

USDA
OALJ/OHC

2017 APR 12 PM 3:43

RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) HPA Docket No. 14-0083
)
ERNEST UPTON,)
)
Respondent.)
_____)
) HPA Docket No. 17-0166
)
ERNEST UPTON, an individual,)
) CONSENT DECISION AND
Respondents.) ORDER AS TO ERNEST UPTON

These proceedings were instituted under the Horse Protection Act, as amended (15 U.S.C. § 1821 et seq.)(HPA or Act), by complaints filed by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (APHIS), on March 14, 2014, and January 12, 2017, respectively, alleging that respondent Ernest Upton violated the Act. The complaint that includes HPA Docket No. 17-0166 was amended on March 30, 2017. This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to these proceedings (7 C.F.R. § 1.138).

Respondent Ernest Upton admits the jurisdictional allegations in the complaints, specifically admits that the Secretary has jurisdiction in this matter, admits certain of the allegations as set forth herein as findings of fact and conclusions of law, denies the remaining allegations, waives oral hearing and further procedure, and consents and agrees to the entry of this decision, for the purpose of settling these proceedings and resolving any other alleged violations of the Act occurring up to and including April 11, 2017. The complainant agrees to the entry of this decision.

Findings of Fact

1. Ernest Upton is an individual whose business mailing address is 131 Mullins Mill Road, Shelbyville, Tennessee 37160. At all times mentioned herein, Mr. Upton 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.).

2. On or about June 15, 2013, Ernest Upton showed a horse (A Game Face) in class 14 in a horse show in Shelbyville, Tennessee.

3. On or about August 27, 2016, Ernest Upton showed a horse (Gin Toddy) in class 73 in a horse show in Shelbyville, Tennessee.

4. On or about August 27, 2016, Ernest Upton entered a horse (Selfie) for showing in class 81 in a horse show in Shelbyville, Tennessee.

5. On or about August 31, 2016, Ernest Upton entered a horse (The Crimson Sky) for showing in class 143 in a horse show in Shelbyville, Tennessee.

6. On or about March 24, 2017, Ernest Upton entered a horse (I’m Just Kidding) for showing in class 25 in a horse show in Shelbyville, Tennessee.

Conclusions of Law

1. On or about June 15, 2013, Ernest Upton showed a horse (A Game Face), while the horse was sore, in class 14 in a horse show in Shelbyville, Tennessee, in violation of the Act (15 U.S.C. § 1824(2)(A)).

2. On or about August 27, 2016, Ernest Upton showed a horse (Gin Toddy), while the horse was sore, in class 73 in a horse show in Shelbyville, Tennessee, in violation of the Act (15 U.S.C. § 1824(2)(A)).

3. On or about August 27, 2016, Ernest Upton entered a horse (Selfie), while the horse was sore, for showing in class 81 in a horse show in Shelbyville, Tennessee, in violation of the Act (15 U.S.C. § 1824(2)(B)).

4. On or about August 31, 2016, Ernest Upton entered a horse (The Crimson Sky),

while the horse was sore, for showing in class 143 in a horse show in Shelbyville, Tennessee, in violation of the Act (15 U.S.C. § 1824(2)(B)).

5. On or about March 24, 2017, Ernest Upton entered a horse (I'm Just Kidding), while the horse was sore, for showing in class 25 in a horse show in Shelbyville, Tennessee, in violation of the Act (15 U.S.C. § 1824(2)(B)).

Respondent Ernest Upton has admitted the facts and conclusions set forth above and the parties have agreed to the entry of this decision. Therefore, such decision will be entered.

Order

1. Respondent Ernest Upton is disqualified for two years, beginning September 3, 2017, and ending September 2, 2019, from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or other device, and from judging, managing or otherwise participating in any horse show, horse exhibition, or horse sale or auction, directly or indirectly through any agent, employee, or other device.¹

2. Respondent Ernest Upton is assessed a civil penalty of \$6,000, which shall be paid in twelve (12) monthly payments beginning on June 1, 2017, and continuing until May 1, 2018. Each payment must be by check or money order made payable to USDA/APHIS, indicating that the payment is in reference to HPA Docket Nos. 14-0083 and 17-0166, and sent to:

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

The provisions of this order shall become effective April 11, 2017. Copies of this decision

¹“Participating” means engaging in any activity beyond that of a spectator, and includes, without limitation, transporting or arranging for the transportation of horses to or from equine events, personally giving instructions to exhibitors, being present in the warm-up or inspection areas or in any area where spectators are not allowed, and financing the participation of others in equine events.

shall be served upon the parties.


[Redacted]
Thomas B. Kakassy
Attorney for Respondent

[Redacted]
Ernest Upton
Respondent

[Redacted]
Colleen A. Carroll
Attorney for Complainant

Nashville, Tennessee
Done at Washington, D.C.,
this 11th day of April 2017
[Redacted]
Channing D. Strother
Administrative Law Judge