

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

AWA Docket No. 06-0012

In re: EVERETT LEROY KING,

Respondent

DEFAULT DECISION AND ORDER

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 et seq.), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent willfully violated the Act and the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 et seq.).

Copies of the complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were served by the Hearing Clerk on Everett Leroy King on April 24, 2006. The Respondent was informed in the letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation. Respondent has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted as set forth herein by Respondents' failure to file an answer, are adopted and set forth herein as Findings of Fact and Conclusions of Law.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

Findings of Fact

1. Everett Leroy King, hereinafter referred to as the Respondent, is an individual whose address is 412 South Main, West Salem, Illinois 62467.

2.. The Respondent, at all times material hereto, was not a licensed dealer as defined in the Act and the regulations.

3. On numerous occasions, continuing through at least May 6, 2004, Respondent conducted business for which a USDA license was required, without holding said license, in willful violation of section 2.1(a)(1) of the regulations (9 C.F.R. § 2.1(a)(1)). Respondent sold, in commerce, forty-eight animals for resale. The animals were not born and raised on the premise of the respondent. The sale of each animal constitutes a separate violation.

4. On May 14, 2004, APHIS conducted a pre-licensing inspection of Respondent's premises and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

a. Primary enclosures used to transport live dogs had sharp wires exposed in such a way that the animals could be injured (9 C.F.R. § 3.14(a)(2));

b. Primary enclosures used to transport live dogs were latched with wire making it difficult for the animals to be removed in case of an emergency (9 C.F.R. § 3.14(a)(4));

c. Primary enclosures used to transport live dogs were not permanently attached to the conveyance, nor did they have handles or handholds which would enable the enclosure to be lifted without tilting (9 C.F.R. § 3.14(a)(5));

d.. Primary enclosures used to transport live dogs were not large enough to

ensure that each animal had enough space to turn about normally while standing, to stand and sit erect, and to lie in a natural position (9 C.F.R. § 3.14(e)(1));

e. Primary enclosures used to transport live dogs were not positioned so as to provide protection from the elements (9 C.F.R. § 3.14(e)(2));

f. Primary enclosures used to transport live dogs were not designed and maintained to as to protect the health and well being of the animals (9 C.F.R. § 3.15(a)); and

g. Sufficient water was not provided to animals while in transport and water bowls were not securely attached (9 C.F.R. §§ 3.16 (a),(c)).

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. By reason of the foregoing Findings of Fact, the Respondent is found to have violated the Animal Welfare Act (7 U.S.C. § 2131 *et seq.*) and the Regulations promulgated thereunder (9 C.F.R. § 1.1 *et seq.*). Accordingly, the following Order is issued.

Order

1. Respondent, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulation promulgated thereunder, and in particular, shall cease and desist from:

(a) Engaging in any activity for which a license is required under the Act and regulations without being licensed as required;

(b) Failing to provide animals with adequate shelter from the elements;

(c) Failing to provide sufficient space for animals in primary enclosures;

(d) Failing to provide animals with adequate potable water; and

(e) Failing to construct and maintain facilities for animals so that they are

structurally sound, in good repair, and appropriate for the animals involved..

2. The Respondent is assessed a civil penalty of \$5,500.00, which shall be paid by a certified check or money order made payable to the Treasurer of United States.

The provisions of this order shall become effective on the first day after this decision becomes final. Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this decision shall be served upon the parties.

Done at Washington, D.C.
January 10, 2007

PETER M. DAVENPORT
Administrative Law Judge

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BEFORE THE SECRETARY OF AGRICULTURE

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MOTION FOR ADOPTION OF PROPOSED DECISION AND ORDER

Copies of the complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were served on Everett Leroy King by the Hearing Clerk by certified mail on April 24, 2006. Respondent was informed in the letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

Respondent has failed to file an answer within 20 days as prescribed by section 1.136 of the Rules of Practice governing proceedings under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 et seq.). Respondent has admitted the facts by reason of default.

Accordingly, pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139, Complainant files herewith its Proposed Decision and Order and moves for its adoption.

The order submitted herewith is authorized by the Act and warranted under the circumstances. Complainant believes that the requested sanctions are appropriate and necessary in order to achieve the remedial purposes of the Act. Furthermore, they are consistent with sanctions imposed in cases where there are violations of a serious nature. See, e.g., *In re S.S.*

Farms Linn County, Inc., James W. Hickey, Marie Hickey, James Joseph Hickey, and Shannon Hansen, 50 Agric. Dec. 476, 497 (1991), *aff'd* 991 F.2d 803 (9th Cir. 1991); *In re Mary Bradshaw*, 50 Agric. Dec. 499, 509 (1991); *In re Ron Morrow*, 53 Agric. Dec. 144 (1994), *aff'd per curiam*, 65 F.3d 168 (Table), 1995 WL 52336 (6th Cir. 1995).

The proposed order is appropriate in view of respondents' many serious violations and should therefore be adopted as proposed by complainant.

Respectfully submitted,

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