

**UNITED STATES DEPARTMENT OF
AGRICULTURE**

BEFORE THE SECRETARY OF AGRICULTURE

HPA Docket No. 08-0106

In re: BERNARD A. DORSEY,
a/k/a B. A. DORSEY

Respondent

DEFAULT DECISION AND ORDER

This proceeding was instituted under the Horse Protection Act ("Act"), as amended (15 U.S.C. § 1821 et seq.), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that Bernard A. Dorsey also known as B.A. Dorsey willfully violated the Act.

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 said respondent by the Hearing Clerk by regular mail on or about May 21, 2008. The Respondent was informed in the accompanying 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 allegations.

Said Respondent failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, are hereby admitted by the respondent's failure to file an answer, and are adopted and set forth herein as Findings of Fact.

Findings of Fact

1. Bernard A. Dorsey also know as B. A. Dorsey (hereafter Respondent) is an individual who resides in Shelbyville, Tennessee 37160.
2. On July 11, 2003 , the Secretary of Agricultural through the Judicial Officer issued a decision and order regarding B. A. Dorsey also known as Bernard A. Dorsey. The Judicial Officer has been delegated with final administrative authority to decide the Department's cases subject to 5 U.S.C. §§ 556 and 557. See 7 C.F.R. § 2.35. The Secretary of Agriculture concluded that "B.A. Dorsey entered Ebony's Bad Bubba for pre-show inspection, thereby entered Ebony's Bad Bubba to be shown or exhibited while the horse was sore, in the 32nd Annual National Walking Horse Trainers Show in Shelbyville, Tennessee, on March 22, 2000, in violation of section

5(2)(B) of the Horse Protection Act (15 U.S.C. § 1824(2)(B)).” In re Bowtie Stables, James L. Corlew, Betty Corlew, and B. A. Dorsey, 59 Agric. Dec. 795 (2003) , 2000 WL 33667891. The Judicial Officer assessed each respondent in In re Bowtie Stables a \$2,200 civil penalty, and ordered that each respondent be disqualified for 1 year from showing, exhibiting, or entering any horse and from managing, judging, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction. *Id.* Bernard Dorsey did not pay the civil penalty assessed by the Judicial Officer. 3. The USDA’s Office of the Hearing Clerk served the Judicial Officer’s Decision and Order on the attorney for the respondent, David Broderick of Broderick and Thornton, Bowling Green, Kentucky on or about July 22, 2003. The Decision and Order stated that the “disqualification of Respondents shall become effective on the 60th day after service of this Order on Respondents.” *Id.* The 1-year disqualification commenced on September 23, 2003.

4. The Respondent from September 23, 2003 to September 22, 2004 was under a one year order of disqualification issued pursuant to the Act from showing, exhibiting, or entering any horse and from managing, judging, or

otherwise participating in any horse show, horse exhibition, horse sale, or horse auction.

5. Section 6 of the Act provides:

(c) Disqualification of offenders; orders; civil penalties applicable; enforcement procedures

In addition to any fine, imprisonment, or civil penalty authorized under this section, any person who was convicted under subsection (a) of this section or who paid a civil penalty assessed under subsection (b) of this section or is subject to a final order under such subsection assessing a civil penalty for any violation of any provision of this chapter or any regulation issued under this chapter may be disqualified by order of the Secretary, after notice and an opportunity for a hearing before the Secretary, from showing or exhibiting any horse, judging or managing any horse show, horse exhibition, or horse sale or auction for a period of not less than one year for the first violation and not less than five years for any subsequent violation. Any person who knowingly fails to obey an order of disqualification shall be subject to a civil penalty of not more than \$3,000 for each violation. Any horse show, horse exhibition, or horse sale or auction, or the management thereof, collectively and severally, which knowingly allows any person who is under an order of disqualification to show or exhibit any horse, to enter for the purpose of showing or exhibiting any horse, to take part in managing or judging, or otherwise to participate in any horse show, horse exhibition, or horse sale or auction in violation of an order shall be subject to a civil penalty of not more than \$3,000 for each violation. The provisions of subsection (b) of this section respecting the assessment, review, collection, and compromise, modification, and remission of a civil penalty apply with respect to civil penalties under this subsection. 15 U.S.C. § 1825(c).

6. The civil penalty for failure to obey an order of disqualification at all relevant times under the Act was \$4,300.

See 7 C.F.R. § 3.91(b)(2)(ix).

7. On or about November 20, 2003, the Respondent knowingly disobeyed the order of disqualification issued by the Secretary, by managing, judging, or otherwise participating in a

horse show, horse exhibition, horse sale, or horse auction, in willful violation of the order of disqualification by participating in the exhibiting and exhibiting a horse called “Really” at the Southern Championship Charity Horse Show in Perry, Georgia in willful violation of the order of disqualification and Section 1825(c) of the Act . 15 U.S.C. § 1825 (c).

8. On or about November 21, 2003, the Respondent knowingly disobeyed the order of disqualification issued by the Secretary, by managing, judging, or otherwise participating in a horse show, horse exhibition, horse sale, or horse auction, in willful violation of the order of disqualification by participating in the exhibiting and exhibiting a horse called “Really” at the Southern Championship Charity Horse Show in Perry, Georgia in willful violation of the order of disqualification and Section 1825(c) of the Act. 15 U.S.C. § 1825 (c).

9. On or about November 21, 2003, the Respondent knowingly disobeyed the order of disqualification issued by the Secretary, by managing, judging, or otherwise participating in a horse show, horse exhibition, horse sale, or horse auction, in willful violation of the order of disqualification by participating in the exhibiting and exhibiting a horse called “Chinatorion” at the Southern Championship Charity Horse Show in Perry, Georgia in

willful violation of the order of disqualification and Section 1825(c) of the Act . 15 U.S.C. § 1825 (c).

10. On or about November 22, 2003, the Respondent knowingly disobeyed the order of disqualification issued by the Secretary, by managing, judging, or otherwise participating in a horse show, horse exhibition, horse sale, or horse auction, in willful violation of the order of disqualification by participating in the exhibiting and exhibiting a horse called “Really” at the Southern Championship Charity Horse Show in Perry, Georgia in willful violation of the order of disqualification and Section 1825(c) of the Act . 15 U.S.C. § 1825 (c).

11. On or about November 22, 2003, the Respondent knowingly disobeyed the order of disqualification issued by the Secretary, by managing, judging, or otherwise participating in a horse show, horse exhibition, horse sale, or horse auction, in willful violation of the order of disqualification by participating in the exhibiting and exhibiting a horse called “Prisim Sky” at the Southern Championship Charity Horse Show in Perry, Georgia in willful violation of the order of disqualification and Section 1825(c) of the Act . 15 U.S.C. § 1825 (c).

12. On or about March 26, 2004, the Respondent knowingly disobeyed the order of disqualification issued by the

Secretary, by managing, judging, or otherwise participating in a horse show, horse exhibition, horse sale, or horse auction, in willful violation of the order of disqualification by participating in the exhibiting and exhibiting a horse called “Judge’s Evidence” at the National Trainers Show in Shelbyville, Tennessee in willful violation of the order of disqualification and Section 1825(c) of the Act . 15 U.S.C. § 1825 (c).

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. By reason of the facts set forth in the Findings of Fact above, said respondent violated 15 U.S.C. § 1825 (c) six times by managing, judging, or otherwise participating in a horse show, horse exhibition, horse sale, or horse auction while under an order of disqualification issued pursuant to the Horse Protection Act.
3. The following Order is authorized by the Act and warranted under the circumstances.

Order

The Respondent is assessed a civil penalty of \$25,800 which shall be paid by a certified check or money order made payable to the Treasurer of United States. The notation "HPA Dkt. No. 08-0106" 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.

The provisions of this order shall become effective on the first day after this decision becomes final. 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.
December 18, 2008

PETER M. DAVENPORT
Administrative Law Judge

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) HPA Docket No. 08-
0106
)
)
Bernard A. Dorsey,)
 also known as)
B. A. Dorsey,)
)
 Respondent)

MOTION FOR ADOPTION OF PROPOSED DECISION AND ORDER

The complaint in this proceeding, filed by the Administrator, Animal and Plant Health Inspection Service, was served upon respondent Bernard A. Dorsey also known as B.A. Dorsey by the Hearing Clerk by U.S. mail on or about May 21, 2008. The Respondent failed to file an answer within 20 days as prescribed by section 1.136 of the Rules of Practice governing proceedings under the Horse Protection Act (hereafter Act or HPA), 7 C.F.R. § 1.136. Therefore the Respondent admitted the facts by reason of default. Accordingly, pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139, Complainant files herewith its Proposed Decision and Order and moves for its adoption.

The order submitted herewith is authorized by the Act and warranted under the circumstances. The HPA provides in Section 1825 (c) that “(a)ny person who knowingly

fails to obey an order of disqualification shall be subject to a civil penalty of not more than \$3,000 for each violation.”¹

The United States Department of Agriculture's sanction policy is set forth in In re S.S. Farms Linn County, Inc. (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), aff'd, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under the 9th Circuit Rule 36-3), as follows:

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose. 50 Agric. Dec. At 497.

Section 6(c) of the Horse Protection Act (15 U.S.C. § 1825(c)) provides that the provisions of section 6(b) of the Horse Protection Act (15 U.S.C. § 1825(b)) respecting assessment of a civil penalty shall apply with respect to civil penalties under section 6(c) of the Horse Protection Act (15 U.S.C. § 1825(c)). Section 6(b)(1) of the Horse Protection Act (15 U.S.C. § 1825(b)(1)) provides, in determining the amount of the civil penalty, the Secretary of Agriculture shall take into account all factors relevant to such determination, including the nature, circumstances, extent, and gravity of the prohibited conduct and, with respect to the person found to have engaged in such conduct, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

1 The amount of the civil penalty has been increased to \$4,300 for each violation.

See 28 U.S.C. § 2461; See 7 C.F.R. § 3.91(b)(2)(ix).

A consideration of these factors supports the assessment of civil penalty of \$25,800. The Respondent has a previous violation of the HPA. The respondent ignored a disqualification order not once but several times. Thus the violations are grave and numerous. Based on these factors that are required to be considered when determining the amount of the civil penalty to be assessed and the United States Department of Agriculture's policy of assessing the maximum civil penalty, the Respondent's violations of the Horse Protection Act warrant the imposition of the maximum civil penalty for each violation. See In re Derwood Stewart, 2007 WL 578986 (USDA)*7. Therefore, the Respondent should be assessed a \$25,800 civil penalty for repeatedly

and knowingly failing to obey an order of disqualification which prohibited him from exhibiting horses for one year..

Respectfully submitted,

SHARLENE A. DESKINS
Attorney for Complainant

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PROPOSED DECISION AND ORDER