

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/OHC
2019 JUL 24 PM2:09

In re:)
)
Lee Marvin Greenly, an individual,)
d/b/a MN Wildlife and/or Minnesota)
Wildlife Connection, Inc.,) AWA Docket No. 19-J-0075
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

John V. Rodriguez, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Administrator of the Animal and Plant Health Inspection Service ("APHIS").

Preliminary Statement

This administrative proceeding was initiated under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131 *et seq.*) ("AWA"); the regulations promulgated thereunder (9 C.F.R. §§ 1.1 *et seq.*); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) ("Rules of Practice").

The Complainant, the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, initiated this proceeding against Respondent Lee Marvin Greenly, an individual doing business as MN Wildlife and/or Minnesota Wildlife Connection, Inc., by filing a complaint on April 19, 2019. The Complaint alleged that: 1) the Respondent operated as an exhibitor, as that term is defined in the AWA and the Regulations, without having been licensed by the Secretary to do so, in that the Respondent exhibited animals on four occasions from on or about July 7, 2015 through on or about July 4, 2018, in willful violation of section 2134 of the Act (7 U.S.C. § 2134) and section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)); 2) the Respondent operated as a dealer, as that term is defined in the AWA and

the Regulations, without having been licensed by the Secretary to do so, in that the Respondent, in commerce, sold two wolf pups on May 15, 2017, in willful violation of section 2134 of the AWA (7 U.S.C. § 2134) and section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)); and 3) the Respondent, on five occasions, failed to obey the Secretary's cease-and-desist order issued under section 2149(b) of the AWA (7 U.S.C. § 2149(b)) in *Greenly*, 72 Agric. Dec. 603 (U.S.D.A. 2013) (AWA Docket No. 11-0072).

Complainant requested that an Administrative Law Judge find that Respondent, on five occasions, violated the AWA and the regulations promulgated thereunder, and on those five occasions also failed to obey the Secretary's cease-and-desist order. Complainant seeks a civil penalty of thirteen thousand three hundred dollars (\$13,300.00)¹ for the four violations when the respondent operated as an exhibitor without having been licensed by the Secretary to do so, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. § 2.10(c); the civil penalty of three thousand three hundred twenty-five dollars (\$3,325.00) for the violation when the respondent operated as a dealer without having been licensed by the Secretary to do so, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. § 2.10(c); the civil penalty of eight thousand two hundred fifty dollars (\$8,250.00)² for the five violations when the respondent failed to obey the Secretary's cease-and-desist order in *Greenly*, 72 Agric. Dec. 603 (U.S.D.A. 2013) (AWA Docket No. 11-0072).

Respondent was duly served with a copy of the Complaint and did not file an answer within the twenty-day period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).³

¹ \$3,325 per violation.

² \$1,650.00 per violation.

³ United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on May 2, 2019. Respondent had twenty days from the date of

On May 29, 2019, Complainant filed a Motion for Default (“Motion for Default”) and Proposed Decision and Order (“Proposed Decision”). Respondent has not filed any objections to Complainant’s Motion for Default or Proposed Decision.⁴

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 do not provide for exceptions to the regulatory consequences of an untimely filed answer where, as in the present case, no meritorious objections have been filed.⁵

As Respondent failed to answer the Complaint, and upon Complainant’s motion for the issuance of a decision without hearing by reason of default, 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).

service to file a response. 7 C.F.R. § 1.136(a). 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(h). In this case, Respondent’s answer was due on or before May 22, 2019. Respondent has not filed an answer in this matter.

⁴ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and returned to the Hearing Clerk’s Office as “unclaimed”. The Motion for Default and Proposed Decision were then re-mailed (*see* 7 C.F.R. § 1.132) via regular mail on June 26 2019 in accordance with 7 C.F.R. § 1.147(c)(1) (“if any such document or paper is sent by certified or registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address.”). Respondent had twenty days from the date of service to file a response. 7 C.F.R. § 1.136(a). 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(h). In this case, Respondent’s objections were due on or before July 16, 2019. Respondent has not filed any objections.

⁵ 7 C.F.R. § 1.139; *see supra* note 4.

Findings of Fact

1. The Respondent Lee Marvin Greenly is an individual doing business as MN Wildlife and/or Minnesota Wildlife Connection Inc.
2. From on or about July 7, 2015 through on or about July 4, 2018, the Respondent, on four occasions, operated as an exhibitor, as that term is defined in the AWA and the Regulations, without having been licensed by the Secretary to do so, in willful violation of section 2134 of the Act (7 U.S.C. § 2134) and section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)).
3. On or about May 15, 2017, the Respondent operated as a dealer, as that term is defined in the Act and the Regulations, without having been licensed by the Secretary to do so, in that the Respondent, in commerce, sold two wolf pups, in willful violation of section 2134 of the AWA (7 U.S.C. § 2134) and section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)).
4. From on or about July 7, 2015 through on or about July 4, 2018, the Respondent, on five occasions, failed to obey the Secretary's cease-and-desist order issued under section 2149(b) of the AWA (7 U.S.C. § 2149(b)) in *Greenly*, 72 Agric. Dec. 603 (U.S.D.A. 2013) (AWA Docket No. 11-0072).

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. The Respondent, on five occasions, violated section 2134 of the AWA (7 U.S.C. § 2134) and section 2.10(c) of the Regulations (9 C.F.R. § 2. 10(c)).

3. The Respondent, on five occasions, failed to obey the Secretary's cease-and-desist order issued under section 2149(b) of the AWA (7 U.S.C. § 2149(b)) in *Greenly*, 72 Agric. Dec. 603 (U.S.D.A. 2013) (A WA Docket No. 11-0072).

ORDER

1. Complainant's Motion for Default is GRANTED.
2. A finding is made that from on or about July 7, 2015 through on or about July 4, 2018, the Respondent, on four occasions, operated as an exhibitor, as that term is defined in the AWA and the Regulations, without having been licensed by the Secretary to do so, in willful violation of section 2134 of the Act (7 U.S.C. § 2134) and section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)) and is assessed the civil penalty of thirteen thousand three hundred dollars (\$13,300.00).
3. A finding is made that on or about May 15, 2017, the Respondent operated as a dealer, as that term is defined in the AWA and the Regulations, without having been licensed by the Secretary to do so, in that the Respondent, in commerce, sold two wolf pups in willful violation of section 2134 of the AWA (7 U.S.C. § 2134) and section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)) and is assessed the civil penalty of three thousand three hundred twenty-five dollars (\$3,325.00).
4. A finding is made that the Respondent, on five occasions, failed to obey the Secretary's cease-and-desist order issued under section 2149(b) of the Act (7 U.S.C. § 2149(b)) in *Greenly*, 72 Agric. Dec. 603 (U.S.D.A. 2013) (AWA Docket No. 11-0072) and is assessed the civil penalty of eight thousand two hundred fifty dollars (\$8,250.00).

5. Respondent shall send a certified check or money order in the amount of twenty-four thousand, eight hundred, and seventy-five dollars (\$24,875.00) made payable to the U.S.

Department of Agriculture, to:

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

within thirty (30) days from the effective date of this Order. Respondent shall indicate on the certified check or money order that this payment is in reference to AWA Docket No. 19-J-0075.

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, as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.,
this 24th day of July 2019



Channing D. Strothe
Chief Administrative Law Judge

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