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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	
TRISTA BROWN, an individual;	)	HPA Docket No. 17-0023
JORDAN CAUDILL, an individual; and	)	**HPA Docket No. 17-0024**
KELLY PEAVY, an individual,	)	HPA Docket No. 17-0025
	)	
Respondents	)	

DEFAULT DECISION AND ORDER DENYING MOTION TO DISMISS AND REQUEST TO ACCEPT LATE-FILED ANSWER

Appearances:

Colleen A. Carroll, Esq.., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington D.C. 20250, for the Complainant, Animal and Plant Health Inspection Service [APHIS]; and

Robin L. Webb, Esq., of Grayson, KY, for the Respondent Jordan Caudill.

Preliminary Statement

This proceeding was instituted under the Horse Protection Act, as amended (15 U.S.C. § 1821 *et seq.*) [HPA or Act], and the regulations promulgated thereunder (9 C.F.R. §§ 11.1-11.4) [Regulations]. This proceeding initiated with a complaint filed on December 23, 2016, by the Administrator of the Animal and Plant Health and Inspection Service [APHIS] of the United States Department of Agriculture [Complainant]., alleging, *inter alia*, that the respondents violated the Act.

The Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes [Rules of Practice], set forth at 7 C.F.R. § 1.130 *et seq.*, apply to adjudication of the instant matter. Pursuant to the Rules of Practice, Respondent was required to file an answer within twenty (20) days after service of the Complaint. 7 C.F.R. §

1.136(a). The Hearing Clerk's records reflect that Respondent failed to file a timely answer to the Complaint.[1]

The Office of the Hearing Clerk served respondent Jordan Caudill [Respondent or Mr. Caudill] with a copy of the Complaint by certified mail on March 28, 2017. Pursuant to the Rules of Practice, Mr. Caudill had twenty (20) days in which to file an answer to the Complaint. Accordingly, Mr. Caudill's answer was due by April 17, 2017. Mr. Caudill did not file an answer until April 24, 2017.

On May 9, 2017, in light of Mr. Caudill's failure to file a timely answer to the Complaint, I entered an "Order to Show Cause Why Default Should Not Be Entered" [Show Cause Order].

On May 25, 2017, Complainant filed a response to the Show Cause Order, as well as a "Motion for Adoption of Decision and Order as to Respondent Jordan Caudill by Reason of Default" [Motion for Default] and "Proposed Decision and Order as to Respondent Jordan Caudill by Reason of Default" [Proposed Decision]. Complainant requests an order assessing Mr. Caudill a penalty of $500 and disqualifying Mr. Caudill for one (1) year, pursuant to 15 U.S.C. § 1825(c), from showing or exhibiting any horse in any show, horse exhibition, or horse sale or auction and from judging or managing any horse show, horse exhibition, horse sale or auction.

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[1] United States Postal Service records reflect that a copy of the Complaint was sent by certified mail and delivered to Respondent on March 28, 2017. Respondent had twenty (20) days from the date of service to file a response. Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. §§ 1.147(g), (h). In this case, Respondent's answer was due by April 17, 2017 but was not filed until April 24, 2017. Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision. 7 C.F.R. § 1.136(c). Other than a consent decision, the Rules of Practice and Procedure do not provide for exceptions to the regulatory consequences of an untimely filed answer.

Also on May 25, 2017, Respondent filed a response to the Show Cause Order, which incorporated a "Motion to Dismiss for Failure to State a Claim." Respondent requests that his late- filed Answer be accepted and "the case be allowed to proceed on the merits." (Resp.'s Resp. at 1).

First, Mr. Caudill argues that default judgments "may be and have been set aside, for excusable neglect or good cause shown." (Resp.'s Resp. at 1). Mr. Caudill is incorrect. The Rules of Practice do not provide that a default decision may be set aside for excusable neglect.[2] "Although, on rare occasions, default decisions have been set aside for good cause shown or where the complainant does not object to setting aside the default decision, *generally there is no basis for setting aside a default decision that is based upon a respondent's failure to file a timely answer*."[3]

It is immaterial that Mr. Caudill was unable to obtain representation by counsel until after his answer was due. (Resp.'s Resp. at 1). Regrettably, other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely filed answer.

> . . . . Respondents state their failure to file a timely answer was not Respondents' fault and was due to mistake, inadvertence, or excusable neglect and was not deliberate or willful. Respondents, relying on the Federal Rules of Civil Procedure and a number of cases, contend the ALJ should have granted Respondents' Motion for Leave to File Late Answer to Complaint.
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> Respondent's reliance on the Federal Rules of Procedure is misplaced. . . . Moreover, unlike Rule 60(b) of the Federal Rules of Civil Procedure, the Rules of Practice do not provide that a default decision may be set aside for excusable neglect.

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[2] Anna Mae Noel & The Chimp Farm, Inc., 58 Agric. Dec. 130, 148 (U.S.D.A. 1999) (emphasis added).

[3] Knapp, 64 Agric. Dec. 253, 295 (U.S.D.A. 2005).

Mitchell, 60 Agric. Dec. 91, 122-24 (U.S.D.A. 2001) (citations omitted). Mr. Caudill's excusable-neglect argument is unavailing.

Additionally, Respondent refers to the Federal Rules of Civil Procedure to support his contention that "due process and equity demand[]" that "late filing" be permitted. (Resp.'s Resp. at 3). Respondent's reliance on the Federal Rules of Civil Procedure is misguided, as the Federal Rules of Civil Procedure "are not applicable to administrative proceedings that are conducted before the Secretary of Agriculture . . . in accordance with the Rules of Practice." *Fresh Prep, Inc.*, 58 Agric. Dec. 683, 687 (U.S.D.A. 1999). *See, e.g.*, *Morrow v. USDA*, 65 F.3d 168 (6th Cir. 1995) (stating that neither the Federal Rules of Civil Procedure nor the Federal Rules of Criminal Procedure apply to administrative hearings).

Second, Mr. Caudill asserts that the "USDA RULES OF PRACTICE DO NOT CONFORM TO EXECUTIVE, LEGISLATIVE, OR JUDICIAL BRANCH INTENT AS TO MINIMAL DUE PROCESS." (Resp.'s Resp. at 3). However, Mr. Caudill provides no citations to statutes or case law that support his argument.

Finally, Mr. Caudill moves to dismiss this proceeding on the basis that "COMPLAINANT FAILS TO STATE A CLAIM AS TO RESPONDENT." (Resp.'s Resp. at 4). First, the Rules of Practice specifically provide that a "motion to dismiss on the pleading" will not be entertained. 7 C.F.R. § 1.143(b). As Mr. Caudill's seeks dismissal based upon the Complaint, the Rules of Practice prohibit the motion.[4] Second, the Motion to Dismiss was not timely filed. *See* 7 C.F.R. § 1.143(b)(2) ("All motions and requests concerning the complaint must be made within the time allowed for filing an answer."). The time for filing an answer to the Complaint expired well before

[4] *See* Resp.'s Resp. at 5 ("The Complaint lacks specificity as to what if any action was undertaken by Respondent Caudill in regard to said alleged violation.").

Respondents filed the instant motions to dismiss.[5] Thus, the Rules of Practice require that the Motion to Dismiss be denied.

Moreover, I find that Mr. Caudill, by failing to file a timely answer to the Complaint, is deemed to have admitted the violation of the Act alleged in the Complaint and waived the opportunity for a hearing.[6] Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision. 7 C.F.R. § 1.136(c). The material facts alleged in the Complaint are all admitted by Mr. Caudill's failure to file a timely answer, and those material facts are adopted and set forth herein as Findings of Fact and Conclusions of Law.

This 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. Jordan Caudill is an individual with a mailing address in [redacted]. At all times mentioned herein, Mr. Caudill was a "person" and an "exhibitor," as those terms are defined in the regulations issued pursuant to the Act (9 C.F.R. § 11.1 *et seq.*) [Regulations].
2. The nature and circumstances of the prohibited conduct are that Mr. Caudill entered a horse in a horse show while the horse was "sore," as that term is defined in the Act and Regulations.

[5] *See supra* note 1 (Mr. Caudill's answer was due by April 17, 2017). The Motion to Dismiss was part of Mr. Caudill's answer, which was not filed until April 24, 2017.

[6] *See* Drogosch, 63 Agric. Dec. 623, 643-44 (U.S.D.A. 20014) (default proper where respondent failed to file timely answer); Lutz, 60 Agric. Dec. 53, 59-60 (U.S.D.A. 2001) (default decision properly issued where respondent filed answer twenty-three days after service of complaint and three days after answer was due); Kutz, 58 Agric. Dec. 744, 752-53 (U.S.D.A. 1999) (Decision as to Nancy M. Kutz) (default proper where respondent's first filing was twenty-eight days after service of complaint on respondent).

The extent and gravity of the prohibited conduct is great. Congress enacted the HPA to end the practice of making gaited horses, including Tennessee Walking Horses, "sore" for the purpose of altering their natural gait to achieve a higher-stepping gait and gaining an unfair competitive advantage during performances at horse shows.[7] Respondent is culpable for the violation. Exhibitors are the absolute guarantors that horses will not be sore within the meaning of the HPA when they are entered or shown.[8]

Conclusions of Law

On August 25, 2016, Jordan Caudill entered a horse (That's My Luck), while the horse was sore, for showing in class 29 in a horse show in Shelbyville, Tennessee, in violation of the Act (15 U.S.C. § 1824(2)(B)).

ORDER

1. Respondent Jordan Caudill's Request to Accept Late Answer is hereby **DENIED**.
2. Respondent Jordan Caudill's Motion to Dismiss is hereby **DENIED**.
3. Respondent Jordan Caudill is assessed a civil penalty of $500, to be paid by check and made payable to USDA, APHIS, indicating that payment is in reference to HPA Docket 17-0024, and sent to:

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[7] "When the front limbs of a horse have been deliberately made 'sore,' usually by using chains or chemicals, 'the intense pain which the animal suffered when placing his forefeet on the ground would cause him to lift them up quickly and thrust them forward, producing exactly [the distinctive high-stepping gait of a champion Walker].' H.R. Rep. No. 91-1597, 91st Cong., 2d Sess. 2 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4870, 4871. Congress' reasons for prohibiting this practice were twofold. First, it inflicted unnecessary pain on the animals; and second, those who made their animal 'sore' gained an unfair competitive advantage over those who relied on skill and patience. In 1976, Congress significantly strengthened the Act by amending it to make clear that intent to make a horse 'sore' is not necessary an element of a violation. *See* Thornton v. U.S. Dep't of Agric., 715 F.2d 1508, 1511-12 (11th Cir. 1983)." Edwards, 55 Agric. Dec. 892, 950 (U.S.D.A. 1996).

[8] Carl Edwards & Sons Stables, 56 Agric. Dec. 529, 588-89 (U.S.D.A. 1997); Edwards, 55 Agric. Dec. 892, 979 (U.S.D.A. 1996).

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4. Respondent Jordan Caudill is disqualified for one (1) year from showing or exhibiting any horse in any horse show, horse exhibition, horse sale, or horse auction, directly or indirectly through any agent, employee, corporation, partnership, or other device, and from judging or managing any horse show, horse exhibition, horse sale, or horse auction.

This Decision and Order shall be final and effective without further proceedings thirty-five (35) days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (30) days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties, with courtesy copies provided via email where available.

Done at Washington, D.C.,
this 20th day of June 2017

[redacted]

Bobbie J. McCartney
Chief Administrative Law Judge

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