

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

In re:	)	
	)	
<b>TIMOTHY WAYNE HOLLEY,</b>	)	<b>HPA Docket No. 06-0005</b>
an individual, d/b/a Tim Holley Stables	)	
and Tim Holley and Son Stables	)	
	)	<b>Confirmation of Oral</b>
Respondent	)	<b>Decision and Order</b>

1. The Complainant, the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (“APHIS”), is represented by Bernadette R. Juarez, Esq. The Respondent Timothy Wayne Holley, an individual, d/b/a Tim Holley Stables and Tim Holley and Son Stables (“Respondent Holley”) represents himself<sup>1</sup> (appears *pro se*).

2. The Complaint, filed on February 14, 2006, alleged violations of the Horse Protection Act (15 U.S.C. § 1821 *et seq.*) (the "Act"). Respondent Holley’s Answer was filed on March 8, 2006. During the hearing in Jackson, Mississippi on April 3-4, 2007, the Complaint was amended to conform to proof.

3. On April 4, 2007, I issued my Decision and Order **orally** at the close of the hearing, in accordance with 7 C.F.R. § 1.142(c)(1). The transcript<sup>2</sup> may not be available to the Hearing Clerk or the parties for weeks, so I provide this documentation. This writing confirms my oral Decision

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<sup>1</sup> Respondent Holley was represented by W. Mitchell Moran, Esq., until Mr. Moran moved to withdraw as Respondent Holley’s attorney, and I granted his motion, during the first day of the hearing, April 3, 2007.

<sup>2</sup> Anyone choosing to pay for an expedited copy of the transcript could order same from Neal R. Gross and Co., Inc., Court Reporters, 1323 Rhode Island Ave NW, Washington DC 20005-3701, telephone 202.234.4433; fax 202.387.7330.

and Order and instructs the Hearing Clerk to comply with 7 C.F.R. § 1.142 (c)(2); see attached Appendix 2.

4. Ten witnesses testified: Ms. Carolyn S. Ballard, Mr. Stephen C. Fuller, Mr. Gary H. Pettway, Ms. Marcia M. Allison, Mr. James Lonnie Messick, Mr. Rhudy Ralph Ayers, Dr. Clement Dussault, Dr. Lynn P. Bourgeois, Ms. Colleen Carroll, Esq., and Dr. Robert A. Willems. Numerous exhibits were admitted into evidence.

*Abbreviated Findings of Fact and Conclusions (See Transcript)*

5. The Secretary of Agriculture has jurisdiction.

6. Respondent Holley is an individual whose address was and is 63 Tamin Cove, Byhalia, Mississippi 38611.

7. Respondent Holley knowingly violated section 5(2)(B) of the Act (15 U.S.C. § 1824(2)(B)) on March 21, 2002, by entering the horse Ultimate Game, while Ultimate Game was sore, for the purpose of showing or exhibiting Ultimate Game, as entry number 422 in class 27 at the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee.

8. While Respondent Holley was under an order of disqualification,<sup>3</sup> Respondent Holley knowingly violated the Horse Protection Act, specifically 15 U.S.C. § 1825(c), **35** times.

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

*Abbreviated Order (See Transcript)*

10. Respondent Holley is assessed a civil penalty of **\$2,200** for his violation of 15 U.S.C. § 1824(2)(B); plus a civil penalty of **\$115,500** for his 35 violations of 15 U.S.C. § 1825(c); both of which shall be paid by certified checks or money orders or cashier's checks, made payable to the

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<sup>3</sup> Respondent Holley was under a one-year period of disqualification from March 15, 2002 through March 14, 2003.

order of the **Treasurer of the United States**. Payments of the civil penalties **shall be sent by a commercial delivery service, such as FedEx or UPS**, to, and received by, Bernadette R. Juarez, Esq., at the following address:

United States Department of Agriculture  
Office of the General Counsel, Marketing Division  
Attn.: Bernadette R. Juarez, Esq.  
South Building, Room 2343, Stop 1417  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250-1417.

11. Respondent Holley is **disqualified for 10 years**<sup>4</sup> from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, family member, corporation, partnership, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, or horse sale or auction, directly or indirectly through any agent, employee, family member, corporation, partnership, or other device.<sup>5</sup>

12. Respondent Holley, 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.

13. My oral Decision and Order becomes final without further proceedings on **Wednesday, May 9, 2007** (35 days after pronouncement), and effective one day thereafter, UNLESS an appeal to the Judicial Officer is filed<sup>6</sup> with the Hearing Clerk by **Friday, May 4, 2007** (30 days after

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<sup>4</sup> Respondent Holley has an opportunity to reduce this period of disqualification by paying his civil penalties, including the \$2,000 balance of his previously imposed \$2,200 civil penalty. *See Transcript.*

<sup>5</sup> “Participating” 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.

<sup>6</sup> prior to 4:30 pm Eastern Daylight time

pronouncement), in accordance with 7 C.F.R. § 1.145 (see attached Appendix 1 and attached Appendix 2).

14. The Hearing Clerk will comply with 7 C.F.R. § 1.142 (c)(2); see attached Appendix 2.

Copies of this Confirmation shall be served by the Hearing Clerk upon each of the parties, and the Hearing Clerk is requested to FAX copies in addition to serving normally.

Done at Washington, D.C.  
this 9<sup>th</sup> day of April 2007

Jill S. Clifton  
Administrative Law Judge

Hearing Clerk's Office  
U.S. Department of Agriculture  
South Building Room 1031  
1400 Independence Ave SW  
Washington DC 20250-9203  
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**

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**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.:**

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**§ 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).