens*, No. 98-0019, 58 Agric. Dec. 149, 180, 1999 WL 288586 (U.S.D.A. May 5, 1999); *Arab Stock Yard, Inc.*, 37 Agric. Dec. 293, 306 (U.S.D.A. 1978), aff'd mem., 582 F.2d 39 (5th Cir. 1978); *Lang*, 57 Agric. Dec. 59, 81-82 (U.S.D.A. 1998).

business, as this is not the first time he has been faced with similar adverse actions by USDA, including monetary penalties and the revocation of his license. Beginning in 2013, Respondent was fined, and his license revoked, for similar offenses as in the present case. *Greenly*, 72 Agric. Dec. 603 (U.S.D.A. 2013) (AWA Docket No. 11-0072). That case made its way to the 8th Circuit Court of Appeals, where the Court affirmed the decision below. *See Greenly v. U.S. Dep't of Agric.*, 576 Fed. Appx. 649 (8th Cir. 2014). At that time, the revocation of Respondent's license went back into effect. Respondent's current violations revolve around his continued defiance of cease and desist orders, and his continuation of business operations despite having no license. Accordingly, even absent a showing of "evil intent," Respondent acted with "careless disregard of statutory requirements" which, because of his prior violations, he knew, or reasonably should have known, applied to his business.

Based on the foregoing, it is my determination that Complainant has set forth sufficient facts to establish that Respondent's violations of the Animal Welfare Act were "willful" as alleged in the Complaint and affirmed by the Chief ALJ's Default Decision.

CONCLUSION AND SUMMARY

Complainant's Motion for Default and Proposed Decision was filed May 29, 2019 ("Motion for Default"), and properly served. [24] On September 16, 2019, Respondent filed a

[24] United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and returned to the Hearing Clerk's Office as "unclaimed". The Motion for Default and Proposed Decision were then re-mailed (see 7 C.F.R. § 1.132) via regular mail on June 26 2019 in accordance with 7 C.F.R. § 1.147(c)(1) ("if any such document or paper is sent by certified or registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address."). Respondent had twenty days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent's objections were due on or before July 16, 2019. Respondent did not file any objections.

Reply to Complainant's Response, admitting he missed the deadline to file the Answer, but offering no explanation for the lapse which might support his contention of "good cause." Reply Memorandum at 1. Accordingly, for the reasons discussed herein, I adopt the Chief ALJ's Findings of Fact and affirm the Default Decision. Respondent's Petition for Appeal and to Set Aside Default is ***denied.***

Findings of Fact and Conclusions of Law

I hereby adopt and affirm the Chief ALJ's Findings of Fact and Conclusions of Law as set forth in his July 24, 2019, Default Decision, including:

1. The Respondent Lee Marvin Greenly is an individual doing business as MN Wildlife and/or Minnesota Wildlife Connection Inc.
2. From on or about July 7, 2015 through on or about July 4, 2018, the Respondent, on four occasions, operated as an exhibitor, as that term is defined in the AWA and the Regulations, without having been licensed by the Secretary to do so, in willful violation of section 2134 of the Act (7 U.S.C. § 2134) and section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)).
3. On or about May 15, 2017, the Respondent operated as a dealer, as that term is defined in the Act and the Regulations, without having been licensed by the Secretary to do so, in that the Respondent, in commerce, sold two wolf pups, in willful violation of section 2134 of the AWA (7 U.S.C. § 2134) and section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)).
4. From on or about July 7, 2015 through on or about July 4, 2018, the Respondent, on five occasions, failed to obey the Secretary's cease-and-desist order issued under section 2149(b) of the AWA (7 U.S.C. § 2149(b)) in *Greenly*, 72 Agric. Dec. 603 (U.S.D.A. 2013) (AWA

Docket No. 11-0072).

5. Respondent has not shown good cause for his failure to timely file an Answer in this case.

6. Complainant has established sufficient facts to establish that Respondent's intrastate transactions affect interstate commerce; accordingly, the Secretary of Agriculture has jurisdiction under the Act and Regulations.

ORDER

Respondent's arguments have been considered and are rejected for the reasons discussed herein. Accordingly, Respondents' Petition for Appeal is ***denied***. Penalties assessed total $24,875.00, as detailed in the Default Decision, and the stay is lifted as of the date of this Order.

RIGHT TO SEEK JUDICIAL REVIEW

Respondents have the right to seek judicial review of the Decision and Order entered in this proceeding and of this Order Denying Respondents' Petition for Appeal in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341–2350. Respondents must seek judicial review within sixty (60) days after entry of this Order.[25] The date of entry of the Order is November _20th___, 2019.

[25] The appeal deadline for the Decision and Order issued in this proceeding on 7/24/2019 was stayed by the timely filing of Respondents' Petition for Appeal, and the time for judicial review shall begin to run for the date of entry of this Order as the final action on the petition in accordance with 7 CFR §1.146(b). Respondents must seek judicial review within sixty (60) days of entry of this Order in accordance with 7 U.S.C. § 2149(c).

Copies of this Order shall be served by the Hearing Clerk upon each of the parties (by certified mail as to Respondents), with courtesy copies provided via email where available.

Done at Washington, D.C.
this __20th__ day of November 2019

Judge Bobbie J. McCartney [redacted]

Judge Bobbie J. McCartney
Judicial Officer

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