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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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In re:

T. Kenneth Emery, LLC,

Respondent

)
) Docket No. 14-0148

)
)
)

) CONSENT DECISION

This proceeding was instituted under the Animal Health Protection Act (7 U.S.C. §§ 7701 *et seq.*)(Act), by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service alleging that the respondent violated the Act and the regulations promulgated thereunder (9 C.F.R. Part 71). The complainant and the respondent have agreed that this proceeding should be terminated by entry of this Consent Decision, and have agreed to the following stipulations:

1. For the purpose of this Consent Decision only, respondent specifically admits that the Secretary of the United States Department of Agriculture has jurisdiction in this matter, neither admits nor denies the remaining allegations in the complaint, admits to the Findings of Fact set forth below, and waives:

(a) Any further procedure;

(b) Any requirement that the final decision in this proceeding contain findings and conclusions with respect to all material issues of fact, law, or discretion, as well as the reasons or bases thereof; and

(c) All rights to seek judicial review and otherwise challenge or contest the validity of this decision.

2. The respondent also stipulates and agrees that the United States Department of Agriculture is the "prevailing party" in this proceeding and waives any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. §§ 504

et seq.) for fees and other expenses incurred by the respondent in connection with this proceeding.

Findings of Fact

I.

T. Kenneth Emery, hereinafter referred to as the respondent, is an individual whose mailing address is (b) (6)

II.

On or about November 5, 2012, the respondent moved thirty-nine (39) live swine for sale in interstate commerce, from Pennsylvania to New Jersey, without identifying each swine in a manner approved by the Administrator, Animal and Plant Health Inspection Service, in violation of 9 C.F.R. § 71.19.

Conclusions

The respondent has admitted the jurisdictional facts and have agreed to the following Order in disposition of this proceeding; therefore, this Consent Decision will be issued.

Order

The respondent, T Kenneth Emery, LLC, is assessed a civil penalty of three thousand and three hundred dollars (\$3,300.00) pursuant to the payment plan outlined in paragraph 1.

1. The respondent shall send a company check or bank/certified check or money order, payable to the Treasurer of the United States, for two thousand dollars (\$2,000.00) to USDA APHIS, P.O. Box 979043, St. Louis, MO, 63197-9000, payable within thirty (30) days from the effective date of this Order. The company check, bank/certified check or money order should include the docket number of this proceeding. The balance of the payment will be made as follows:

(a). Five hundred dollars (\$500.00) by September 1, 2015;

(b) Five hundred dollars (\$500.00) by November 1, 2015;

(c) Three hundred dollars (\$300.00) by January 1, 2016.

2. The Complainant, the Animal and Plant Health Inspection Service, agrees not to file any administrative complaint or initiate civil or criminal proceedings against respondent for the sale of sheep in interstate commerce without official identification (NY140191-VS), or any other violation that occurred prior to the effective date of this order and are known to Complainant.

The provisions of this order shall become effective on the thirtieth day after service of this consent decision and order on the respondent.

Copies of this decision shall be served upon the parties.

[Redacted signature area]

T. Kenneth Emery, LLC.
Respondent

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Tracey Manoff
Attorney for Complainant

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Issued this 21st day of MAY, 2015
at Washington, D.C.

[Redacted signature area]

Administrative Law Judge

JANICE K. BULLARD