

UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	AWA Docket Nos. 04-0016 &
)	05-0013
DAVID HAMILTON, an individual, doing)	
business as MID-SOUTH DISTRIBUTORS)	
OF ARKANSAS, LLC, an Arkansas)	
domestic limited liability company; and)	
WILLIAM HAMILTON, an individual,)	
doing business as MID-SOUTH)	
DISTRIBUTORS,)	
)	
Respondents.)	CONSENT DECISION

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*), by an amended complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondents willfully violated the Act and the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 *et seq.*). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

The respondents admit the jurisdictional allegations of the amended complaint and specifically admit that the Secretary has jurisdiction in this matter, neither admit nor deny the remaining allegations, waive oral hearing and further procedure, and consent and agree, for the purpose of settling this proceeding, to the entry of this decision.

The complainant agrees to the entry of this decision.

FINDINGS OF FACT

1. Respondent David Hamilton is an individual doing business as Mid-South Distributors of Arkansas, LLC, and whose mailing address is 3306 Walkers Corner Road, Scott, Arkansas 72142. At all time mentioned herein said respondent was licensed and operating as a

dealer as that term is defined in the Act and the Regulations, and held Animal Welfare Act license number 71-B-0149, issued to "David Hamilton DBA: Mid-South Distributors, L.L.C." The acts, omissions, and failures to act by any person acting for or employed by respondent David Hamilton, as alleged herein, are deemed the acts, omissions and failures of respondent David Hamilton for the purpose of constructing or enforcing the provisions of the Act and Regulations.

2. Respondent Mid-South Distributors of Arkansas, LLC ("Mid-South"), is an Arkansas domestic limited liability company whose agent for service of process is David Hamilton, 3306 Walkers Corner Road, Scott, Arkansas 72142. At all time mentioned herein said respondent was operating as a dealer as that term is defined in the Act and the Regulations. The acts, omissions, and failures to act by any person acting for or employed by respondent Mid-South, as alleged herein, are deemed the acts, omissions and failures of respondent Mid-South for the purpose of constructing or enforcing the provisions of the Act and Regulations.

3. Respondent William Hamilton is an individual doing business as Mid-South Distributors of Arkansas and whose mailing address is 7524 East Pike, Norwich, Ohio 43767. At all time mentioned herein said respondent was licensed and operating as a dealer as that term is defined in the Act and the Regulations, and held Animal Welfare Act license number 31-B-0129. The acts, omissions, and failures to act by any person acting for or employed by respondent William Hamilton, as alleged herein, are deemed the acts, omissions and failures of respondent William Hamilton for the purpose of constructing or enforcing the provisions of the Act and Regulations.

CONCLUSIONS

The respondents having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, such decision will be entered.

ORDER

1. Respondents, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder.

2. Respondents David Hamilton and Mid-South are jointly and severally assessed a civil penalty of \$25,000. Respondent William Hamilton is assessed a civil penalty of \$5,000. The assessed civil penalties shall be paid by certified check or money order made payable to the Treasurer of the United States, and received by counsel for complainant on or before October 21, 2005. Respondents shall indicate on the certified checks or money orders that payment is in reference to AWA Docket Nos. 04-0016 & 05-0013.

3. Respondent William Hamilton's Animal Welfare Act license (number 31-B-0129), is suspended for five years, from the effective date of this Order, and continuing thereafter until Respondent William Hamilton has demonstrated to Animal and Plant Health Inspection Service ("APHIS") that he is in compliance with the Act, the regulations and standards issued thereunder. When Respondent William Hamilton has demonstrated such compliance, APHIS shall seek a supplemental order lifting such suspension.

4. Respondents David Hamilton and Mid-South's Animal Welfare Act license (number 71-B-0149), is suspended for five years, from the effective date of this Order, and continuing thereafter until Respondents David Hamilton and Mid-South have demonstrated to

APHIS that they are in compliance with the Act, the regulations and standards issued thereunder. When Respondents David Hamilton and Mid-South have demonstrated such compliance, APHIS shall seek a supplemental order lifting such suspension.

5. Respondents David Hamilton and Mid-South agree that if and when the license suspension described in paragraph 4 of this order is lifted, there shall be a two-year period of time thereafter which shall be referred to as the “probation period.” Respondents David Hamilton and Mid-South further agree that if, during the probation period, APHIS documents a “repeat failure to comply”¹ with the provisions of the Animal Welfare Act (7 U.S.C. § 2131 et seq.) and regulations and standards issued thereunder (9 C.F.R. § 1.1 et seq.), which, after notice and opportunity for a hearing results in the finding of a violation, Respondents’ Animal Welfare Act license will be revoked. Such license revocation shall be in addition to any penalty found to be warranted for such future violations.

6. Respondent William Hamilton agrees that if and when the license suspension described in paragraph 3 of this order is lifted, there shall be a two-year period of time thereafter which shall be referred to as the “probation period.” Respondent William Hamilton further agrees that if, during the probation period, APHIS documents a “repeat failure to comply”² with the provisions of the Animal Welfare Act (7 U.S.C. § 2131 et seq.) and regulations and standards issued thereunder (9 C.F.R. § 1.1 et seq.), which, after notice and opportunity for a hearing

¹A “repeat failure to comply” means that APHIS official(s) have identified on two consecutive inspections of a Respondent’s facilities, animals and records, the failure to comply with the same section(s) of the Act, 7 U.S.C. § 2131 et seq., and/or the regulations and standards, 9 C.F.R. § 1.1 et seq.

²*Id.*

results in the finding of a violation, Respondent's Animal Welfare Act license will be revoked. Such license revocation shall be in addition to any penalty found to be warranted for such future violations.

7. An APHIS Supervisory Animal Care Specialist will accompany the Veterinary Medical Officer ("VMO") and/or Animal Care Inspector ("ACI") to conduct unannounced inspections of Respondents' facilities, animals and records for purposes of:

- a. determining whether Respondents have demonstrated compliance with the Act and regulations and standards for purposes of lifting the licenses suspensions in paragraphs 3 and 4 of this order; and
- b. determining whether Respondents failed to comply with a provision(s) of the Act and/or regulations and standards that APHIS officials previously identified as non-compliant during their immediately preceding inspection, as provided in paragraphs 5 and 6 of this order.

The provisions of this order shall become effective on the date this Order is issued.

Copies of this decision shall be served upon the parties.

[Redacted signature]

David Hamilton
Respondent

Mid-South Distributors of Arkansas LLC
Respondent

By [Redacted signature]
Its [Redacted signature]

[Redacted signature]

William Hamilton
Respondents

[Redacted signature]

Bernadette R. Juarez
Attorney for Complainant

Done at Washington, D.C.
this 28th day of October 2005

[Redacted signature]

Peter M. Davenport
Administrative Law Judge