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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	
SAM PERKINS, an individual,	)	HPA Docket No. 17-0128
	)	
Respondent	)	

DEFAULT DECISION AND ORDER

Appearances:

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

Steven M. Mezrano, Esq., Homewood, AL, for the Respondent Sam Perkins.

Preliminary Statement

This proceeding was instituted under the Horse Protection Act, as amended (15 U.S.C. § 1821 *et seq.*) [Act], and the regulations promulgated thereunder (9 C.F.R. §§ 11.1-11.4) [Regulations]. This proceeding initiated with a complaint filed on January 11, 2017, by the Administrator, Animal and Plant Health and Inspection Service [APHIS], of the United States Department of Agriculture [USDA; Complainant]. The Complaint alleges that Sam Perkins [Respondent] violated the Act with respect to two horses: Kentucky Line, a two-year-old colt registered as 21402507, and Prince at the Ritz, a five-year-old stallion registered as 21103821.

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]

On February 21, 2017, Complainant filed with the Hearing Clerk a "Motion for Adoption of Decision and Order by Reason of Default" [Motion for Default] and proposed "Decision and Order by Reason of Default" [Proposed Decision].[2] Also on February 21, 2017, Respondent filed his untimely[3] Answer to the Complaint. On March 6, 2017, Respondent filed an "Opposition to Petitioner's Motion for Adoption of Decision and Order by Reason of Default" [Opposition to Motion],[4] in which Respondent raised a number of constitutional claims and asserted that "the case should be dismissed."[5]

Complainant opposed both the dismissal and abatement of this proceeding, and on March 10, 2017, Complainant filed a "Motion to Certify Question to the Judicial Officer" [Motion to

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[1] United States Postal Service records reflect that the Complaint was sent via certified mail and delivered to Respondent's address on January 26, 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 February 15, 2017 but was not filed until February 21, 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.

[2] United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent via certified mail and delivered to Respondent's address on March 1, 2017.

[3] *See supra* note 1.

[4] In his Opposition to Motion, Respondent argues he was "never served with APHIS's Complaint." However, as discussed in footnote 1, United States Postal Service records reflect that the Complaint was sent via certified mail and delivered to Respondent's address on January 26, 2017. Respondent's address appeared on the entry forms that he signed for the three horses at issue in this case.

[5] These constitutional issues were addressed in my April 5, 2017 "Order Denying Respondents' Motion to Dismiss or Abate Proceedings and Complainant's Motion to Certify Question to the Judicial Officer."

Certify].[6] Respondent did not file a response to the Motion to Certify,[7] and on April 5, 2017, I issued an "Order Denying Respondents' Motion to Dismiss or Abate Proceedings and Complainant's Motion to Certify Question to the Judicial Officer."

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). As Respondent failed to file an answer within the time period prescribed in section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), this Decision and Order is issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Sam Perkins is an individual whose business mailing address is c/o Joe Fleming Stables, 2003 Highway 64 West, Shelbyville, Tennessee 37160. At all times mentioned herein, Respondent 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. The nature and circumstances of the prohibited conduct alleged in the Complaint are that Respondent entered two horses in a show while the horses were "sore," as that term is defined in the Act and Regulations. The extent and gravity of the prohibited conduct is great. Congress

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[6] Complainant moved to certify the following question to the Judicial Officer:

> Should the U.S. Department of Agriculture's Administrative Law Judges continue to preside over administrative proceedings before the Secretary of Agriculture unless and until such time as there is a final determination by the federal courts that they lack authority to do so?

[7] The Hearing Clerk's records reflect that Respondent's counsel was served via email with the Motion to Certify Question on March 13, 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, a response was due by April 3, 2017. Respondent did not file a response.

enacted the Horse Protection Act 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.[8]

3. APHIS has issued multiple warning letters to Respondent. On October 2, 2014, APHIS issued an Official Warning (MS 140013) to Respondent with respect to his having entered a horse (Spooky Dollar) in a horse show on March 30, 2013, which horse APHIS found was sore. On October 9, 2014, APHIS issued an Official Warning (TN 140104) to Respondent with respect to his having entered a horse (Inception) in a horse show on June 27, 2014, which horse APHIS found was sore. On October 10, 2014, APHIS issued an Official Warning (FL 140188) to Respondent with respect to his having entered a horse (Threat on Parole) in a horse show on April 25, 2013, which horse APHIS found was sore. On April 13, 2015, APHIS issued an Official Warning (TN 140111) to Respondent with respect to his having entered a horse (Cadillac's Bum) in a horse show on June 15, 2013, which horse APHIS found was sore. On December 14, 2015, APHIS issued an Official Warning (TN 150022) to Mr. Perkins with respect to his having shown a horse (Escape from Alcatraz) in a horse show on August 24,

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> 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).

2014, which horse APHIS found was sore. On December 14, 2015, APHIS issued an Official Warning (TN 150023) to Respondent with respect to his having entered a horse (A Super Bowl MVP) in a horse show on August 26, 2014, which horse APHIS found was sore. On December 18, 2015, APHIS issued an Official Warning (TN 150172) to Respondent with respect to his having entered a horse (Cadillac's Burn) in a horse show on July 3, 2014, which horse APHIS found was sore and bearing a prohibited substance. On December 18, 2015, APHIS issued an Official Warning (TN 150160) to Respondent with respect to his having shown a horse (The Sportster) in a horse show on August 23, 2014, which horse APHIS found was sore. On December 18, 2015, APHIS issued an Official Warning (TN 150121) to Respondent with respect to his having entered a horse (Threat on Parole) in a horse show on August 22, 2014, which horse APHIS found was sore. On December 18, 2015, APHIS issued an Official Warning (TN 150173) to Respondent with respect to his having entered a horse (Threat on Parole) in a horse show on July 4, 2014, which horse APHIS found was sore. On April 11, 2016, APHIS issued an Official Warning (TN 160008) to Respondent with respect to his having shown a horse (The American Patriot) in a horse show on August 30, 2015, which horse APHIS found was sore. On April 11, 2016, APHIS issued an Official Warning (TN 160009) to Respondent with respect to his having shown a horse (Miss Empty Pockets) in a horse show on September 1, 2015, which horse APHIS found was sore. On April 11, 2016, APHIS issued an Official Warning (TN 160010) to Respondent with respect to his having shown a horse (Sophisticated) in a horse show on September 1, 2015, which horse APHIS found was sore. On April 12, 2016, APHIS issued an Official Warning (TN 160011) to Respondent with respect to his having shown a horse (I'm a Mastermind) in a horse show on September 2, 2015, which horse APHIS found was sore.

4. Respondent is culpable for the violations alleged in the Complaint. Exhibitors of horses are absolute guarantors that those horses will not be sore within the meaning of the Act when they are entered or shown.[9]

Conclusions of Law

1. The Secretary, USDA, has jurisdiction in this matter.
2. On or about August 25, 2016, Respondent entered a horse (Kentucky Line), while the horse was sore, for a showing in class 26 in a horse show in Shelbyville, Tennessee, in violation of the Act (15 U.S.C. § 1824(2)(B)).
3. On or about August 27, 2016, Respondent entered a horse (Prince at the Ritz), while the horse was sore, for showing in class 84B in a horse show in Shelbyville, Tennessee, in violation of the Act (15 U.S.C. § 1824(2)(B)).

ORDER

1. Respondent is assessed a $4,400 civil penalty, which shall be paid by certified check or money order, made payable to the "Treasurer of the United States," indicating that the payment is in reference to HPA Docket No. 17-0128, and sent to:

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

2. Respondent is disqualified for two years from showing or exhibiting any horse in any 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 action.

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[9] 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).

3. This Order shall take effect on the day that this Decision becomes final.

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 14th day of April, 2017

[redacted]

Bobbie J. McCartney
Chief Administrative Law Judge

Hearing Clerk's Office
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