

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) A.Q. Docket No. 08-0146
)
Randy G. Smith and Jeff Smith)
d/b/a Smith Horse Company)
)
Respondents)

Ruling Denying Motion to Grant Default Decision

On June 19, 2008, Kevin Shea, Acting Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, filed a single complaint against Randy G. Smith and Jeff Smith d/b/a Smith Horse Company, alleging a number of violations of the Animal Health Protection Act and the Commercial Transportation of Equines for Slaughter Act. Each allegation in the complaint alleged that “respondents” committed the violations alleged.

A timely handwritten answer, dated July 14, 2008, and received by the Hearing Clerk on July 23, 2008 was filed by Randy G. Smith, essentially denying commission of the alleged violations. This document had no caption, other than the number of the case, and did not specifically indicate whether it was filed on behalf of Randy G. Smith as an individual or on behalf of the partnership.

Having received no response from Jeff Smith, Complainant on November 4, 2008 filed a Motion for Adoption of Proposed Default Decision and Order, seeking \$64,500 in civil penalties.

On November 24, 2008 Respondents, through counsel, objected to the Proposed Default Decision and Order. Complainant filed a response to Respondents' Objections, essentially contending that because Respondent Jeff Smith did not file an answer to the complaint, he had admitted the allegations of the complaint and waived his right to a hearing. Respondents filed a reply to Complainant's response on December 30, 2008 stating that the answer filed by Randy Smith was intended to be a response on behalf of both Respondents.

I find that, in the absence of clear evidence to the contrary, there is merit to the contention that the answer filed by Randy G. Smith was filed on behalf of the partnership, and that the Motion for a Default Decision against Jeff Smith should be denied. While no cases have been cited to me on this subject, and I am unable to locate any specific decision by the Judicial Officer or any USDA administrative law judge on this subject, a close look at the answer filed by Randy G. Smith indicates that "I" and "we" are used interchangeably, and that the explanations and denials offered apply to the allegations that were made against "respondents" in each case. Further, granting a judgment against Jeff Smith would, since the entity is a partnership, effectively be a judgment against the partnership, and thus against Randy G. Smith, effectively denying him his right to a meaningful hearing. While it would have been better if the answer filed by Randy G. Smith clearly indicated that he was filing on behalf of the partnership, in the absence of clear law on the effect of one partner filing an answer, combined with the answer clearly addressing the allegations in a manner that would pertain to both partners to the partnership, I decline to grant the Complainant's motion.

Copies of this Order will be served upon the parties by the Hearing Clerk.

MARC R. HILLSON
Chief Administrative Law Judge

January 30, 2009