

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

2017 MAY -9 PM 2: 43

RECEIVED

In re:)
)
 RAY BEECH, an individual,) HPA Docket No. 17-0200
)
 Respondent)

DEFAULT DECISION AND ORDER

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

Respondent Ray Beech, pro se.

Preliminary Statement

This proceeding was instituted under the Horse Protection Act (15 U.S.C. § 1821 *et seq.*) [Act or HPA] by a complaint filed on February 3, 2017, by the Administrator of the Animal and Plant Health Inspection Service [Complainant or APHIS], alleging, *inter alia*, that respondent Ray Beech [Respondent] violated the Act by allowing the entry of a horse he owned, Our Commander in Chief, in class 187 in a horse show in Shelbyville, Tennessee, while the horse was sore.

On February 8, 2017, the Office of the Hearing Clerk [OHC] sent Mr. Beech a copy of the Complaint by certified mail. According to the United States Postal Service, the certified mailing was delivered to Mr. Beech on February 16, 2017.

The Rules of Practice required Respondent to file an answer to the Complaint no later than 20 days after service.¹ The cover letter that accompanied the Complaint specifically stated: “The

¹ “7 C.F.R. §§ 1.136(c) and 1.139 clearly describe the consequences of failing to answer a complaint in a timely fashion. These sections provide for default judgments to be entered. They specifically provide for admissions absent an answer. *See* 7 C.F.R. § 1.136(c) (‘Failure to file an answer within the time provided .

rules specify that you have 20 days from the receipt of this letter to file with the Hearing Clerk your written Answer to the Complaint signed by you or your attorney of record.” In addition, the Complaint stated that the “[f]ailure to file a timely answer shall constitute an admission of all the material allegations of this complaint.” The OHC’s cover letter also advised Respondent that he could file his answer by email: “Your answer, as well as any other pleadings or requests regarding this proceeding may be submitted to the Hearing Clerk via email at (OALJHearingClerks@ocio.usda.gov).”

The twentieth day after service of the Complaint was March 8, 2017. Mr. Beech did not file an answer to the Complaint by that date.² According to the Hearing Clerk’s records, Mr. Beech’s answer was filed on March 9, 2017, at 2:10 p.m.

[The respondent] filed no answer or any other document during the twenty-day period provided. His failure to file an answer within the time provided constitutes an admission of the allegations in the complaint, pursuant to section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)).

McDaniel, 45 Agric. Dec. 2255, 2257 (U.S.D.A. 1986).

The requirement in the Department’s rules of practice that respondent deny or explain any allegation of the complaint and set forth any defense in a timely answer is necessary to enable this Department to handle its large workload in an expeditious and economical manner. During the last fiscal year, the Department’s five ALJ’s (who do not have law clerks) disposed of 496 cases. The Department’s

. . . shall be deemed . . . an admission of the allegations in the complaint. . . .’”. *Morrow v. Dep’t of Agric.*, 65 F.3d 168 (6th Cir. 1995). Furthermore, the failure to answer constitutes a waiver of the right to a hearing. 7 C.F.R. § 1.139.

² United States Postal Service records reflect that Respondent received a copy of the Complaint on February 16, 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 March 8, 2017 but was not filed until March 9, 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. § 1136(c). Regrettably, other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely filed answer.

Judicial Officer disposed of 42 cases. In a recent month, 66 new cases were filed with the Hearing Clerk. Over 150 new Plant Quarantine Act cases are awaiting processing in the Office of the General Counsel.

The courts have recognized that administrative agencies “should be ‘free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.’” If a respondent in one case is permitted to contest some of the allegations of fact, or raise new issues, even though a timely answer was not filed, all other respondents in all other cases would have to be afforded the same privilege. Permitting such practice would greatly delay the administrative process and would require additional personnel.

Kaplinsky, 47 Agric. Dec. 613, 618–19 (U.S.D.A. 1988) (citing *Cella v. United States*, 208 F.2d 783, 789 (7th Cir. 1953), *cert. denied*, 347 U.S. 1016 (1954) (quoting *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 143 (1940)); *Swift & Co. v. United States*, 308 F.2d 849, 851- 52 (7th Cir. 1962)).

On March 20, 2017, Complainant filed with the Hearing Clerk a “Motion for Adoption of Decision and Order as to Ray Beech by Reason of Default” [Motion for Default] and “Proposed Decision and Order as to Ray Beech by Reason of Default” [Proposed Decision]. Complainant requested a finding that, pursuant to the Rules of Practice, Respondent Ray Beech had admitted the violation of the Act alleged in the Complaint and requested that Mr. Beech be assessed a civil penalty of \$100.

On March 30, 2017, Mr. Beech responded via email to Complainant’s Motion for Default. The Response, which included a photograph of Mr. Beech’s green card and certified-mail receipt (USPS Tracking No. 70150640000789032745)³ for the Answer, simply reads: “I received a letter stating that I was in default. However, my response was mailed Certified Mail Receipt on March 4, 2017, within the 20 days required. The letter was received on February 16, 2017. Thank you, Ray Beech.” (Resp. at 1).

³ See Resp. at 1.

Mr. Beech's response does not set forth any meritorious objections to Complainant's Motion for Default.⁴ As previously discussed herein, the Rules of Practice provide that a respondent shall file an answer with the Hearing Clerk "[w]ithin 20 days after the service of the complaint." 7 C.F.R. § 1.136(a). The Rules of Practice also specify that "[a]ny document or paper required or authorized under the rules in this part to be filed shall be deemed to be filed *at the time when it reaches the Hearing Clerk.*" 7 C.F.R. § 1.147(h) (emphasis added). Thus, it is the date an answer is received by the Hearing Clerk's Office—not the date on which an answer is mailed—that constitutes the effective filing date.

Here, Respondent's answer was required to be received by the Hearing Clerk's Office on or before March 8, 2017 in order to be deemed timely filed. United States Postal Service records reflect that the Answer was delivered to the Hearing Clerk's Office on March 9, 2017. "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."⁵

Accordingly, the material facts alleged in the Complaint are all admitted by Respondent's failure to file a timely answer and 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).

⁴ See 7 C.F.R. § 1.139 ("Within 20 days after service of such motion [for default] and proposed decision, the respondent may file with the Hearing Clerk objections thereto. . . . If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.").

⁵ Knapp, 64 Agric. Dec. 253, 295 (U.S.D.A. 2005).

Findings of Fact

1. Ray Beech is an individual with a mailing address in [REDACTED] At all times mentioned herein, Mr. Beech 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 alleged in the Complaint are that Mr. Beech allowed the entry of a horse he owned in a horse show while the horse was “sore” (as that term is defined in the Act and Regulations). 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.⁶ The respondent is culpable for the violation. Owners of horses are absolute guarantors that those horses will not be sore within the meaning of the HPA when they are entered or shown.⁷

Conclusions of Law

1. The Secretary, USDA, has jurisdiction in this matter.

6

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. 4870,4 871. 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.D.A.*, 715 F.2d 1508, 1511-12 (11th Cir. 1983).

Edwards, 55 Agric. Dec. 892, 950 (U.S.D.A. 1996).

⁷ 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).

2. On or about September 3, 2016, Ray Beech allowed the entry of a horse he owned (Our Commander in Chief), while the horse was sore, for showing in class 187 in a horse show in Shelbyville, Tennessee, in violation of the Act (15 U.S.C. § 1824(2)(D)).

ORDER

Respondent Ray Beech is assessed a civil penalty of \$100.00, to be paid by check made payable to USDA, APHIS, indicating that the payment is in reference to HPA Docket No. 17- 0020, and sent to:

USDA, APHIS, MISCELLANEOUS
P.O. Box 979043
St. Louis, Missouri 63197-9000

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 9th day of May, 2017


Bobbie J. McCartney
Chief Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building, Room 1031
1400 Independence Avenue, SW
Washington, D.C. 20250-9203
Tel: 202-720-4443
Fax: 202-720-9776
<mailto:OALJHearingClerks@ocio.usda.gov>