

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

AWA Docket No. 08-0169

In re: BEVERLY HOWSER,
JONATHAN HOWSER, and
HEATHER MONTAVY,

Respondents

DEFAULT DECISION AND ORDER AS TO HEATHER MONTAVY

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*) (the “Act”), by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the Respondents willfully violated the Act and the regulations and standards (9 C.F.R. § 1.1 *et seq.*) (the “Regulations”) issued thereunder.

On September 16, 2008, the hearing clerk sent to respondent Heather Montavy, by certified mail, return receipt requested, a copy of the complaint. Respondent Heather Montavy was informed in the accompanying letter of service that an answer to the complaint should be filed pursuant to the Rules of Practice and that a failure to answer any allegation in the complaint would constitute an admission of that allegation. The complaint was received on September 20, 2008.^[1] Respondent Heather Montavy failed to file an answer within the time prescribed in the Rules of Practice; thus the material facts alleged in the complaint, which are admitted by respondent Heather Montavy’s default, are adopted and set forth herein as Findings of Fact.

^[1] See Domestic Return Receipt for Article Number 7007 0710 0001 3860 2079.

This Default Decision and Order is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

FINDINGS OF FACT

1. Respondent Heather Montavy (hereinafter “Respondent Montavy”), is an individual residing in Bates City, Missouri 64011.^[2]

2. Respondent Montavy, at all material times mentioned herein, was operating as a dealer as defined in the Act and the Regulations.

3. Respondent Montavy has a small-sized business. During the 15-month period described herein (May 2005 through August 2006), respondent Montavy sold no fewer than 25 dogs of various different breeds, including a sale to at least one licensed dealer.

4. Despite having made aware of the licensing requirements under the Act and Regulations, respondent Montavy continued to engage in regulated activity without a license and sold numerous dogs, including a sale to at least one licensed dealer.

5. Between on or about May 2005 and on or about August 2006, respondent Montavy, without being licensed, sold, in commerce no fewer than twenty-five dogs to Conrad’s Cuddly Canines, a licensed dealer (Animal Welfare Act license number 43-B-0227), for resale use as pets or breeding purposes, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b).

6. The violations described in the paragraph above (¶ 5) took place on or about at least the following dates: May 10, 2005; August 17, 2005; January 11, 2006; March 8, 2006; April 5, 2006; June 14, 2006; July 26, 2006 and August 9, 2006.

^[2] An updated address for respondent Montavy was provided to the hearing clerk in a letter from counsel for complainant, dated September 15, 2008.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. Respondent Montavy, at all material times mentioned herein, was operating as a dealer as defined in the Act and the Regulations.
3. Respondent Montavy has a small-sized business, selling no fewer than 25 dogs of various different breeds, including sales to at least one licensed dealer.
4. The violations are serious and include repeated instances in which Respondent Montavy, without being licensed, operated as a dealer. Enforcement of the Act and Regulations depends upon the identification of persons operating as dealers.
5. Respondent Heather Montavy does not have a previous history of violations; however, Respondent Heather Montavy's conduct over the period described herein reveals a consistent disregard for, and unwillingness to abide by, the requirements of the Act and the Regulations. Despite being made aware of the licensing requirements under the Act and Regulations, Respondent Heather Montavy continued to engage in regulated activity without a license and sold numerous dogs, including to at least one sale to a licensed dealer. Such an ongoing pattern of violations establishes a "history of previous violations" for the purposes of section 2149(b) of the Act (7 U.S.C. § 2149(b)) and lack of good faith. See In re William Richardson, 66 Agric. Dec. 69, 88-89, 2007 WL 1723728, at *13 (U.S.D.A. June 13, 2007) (opinion of Judicial Officer)
6. Between on or about May 2005 and on or about August 2006, Respondent Heather Montavy, without being licensed, sold, in commerce no fewer than twenty-five dogs to Conrad's Cuddly Canines, a licensed dealer (Animal Welfare Act license number 43-B-0227), for resale use as pets or breeding purposes, in willful violation of section 2134 of the Act and

section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b). These violations took place on or about at least the following dates: May 10, 2005; August 17, 2005; January 11, 2006; March 8, 2006; April 5, 2006; June 14, 2006; July 26, 2006 and August 9, 2006.

ORDER

1. Respondent Heather Montavy, 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 engaging in activities for which an Animal Welfare Act license is required

2. Respondent Heather Montavy is assessed a civil penalty of \$1,000. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States and sent to:

United States Department of Agriculture
Office of the General Counsel
Marketing Division – Room 2343-South
1400 Independence Avenue, SW.
Washington, DC 20250-1417

Respondent Heather Montavy shall state on the certified check or money order that the payment is in reference to AWA Docket No. 08-0169.

3. Respondent Heather Montavy is disqualified for five (5) years from becoming licensed under the Animal Welfare Act or otherwise obtaining, holding, or using an Animal Welfare Act license, directly or indirectly, or through any corporate or other device or person.

4. During this period of disqualification, Respondent Heather Montavy, either directly or indirectly, or through any corporate or other device or person, shall not engage in any activity for which a license under the Animal Welfare Act is required.

5. The provisions of this order shall become effective on the first day after this decision becomes final. This decision becomes final without further proceedings 35 days after service as provided in sections 1.142 and 1.145 of the Rules of Practice.

Copies of this Default Decision and Order shall be served on the parties.

Done at Washington, D.C.
October 15, 2009

PETER M. DAVENPORT
Administrative Law Judge

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