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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	
BETH BEASLEY, an individual,	)	HPA Docket No. 17-0119
	)	
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 Complainant, Animal and Plant Health Inspection Service [APHIS]; and

Steven Mezrano, Esq., of Birmingham, AL, for the Respondent, Beth Beasley.

Preliminary Statement

This proceeding was instituted under the Horse Protection Act (15 U.S.C. § 1821 *et seq.*) [Act or HPA] by a complaint filed on January 11, 2017, by the Administrator of the Animal and Plant Health Inspection Service [APHIS], alleging that respondent Beth Beasley [Respondent] violated the Act with respect to a horse she owned: Inception, a nine-year-old gelding registered as 20713306.

On January 23, 2017, the Office of the Hearing Clerk [OHC] sent Ms. Beasley a copy of the Complaint by certified mail. The respondent was required to file an answer to the Complaint no later than 20 days after service.[1] The Complaint stated that the "[f]ailure to file a timely answer

[1] "7 C.F.R. §§ 1.136(c) and 1.139 clearly describe the consequences of failing to answer a complaint in a timely fashion. These sections provide for default judgments to be entered. They specifically provide for admissions absent an answer. *See* 7 C.F.R. § 1.136(c) ('Failure to file an answer within the time provided . . . shall be deemed . . . an admission of the allegations in the complaint. . . .')". *Morrow v. Dep't of Agric.*, 65 F.3d 168 (6th Cir. 1995). Furthermore, the failure to answer constitutes a waiver of the right to a hearing. 7 C.F.R. § 1.139.

shall constitute an admission of all the material allegations of this complaint." The OHC's cover letter also advised Ms. Beasley that she could file her answer by email: "Your answer, as well as any other pleadings or requests regarding this proceeding may be submitted to the Hearing Clerk via email at (OALJHearingClerks@ocio.usda.gov)."

The twentieth day after service of the Complaint was February 17, 2017. Ms. Beasley did not file an answer to the Complaint by that date.[2]

> [The respondent] filed no answer or any other document during the twenty-day period provided. His failure to file an answer within the time provided constitutes an admission of the allegations in the complaint, pursuant to section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c).

McDaniel, 45 Agric. Dec. 2255, 2257 (U.S.D.A. 1986).

According to the OHC's log, Ms. Beasley, through counsel, filed an answer to the Complaint on February 21, 2017, by email at 12:39 p.m. and by FAX at 1:34 p.m. "Although, on rare occasions, default decisions have been set aside for good cause shown or where the complainant does not object to setting aside the default decision, generally there is no basis for setting aside a default decision that is based upon a respondent's failure to file a timely answer."[3]

> The requirement in the Department's rules of practice that respondent deny or explain any allegation of the complaint and set forth any defense in a timely answer is necessary to enable this Department to handle its large workload in an expeditious and economical manner. During the last fiscal year, the Department's

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[2] United States Postal Service records reflect that Respondent received a copy of the Complaint on January 28, 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 17, 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. § 1136(c). Regrettably, other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely filed answer.

[3] Knapp, 64 Agric. Dec. 253, 295 (U.S.D.A. 2005).

> five ALJ's (who do not have law clerks) disposed of 496 cases. The Department's Judicial Officer disposed of 42 cases. In a recent month, 66 new cases were filed with the Hearing Clerk. Over 150 new Plant Quarantine Act cases are awaiting processing in the Office of the General Counsel.
>
> The courts have recognized that administrative agencies "should be 'free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.'" If a respondent in one case is permitted to contest some of the allegations of fact, or raise new issues, even though a timely answer was not filed, all other respondents in all other cases would have to be afforded the same privilege. Permitting such practice would greatly delay the administrative process and would require additional personnel.

Kaplinsky, 47 Agric. Dec. 613, 618–19 (U.S.D.A. 1988) (citing *Cella v. United States*, 208 F.2d 783, 789 (7th Cir. 1953), *cert. denied*, 347 U.S. 1016 (1954) (quoting *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 143 (1940)); *Swift & Co. v. United States*, 308 F.2d 849, 851- 52 (7th Cir. 1962)).

On March 20, 2017, Complainant filed with the Hearing Clerk a "Motion for Adoption of Decision and Order as to Beth Beasley by Reason of Default" [Motion for Default] and "Proposed Decision and Order as to Beth Beasley by Reason of Default" [Proposed Decision]. On April 3, 2017, Respondent filed an "Opposition to Petitioner's Motion for Adopt of Decision and Order by Reason of Default" [Opposition].[4]

The material facts alleged in the Complaint are all admitted by the respondent's failure to file a timely answer and are adopted and set forth herein as Findings of Fact and Conclusions of

[4] In her Opposition, Respondent submits that she was included on an "Opposition to Petitioner's Motion for Adoption of Decision and Order by Reason of Default" on March 6, 2017 "even though a Petitioner had not filed a Motion for Default against those parties at that time." (Opposition at 2 ¶ 6). This fact is immaterial to the present issue; to merely include a party on an opposition to default does not automatically preclude the entry of default. Additionally, Respondent asserts that on March 20, 2017 "Petitioner filed for default against Amelia Haselden, Beth Beasley, and Charles Yoder, despite the fact that an Answer had already been filed on the Respondents' behalf." (Opposition at 2 ¶ 7). Although this is true, it does not change the fact that the Answer was filed four days late. *See supra* note 1. APHIS properly filed its Motion for Default in accordance with the Rules of Practice. *See* 7 C.F.R. § 1.139 ("The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, *complainant shall file a proposed decision, along with a motion for the adoption thereof,* both of which shall be served upon the respondent by the Hearing Clerk.") (emphasis added).

Law. This Decision and Order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Beth Beasley, also known as Elizabeth Locke Beasley, is an individual with a mailing address in California. At all times mentioned herein, Ms. Beasley 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.*) [Regulations].

2. The nature and circumstances of the prohibited conduct alleged in the Complaint are that Ms. Beasley allowed the entry of a horse she owned in a horse show while the horse was "sore" (as that term is defined in the Act and the Regulations). The extent and gravity of the prohibited conduct is great. Congress enacted the HPA 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.[5] The respondent is culpable for the violation. Owners of horses

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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).

are absolute guarantors that those horses will not be sore within the meaning of the HPA when they are entered or shown.[6]

3. On June 19, 2013, APHIS issued an Official Warning (TN 130260) to Ms. Beasley with respect to the showing of a horse (She's All That Jazz) in a horse show on August 31, 2012, which horse APHIS found was bearing a prohibited substance (o-aminoazotoluene). On May 12, 2015, APHIS issued an Official Warning (TN 150067) to Ms. Beasley with respect the entry of a horse show owned (He's the Whole Shabang) in a horse show on August 29, 2014, which horse APHIS found was sore. On July 8, 2016, APHIS issued an Official Warning (TN 160105) to Ms. Beasley with respect to the entry of a horse she owned (Inception) in a horse show on September 1, 2015, which horse APHIS found was sore.

Conclusions of Law

1. The Secretary, USDA, has jurisdiction in this matter.

2. On or about September 1, 2016, Beth Beasley allowed a horse she owned (Inception) to be shown, while the horse was sore, in class 148 in a horse show in Shelbyville, Tennessee, in violation of the Act (15 U.S.C. § 1824(2)(D)).

ORDER

1. Respondent Beth Beasley is assessed a $2,200 civil penalty which shall be paid by check made payable to USDA/APHIS, indicating that the payment is in reference to HPA Docket No. 17-0119, and sent to:

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

[6] 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).

2. Respondent Beth Beasley is disqualified for one (1) year 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 auction.

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 25th day of April, 2017

[redacted]

Bobbie J. McCartney
Chief Administrative Law Judge

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