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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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HPA Docket No. 10-0110

In re: Brian Charles Jones,  
an individual and  
Brian Watson Jones,  
an individual,

Respondents

**ORDER**

On February 4, 2010, Kevin Shea, the Acting Administrator of the Animal and Plant Health Inspection Service filed the Complaint in this action alleging violations by the Respondents of the Horse Protection Act, as amended (15 U.S.C. §1821, *et seq.*) (HPA or the Act) seeking such order or orders as are authorized by the Act and warranted under the circumstances, including an order assessing civil penalties against the Respondents and disqualifying them for appropriate periods as provided in the Act.

On February 6, 2010, the Hearing Clerk's Office mailed copies of the Complaint to the Respondents by certified mail to the address provided in the Complaint. On February 22, 2010, the Postal Service returned the envelopes in which the Complaints had been mailed as undeliverable, with the box "Other" checked and bearing a notation on the Brian Watson Jones envelope of "no mail box." Counsel for the Complainant was advised that the attempts to serve the Respondents by certified mail had been unsuccessful with the filing of a Notice of Unsuccessful Service filed on February 23, 2010.

On March 9, 2010, the Complainant filed a Response to “Notice of Unsuccessful Service.” Apparently without checking the record, in the Response, Counsel for the Complainant faulted the Clerk’s Office for failing to identify which of the two Respondents had not been served (emphasis in the pleading) and reciting the provision of the Rules of Practice regarding procedures (inapplicable in the instant case) to be taken if mail was returned as either “unclaimed” or “refused.” The Response concluded by indicating that the Complainant was not in a position to undertake the activities requested by the “Notice.”

On March 23, 2010 following receipt of the above Response, the Hearing Clerk’s Office filed an Amended Notice of Unsuccessful Service clarifying the original Notice. On September 2, 2010, the Complainant provided a new address and requested service at that address for both Respondents.

The following day on September 3, 2010, the Hearing Clerk’s Office again mailed copies of the Complaint to the Respondents by certified mail. This effort was again unsuccessful as both envelopes were returned as “Not deliverable as addressed.” On September 13, 2010, the Hearing Clerk filed another “Notice of Unsuccessful Service.”

Although more than a month has passed since the filing of the Notice of Unsuccessful Service, no further action has been taken by the Complainant.

Seeing neither a new address or effort on the part of the Administrator to effect service by other means authorized by the Rules of Practice, rather than allowing this case to remain on the docket without action being taken to advance it to resolution, it is **ORDERED DISMISSED** without prejudice to being refiled provided a valid service can be effected.

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



Peter M. Davenport  
Chief Administrative Law Judge

Date: November 2, 2010

Hearing Clerk's Office  
U.S. Department of Agriculture  
1400 Independence Avenue SW  
Room 1031, South Building  
Washington, D.C. 20250-9203  
202-720-4443  
Fax: 202-720-9776