

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWA Docket No. 07-0096
)	
Alice Myrick,)	
doing business as)	
Myrick Toy Kennel,)	
)	
Respondent)	

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 ("APHIS"), 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.). 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 the Respondent on May 14, 2007. 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.

The Respondent failed to file an answer to the 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 complaint are adopted as findings of fact and conclusions of law. 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

I

A. Alice Myrick, hereinafter referred to as the respondent, is an individual whose address is Route 2, Box 79, Mapleton, Kansas 66754. The respondent operates under the business name of Myrick Toy Kennel.

B. The respondent, at all times material hereto, was operating as a dealer as defined in the Act and the regulations. The respondent's AWA license number is 48-A-1418.

II

On July 10, 2002, APHIS inspected 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:

1. Housing facilities for animals were not kept in good repair so as to protect the animals from injury (9 C.F.R. § 3.1(a)); and
2. The buildings and surrounding grounds were not keep clean and in good repair (9 C.F.R. § 3.11(c)).

III

A. On August 7, 2003, APHIS inspected respondent's premises and found that respondent had failed to identify at least eight dogs on her premises, in willful violation of section 2.50(b)(1) of the regulations (9 C.F.R. § 2.50(b)(1)).

B. On August 7, 2003, APHIS inspected respondent's premises and found that respondent had failed to make and maintain records which fully and correctly disclosed information regarding dogs in her possession, in willful violation of section 2.75(b)(1) of the regulations (9 C.F.R. § 2.75(b)(1)).

C. On August 7, 2003, 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. Respondent failed to provide shelter with sufficient space to allow dogs to stand, sit and lie in a comfortable, normal position (9 C.F.R. § 3.6 (a)(2)(xi)).

IV

A. On June 18, 2004, APHIS inspected respondent's premises and found that respondent had failed to provide adequate veterinary care to at least one dog which had a wound that appeared to contain maggots, in willful violation of section 2.40(b)(3) of the regulations (9 C.F.R. § 2.40(b)(3)).

B. On June 18, 2004, 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. Respondent failed to spot clean daily hard surfaces in which the dogs have contact (9 C.F.R. §3.1(c)(3));

2. Respondent failed to properly store cleaning supplies in a manner so as to protect the dogs from injury (9 C.F.R. § 3.1(e)); and

3. Respondent failed to provide shelter with sufficient space to allow dogs to stand, sit and lie in a comfortable, normal position (9 C.F.R. § 3.4(b)).

V

A. On August 6, 2004, APHIS inspected respondent's premises and found that respondent failed to identify at least seven dogs on her premises, in willful violation of section 2.50(a)(2) of the regulations (9 C.F.R. § 2.50(a)(2)).

B. On August 6, 2004, 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. Respondent failed to provide primary enclosures free of sharp points or edges that could injure the animals (9 C.F.R. § 3.6(a)(2)(i)).

VI

A. On March 16, 2005, APHIS inspected respondent's premises and found that respondent 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)). These violations included but were not limited to :

1. At least four boxers were not treated for a skin condition.

2. The respondent did not have a veterinarian provide care to a puppy that was observed to be dying and died during the inspection.

B. On March 16, 2005, APHIS inspected respondent's premises and found that respondent had failed to identify at least twenty-five dogs on her premises, in willful violation of section 2.50(a)(1) of the regulations (9 C.F.R. § 2.50(a)(1)).

C. On March 16, 2005, APHIS inspected respondent's premises and attempted to photograph the facilities but were denied access, in willful violation of section 2.126(a)(4) of the regulations (9 C.F.R. § 2.126(a)(4)) since the respondent stopped APHIS personnel from photographing animals during the inspection including a dog with a skin condition.

D. On March 16, 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. Respondent failed to provide sufficiently ventilated housing facilities for dogs (9 C.F.R. § 3.2(b));
2. Respondent failed to provide floor areas which were impervious to moisture (9 C.F.R. § 3.3(e)(1)(ii));
3. Respondent failed to provide outdoor housing shelter which had wind and rain breaks (9 C.F.R. § 3.4(b)(3));
4. Respondent failed to provide primary enclosures free of sharp points or edges that could injure the animals (9 C.F.R. § 3.6(a)(2)(i));
5. Respondent failed to provide dogs housed in groups 100% of the required space for each dog if maintained separately (9 C.F.R. § 3.8(b)); and
6. Respondent failed to clean often enough to prevent excessive accumulation of feces (9 C.F.R. § 3.11(a)).

VII

On March 25 and March 26, 2005, the respondent transported at least five dogs with health certificates that were executed by a veterinarian more than ten days prior to the date the

dogs were delivered in willful violation of the Act (7 U.S.C. § 2143 (f)) and section 2.78 of the regulations (9 C.F.R. § 2.78).

VIII

A. On April 1, 2005, APHIS inspected respondent's premises and found that respondent had failed to establish and maintain programs of adequate veterinary care, in willful violation of section 2.40(b)(2) of the regulations (9 C.F.R. § 2.40(b)(2)). These violations included but were not limited to :

1. At least four boxers had skin conditions that had worsen since the previous inspection. One white boxer named "Cinderella" had very red, crusty skin and eyes that were matted. A boxer named "Bashful" had crusty, scabby skin and matted eyes. Two boxers, one which was named "Rainbow" and another named "Brutus" had scabby skin which made their legs appear to be swollen.

2. One female dog which was a Westie was observed to limp.

3. One male dog which was a Westie was observed to have a skin problem under his body and down his legs.

B. On April 1, 2005, APHIS inspected respondent's premises and found that respondent had failed to provide adequate veterinary care, in willful violation of section 2.40(b)(3) of the regulations (9 C.F.R. § 2.40(b)(3)).

C. On April 1, 2005, APHIS inspected respondent's premises and found that respondent had failed to identify all dogs on her premises, in willful violation of section 2.50(a)(1) of the regulations (9 C.F.R. § 2.50(a)(1)).

D. On April 1, 2005, APHIS inspected respondent's premises and found that respondent had failed to identify all live puppies less than 16 weeks of age, in willful violation of section 2.50(a)(1) of the regulations (9 C.F.R. § 2.50(a)(2)).

E. On April 1, 2005, APHIS inspected respondent's premises and found that respondent had failed to make and maintain records which fully and correctly disclosed information regarding dogs in her possession, in willful violation of section 2.75(a)(1) of the regulations (9 C.F.R. § 2.75(a)(1))

F. On April 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. Respondent failed to clean and sanitized surfaces in the facilities with which the dogs have contact (9 C.F.R. §3.1(c)(2));
2. Respondent failed to provide outdoor housing shelter which provided wind and rain breaks (9 C.F.R. § 3.4(b)(3));
3. Respondent failed to provide primary enclosures free of sharp points or edges that could injure the animals (9 C.F.R. § 3.6(a)(2)(i));
4. Respondent failed to maintain enclosures in good repair (9 C.F.R. § 3.6(a)(1));
5. Respondent failed to provide a minimum amount of floor space for housed dogs (9 C.F.R. § 3.6(c)(1)(i)); and
6. Respondent failed to clean often enough to prevent excessive accumulation of feces (9 C.F.R. § 3.11(a)).

VIII

A. On April 8, 2005, APHIS inspected respondent's premises only to determine if the six dogs observed in need of veterinarian care at the previous inspection had received veterinarian care and found that respondent had failed to provide adequate veterinary care, in willful violation of section 2.40(b)(3) of the regulations (9 C.F.R. § 2.40(b)(3)). These violations included but were not limited to :

1. The respondent's records did not show if the four boxers with skin conditions were being treated because the treatment plan prescribed by a veterinarian was not documented by the respondent.

2. The male Westie with the skin condition that was observed on the previous inspection was euthanized rather than being treated by a veterinarian. The respondent failed to document if the euthanasia was performed in a manner that constituted adequate veterinarian care for the dog.

3. The respondent had no documentation to show that the lame female Westie received adequate veterinarian care and the dog continued to limp.

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. The 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 sufficient space for animals in primary enclosures;

(c) Failing to maintain primary enclosures for animals that are clean and sanitary;

(d) Failing to keep the premises clean and in good repair;

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

(f) Failing to provide animals kept outdoors with shelter from inclement weather;

(g) 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;

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

(i) Failing to maintain records of the acquisition, disposition, description, and identification of animals, as required; and

(j) Failing to provide veterinary care to animals.

2. The respondent is assessed a civil penalty of \$20,000.00, which shall be paid by a certified check or money order made payable to the Treasurer of United States. The notation "AWA Dkt. No. 06-0008" shall appear on the certified check or money order. The check shall be

sent to Sharlene Deskins, USDA OGC Marketing Division, Mail Stop 1417, 1400 Independence Ave. S.W., Washington, D.C. 20250-1417.

3. The respondent's license is revoked. The respondent is permanently disqualified from becoming licensed under the Act and regulations. The respondent shall not engage in any activity which requires a license under the Animal Welfare Act.

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 21st day of April, 2008

Marc R. Hillson
Administrative Law Judge

