

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
John Wallace,) AWA Docket No. 20-J-0018
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearances:

Matthew Scott Weiner, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, Animal and Plant Health Inspection Service (“APHIS”); and

Respondent John Wallace, pro se.

Preliminary Statement

This is a proceeding 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.*) (“Regulations”); 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 matter initiated with a complaint filed on November 19, 2019 by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (“Complainant”), alleging that John Wallace (“Respondent”) willfully violated the AWA and Regulations.

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).¹ Accordingly, on February 19, 2020, Complainant filed a Motion for Default and Proposed Decision and Order on the Record by Reason of Default (“Proposed Decision”).

On March 23, 2020, Respondent filed an untitled document “responding to the complaint for Motion of Default Docket #20-J-0018 Animal Welfare License #74-B-0498.”² Although Respondent does not specify whether he intended to respond to the Complaint or to the Motion for Default, the document appears to address both. Regarding the Motion for Default, Respondent states:

I did not understand that I had to respond to the November 22, 2019 Letter of Complaint. After, I spoke with Matthew Weiner, Attorney for USDAOGC Office about the complaint & allegations, I did not respond within 20 days due to my understanding of the conversation between Matt Weiner & I, I clearly understood Matt was documenting the information as my written respond.

Response at 1. Throughout the remainder of the document, Respondent offers explanations for (but does not clearly deny) the violations alleged in the Complaint.³

If Respondent’s Response is to be considered an answer to the Complaint, it is eighty-eight days late.⁴ Respondent was cautioned of the consequences for failure to file a timely

¹ United States Postal Service records reflect that the Complaint was sent to Respondent and delivered on December 6, 2019. 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 answer was due on or before December 26, 2019.

² Response at 1.

³ *See id.* at 1-3.

⁴ *See supra* note 1.

answer by the Rules of Practice, Hearing Clerk's Letter,⁵ and the Complaint itself.⁶ Further, if the Response is to be treated as an objection to Complainant's Motion for Default, I find that the objection lacks merit.⁷ It is immaterial that Respondent "did not respond within 20 days due to [his] understanding"⁸ of a conversation with Mr. Weiner, as the Rules of Practice do not provide that a default decision may be set aside for excusable neglect.⁹

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.¹⁰ 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.¹¹

As Respondent failed to file a timely answer to the Complaint, and upon Complainant's

⁵ The Hearing Clerk's letter, which was sent to Respondent with the Complaint, reads: "**The rules specify that you have 20 days from the receipt of this letter to file with the Hearing Clerk your written Answer to the Complaint signed by you or your attorney of record. . . .** Failure to file a timely answer or filing an answer which does not deny the allegation of the Complaint may constitute an admission of those allegations and waive your right to an oral hearing." Hearing Clerk's Letter at 1.

⁶ The Complaint states: "Failure to file a timely answer shall constitute an admission of all the material allegations of the Complaint." Complaint at 2.

⁷ See 7 C.F.R. § 1.139 ("Within 20 days after service of [a motion for default] and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure of hearing.").

⁸ Response at 1.

⁹ See, e.g., *Caudill*, 76 Agric. Dec. 436, 443-44 (U.S.D.A. 2017).

¹⁰ 7 C.F.R. § 1.136(c).

¹¹ 7 C.F.R. § 1.139; see *supra* note 7 and accompanying text.

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).

Findings of Fact

1. Respondent John Wallace is an individual whose business address is P.O. Box 4272, Bryan, TX 77805.
2. Respondent's home address is in the (b) (6). In order to protect the personal privacy of Respondent, his address is not included in this Decision and Order but has been provided to the Hearing Clerk for the purpose of effectuating service of process.
3. At all times material herein, Respondent was a dealer, as that term is defined in the AWA and Regulations, and held license number 74-B-0498.
4. On or about June 20, 2019, Respondent willfully violated section 2.40 of the Regulations (9 C.F.R. § 2.40) by failing to provide the following animals adequate veterinary care and/or use appropriate methods to prevent, control, diagnose and treat disease and injuries.
 - a. Respondent did not have an attending veterinarian or a written program of veterinary care and did not obtain veterinary care for *Zar*, an adult male lion who was visibly emaciated, had rapid and shallow respiration, was reluctant to move, and had shown signs of illness for over a month 9 C.F.R. § 2.40(b)(2).
 - b. Respondent did not have an attending veterinarian or a written program of veterinary care and did not obtain veterinary care for *Toby*, an adult tiger who had a visibly swollen and discolored left front claw that had grown into its left front foot pad, as well as a claw that had grown into its left rear foot pad. 9 C.F.R. § 2.40(b)(2).

5. On or about July 12, 2018, Respondent failed to have a responsible adult available during business hours to accompany APHIS officials during the inspection process, in violation of 9 C.F.R. § 2.126, in that Respondent's unavailability prevented APHIS inspectors from inspecting his facility.
6. On or about December 24, 2018, Respondent failed to have a responsible adult available during business hours to accompany APHIS officials during the inspection process, in violation of 9 C.F.R. § 2.126, in that Respondent's unavailability prevented APHIS inspectors from inspecting his facility.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent John Wallace failed to provide animals adequate veterinary care and/or use appropriate methods to prevent, control, diagnose, and treat diseases and injuries.
3. Respondent failed to have a responsible adult available during business hours to accompany APHIS officials during the inspection process.
4. The Secretary has authority under 7 U.S.C. § 2149(a) to revoke AWA license number 74-B-0498, held by Respondent.

ORDER

1. AWA license number 74-B-0498 is hereby revoked.
2. Respondent John Wallace, his agents, and employees, directly or indirectly, in connection with operations subject to the Animal Welfare Act, shall cease and desist from engaging in activities under the Animal Welfare Act that require a valid AWA license.
3. This Order shall have the same effect as if entered after a full hearing.

The provisions of this Order shall become effective on the first day after this Decision becomes final. This Decision shall be final 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, with courtesy copies provided via email where available.

Done at Washington, D.C.,
this 31st day of March 2020



Channing D. Strother
Chief Administrative Law Judge

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