

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



In re:) Docket No. 13-0197
)
Joseph D. Graber and Rhoda Graber,)
) Consent Decision
Respondents.) and Order

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondents willfully violated the Act and the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 et seq.). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

The respondents admit the jurisdictional allegations in paragraph I of the complaint and specifically admits that the Secretary has jurisdiction in this matter, neither admit nor deny the remaining allegations, waive oral hearing and further procedure, and consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

The complainant agrees to the entry of this decision.

Findings of Fact

1. Joseph Graber and Rhoda Graber, hereinafter referred to as the respondents, are individuals whose mailing address is 9258 E 875 N, Odon, IN 47562.
2. The respondents, at all times material herein, were licensed and operating as a dealer as defined in the Act and the regulations.

Conclusions

The respondents having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, such decision will be entered.

Order

1. Respondents, their 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 and standards issued thereunder, and in particular, shall cease and desist from:

- (a) Failing to utilize adequate veterinary care;
- (b) Failing to construct and maintain housing facilities for animals so that surfaces may be readily cleaned and sanitized or be replaced when necessary; and
- (c) Failing to provide for the rapid elimination of excess waste from primary enclosures for animals.

2. The respondents are assessed a civil penalty of \$7,500.00, of which \$2,500.00 shall be held in abeyance, provided that the Respondents, after notice and opportunity for a hearing, are not found to have violated the Act or the regulations and standards issued thereunder, or this Order for two (2) years. The remaining \$5,000.00 shall be paid by certified check or money order made payable to the Treasurer of United States. \$2,500.00 of said amount shall be remitted within 7 days of the effective date of this Consent Decision and Order. The remainder shall be paid in equal installments of \$250.00 each month, on or before the fifteenth of the month, beginning with the 2nd month after the effective date of the Consent.

3. Respondent's license is suspended for 1 week, and continuing thereafter until they demonstrate to the Animal and Plant Health Inspection Service that they are in full compliance

with the Act, the regulations and standards issued thereunder, and this order, including payment of the initial \$2,500.00 of the total civil penalty imposed herein. When respondents demonstrate to the Animal and Plant Health Inspection Service that they have satisfied this condition, a supplemental order will be issued in this proceeding upon the motion of the Animal and Plant Health Inspection Service, terminating the suspension.

4. The parties agree, that notwithstanding paragraphs 2 and 3 of this Consent Decision and Order, a failure by the Respondents to abide by the monthly payment terms in paragraph 2 shall result in the entire remaining balance becoming immediately due and gives APHIS the right to refuse any license renewal until such payment is made in full.

The provisions of this order shall become effective on the first day after service of this decision on the respondents. Copies of this decision shall be served upon the parties.

[Redacted signature]

Joseph Graber
Respondent

[Redacted signature]

Rhoda Graber
Respondent

[Redacted signature]

Brian T. Hill
Attorney for Complainant

Done at Washington, D.C.
this 16th day of December, 2013

[Redacted signature]

Administrative Law Judge