

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	HPA Docket No. 01-D022 (formerly
)	HPA Docket No. 01-A022, formerly
TIM GRAY, an individual,)	HPA Docket No. 01-0022)
)	
)	CONFIRMATION OF ORAL
Respondent)	DECISION and ORDER

Complainant, the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, is represented by Colleen A. Carroll, Esq.

Respondent, Tim Gray, is representing himself.

This proceeding was instituted under the Horse Protection Act (15 U.S.C. § 1821 et seq.) (the “Act”), by a complaint filed on June 28, 2001, alleging, among other things, that on or about May 27, 2000, Respondent Tim Gray violated section 5(2)(B) of the Act by entering a horse named “JFK All Over” in a horse show while the horse was sore. Respondent Tim Gray timely filed an answer to the complaint, which, among other things, denied the horse was sore.

On March 7, 2005, I issued my Decision and Order as to Respondent Tim Gray **orally** at the close of the hearing, in accordance with 7 C.F.R. § 1.142(c)(1). The transcript may not be available to the Hearing Clerk or the parties for weeks, so I provide this documentation. This writing confirms my oral Decision and Order and instructs the Hearing Clerk to comply with 7 C.F.R. § 1.142 (c)(2): see attached Appendix 2.

Four witnesses testified and I now identify the exhibits that were admitted into evidence. The four videotapes (CX10, CX11, CX12, and CX13) and CX2 are all located in Complainant’s exhibit notebook marked HPA Docket No. 01-0022 and used for the first time in HPA Docket No. 01-B022. The remainder of the exhibits admitted in this case are located with this record file: CX3, CX4a, CX4b, CX4c, CX7 and CX20.

Abbreviated Summary of Findings of Fact Announced Orally

1. Respondent Tim Gray is an individual whose mailing address is 3125 Highway 231 North, Shelbyville, Tennessee 37160, and who is engaged in the business of training and showing Tennessee Walking Horses.

2. On or about May 27, 2000, Respondent Tim Gray entered “JFK All Over” in the 30th Annual Spring Fun Show in Shelbyville, Tennessee, (the “Fun Show”), as entry number 252 in class number 34 (“Three-Year-Old Walking Stallions”) for the purpose of showing the horse in that class.

3. On or about May 27, 2000, Respondent Tim Gray entered “JFK All Over” in the Fun Show, as entry number 252 in class number 34, while the horse was “sore,” as that term is defined in the Act, for the purpose of showing the horse in that class, in violation of section 5(2)(B) of the Act (15 U.S.C. § 1824(2)(B)).

Abbreviated Summary of Conclusions Announced Orally

1. The Secretary of Agriculture has jurisdiction in this matter.

2. Respondent Tim Gray has violated section 5(2)(B) of the Horse Protection Act. 15 U.S.C. § 1824(2)(B).

3. The following order is authorized by the Act and warranted under the circumstances.

Abbreviated Summary of Order Announced Orally

1. Respondent Tim Gray is assessed a civil penalty of \$2,200, which shall be paid by May 6, 2005, by a certified check or money order or cashier’s check, made payable to the order of, the Treasurer of the United States.

2. Respondent Tim Gray is disqualified for two years from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, corporation, partnership,

or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, or horse sale or auction.¹

3. Respondent Tim Gray, his agents and employees, successors and assigns, directly or indirectly or through any corporate or other device, shall cease and desist from violating the Act and the regulations issued thereunder.

My oral Decision and Order becomes final and effective without further proceedings on **Monday, April 11, 2005**, UNLESS an appeal to the Judicial Officer is filed with the Hearing Clerk by **Wednesday, April 6, 2005**, in accordance with 7 C.F.R. § 1.145 (see attached Appendix 1).

Copies of this Confirmation shall be served by the Hearing Clerk upon the parties; Respondent's copy shall be sent by ordinary mail, and also by FAX to 931-684-0379, in addition to being served by certified mail. Further, the Hearing Clerk shall use the same means to serve

¹Participating means engaging in any activity beyond that of a spectator, and includes, without limitation, transporting or arranging for the transportation of horses to or from equine events, personally giving instructions to exhibitors, being present in any area where spectators are not allowed, and financing the participation of others in equine events.

the transcript excerpt when it is available.

Done at Washington, D.C.
this 10 day of March 2005

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue, SW
Room 1081, South Building
Washington, D.C. 20250-9200
202-720-4443
Fax: 202-720-9776

APPENDIX 1

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 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, or within 30 days after issuance of the Judge's decision, if the decision is an oral 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. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such

an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145.

APPENDIX 2

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

**ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY
UNDER**

VARIOUS STATUTES

...

§ 1.142(c) Judge's Decision

(1) The Judge may, upon motion of any party or in his or her own discretion, issue a decision orally at the close of the hearing, or within a reasonable time after the closing of the hearing.

(2) If the decision is announced orally, a copy thereof, excerpted from the transcript or recording, shall be furnished to the parties by the Hearing Clerk. Irrespective of the date such copy is mailed, the issuance date of the decision shall be the date the oral decision was announced.

(3) If the decision is in writing, it shall be filed with the Hearing Clerk and served upon the parties as provided in §1.147.

(4) The Judge's decision shall become final and effective without further proceedings 35 days after the issuance of the decision, if announced orally at the hearing, or if the decision is in writing, 35 days after the date of service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to §1.145; *Provided, however*, that no decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal.

7 C.F.R. § 1.142 (c).