

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 04-0021
)
Marjorie and Harold Walker,)
d/b/a Linn Creek Kennel,)
)
Respondents)

**DECISION AND ORDER UPON ADMISSION
OF FACTS BY REASON OF DEFAULT**

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act (“Act”), as amended (7 U.S.C. § 2131 et seq.), by an 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 issued thereunder (9 C.F.R. § 1.1 et seq.). An Amended Complaint was filed by the Administrator on February 6, 2006.

Copies of the amended complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were served upon Respondent Marjorie Walker who is also known as Marjorie Price on February 16, 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 Marjorie Walker failed to file an answer to the Amended 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)) which provides that 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)) and the failure to deny or otherwise respond to an allegation of the complaint 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 constitutes a waiver of hearing. Accordingly, the material allegations in the Amended Complaint are adopted as findings of fact and conclusions of law.

Furthermore, Respondent Marjorie Walker was informed in an Order issued on January 17, 2006, that:

The Respondent will file with the Hearing Clerk a list of exhibits and a list of witnesses within twenty (20) days after the date her Answer to the Amended Complaint is received by the Hearing Clerk. In the event no such Answer is filed, the Complainant may file an appropriate Motion for Decision Without Hearing By Reason of Default. Order (January 17, 2006).

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 and Conclusions of Law

A. Marjorie Walker also known as Marjorie Price, hereinafter referred to as Respondent, is an individual doing business as Linn Creek Kennel whose address is P. O. Box 107, Gentry, Missouri 64453.

B. The Respondent, at all times material hereto, were licensed and operating as a dealer as defined in the Act and the regulations. As of the date of the amended complaint, the license is listed as being held in the name of Harold and Marjorie Walker.

II

A. On December 1, 2005, APHIS inspected Respondent's premises and records and found that Respondent had failed to provide adequate veterinary care to several dogs, in willful violation of section 2.40(b) of the regulations (9 C.F.R. § 2.40(b)) including but not limited to:

1. A six week old puppy that was observed bumping into walls that had not had its eyes examined by a veterinarian.

2. Nine dogs were observed to be visibly thin with visible ribs, prominent pelvic bones and obvious waist and abdominal tuck. Seven of these dogs also had coats that were thin and patchy. These dogs had not been examined by a veterinarian.

3. Two dogs had several matted coats caked with mud and fecal matter.

4. Twenty-seven dogs had excessively long toenails that were affecting the dogs' normal stance.

B. On December 1, 2005, APHIS inspected respondent's premises and records and found that the respondent had failed to identify all dogs on the premises with an official tag or legible tattoo marking acceptable to and approved by the Administrator in willful violation of section 2.50(a)(1) of the regulations (9 C.F.R. § 2.50(a)(1)).

C. On December 1, 2005, APHIS inspected the Respondent's facility 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:

1. Interior surfaces of housing facilities and surfaces that come in contact with dogs were not free of jagged edges and sharp points that might injure the animals. (9 C.F.R. § 3.1(c)(1)(ii));

2. Hard surfaces with which the dogs come in contact were not spot-cleaned daily to prevent accumulation of excreta, debris and reduce disease hazards (9 C.F.R. § 3.1 (c)(3));

3. Toxic substances including but not limited to bleach and cleaning supplies were improperly stored in animal areas including the food preparation area and near medication used on the animals (9 C.F.R. § 3.1(e));

4. The sheltered parts of sheltered housing facilities for dogs were not sufficiently heated to protect the dogs from temperature extremes and to provide for their health and well-being since the heating unit was not working and the temperature inside the building at the time of inspection was 23 F (9 C.F.R. § 3.3(a)).

5. Breeds of dogs that cannot tolerate the prevalent temperatures of the area without stressor discomfort including short haired dogs and puppies were kept in outdoor facilities without specific approval by the attending veterinarian (9 C.F.R. § 3.4(a)(1)).

6. Dogs in outdoor housing facilities were not provided with adequate protection from the elements since wind breaks were not provided for at least 30 outdoor enclosures containing approximately 70 dogs (9 C.F.R. § 3.4(b)(3)).

7. Dogs in outdoor housing facilities were not provided with adequate protection from the elements and were not provided with clean, dry, bedding material when the ambient temperature was below 50 F and additional bedding when the temperature is below 35 F (9 C.F.R. § 3.4(b)(4));

8. Dogs in outdoor housing facilities were not provided with adequate protection from the elements since the structures available were either too small to hold all of the dogs or there were not a sufficient number of the shelters to allow all dogs to move inside in a normal manner including being able to turn freely (9 C.F.R. § 3(b));

9. Dogs were not provided with food of sufficient quantity and nutritive value to maintain the normal condition and weight of the animals since the amount of food available would only last for another day and no arrangements were made to bring more food to the facility (9 C.F.R. § 3.9(a));

10. Dogs were not provided with potable water since the water in their dishes in all outdoor enclosures and one of the sheltered facilities was frozen and the dogs were not

offered water as often as necessary to ensure their health and well-being.(9 C.F.R. § 3.10); and

11. Primary enclosures for dogs were not kept clean since the majority of outdoor and sheltered facilities had an accumulation of fecal matter that was estimated to be more than the amount of fecal matter that accumulates in 24 hours (9 C.F.R. § 3.11(a).

III

On November 18, 2005, the Respondent refused to permit Animal and Plant Health Inspection Services employees to conduct a complete inspection of her animal facilities, in willful violation of section 16 of the Act (7 U.S.C. § 2146) and section 2.126 of the regulations (9 C.F.R.§ 2.126) since no facility representative was available to allow an APHIS employee to enter the respondent's facilities.

IV

On October 13, 2005, the Respondent refused to permit Animal and Plant Health Inspection Services employees to conduct a complete inspection of her animal facilities, in willful violation of section 16 of the Act (7 U.S.C. § 2146) and section 2.126 of the regulations (9 C.F.R.§ 2.126) since no facility representative was available to allow an APHIS employee to enter the Respondent's facilities.

V

On August 31, 2005, the Respondent refused to permit Animal and Plant Health Inspection Services employees to conduct a complete inspection of her animal facilities,

in willful violation of section 16 of the Act (7 U.S.C. § 2146) and section 2.126 of the regulations (9 C.F.R. § 2.126) since no facility representative was available to allow an APHIS employee to enter the Respondent's facilities.

VI

A. On March 10, 2005, APHIS inspected Respondent's premises and records and found that the Respondent was in wilful violation of 2.40(a) of the regulations (9 C.F.R. § 2.40(a)) since the Respondent could not locate the program of vet care or establish the last date that a veterinarian had visited the facility.

B. On March 10, 2005, APHIS inspected the Respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards since primary enclosures for dogs were not constructed so that they provide sufficient space to allow each animal to turn about freely, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner (9 C.F.R. § 3.6(a)(2)(xi)).

VII

On February 4, 2005, the Respondent refused to permit Animal and Plant Health Inspection Services employees to conduct a complete inspection of her animal facilities, in willful violation of section 16 of the Act (7 U.S.C. § 2146) and section 2.126 of the regulations (9 C.F.R. § 2.126) since no facility representative was available to allow an APHIS employee to enter the respondent's facilities.

VIII

On August 19, 2004, APHIS inspected the Respondent's facility and found the following willful violation of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) because dogs in outdoor housing facilities were not provided with adequate protection from the elements since wind and rain breaks were not provided for outdoor enclosures. (9 C.F.R. § 3.4(b)(3)).

IX

On July 29, 2004, the Respondent refused to permit Animal and Plant Health Inspection Services employees to conduct a complete inspection of her animal facilities, in willful violation of section 16 of the Act (7 U.S.C. § 2146) and section 2.126 of the regulations (9 C.F.R. § 2.126) since no facility representative was available to allow an APHIS employee to enter the Respondent's facilities.

X

On January 21, 2004, APHIS inspected the Respondent's facility and found the following willful violation of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) because dogs in

outdoor housing facilities were not provided with adequate protection from the elements since wind and rain breaks were not provided for outdoor enclosures. (9 C.F.R. § 3.4(b)(3)).

XI

On March 6, 2001, APHIS inspected Respondents'¹ premises and records and found that Respondents had transported puppies in interstate commerce without valid health certificates, in willful violation of section 2.78(a) of the regulations (9 C.F.R. § 2.78(a)).

XII

A. On November 5, 2001, APHIS inspected Respondents' premises and records and found that Respondents had transported puppies in interstate commerce that were not eight weeks of age, in willful violation of section 2.130 of the regulations (9 C.F.R. § 2.130).

XIII

A. On November 15, 2001, APHIS inspected Respondents' premises and records and found that Respondents had failed to identify dogs that were over the age of

¹The first complaint was filed against Marjorie Walker and Harold Walker and included violations that occurred in the years 2001 and 2002. On November 30, 2005, Administrative Law Judge Davenport dismissed Harold Walker from the case. Thus, for violations that occurred in the years 2001 and 2002, the complaint refers to Respondents since at the time the case was filed there were two Respondents. The violations from 2004 onward involve Marjorie Walker and she is referred to as the Respondent.

sixteen weeks, in willful violation of section 2.50(b)(1) of the regulations (9 C.F.R. § 2.50(b)(1)).

B. On November 15, 2001, APHIS inspected Respondents' premises and records and found that Respondents had failed to make and maintain records which correctly disclosed the required information for dogs held at the facility, in willful violation of section 2.75(a)(1) of the regulations (9 C.F.R. § 2.75(a)(1)).

C. On November 15, 2001, APHIS inspected the Respondents' facility 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:

1. Respondents failed to provide housing facilities for dogs that were in good repair and which protected the dogs from injury (9 C.F.R. § 3.1(a)); and
2. Respondents failed to adequate clean and sanitize water receptacles (9 C.F.R. § 3.1 (b)(2)).

XIV

A. On November 27, 2001, APHIS inspected the Respondents' facility 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:

1. Respondents failed to position primary enclosures for dogs in a manner that allowed the dogs to be easily and quickly removed in the case of an emergency (9 C.F.R. § 3.11(f)).

XV

A. On January 16, 2002, APHIS inspected Respondents' premises and records and found that Respondents had failed to identify dogs that were over the age of sixteen weeks, in willful violation of section 2.50(b)(1) of the regulations (9 C.F.R. § 2.50(b)(1)).

B. On January 16, 2002, APHIS inspected Respondents' premises and records and found that Respondents had failed to identify dogs that were under the age of sixteen weeks, in willful violation of section 2.50(b)(3) of the regulations (9 C.F.R. § 2.50(b)(3)).

C. On January 16, 2002, APHIS inspected the Respondents' facility 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:

1. Respondents failed to provide clean dry bedding for dogs (9 C.F.R. § 3.4(b)(4)) and
2. Respondents failed to remove excreta from primary enclosures on a daily basis (9 C.F.R. § 3.11(a)).

XVI

A. On March 18, 2002, APHIS inspected Respondents' premises and records and found that Respondents had transported puppies in interstate commerce that were not eight weeks of age, in willful violation of section 2.130 of the regulations (9 C.F.R. § 2.130).

XVII

A. On April 1, 2002, APHIS inspected Respondents' premises and records and found that Respondents had transported puppies in interstate commerce that were not eight weeks of age, in willful violation of section 2.130 of the regulations (9 C.F.R. § 2.130).

B. On April 1, 2002, APHIS inspected Respondents' premises and records and found that Respondents had transported puppies in interstate commerce without valid health certificates, in willful violation of section 2.78(a) of the regulations (9 C.F.R. § 2.78(a)).

XVIII

A. On July 18, 2002, APHIS inspected Respondents' premises and records and found that Respondents had failed to provide adequate veterinary care, in willful violation of section 2.40(b) of the regulations (9 C.F.R. § 2.40(b)).

B. On July 18, 2002, APHIS inspected Respondents' premises and records and found that Respondents had failed to identify dogs that were over the age of sixteen weeks, in willful violation of section 2.50(b)(1) of the regulations (9 C.F.R. § 2.50(b)(1)).

C. On July 18, 2002, APHIS inspected Respondents' premises and records and found that Respondents had failed to identify dogs that were under the age of sixteen weeks, in willful violation of section 2.50(b)(3) of the regulations (9 C.F.R. § 2.50(b)(3)).

D. On July 18, 2002, APHIS inspected Respondents' premises and records and found that Respondents had failed to make and maintain records which correctly

disclosed the required information for dogs held at the facility, in willful violation of section 2.75(a)(1) of the regulations (9 C.F.R. § 2.75(a)(1)).

E. On July 18, 2002, APHIS inspected the Respondents' facility 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:

1. Respondents failed to provide housing facilities that were structurally sound and maintained to secure the dogs and protect them from injury (9 C.F.R. § 3.1(a));
2. Respondents failed to provide outdoor housing that provided shelter from the elements (9 C.F.R. § 3.4(b));
3. Respondents failed to provide dog enclosures that had coated wire floors or were more than 1/8 of an inch in diameter (9 C.F.R. § 3.6(a)(2)(xii));
4. Respondents failed to remove excreta and food waste from primary enclosures on a daily basis (9 C.F.R. § 3.11(a)); and
5. Respondents failed to properly clean and sanitize water and food receptacles and primary enclosures (9 C.F.R. § 3.11(b)(2)).

Conclusions

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts set forth in the "Findings of Fact" above, the Respondent has willfully violated the Act and regulations promulgated under the Act.

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

Order

1. Respondent, her agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations issued thereunder, and in particular, shall cease and desist from

(a) Failing to construct and maintain housing facilities for animals so that they are structurally sound and in good repair in order to protect the animals from injury, contain them securely, and restrict other animals from entering;

(b) Failing to provide for the regular and frequent collection, removal, and disposal of animal and food wastes, in a manner that minimizes contamination and disease risks;

(c) Failing to construct and maintain housing facilities for animals so that surfaces may be readily cleaned and sanitized or be replaced when necessary;

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

(e) Failing keep food and water receptacles clean and sanitized;

(f) Failing to establish and maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine;

(g) Failing to individually identify animals, as required;

- (h) Failing to maintain records of the acquisition, disposition, description, and identification of animals, as required;
- (i) Transporting animals in interstate commerce without valid health certificates;
- (j) Transporting animals in interstate commerce that are not at least eight weeks of age;
- (k) Failing to transport animals in primary enclosures that allowed the animals to be quickly removed in an emergency;
- (l) Failing to provide clean, dry bedding for animals;
- (m) Failing to provide dog enclosures that have coated wire floors or that are more than an 1/8 inch in diameter; and
- (n) Failing to provide animals with sufficient food and potable water.

2. The Respondent is assessed a civil penalty of \$15,000, which shall be paid by a certified check or money order made payable to the Treasurer of United States.

3. The Respondent's license is permanently revoked.

The provisions of this Order shall become effective on the first day after service of this decision on the Respondent.

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.
this 25th day of May, 2006

Peter Davenport
Administrative Law Judge