

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

A.Q. Docket No. 07-0020

In re: LINDA PENA,
Respondent

DEFAULT DECISION AND ORDER

This is an administrative proceeding for the assessment of a civil penalty for violations of the Animal Health Protection Act (7 U.S.C. § 8301 *et seq.*) and regulations promulgated thereunder (9 C.F.R. § 93.103 *et seq.*), in accordance with the Rules of Practice in 7 C.F.R. § 1.130 *et seq.*

On November 13, 2006, the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, instituted this proceeding by filing an administrative complaint against Linda Pena (hereinafter, Respondent). The complaint was mailed by certified mail to the Respondent on November 14, 2006 and was served on Respondent on November 21, 2006. Pursuant to section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), Respondent was informed in the complaint and the letter accompanying the complaint that an answer should be filed with the Hearing Clerk within twenty (20) days after service of the complaint, and that failure to file an answer within twenty (20) days after service of the complaint constitutes an admission of the allegations in the complaint and waiver of a hearing. Respondent's answer thus was due no later than December 12, 2006, twenty days after service of the complaint (7 C.F.R. §

136(a)). Respondent never filed an answer to the complaint and the Hearing Clerk's Office mailed her a No Answer Letter on January 5, 2007.

Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) or to deny or otherwise respond to an allegation of the complaint shall be deemed an admission of the allegations in the complaint. Since the admission of the allegations in the complaint constitutes a waiver of hearing (7 C.F.R. § 1.139) and Respondent's failure to file an answer is deemed such an admission pursuant to the Rules of Practice, Respondent's failure to answer is likewise deemed a waiver of hearing. Accordingly, the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.139).

FINDINGS OF FACT

1. Linda Pena (hereinafter referred to as "the Respondent") has a mailing address of 252 Ellis Street, Lake Elsinore, California 92530.

2. On or about November 26, 2002, the Respondent imported 43 parrots into the United States from Mexico in violation of the regulations in 9 C.F.R Part 93, Subpart A, as follows:

- a. The parrots were imported without a permit, as required in 9 C.F.R. § 93.103(a).
- b. The parrots were imported without a veterinary certificate as required in 9 C.F.R. § 93.104(a).

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. By reason of the Findings of Fact set forth above, Respondent Linda Pena violated the Animal Health Protection Act (7 U.S.C. § 8301 *et seq.*).

ORDER

1. Respondent Linda Pena is hereby assessed a civil penalty of three thousand dollars (\$3,000.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent Linda Pena shall indicate that payment is in reference to A.Q. Docket No. 07-0020.

2. This order shall be final and effective thirty five (35) days after service of this Default Decision and Order upon Respondent Linda Pena unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.145).

Copies of this Default Decision and Order shall be served on the parties by the hearing Clerk's Office.

Done at Washington, D.C.
March 7, 2007

PETER M. DAVENPORT
Administrative Law Judge

Copies to: Cory S. Spiller, Esquire
Linda Pena

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue SW
Room 1031, South Building
Washington, D.C. 20250-9203
202-720-4443
Fax: 202-720-9776

