

2016 DEC 27 AM 8:47

RECEIVED

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

HPA Docket No. 15-0097

In re:

Philip Trimble,

Respondent.

DENIAL OF COMPLAINANT MOTION FOR SUMMARY JUDGEMENT

This docket involves a Complaint filed by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, on April 9, 2015 that Respondent violated the Horse Protection Act, 15 U.S.C. §§ 1821, *et seq.* (“HPA”). Respondent answered on April 23, 2015, admitting portions of the Complaint, denying others, and asserting certain defenses.

Pursuant to Judge Bullard’s April 30, 2015 order, the parties have exchanged copies of anticipated exhibits and have, respectively, filed with the Hearing Clerk lists of those anticipated exhibits and of anticipated witnesses. The parties participated with me in an October 5, 2016 telephone conference. *See* my October 7, 2016 Summary of Telephone Conference and Order.

On October 21, 2016, Complainant filed a Motion for Summary Judgment, accompanied by twelve supporting exhibits, four of Respondent’s expected exhibits referenced in Complainant’s Motion for Summary Judgment, and a Proposed Decision and Order. On November 15, 2016, Respondent filed its Response to the Motion for Summary Judgment,

accompanied by a Memorandum of Facts and Law in Support of his Response, Exhibits in Opposition, and a Proposed Decision and Order.

Complainant states in its Motion for Summary Judgment, p. 3, that in order to prevail Complaint must show that "no genuine issue [exists] as to any material fact and that [Complainant] is entitled to judgment as a matter of law." Complainant also states, *id.*:

If the moving party supports its motion for summary judgment, the burden shifts to the non-moving party who may not rest on mere allegation or denial in the pleadings, but must set forth facts showing there is a genuine issue of fact for trial. . . . In ruling on a motion for summary judgment, all evidence must be considered in the light most favorable to the nonmoving party with all justifiable inferences to be drawn in the non-movant's favor. [citations omitted]

I conclude that the evidence presented in Respondent's response and the documents accompanying it, considered in the light most favorable to Respondent, demonstrate that there exist in this case genuine issues of material fact. Therefore, Complainant's Motion for Summary Judgment is denied, and, as requested by Respondent, this matter will be set for hearing.

The information and instructions provided in Judge Bullard's April 30, 2015 order remain effective. The parties are encouraged maintain communications with each other, and to reach agreement between themselves on procedural and substantive matters wherever possible. Review of the filings by the respective parties with respect to the Motion for Summary Judgment indicates that there are many matters in the case as to which the parties are not in disagreement. I encourage the parties to attempt to reach a written stipulation as to matters not in dispute and to file that stipulation prior to the hearing. As always, parties' settlement efforts are encouraged.

My legal assistant will contact the respective party representatives to schedule another Section 1.140 (7 C.F.R. § 1.140) telephone conference for early 2017, to, among other things,

schedule hearing dates. The parties should be ready to discuss hearing dates, as well as the other Section 1.140 items, during that telephone conference.

As set out above, Complainant's October 21, 2016 Motion for Summary Judgment is denied, and this case will be set for a Section 1.140 telephone conference in order to assist in establishing a hearing schedule.

So ordered.

Signed this 23rd day of December, 2016, in Washington, D.C.



Channing D. Strother
Administrative Law Judge

Hearing Clerk
Office of Administrative Law Judges
United States Department of Agriculture
South Building, Room 1031-S
Washington, DC 20250
Phone: 202-720-4443
Fax: 202-720-9776