

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

HPA Docket No. 04-0003

In re: ROBERT RAYMOND BLACK, II, an individual;
CHRISTOPHER B. WARLEY, an individual;
BLACK GOLD FARM, INC., a Texas corporation;
ROBBIE WARLEY, an individual doing business as BLACK GOLD FARMS;
HERBERT DERICKSON and JILL DERICKSON,
individuals doing business as HERBERT DERICKSON TRAINING FACILITY,
also known as HERBERT DERICKSON STABLES and
also known as HERBERT DERICKSON BREEDING AND TRAINING
FACILITY

Respondents

DECISION AND ORDER

Preliminary Statement

On August 19, 2004, Kevin Shea, the Administrator of the Animal and Plant Inspection Service, United States Department of Agriculture (“APHIS”) initiated this disciplinary proceeding against the Respondents by filing a complaint alleging violations of the Horse Protection Act of 1970, as amended, (15 U.S.C. § 1821, *et seq.*) (the “Act”). The protracted proceedings have included consideration of a procedural issue by the Judicial Officer prior to reaching the case on the merits.¹ Following motions requesting extensions of time in which to file their answers, all of the Respondents, except for Robert Raymond Black, II² (hereinafter “Black”) filed answers denying the material

¹ *In re Robert Raymond Black, II, et al*, 64 Agric. Dec. 681 (2005).

² Black’s copy of the Complaint mailed by Certified Mail by the Hearing Clerk was returned by the Postal Service as being “Not deliverable as addressed.”

allegations of the complaint. Notwithstanding the failure to serve Respondent Black in accordance with the Rules of Practice, the Complainant sought judgment by default by a Motion for Adoption of Proposed Decision and Order filed on October 21, 2004. On November 11, 2004, counsel for Black filed his Notice of Appearance and by a pleading filed on November 12, 2004 indicated that Black had never been served with a copy of the Complaint and sought dismissal of the complaint against Black, or in the alternative, requested an extension of time in which to answer. The Motion for an Extension of Time in Which to Answer was granted by Order dated January 21, 2005, and the Hearing Clerk was directed to serve the Complaint upon counsel. Noting the traditional preference for decisions on the merits over default procedures, the ruling on the Motion for Adoption of the Proposed Decision and Order was deferred. On February 15, 2005, an answer was filed on Black's behalf. The Complainant, however, appealed the deferral of the Motion for Adoption of Proposed Decision and Order to the Judicial Officer, who on May 3, 2005, dismissed the appeal and returned the case to the Administrative Law Judge for further proceedings.³

An oral hearing was held on June 26 and 27, 2006 in Shelbyville, Tennessee. The Complainant was represented by Colleen A. Carroll, Esquire, Office of General Counsel, United States Department of Agriculture, Washington, DC. Robert Raymond Black, II was represented by Jack G. Heffington, Esquire, Christiana, Tennessee; Co- Respondents Christopher B. Warley, Black Gold Farm, Inc., and Robbie J. Warley were represented by L. Thomas Austin, Esquire, Austin, Davis & Mitchell, Dunlap, Tennessee; and Co-

³ *In re Robert Raymond Black, II, et al*, 64 Agric. Dec. 681 (2005).

Respondents Herbert Derickson and Jill Derickson were represented by S. Todd Bobo, Esquire, Bobo, Hunt & White, Shelbyville, Tennessee.⁴

Upon consideration of the testimony at the hearing,⁵ the evidence of record⁶ and the proposed findings, conclusions and the briefs filed by the parties, I find that the Respondents Robbie J. Warley, Black Gold Farms, Inc. and Herbert Derickson committed violations of the Act, as indicated, but find that the allegations against the other Respondents should be dismissed.

Discussion

The Complaint alleges that on or about March 21, 2002, Respondents Herbert Derickson, Jill Derickson, and Robert Raymond Black, II, violated § 5(1) of the Act, (15 U.S.C. § 1824(1)), by transporting “Just American Magic” to the Walking Horse Trainers Show in Shelbyville, Tennessee, while the horse was sore, as that term is defined in the Act, with reason to believe that the horse, while sore, may be entered for the purpose of its being shown in that horse show; that on or about the same date, Respondents Christopher B. Warley, Herbert Derickson, Jill Derickson, and Robert Raymond Black, II, violated § 5(2)(B) of the Act, (15 U.S.C. § 1824(2)(B)), by entering “Just American Magic” as entry number 425 in class number 25 in the Walking Horse Trainers Show in Shelbyville, Tennessee, while the horse was sore, as that term is defined in the Act; and that on or about the same date, Respondents Robbie J. Warley and Black Gold Farm, Inc. violated § 5(2)(D) of the Act, (15 U.S.C. § 1824(2)(D)), by allowing Respondents

⁴ Mr. Bobo’s representation of the Dericksons commenced on June 6, 2006 with his Entry of Appearance filed on that date. The Dericksons were previously represented by Brenda S. Bramlett, Esquire who upon her request was authorized to withdraw as counsel for the Dericksons by Order dated April 19, 2006.

⁵ A total of eleven witnesses testified, of which 9 were called and testified for the Complainant; Robert Raymond Black, II, and his wife were the only two witnesses called by the Respondents.

⁶ Complainant’s Exhibits CX 1A, 1B, 1C, 2-5, 7-16, 20-22 were identified and admitted into evidence. Exhibits CX 17-19 were not admitted. Respondent’s Exhibits RX 1-5 (D) and RX 1, 6 & 7 (W) were admitted.

Christopher B. Warley, Herbert Derickson, Jill Derickson, and Robert Raymond Black, II to enter the horse “Just American Magic” owned by Robbie J. Warley and Black Gold Farms, Inc. in the Walking Horse Trainers Show in Shelbyville, Tennessee, for the purpose of showing that horse which was sore, as that term is defined in the Act.

In addition to generally denying the material facts alleged in the Complaint, the Respondents have asserted a number of affirmative defenses, including laches, *res judicata*, collateral estoppel, and double jeopardy. Laches, a defense based upon undue delay in asserting a legal right or privilege, has long been held to be inapplicable to actions of the government. *United States v. Kirkpatrick*, 22 U.S. (9 Wheat) 720 (1824); See also, *Gausson v. United States*, 97 U.S. 584, 590 (1878); *German Bank v. United States*, 148 U.S. 573, 579 (1893); *United States v. Verdier*, 164 U.S. 213, 219 (1896); *United States v. Mack*, 295 U.S. 480, 489 (1935). Similarly, the United States is not bound by state statutes of limitation. *United States v. Summerlin*, 310 U.S. 414 (1940); *United States v. Merrick Sponsor Corp.*, 412 F.2d 1076 (2d Cir. 1970).

The Respondents also assert that the identical violations were the subject of separate proceedings before the National Horse Show Commission against certain of the Respondents and that those proceedings, resulting in the exoneration of Robbie Warley by the National Horse Show Commission Board of Directors⁷ and sanctions being imposed against Herbert Derickson,⁸ preclude relitigation by the United States Department of Agriculture in the instant proceeding. Supporting this position, they

⁷ The Hearing Committee had recommended that Robbie Warley be given a suspension for 8 months for the “allowing” violation (RX 6W); however, the Board reversed the Committee decision and exonerated her. RX 7W.

⁸ The National Horse Show Commission imposed a fine of \$700.00 and a two year suspension upon Herbert Derickson. RX 2D. The Suspension Notice indicates that the suspension would be effective December 16, 2002 and continue in force until December 15, 2004. RX 3D.

introduced an agreement (APHIS Horse Protection Operating Plan 2001-2003) between the Department and the certified Horse Industry Organization (“HIO”) (hereinafter, the “Agreement”) under which APHIS ceded “initial enforcement responsibility upon the various certified Designated Qualified Persons (hereinafter, the “DQP”) programs for affiliated horse shows, exhibitions, sales and auctions.” The Complainant counters this argument by referencing those provisions of the Agreement that expressly contain both a clear reservation of authority on the part of APHIS to enforce the Secretary’s authority against any violator when it feels such action is necessary and an express disclaimer that APHIS was in any way relinquishing any of its enforcement authority under the Act or the Regulations.⁹ Even were all the requisite threshold elements necessary to trigger the defenses present, which it is argued that they are not, a detailed discussion of the doctrines of *res judicata*, collateral estoppel, and double jeopardy is not necessary as the issue of whether National Horse Show Commission disciplinary proceedings bar a subsequent enforcement action by the Department for the same event has been previously considered and answered adversely to the Respondents by both the Judicial Officer and the Court of Appeals for the Sixth Circuit in *In re Jackie McConnell, et al.*, 64 Agric. Dec. 436 (2005), *petition for review denied sub nom. McConnell v. U.S. Department of Agriculture*, WL 2430314 (6th Cir. 2006) (unpublished) (not to be cited except pursuant to Rule 28(g)).

“Just American Magic,” then a seven year old registered Tennessee Walking Horse gelding owned by Black Gold Farm, Inc. - - Robbie Warley¹⁰, was entered to show

⁹ See RX 4 D, Sections II and III.

¹⁰ CX 3. Although the entry form lists the owner of the horse as being Black Gold Farms, Inc. (CX 2), “Just American Magic’s” Tennessee Walking Horse registration reflects both names; however, Black Gold Farms, Inc. is wholly owned by Robbie J. Warley according to CX 9.

as entry number 425 in Class 25 at the 34th Annual National Walking Horse Trainers Show held in Shelbyville, Tennessee on March 21, 2002. The entry blank to enter the horse in the show bears Herbert Derickson's signature and designates the scheduled rider to be Chris Warley.¹¹ On the evening of the show, the horse was led to the pre-show inspection area by Herbert Derickson¹² where the horse was first inspected by DQPs Bob Flynn and Charles Thomas and then by Lynn P. Bourgeois, D.V.M. and Clement Dussault, V.M.D., Veterinary Medical Officers (hereinafter VMO(s)) employed by the United States Department of Agriculture. The inspections of both of the DQPs and both VMOs were all consistent in finding that "Just American Magic" was both bilaterally "sore" and in violation of the scar rule. CX 1A, CX 12 and RX 1D.

Transportation Violations. Although the Complaint alleged that Black and the two Dericksons transported the horse, while sore, for the purpose of being shown at the show, the evidence supporting the allegation was scant, with the entry in item 27 of the APHIS Form 7077 (CX 1A) being the primary evidence introduced in support of the allegations. The entry in question¹³ was made by Senior Investigator Steve Fuller, as evidenced by his initials in the upper right hand margin of that entry, ostensibly based upon his interview of Black, a matter disputed by Black during his testimony. (Tr. 460-461). At the hearing, both Black and his wife Amanda testified that Black did not

¹¹ CX 2

¹² During the course of the inspection process, Derickson, (possibly because he had two horses in the same class; see Tr. 478-479) left the inspection area and was replaced by Black for the balance of the inspection. At the conclusion of the inspections, Black signed the DQP Ticket as the Custodian or Assistant and was listed on the APHIS Form 7077 as being the person (Custodian) presenting the horse for inspection (item 8), trainer (item 11), person responsible for transportation of the horse (item 27). CX 1A, CX 12, RX 1 (D). Black was under the impression that it had been a clerical worker at the DQP desk that had asked him to sign the DQP Ticket and did not recall speaking to Senior Investigator Fuller. Tr. 472. Black, who is generally known as Robby, rather than his full name also testified that the incident on March 21, 2002 was the first time that he had been asked to sign a DQP ticket. Tr. 461.

¹³ Fuller testified that he completed items 8-13, 15-21, 27 and 28 of CX 1A. Tr. 159-160.

transport the horse to the arena as they had driven together to and from the arena. Tr. 477, 498-499.

Given the equivocal nature of Senior Investigator Fuller's testimony,¹⁴ the believable testimony of both Blacks, and presence of information on the form which is inconsistent with and contradicted by the horse show records, while being well aware that the horse had to have been transported to the arena by someone, I find that the Complainant has failed to meet its burden of proof of establishing that either of the Dericksons or Black transported "Just American Magic" to be shown at the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee on March 21, 2002.

Entering Violations. "Just American Magic" was entered as Entry number 425 in Class 25 of the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee on March 21, 2002. The Complaint alleges that the horse was entered by the Respondents Christopher B. Warley, Herbert Derickson, Jill Derickson, and Robert Raymond Black, II.

Section 5(2)(B) of the Act prohibits any person from entering a horse in a horse show while the horse is sore. The Complainant argues that under the Act "entering" of a horse is considered to be a continuing process, not merely a single event, and encompasses all of the activities required to be completed before a horse can actually be shown or exhibited, including the "clerical" steps of completing the entry form, paying the entry fee, presenting the horse for inspection and including the time necessary to complete those requirements relying upon language found in the Judicial Officer's and the reviewing Court's decisions in *In re Elliott*, 51 Agric. Dec. 334, 342 (1992), *aff'd*.

¹⁴ Senior Investigator Fuller testified that he "assumed" that he had obtained the information which he placed on the APHIS Form 7077 from Black because he had his Social Security number and date of birth. Tr. 161.

sub nom Elliott v. Administrator, 990 F.2nd 140 (4th Cir. 1993).¹⁵ The Complainant accordingly seeks sanctions against Christopher B. Warley for being designated as the scheduled rider, Herbert Derickson for having signed the entry form, being the horse's trainer and having presented the horse to the DQPs for pre-show inspection, Jill Derickson for having signed the check for the entry fee and Robert Raymond Black, II for being the (successor) custodian of the horse after Herbert Derickson left the inspection area during the course of the inspection.

By way of contrast, the focus of the National Horse Show Commission in their enforcement of violations of their rules, makes a distinction upon whether the violations occurred pre-or post-show. At the hearing, Lonnie Messick, the Executive Vice President for the National Horse Show Commission testified that if a horse was excused from a class for any reason that was a violation, the Commission would seek sanctions against the owner and trainer for pre-show violations and against the owner, trainer and exhibitor for post-show violations. Tr. 340 – 341. In determining the identity of responsible individuals, Mr. Messick testified that the Commission looked to entry

¹⁵ The language concerning the time necessary to complete the requirements of “entering” a horse addresses the argument raised by Elliott that even though the horse may have been sore when examined, that fact did not prove that the horse was sore when entered in the show. The Judicial Officer discussed the continuing process language and while suggesting that he considered *In re Mary C. Baird, et al.* 48 Agric. Dec. 906 (1989) (the case cited by the Complainant for the proposition) to be dubious precedent, he agreed that the pre-show inspection is part of the entry process. The Circuit Court in affirming the Judicial Officer's decision forcefully rejected Elliott's argument that entering constitutes only registration and payment of the entry fee:

...We cannot agree that “entering” means simply paying the fee and registering the horse for showing, which oftentimes is done by mail without the requirement for presenting the horse. Inspection of the horse is a prerequisite to the horse being eligible to show and the horse is not fully qualified to show until the inspection is passed. The plain meaning of “entering” a horse in a show would seem to encompass all the requirements—including inspection—and the time necessary to complete those requirements.

...We think it stretches credulity to argue that Congress intended only to prohibit a horse being “sore” at registration or when being shown and between that time the horse is permitted to be “sore.” 990 F.2d at 145.

documents to determine the parties against whom any action should be taken. Tr. 335. The Commission's enforcement approach does lend itself to common sense predictability, is consistent with the results recorded in the older cases,¹⁶ and avoids potential overreaching with the broad cast of the enforcement net advanced in this case.

The Complainant cites *In re Bowtie Stables, LLC.*, 62 Agric. Dec. 580, 594-95 (2003) for the proposition that merely being the designated rider is sufficient to support a violation of the Act for "entering" if the horse is found to be sore. Such reliance is misplaced, as although such language does appear in both Judge Jill Clifton's initial decision as well as that of the Judicial Officer, it is dicta in both instances, as the Complaint in that case failed to allege that the scheduled rider, Betty Corlew, "entered" the horse in violation of 15 U.S.C. § 1824 (2)(B). Given that in many cases, there can be last minute rider changes or the rider may see the horse for the first time only after the horse has passed the pre-show inspection as they are focused on keeping riding attire clean prior to mounting, extension of liability to a designated rider whose mount is excused at a pre-show inspection appears unwarranted if the rider is neither an owner of the horse nor presented the horse for inspection.

The evidence introduced at the hearing concerning Jill Derickson's involvement in "entering" the horse is essentially limited to the proof establishing that she signed the check on the Herbert Derickson Training Facility account in payment for entry and other fees incident to the entity's participation in the 34th Annual National Walking Horse

¹⁶ See for example *In re A. P. "Sonny" Holt et al.* 49 Agric. Dec. 853 (1990) in which the allegations against Richard Wall, an assistant trainer and employee of Holt who operated solely at Holt's direction were dismissed where his sole participation was to lead the horse to the inspection area. In that case, the owner's daughter was the designated rider, but was not charged with any violation. Similarly, the Department has sought sanctions against a trainer, rather than his employee, even where it was alleged that the employee presented the horse for inspection against the trainer's directions. *In re Paul A. Watlington*, 52 Agric. Dec. 1172, 1199 (1993).

Trainer's Show, including the entry fee for "Just American Magic" in class number 25.¹⁷ As the Complainant's interpretation of "entering" would extend liability to any individual who signed a check for entry fees, a bank teller signing a bank or cashier's check for entry fees could become subject to liability under the Act. Accordingly, the Complainant's interpretation in this case will be rejected as over reaching and lacking the requisite nexus to enforcing the objectives of the Act.

In a case of apparent first impression, the Complainant also seeks sanctions against Robert Raymond Black, II as an individual also responsible for "entering" the horse where his involvement was limited to taking over for Mr. [Herbert] Derickson – during the inspection....after it had already started.¹⁸ Tr. 473. At the time, although Black had a trainer's license,¹⁹ he was a full time employee working for Herbert Derickson from October of 2001 until February of 2003. Tr. 467-8. While it is well established that an individual who presents a horse for inspection may be found to be participating in "entering" a horse, *Elliott v. Administrator*, 990 F.2d 140, 145 (4th Cir. 1993); *Gray v. U.S. Department of Agriculture*, 39 F.3d 670, 676 (6th Cir. 1994), it is not as clear that the objectives of the Act dictate seeking sanctions against a successor rein holder after the horse was initially presented by the trainer.

Allowing Violations. The complaint alleges that Robbie J. Warley and Black Gold Farms, Inc., the co-owners of "Just American Magic," allowed the horse, while

¹⁷ A copy of the check (No. 7368 in the amount of \$2295.00) was introduced as CX 10 at page 8. While the Answer filed on behalf of Jill Derickson does admit that she was an individual doing business as Herbert Derickson Training Facility (as did her husband), there was no evidence at the hearing that she had any active involvement with "Just American Magic."

¹⁸ A review of CX 12 indicates that Derickson left after the DQPs had completed their examinations of the horse as Black was first observed holding the reins during the VMO examinations. Neither the testimony nor the video tape indicates whether Derickson knew that the horse would be excused as a result of the DQP examinations (see RX 1 D).

¹⁹ CX 10 at 1.

sore, to be entered in the 34th Annual National Walking Horse Trainers Show on March 21, 2002. In addition to asserting the defenses of laches, *res judicata*, and collateral estoppel previously discussed, the Respondents rely upon written directives to Herbert Derickson directing him to fully comply with the Horse Protection Act. RX 1 W. The letter further advised Derickson that should he fail to comply with the directions, any horse or horses placed at his facility would be removed, required that he sign the letter as confirmation that he agreed to its direction and requested that he return a signed copy to the owners. The issue of whether the use of similar letters would shield an owner from strict liability under 15 U.S.C. 1824(2)(D) has been considered in two circuits,²⁰ first in *Burton v. United States Department of Agriculture*, 683 F.2d 231 (4th Cir. 1982) and later in *Baird v. United States Department of Agriculture*, 39 F.3d 131 (6th Cir. 1994). The Court in *Baird* declined to require *Burton*'s three pronged test, but instead required the government to prove that the admonition the owner directed to his trainers concerning the soring of the horses constituted merely a pretext or a self-serving ruse designed to mask what in actuality was conduct violative of § 1824. *Id.* In this case, the Complainant has met that burden. On September 30, 2000, while being trained by Herbert Derickson, "Just American Magic" had been entered in the International Show at Murfreesboro, Tennessee, but was found to be in violation of the Act by virtue of a 7 point score and was excused by the DQPs from showing in the class. Notwithstanding this earlier violation and contrary to the written intent expressed in the letter, Robbie Warley and Black Gold Farms, Inc. allowed "Just American Magic" to remain at the Herbert Derickson Training Facility (where the horse was trained by others during the period of

²⁰ The Eleventh and Ninth Circuits have discussed *Burton* without ruling on the propriety of its holding. *Thornton v. United States Department of Agriculture*, 715 F.2d 1508 (11th Cir. 1983); *Stamper v. Secretary of Agriculture*, 722 F.2d 1483 (11th Cir. 1984).

time that Derickson served an 8 month suspension) at least until after the 34th Annual National Walking Horse Trainers Show in March of 2002.

Findings of Fact

1. Respondent Robert Raymond Black, II, is an individual whose mailing address is 140 Parker Road, Shelbyville, Tennessee. At all times relevant to this action, he was an employee of Herbert T. Derickson, IV's (named herein as Herbert Derickson) Herbert Derickson Training Facility.

2. Respondent Christopher B. Warley is an individual whose mailing address is 94 Mountain Road, Glastonbury, Connecticut 06033. According to the entry form, he was to be the scheduled rider of "Just American Magic" in class 25 of the 34th Annual National Walking Horse Trainers Show held in Shelbyville, Tennessee on March 21, 2002. The said Respondent is listed on corporate filings as being a director and vice president of Black Gold Farms, Inc.

3. Respondent Robbie J. Warley is an individual doing business as Black Gold Farms, and whose mailing address is 730 Normandy Road, Normandy, Tennessee 37360. At all times mentioned herein, said Respondent was the registered co-owner and *de facto* owner of the Tennessee Walking Horse named "Just American Magic," and is listed on corporate filings as a director, the president, and sole shareholder of Respondent Black Gold Farm, Inc.

4. Respondent Black Gold Farm, Inc., is a Texas corporation, whose agent for service of process is Robbie J. Warley, 8105 Bells, Frisco, Texas 75034. At all times mentioned herein said Respondent was the registered co-owner of the Tennessee Walking Horse named "Just American Magic."

5. Respondent Herbert T. Derickson, IV is an individual who has held a AAA license issued by the Walking Horse Trainers Association since the inception of that organization's licensing program in 1988. He does business as Herbert Derickson Training Facility, aka Herbert Derickson Stables, aka Herbert Derickson Breeding and Training Facility, whose mailing address is 131 Mullins Mill Road, Shelbyville, Tennessee 37160. At all times mentioned herein said Respondent was engaged in the business of training the Tennessee Walking Horse named "Just American Magic" for showing at horse shows.

6. Respondent Jill Derickson, whose mailing address is also 131 Mullins Mill Road, Shelbyville, Tennessee 37160, is the wife of Herbert Derickson and assists her husband in the operation of his business.

7. In approximately September 2001, Respondents Black Gold Farm, Inc., and/or Robbie J. Warley²¹ retained Respondent Herbert Derickson, to train "Just American Magic" to perform in horse shows and exhibitions, and to show "Just American Magic" in horse shows.

8. On or about March 1, 2002, Respondent Herbert Derickson completed and signed an entry form to enter "Just American Magic" as entry number 425 in class number 25 in the 34th Annual National Walking Horse Trainers Show in Shelbyville, Tennessee. A check written on the Herbert Derickson Training Facility account accompanied the entry form which was delivered to the Walking Horse Trainers Association and on March 21, 2002, the said Respondent presented the horse for pre-show inspection.

²¹ See Finding of Fact No. 3.

10. On or about March 21, 2002, Respondents Robbie J. Warley and Black Gold Farm, Inc., allowed the entry of “Just American Magic” in the Walking Horse Trainers Show in Shelbyville, Tennessee.

Conclusions of Law

1. On and before March 21, 2002, Herbert Derickson violated Section 5(2)(B) of the Act, (15 U.S.C. § 1824(2)(B)), by entering “Just American Magic” as entry number 425 in class number 25 of the 34th Annual National Walking Horse Trainers Show held in Shelbyville, Tennessee on March 21, 2002, while the horse was sore, as that term is defined in the Act.

2. On and before March 21, 2002, Robbie J. Warley and Black Gold Farms, Inc. violated Section 5(2)(D) of the Act (15 U.S.C. § 1824(2)(D)), by allowing the entry by others of “Just American Magic,” a horse owned by them as entry number 425 in class number 25 of the 34th Annual National Walking Horse Trainer’s Show held in Shelbyville, Tennessee on March 21, 2002, for the purpose of showing that horse, which was “sore,” as that term is defined in the Act.

Order

1. Respondent Herbert Derickson, IV is assessed a civil penalty of \$2,200.00, payable to the Treasurer of the United States of America, within 60 days of the effective date of this Order.

2. Respondents Robbie J. Warley and Black Gold Farms, Inc. are jointly and severally assessed a civil penalty of \$2,200.00, payable to the Treasurer of the United States of America, within 60 days of the effective date of this Order.

3. The payments of the civil penalties shall be sent to:

Colleen A. Carroll
Office of the General Counsel
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Mail Stop 1417 South Building
Washington, D.C. 20250-1417

4. Respondent Herbert Derickson, IV and his related entities are disqualified for two years from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, family member or other device, and from judging, managing or otherwise participating in any horse show, horse exhibition, or horse sale or auction, directly or indirectly through any agent, employee, family member or other device;²² however, one year of the two year disqualification will be suspended, giving the said Respondent partial credit for the suspension imposed by the National Horse Show Commission.²³ The Respondent will however continue to be disqualified indefinitely as long as any portion of the civil penalty in paragraph 1 above remains unpaid.

5. Respondents Robbie J. Warley, and Black Gold Farm, Inc., are disqualified for one year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, family member or other device, and from judging, managing or otherwise participating in any horse show, horse exhibition, or horse sale or auction, directly or indirectly through any agent, employee, family member

²² “Participating” means engaging in any activity beyond that of a spectator, and includes, without limitation, transporting or arranging for the transportation of horses to or from equine events, personally giving instructions to exhibitors, being present in the warm-up or inspection areas, or in any area where spectators are not allowed, and financing the participation of others in equine events.

²³ Consideration was given to giving additional credit for the suspension imposed by the National Horse Show Commission; however, only partial credit was awarded due to the evidence introduced that the Herbert Derickson Training Facility continued to serve at least as a conduit for entry fees and prize money awarded during the period of Herbert Derickson’s National Horse Show Commission suspension. CX 10. Such conduct would appear to be violative of the definition of “participating” adopted as part of this decision.

or other device.²⁴ After the conclusion of the disqualification period, the Respondents will continue to be disqualified indefinitely so long as the civil penalty in paragraph 2 above remains unpaid.

6. The allegations of violations of the Act brought against the other Respondents are **DISMISSED**.

Done at Washington, D.C.
October 3, 2006

PETER M. DAVENPORT
Administrative Law Judge

Copies to: Colleen A. Carroll, Esq.
Jack G. Heffington, Esq.
L. Thomas Austin, Esq.
S. Todd Bobo, Esq.

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²⁴See preceding note.

