

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWA Docket No. 08-0107
Karla Jean Smith,)	
)	Decision and Order
Respondent)	by Reason of Default

The Complaint, filed on April 21, 2008, alleged that the Respondent, Karla Jean Smith, without being licensed under the Animal Welfare Act, beginning in 2005, sold dogs in commerce for compensation or profit and operated as a dealer, thereby violating section 4 (7 U.S.C. § 2134) of the Animal Welfare Act, as amended (frequently herein the “Animal Welfare Act” or the “AWA” or the “Act”) and section 2.1(a)(1) of the regulations issued pursuant to the Act (frequently herein the “Regulations”). 9 C.F.R. § 2.1(a)(1). The Complainant asks that Respondent Smith consequently be permanently disqualified from obtaining an Animal Welfare Act license.

Parties and Counsel

The Complainant, the Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (herein frequently “APHIS” or “Complainant”), is represented by Frank Martin, Jr., Esq., Office of the General Counsel (Marketing Division), United States Department of Agriculture, 1400 Independence Avenue, S.W., Washington D.C. 20250-1417.

The Respondent, Karla Jean Smith (frequently herein “Respondent Smith” or “Respondent”), has failed to appear.

Procedural History

The Complainant’s Motion for Adoption of Proposed Decision and Order, filed July 14, 2008, is before me. A copy of the Motion and a copy of the proposed Decision and Order were delivered and signed for by Respondent Smith on July 18, 2008; she failed to respond. [See Domestic Return Receipt for Article Number 7007 0710 0001 3860 1898.]

On April 21, 2008, the Hearing Clerk had mailed a copy of the Complaint to Respondent Smith by certified mail. The Complaint and the Hearing Clerk’s notice letter dated April 21, 2008, and a copy of the Rules of Practice, were delivered and signed for by Respondent Smith on April 24, 2008. [See Domestic Return Receipt for Article Number 7007 0710 0001 3858 9622.] No answer to the Complaint has been received. The time for filing an answer expired on May 14, 2008.

The Rules of Practice provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. §1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139.

Accordingly, the material allegations in the Complaint, which are admitted by Respondent Smith’s default, are adopted and set forth herein as Findings of Fact. This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139. See 7 C.F.R. §1.130 *et seq.*, especially 7 C.F.R. § 1.139.

Findings of Fact and Conclusions

1. Respondent Karla Jean Smith is an individual whose mailing address is in Holden, Missouri 64040.
2. Respondent Smith, at all times material herein beginning on or about October 15, 2005, was operating as a dealer as defined in the Animal Welfare Act and the Regulations, without being licensed, and sold in commerce, for compensation or profit, at least 14 dogs for use as pets, in willful violation of section 4 (7 U.S.C. § 2134) of the Animal Welfare Act and section 2.1(a)(1) of the Regulations. 9 C.F.R. § 2.1(a)(1).
3. The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149.
4. The Secretary of Agriculture has jurisdiction over Respondent Smith and the subject matter involved herein.
5. Enforcement of the Act and Regulations depends upon the identification of persons operating as dealers. *See* 7 U.S.C. § 2131; *see* the opinion of the Judicial Officer of the United States Department of Agriculture: “[T]he failure to obtain an Animal Welfare Act license before operating as a dealer is a serious violation because enforcement of the Animal Welfare Act and the Regulations and Standards depends upon the identification of persons operating as dealers.” *In re: J. Wayne Shaffer*, 60 Agric. Dec. 444, 478, 2001 WL 1143410, at *23 (U.S.D.A. Sept. 26, 2001).

Order

6. Respondent Smith, her agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations issued thereunder, and, in particular, shall cease and desist

from engaging in any activity for which a license is required under the Act and Regulations without being licensed as required, effective on the day after this Decision becomes final.

7. Respondent Smith is permanently disqualified from becoming licensed under the Animal Welfare Act or from otherwise obtaining, holding, or using an Animal Welfare Act license, directly or indirectly, or through any corporate or other device or person, effective on the day after this Decision becomes final.

Finality

8. This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 1st day of October 2008

Jill S. Clifton
Administrative Law Judge

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

APPENDIX A

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