

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWA DOCKET No. 03-0026

In re:

NELLIE L. BABB, a/k/a
NELLIE L. STANBAUGH or STAMBAUGH

Respondent

DECISION AND ORDER

This action was brought by the Administrator of the Animal and Plant Health Inspection Service ("APHIS") against the Respondent, Nellie L. Babb, also known as Nellie L. Stanbaugh or Stambaugh, for violations of the Animal Welfare Act, as amended, (7 U.S.C. 2131, et seq.), hereinafter referred to as the "Act" and the Regulations issued pursuant to the Act. The Respondent has generally denied the allegations of the Complaint and an Oral Hearing was held in Tulsa, Oklahoma on Wednesday, February 16, 2005.

The Respondent failed to appear and although a Decision by Reason of Default could have been entered, the Complainant introduced the testimony of witnesses and

produced documentary evidence fully supporting the allegations contained in the Complaint. A brief summary of the evidence follows.

The Complainant first called Leon Robertson, the former owner of Pine Spring Pets who testified concerning his dealings with the Respondent, identifying specific purchases from the Respondent on January 2, 2001 (Exhibits CX 1 and 2), January 9, 2001 (Exhibit CX 5), January 11, 2001 (Exhibit CX 6), August 21, 2001 (Exhibit CX 12, 13 and 14), November 13, 2001 (Exhibit CX 17), February 19, 2002 (Exhibit CX 18), May 21, 2002 (Exhibit CX 3) and June 4, 2002 (Exhibit CX 3) as well as confirming the contents of his affidavit given to Investigator Bob Stiles on July 1, 2002 (Exhibit CX 3).

Kenneth Josserand, a licensed dealer under the Act, was next called to identify an invoice dated July 16, 2001 for the purchase of six puppies from the Respondent (Exhibit CX 7) and to confirm the specifics contained on an affidavit given to Senior Investigator Daniel Hutchings on April 16, 2002 (Exhibit CX 8).

Daniel Hutchings, a APHIS Senior Investigator, testified that, during the course of the investigation, he had interviewed Mr. Josserand (Exhibit CX 8) and Joyce Walters, the owner of Select Pets, another dealer who had purchased Pomeranian puppies from the Respondent on two separate occasions, June 26, 2001 and August 6, 2001 and identified the affidavit he took from Ms. Walters on March 28, 2002. (Exhibits CX 9, 10 and 11) Senior Investigator Hutchings then testified that he had obtained documentary evidence of the Respondent's dealings with Southwest Kennel Auctions and the sale of six dogs through that facility on September 21, 2001. He concluded his testimony by identifying the Respondent's application for her dealer license (Exhibit CX 23), a copy of the license

(Exhibit CX 25) and a copy of the letter notifying the Respondent that her license had expired (Exhibit CX 21).

The last witness, Bob Stiles, an APHIS Investigator, testified that as part of his duties in this investigation, he had interviewed both Leon Robertson and the Respondent and secured affidavits from Mr. Robertson on July 1, 2002 (Exhibit CX 3) and the Respondent on June 24, 2002 (Exhibit CX 4) and a summary of his investigation was contained in a Memorandum sent to Senior Investigator Hutchings which was dated June 26, 2002 (Exhibit CX 26).

Section 2131 of Title 7, United States Code provides:

The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order –

- (1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;
- (2) to assure the humane treatment of animals during transportation in commerce; and
- (3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

The implementing regulations found at 9 C.F.R. 1.1, et seq. define a Dealer as:

...any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research,

teaching, testing, experimentation, exhibition, or use as a pet; or any dog at the wholesale level for hunting, security, or breeding purposes.....

and who derives no more than \$500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats during any calendar year.

Section 2.1 sets forth the requirements for licensing, describes the application process and contains the exemptions from licensing requirements:

(a)(1) Any person operating or desiring to operate as a dealer...except persons who are exempted from the licensing requirements...must have a valid license. ...

(3) The following persons are exempt from the licensing requirements...

(i) Retail pet stores which sell...at retail only: *Provided, That* Anyone wholesaling any animals, selling any animals for research or exhibition...must have a license.

(ii) Any person who sells or negotiates the sale or purchase of any animal...and who derives no more than \$500 gross income from the sale of such animals ...during any calendar year and is not otherwise required to obtain a license. ...

(iv) Any person who sells fewer than 25 dogs and/or cats per year which were raised on his or her premises...

Section 2.2 contains the requirement of acknowledgement of the regulations and standards before a license will be issued and again before it may be renewed. The signature on the application form constitutes an agreement to comply with the regulations and standards.

The transactions detailed in the testimony and documentary evidence above expressly come within the above provisions of the Act and the Regulations. By failing to renew her license but continuing to operate as a dealer, it is clear that the Respondent repeatedly and willfully violated the Regulations. The Respondent seeks to excuse her conduct by claiming an exemption by an "explicit reservation of rights" under the Uniform Commercial Code provisions; however federal preemption precludes such a claim. She also publicly denies the Fourteenth Amendment and indicates that she cannot

be compelled to perform under edicts and accordingly is not subject to regulation. Her assertions while imaginative and possibly novel are without merit.

Having heard the testimony of the witnesses and considered the exhibits and the entire record, the violations alleged in the Complaint have been established and the following Findings of Fact are made.

FINDINGS OF FACT

1. That the Respondent, Nellie L. Babb, also known as Nellie L. Stanbaugh, is an individual formerly residing at Route 1, Box 70, San Antonio, Texas.

2. That at all times material herein, the Respondent was operating as a dealer as defined in the Act and the Regulations.

3. That on May 15, 1999 Respondent applied for and received a license as a “Class A Dealer”, which license expired on May 26, 2000.

4. That by letter dated August 9, 2000, the Respondent was advised in writing that her license had expired.

5. That the Respondent, in willful violation of the Act and the Regulations, continued to operate as a dealer without renewing her license, selling at least forty (40) dogs to licensed dealers on at least ten occasions, to wit:

DATE	NUMBER OF ANIMALS	PURCHASER
January 2, 2001	7	Pine Springs Pets
January 9, 2001	5	Pine Springs Pets
January 11, 2001	1	Pine Springs Pets
July 16, 2001	6	Kenneth Josserand
August 6, 2001	2	Select Pets

August 21, 2001	6	Pine Springs Pets
November 13, 2001	1	Pine Springs Pets
February 19, 2002	6	Pine Springs Pets
May 21, 2002	3	Pine Springs Pets
June 4, 2004	3	Pine Springs Pets

ORDER

Being sufficiently advised, it is **ORDERED** as follows:

1. That the Respondent, Nellie L. Babb, also known as Nellie L. Stanbaugh or Stambaugh, shall cease and desist from any and all further violations of the Act and the Regulations.

2. That by reason of her willful violations of the Act and the Regulations, the Respondent, Nellie L. Babb, also known as Nellie L. Stanbaugh or Stambaugh, is **PERMANENTLY** disqualified from becoming licensed under the Act and Regulations.

3. That the Respondent, Nellie L. Babb, also known as Nellie L. Stanbaugh, is assessed a civil penalty in the amount of THIRTY THOUSAND DOLLARS (\$30,000.00); however, of this amount, the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) of the civil penalty shall be suspended on the condition that the Respondent commit no further violations of the Act and Regulations.

This civil penalty shall be payable to the “Treasurer of the United States” by certified check or money order, and shall be forwarded with thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
Office of General Counsel
Attention: Robert Ertman
Room 2343, South Building
Washington, D.C. 20250

Respondent shall indicate on the certified check or money order that payment is in reference to AWA Docket No. 03-0026.

Copies of this Order shall be served upon the Parties by the Hearing Clerk's Office.

Done at Washington, D.C.
this the 18th day of February, 2005

PETER M. DAVENPORT
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue SW
Room 1081, South Building
Washington, D.C. 20250-2900
202-720-9443
Fax: 202-720-9776