

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) [AHPA]
 Middlesex Livestock Auction, LLC,) Docket No. **18-0034**
)
 Respondent.)

**Decision and Order AMENDED on Remand
from the USDA Judicial Officer**

Appearances:

Lauren C. Axley, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue SW, Washington, DC, for the Complainant, the Administrator of the Animal and Plant Health Inspection Service (APHIS); and

(b) (6), *representative of the Respondent, Middlesex Livestock Auction, LLC.*

Decision Summary

1. Middlesex Livestock Auction, LLC, during 2014, 2015, and 2016, violated the Animal Health Protection Act (7 U.S.C. § 8301 *et seq.*) (frequently “AHPA”), by failing to comply with a regulation (9 C.F.R. § 79 *et seq.*) that required specific recordkeeping for the transfer of ownership of 3 goats and APHIS immediate access to inspect records.
2. This Decision and Order differs from my first Decision and Order issued on December 15, 2020: Decision and Order on the Written Record (Ruling GRANTING in part and DENYING in part APHIS’s Motion for Summary Judgment), online at https://oalj.oha.usda.gov/sites/default/files/201215_DOonSummaryJudgment_AHPA_18-0034%20Middlesex%20Livestock%20Auction%2C%20LLC_Redacted.pdf
3. My Order near the end of this document imposes a \$7,000 civil penalty, total, for the violations described in paragraph 1 above (as did my first Decision and Order), but this

Order allows Middlesex Livestock Auction, LLC, to pay installments of not less than \$150 per month until the \$7,000 civil penalty is paid in full.

Recent Procedural History

4. The USDA Judicial Officer issued, on March 26, 2021, his Order Remanding for Further Proceedings (“the Judicial Officer’s Remand Order”) regarding Docket No. 18-0034, Middlesex Livestock Auction, LLC, Respondent, online at https://oalj.oaha.usda.gov/sites/default/files/18-0034%20-%20JO%20REMAND_Redacted.pdf
5. In response to the Judicial Officer’s Remand Order, I filed Directions on April 9, 2021; Middlesex Livestock Auction, LLC (frequently “Middlesex Livestock Auction” or Respondent) filed its Response on May 10, 2021; and the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (frequently “APHIS” or Complainant), filed Complainant’s Response on June 10, 2021.
6. Having carefully considered the documents specified in paragraphs 4 and 5 above, I enter the following Findings of Fact, Conclusions, and Order.

Findings of Fact

7. Middlesex Livestock Auction, LLC, the Respondent, adds value to the community (the community is Connecticut and surrounds), providing a livestock market for goats (the subject of this case), and other livestock: sheep, cattle, rabbits, fowl, horses, for example. The responsibility for defending this administrative action falls to (b) (6) alone.
8. Middlesex Livestock Auction, LLC, the Respondent, is a limited liability company with a mailing address of PO Box 404, Durham CT 06422; and a business location at 488 Cherry Hill Rd, Middlefield CT 06455.

9. Middlesex Livestock Auction, LLC, committed serious offenses when it failed to make records immediately available for inspection when APHIS requested access. These failures occurred 5 or more years ago, on multiple dates in 2015 and 2016, including September 11, 2015; April 21, 2016; May 4, 2016; and October 28, 2016.

10. Middlesex Livestock Auction, LLC, committed serious offenses when it failed to keep specified records relating to the transfer of ownership of 3 goats at issue in the Complaint, so that those 3 goats could be traced. The goats are identified by the numbers 886, 887, and 1831. Those recordkeeping failures happened 6 or more years ago. One of the 3 goats was sold in 2014 (on November 17, 2014); two of the 3 goats were sold in 2015 (on August 31, 2015).

Conclusions

11. The Secretary of Agriculture has jurisdiction over the parties and the subject matter.

12. Middlesex Livestock Auction, LLC, is currently best represented by (b) (6) alone, for purposes of this docket.

13. The specific recordkeeping required by the regulations at 9 C.F.R. § 79 *et seq.* for the transfer of ownership of 3 goats; and for APHIS immediate access to inspect records, is authorized under the Animal Health Protection Act. 7 U.S.C. § 8301 *et seq.*

14. Having the name and address of the buyer of each of the 3 goats in the records of Middlesex Livestock Auction, LLC, is essential to APHIS being able to trace the goats in the event of an outbreak of disease. APHIS is vigilant to prevent the spread of Scrapie, a degenerative and eventually fatal disease affecting the central nervous systems of sheep and goats. Title 9 Code of Federal Regulations Part 79 is entitled “Scrapie in Sheep and Goats”. 9 C.F.R. § 79 *et seq.*

15. Middlesex Livestock Auction, LLC failed to comply with records requirements of the regulations at 9 C.F.R. § 79 *et seq.* as stated in Findings of Fact, paragraphs 9 and 10 above.

16. Middlesex Livestock Auction, LLC (a) has proved that the corona virus pandemic has impacted its ability to pay a \$7,000 civil penalty, and (b) has proved that years of the (b) (6) family sacrificing to keep the Auction business open to serve the community has also impacted its ability to pay a \$7,000 civil penalty.

17. Middlesex Livestock Auction, LLC can and should pay a \$7,000 civil penalty, total, for the violations described in paragraphs 9 and 10 above, because APHIS needs to rely on an auction's records in order to trace animals in the event of an outbreak of disease.

18. An adjustment to the \$7,000 civil penalty that is warranted, is to authorize Middlesex Livestock Auction, LLC to pay its civil penalty in installments of not less than \$150 per month until paid in full, based on its inability to pay the total civil penalty in a lump sum.

19. The following Order is authorized by the Act and warranted under the circumstances.

Order

20. Respondent Middlesex Livestock Auction, LLC shall pay a **civil penalty totaling \$7,000 (seven thousand dollars) in installments of not less than \$150 per month** until paid in full, beginning within **60 days** after this Decision and Order becomes final and effective (see below, for when this Decision and Order becomes final and effective). The payment(s) shall be **paid by certified checks, cashier's checks, or money orders**, marked **Docket No. 18-0034**, payable to order of "**US Dept. of Agriculture**" and delivered to the address on the following page:

U.S. Department of Agriculture
APHIS, U.S. Bank
PO Box 979043
St Louis MO 63197-9000

Prepayment may be made without penalty. Failure to keep current on the amount that would have been paid if installments had been paid when due, may result in the entire balance becoming payable at once.

Finality

This Decision and Order shall be final and effective without further proceedings 35 (thirty-five) days after service, unless appealed to the Judicial Officer by a party to the proceeding by filing with the Hearing Clerk within 30 (thirty) days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145). See Appendix A.

The most efficient way to file with the Hearing Clerk is to email, or to FAX if you prefer, using the information on the last page of this Decision and Order. If emailing or FAXing to the Hearing Clerk, submit once [NOT in quadruplicate]. Due to the corona virus pandemic and limited in-office staffing, filing via email with the Hearing Clerk at SM.OHA.HearingClerks@usda.gov is preferred.

Or, use the FAX number for the Hearing Clerk, if you prefer. The Hearing Clerk receives FAXes sent to 1-844-325-6940 in an inbox on the computer, so coming into the office is not required to retrieve the FAXes.

Copies of this “Decision and Order AMENDED on Remand from the USDA Judicial Officer” shall be sent by the Hearing Clerk to each of the parties.

The Hearing Clerk will use for the Respondent Middlesex Livestock Auction, LLC **both** certified mail and regular mail, and as a courtesy will email (b) (6) at the email address she used to reach the Hearing Clerk.

Issued this 10th day of June 2021 at Washington, D.C.



Digitally signed by
JILL CLIFTON
Date: 2021.06.10
14:58:06 -04'00'

Jill S. Clifton
Administrative Law Judge

Appendix A enclosed

Postscript: Middlesex Livestock Auction, LLC filed a document on June 10, 2021.
I ask Middlesex Livestock Auction, LLC to study a footnote in the Judicial Officer's
Remand Order: footnote 4 on page 3.

Hearing Clerk's Office
U.S. Department of Agriculture
Stop 9203 South Building Room 1031
1400 Independence Ave SW
Washington DC 20250-9203

1-844-325-6940 FAX
1-202-720-4443 phone

sm.oha.HearingClerks@usda.gov

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time

for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145