

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

In re:	)	
	)	HPA Docket No. 04-0001
Kim Bennett,	)	
	)	
Respondent	)	<b><u>DECISION AND ORDER</u></b>

**Preliminary Statement**

This is a case of first impression in a disciplinary proceeding under the Horse Protection Act, as amended (15 U.S.C. § 1821 et seq.; “the Act”). At issue is whether the refusal to allow a government official to complete his inspection of a Tennessee Walking Horse is a violation of law when the evidence fails to prove that the inspection was reasonable as required by the Act and an applicable regulation. This proceeding was initiated by a complaint filed on April 15, 2004, by the Administrator of the Animal and Plant Health Inspection Service (“APHIS”), United States Department of Agriculture (“USDA”). The complaint alleges that on August 26, 2002, Kim Bennett violated the Act (15 U.S.C. § 1824 (9)) and an implementing regulation (9 C.F.R. § 11.4), by refusing to allow an authorized APHIS official to inspect a horse he had entered and intended to show at the 64<sup>th</sup> Annual Tennessee Walking Horse National Celebration Show (“the 2002 Celebration”). Mr. Bennett filed a timely answer denying the allegations and requesting a

hearing. I held an oral hearing in Nashville, Tennessee, on May 17-18, 2005, at which testimony was recorded and transcribed (“TR\_\_”), and various exhibits were received from Complainant (“CX\_\_”) and from Respondent (“RX\_\_”). USDA was represented by Frank Martin, Jr., Esq., Office of the General Counsel, USDA, Washington, DC. Kim Bennett was represented by David Broderick, Esq. and Tad T. Pardue, Esq., Broderick & Associates, Bowling Green, KY. In accordance with a schedule set at the hearing, briefing was completed by the parties on August 12, 2005.

Upon consideration of the record evidence and the arguments of the parties, I have decided for the reasons that follow, that Complainant has failed to prove that Kim Bennett violated the Act and the regulations and an order dismissing the case with prejudice is hereby being entered.

#### **Findings of Fact**

1. The respondent, Kim Bennett, is an individual whose mailing address is 636 Mt. Lebanon Road, Alvaton, Kentucky 42122. (Answer).
2. Kim Bennett obtained a degree in equine science from Middle Tennessee State University in 1976, and has been a trainer and breeder of Tennessee Walking Horses since 1980. He has a trainer’s license with the Walkers Training Association and an AAA Judge’s license with the National Horse Show Commission. Both licenses are in good standing. He has judged shows throughout America and twice judged the Celebration. Kim Bennett has served on the National Board of the Tennessee Walkers Breeders and Exhibitors Association for approximately eighteen years. He served on the License Enforcement Committee of the Walking Horse Owners Association until its merger with the National Horse Show Commission. He is a voting member of the

National Horse Show Commission and has represented the Tennessee Walking Horse Owners Association on that Commission for approximately fifteen years. (TR 392-395).

3. Kim Bennett and his wife, Leigh Bennett, who is also a licensed horse trainer and an AAA certified judge, keep upwards of fifty horses on their farm in Alvaton, Kentucky. (TR 315-316).

4. In February 2002, Kim Bennett and Leigh Bennett began training a horse named "The Duck" after it had been purchased, based on their advice, for \$100,000.00 by Dr. Dwight and Elizabeth Ottman of Owensboro, Kentucky. (TR 317, TR 400-402).

5. The Duck was a stallion and a past World Grand Champion. It was being used exclusively for breeding at the time of its purchase by the Ottmans. In 2002, the Duck was bred with 32 mares for which a \$900.00 stud fee was charged for each breeding. Kim Bennett undertook to restore the horse's form to win another championship at the 2002 Celebration to increase its value even more. The Duck was an unusually nervous and aggressive horse that was sensitive to its environment, could get excited fairly easily and was not very fond of strangers. (TR 15, TR 260, TR 295 and TR 402-404).

6. On August 26, 2002, shortly before 11:00 PM EDT, Kim Bennett led the Duck into the inspection area of the Calsonic Arena in Shelbyville, Tennessee where the 2002 Celebration was being held, and presented the horse for pre-show inspection. The Duck had been entered by Kim Bennett for showing and exhibiting at the 2002 Celebration as entry number 784 in class 104. Class 104 was considered a qualifying event for the 2002 World Grand Championship. (TR 320, TR 408, CX 1, CX 2, CX 3, CX 4A).

7. As a stallion recently used for breeding, the Duck became very agitated and easily aroused when near other horses. Because of the Duck's unsteady temperament and the possibility that it might become excited and difficult to handle and mount, Kim Bennett had waited until the inspection area was clear of other horses that might distract the Duck before leading it to the inspection area. (TR 322, TR 405-408).

8. On August 26, 2002, at about 11:00 PM EDT, a pre-show inspection of the Duck was made by Mark Thomas, a Designated Qualified Person employed by the National Horse Show Commission that had been engaged to conduct the inspection process for the 2002 Celebration. (TR 9, TR 408).

9. Mark Thomas has been a licensed Designated Qualified Person for fourteen years and has inspected horses at hundreds of horse shows. (TR 13).

10. Mark Thomas conducted a three-part inspection of the Duck, as he did other horses, consisting of (1) general appearance, (2) locomotion and (3) palpation. He gave the Duck the best score in each category. (TR 16-18).

11. Mark Thomas approved the Duck to be shown and exhibited, and Kim Bennett, who was to be the horse's rider, then led it to the warm-up area. (TR 27, TR 410).

12. Two APHIS Veterinary Medical Officers were assigned to the 2002 Celebration and were present in the inspection area on the evening of August 26, 2002. They were Dr. Michael Guedron and Dr. Lynn Bourgeois. Dr. Bourgeois was the Show Veterinarian, the APHIS designation for the veterinarian in charge, whose duties included inspecting horses himself, the management of both Dr. Guedron and a team of APHIS inspectors, the monitoring of the Designated Qualified Persons and their performance,

and trying to make everything go smoothly.(TR 130-131, TR 134-136, TR 187, TR 212-213).

13. Before the 2002 Celebration, complaints had been made to USDA about Dr. Guedron's demeanor and the performance of his duties at horse shows. He smoked while around horses and in designated non-smoking areas. He failed to stand during the playing of the National Anthem. He would so conduct pre-show inspections that horses with nothing wrong with them would miss their show class. A Designated Qualified Person complained to Dr. Bourgeois at a special meeting held on August 25, 2002, that Dr. Guedron had intimidated and harassed him. In the year 2002, Dr. Guedron was involved in a majority of the conflicts that were the subject of conflict resolutions with the National Horse Show Commission's Designated Qualified Persons. (TR 38, TR 190-193, TR 204, TR 206, TR 266-267).

14. Kim Bennett knew of Dr. Guedron's reputation when he led the Duck into the warm-up area to show him at the 2002 Celebration. (TR 394-400).

15. Kim Bennett later learned that Dr. Guedron had a problem with his employment application with USDA and had lost his license to practice in the State of Florida. (TR 395-399, TR 442).

16. Dr. Guedron is no longer employed by APHIS or USDA. It is believed that he presently lives in the State of Florida. (TR 111-112, TR 206, TR 388, RX 13).

17. As Kim Bennett led the Duck into the warm-up area on the evening of August 26, 2002, he was followed by Dr. Guedron who stopped Mr. Bennett and instructed him to return the horse to the inspection area for another inspection. Dr. Guedron did not tell Kim Bennett why he wanted to re-inspect the horse and did not

provide a reason when asked. Kim Bennett nonetheless agreed to the re-inspection and allowed it to be conducted by Dr. Guedron until he observed him palpate the horse's left front pastern in a way that Kim Bennett believed to be abusive and calculated to elicit a reaction from a horse that was not sore. At that point, Kim Bennett led the horse away from Dr. Guedron. Dr. Guedron asked Kim Bennett if he was refusing inspection.

Mr. Bennett replied: "No, I am not. I am only asking that you inspect the horse properly". Further conversations took place, and Mr. Bennett became more agitated as his opportunity to exhibit the horse and re-establish it as a champion, disappeared with the passage of time. Dr. Bourgeois, the Show Vet, asked Mr. Bennett whether or not he would allow Dr. Guedron to complete his inspection and Kim Bennett replied: "Not Dr. Guedron". Kim Bennett requested that Dr. Bourgeois inspect the horse instead of Dr. Guedron because Dr. Guedron was using the points of his thumbs rather than the balls of his thumbs to palpate the horse's foot. This request could have been granted by Dr. Bourgeois but, without any reason being given, was refused. Apparently, Dr. Bourgeois believed it was more important to uphold Dr. Guedron's authority than to defuse the situation by performing the inspection himself. Dr. Bourgeois was also unwilling to do more to take control of the situation because he believed he had been "emasculated" by orders given to him that night by Dr. Gibson, the APHIS Deputy Administrator for Animal Care who happened to be in attendance at the 2002 Celebration. ( TR 137, TR 160, TR 162, TR 199, TR 220-222, TR 328-335, TR 411-420, CX 4-A).

18. The customary procedure when a Veterinary Medical Officer finds a violation of the Act, is to request the Designated Qualified Person who passed the horse

for exhibition to write a ticket on the horse. However, this instruction was not given and no ticket was ever written. (TR 194-195).

19. Dr. Guedron did not testify at the hearing. He did not file an investigative report, affidavit, or statement of any kind. The record is totally devoid of any evidence from Dr. Guedron on why he undertook to inspect the Duck on the evening of August 26, 2002, the way in which he palpated the horse, or the reactions he elicited.

### Conclusions

**Complainant has not met the burden of establishing through a preponderance of evidence that Kim Bennett refused to allow a representative of APHIS to reasonably inspect the horse Kim Bennett had entered to exhibit and show at the 2002 Celebration. Therefore, Kim Bennett has not violated the implementing regulation and the Act, and this proceeding should be dismissed with prejudice.**

The Act has a two-fold purpose in regulating horse shows. First, it seeks to prevent the pain horses experience when subjected to abusive “soring” techniques to enhance their performance at horse shows. Second, it seeks to take away the unfair advantage an exhibitor of a sore horse has over exhibitors who do not sore their horses. *See In re: George Blades*, 40 Agric. Dec. 1725,1736 (1981). To achieve these objectives, the Act requires the management of horse shows to disqualify sore horses and appoint inspectors, known as Designated Qualified Persons, to diagnose and detect the sore horses. To assure compliance, the Act requires USDA to prescribe regulations for the appointment of these inspectors and the manner of their inspections. *See* 15 U.S.C. § 1823.

In addition, USDA may have its own representatives inspect the horse shows and required records provided that:

...Such an inspection shall be commenced and completed with reasonable promptness and shall be conducted within reasonable limits and in a reasonable manner....

15 USC § 1823 (e). (emphasis supplied)

Kim Bennett is charged with refusing a USDA inspection and violating the provision of the Act that prohibits:

The failure or refusal to permit access to or copying of records, or the failure or refusal to permit entry or inspection, as required by section 4 [15 USC § 1823].

15 USC § 1824 (9).

Kim Bennett is likewise charged with violating an implementing regulation that recognizes the delegation of the USDA inspection function to APHIS and states:

Each horse owner, exhibitor, trainer, or other person having custody of, or responsibility for, any horse at any horse show,... shall allow any APHIS representative to reasonably inspect such horse at all reasonable times and places the APHIS representative may designate....APHIS representatives will not generally or routinely delay or interrupt actual individual classes or performances at horse shows,...for the purposes of examining horses, but they may do so in extraordinary situations such as but not limited to, lack of proper facilities for inspection, refusal of management to cooperate with Department inspection efforts, reason to believe that failure to immediately perform inspection may result in the loss, removal, or masking of any evidence of a violation of the Act or the regulations, or a request by management that such inspections be performed by an APHIS representative.

9 CFR § 11.4 (a). (emphasis supplied)

Kim Bennett allowed Dr. Guedreon, an APHIS representative, to start an inspection of the horse Mr. Bennett was about to mount and ride into the show ring, but refused to allow Dr. Guedron to continue the inspection when Mr. Bennett observed that it was not being reasonably conducted. He did not refuse the APHIS inspection per se, but he sought to assure that it would be reasonably conducted by having it performed by another APHIS inspector.

I found Kim Bennett to be a credible witness. His testimony that the horse was sound and an inappropriate candidate for a pre-show re-inspection was supported by:

1. Mark Thomas, the Designated Qualified person who conducted the pre-show inspection. (TR 24, TR 66).

2. Dr. Stephen Mullens, a private veterinarian employed on the evening of August 26, 2002, by Mr. Bennett to examine the horse to determine if it was sound or sore to help resolve his controversy with APHIS. (TR 76, TR 80-81).

3. Lonnie Messick, Executive Vice President of the National Horse Show Commission and its Animal Care Designated Qualified Persons Coordinator. (TR 258, TR 260-261).

4. Kurt Moss, a horse trainer holding an AAA judge's license with the National Horse Show Commission. (TR 297-298).

5. Duane Rector, the horse's blacksmith who also holds a judge's license. (TR 307-309).

6. Leigh Bennett, Kim Bennett's wife, who is also a licensed horse trainer and an AAA certified judge. (TR 325).

All six of these witnesses impressed me as credible and trustworthy.

The sole witness to testify for APHIS to support its allegation that Kim Bennett refused a reasonable inspection was the Show Veterinarian, Dr. Lynn Bourgeois. On the night of August 26, 2002, Dr. Bourgeois did not witness the pre-show inspection of the horse by Mark Thomas, the Designated Qualified Person. (CX 3). He did not see Dr. Guedron ask Mr. Bennett to have the horse return for re-inspection, and did not see Dr. Guedron inspecting the horse. (TR 138). He did not undertake to inspect the horse

himself when Mr. Bennett requested him to do so, but instead decided to “let him vent until the winners of the last class came out and were inspected”. (CX 3). He did not attempt to defuse the situation that night, but instead is still angry that his superior “emasculated” him by giving him instructions with which he disagreed. (Finding 17).

Dr. Bourgeois attempted to show that Dr. Guedron’s request to inspect the horse was reasonable by watching a videotape of Mr. Thomas’ inspection, and opining when its left foot was palpated, “there was a subtle move”. (TR 146). However, none of the other expert witnesses who testified detected such a reaction. Dr. Bourgeois also testified on the basis of watching the videotape, that Dr. Guedron elicited a response when he palpated the horse’s left foot. (TR148). But the videotape (CX 4-A) did not enable him to see if Dr. Guedron may have obtained a reaction by using an improper technique such as palpating the horse’s foot with the points of his thumbs rather than the balls of his thumbs.

Complainant has the burden of proving a violation of the Act by a preponderance of the evidence. *In re Robert B. Mc Cloy, Jr.*, 61 Agric. Dec. 173,195 (2002). The Act specifically requires a USDA inspection to be conducted “in a reasonable manner” (15 U.S.C. § 1823 (e)). The controlling regulation likewise requires “any APHIS representative to reasonably inspect” the horse (9 C. F. R. § 11.4 (a)).

The preponderance of evidence in this case fails to prove that Dr. Guedron conducted the horse’s inspection in a reasonable manner. He elected to initiate a pre-show inspection of the last horse to leave the inspection area with very little time left to make its class event. Typically, APHIS inspections are conducted at the completion of

these events.(TR 210-211, RX 26 at page 19). In fact, the governing regulation charges APHIS inspectors to ordinarily avoid delaying individual classes:

....APHIS representatives will not generally or routinely delay or interrupt actual individual classes or performances at horse shows,..for the purposes of examining horses,...

9 C. F. R. § 11.4 (a).

Even assuming Dr. Guedron had a good reason for conducting a pre-show inspection of the horse that could and did delay the horse from competing in its class, there is no proof that he conducted the inspection properly to qualify as being performed in a “reasonable manner”. Only two people have actual knowledge of how Dr. Guedron palpated the horse. They are Kim Bennett and Dr. Guedron. Kim Bennett testified that Dr. Guedron did not palpate the horse properly. There is no evidence to refute this testimony. Dr. Guedron did not testify and never prepared an investigative report, an affidavit, or any kind of statement attesting to the fact that he properly palpated the horse’s foot. Without such evidence, a finding cannot be made that he conducted the inspection in a reasonable manner. This is a necessary element of Complainant’s proof that has not been met. Inasmuch as Complainant has failed to meet its burden of proof, this proceeding against Kim Bennett is being dismissed with prejudice.

**ORDER**

This proceeding that was filed against Kim Bennett, respondent, is hereby dismissed with prejudice. This dismissal shall become effective and final thirty-one (31) days after receipt thereof unless Complainant shall appeal this Decision and Order to the Judicial Officer within thirty (30) days after receiving it in accordance with 7 C.F.R. §1.145.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Victor W. Palmer  
Administrative Law Judge