

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) Docket No. 11-0235
)
Mitchell Stanley, d/b/a)
Stanley Brothers Livestock,)
)
Respondent) **Decision and Order**

PROCEDURAL HISTORY

Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on May 17, 2011. The Administrator instituted the proceeding under sections 901-905 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. § 1901 note) [hereinafter the Commercial Transportation of Equine for Slaughter Act]; the regulations issued under the Commercial Transportation of Equine for Slaughter Act (9 C.F.R. pt. 88) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Administrator alleges, on or about May 10, 2007, Mitchell Stanley, d/b/a Stanley Brothers Livestock, commercially transported 27 horses from Bastrop, Louisiana, to Cavel International, in DeKalb, Illinois [hereinafter Cavel], for slaughter, in violation of the Commercial Transportation of Equine for Slaughter Act and the Regulations, and, on or about August 13, 2009, Mr. Stanley commercially transported 36 horses from Hamburg, Arkansas, to Carnicos de Jeres S.A. de C.V., in Jerez, Zacatecas, Mexico [hereinafter Carnicos], for slaughter, in violation of the Commercial Transportation of Equine for Slaughter Act and the Regulations.¹

The Hearing Clerk served Mr. Stanley with the Complaint and a service letter on June 15, 2011.² Mr. Stanley failed to file an answer to the Complaint within 20 days after service, as required by the Rules of Practice (7 C.F.R. § 1.136(a)). The Hearing Clerk sent Mr. Stanley a letter dated July 8, 2011, informing Mr. Stanley that he had not filed a timely response to the Complaint. Mr. Stanley failed to file a response to the Hearing Clerk's July 8, 2011, letter.

On July 13, 2011, in accordance with the Rules of Practice (7 C.F.R. § 1.139), the Administrator filed a Motion for Adoption of Proposed Default Decision and Order [hereinafter Motion for Default Decision] and a Proposed Default Decision and Order. The Hearing Clerk served Mr. Stanley with the Administrator's Motion for Default

¹Compl. ¶¶ II-III.

²Memorandum to the File, dated June 15, 2011, and signed by Carla M. Andrews, Assistant Hearing Clerk.

Decision and the Administrator's Proposed Default Decision and Order on July 19, 2011.³

Mr. Stanley failed to file objections to the Administrator's Motion for Default Decision and the Administrator's Proposed Default Decision and Order within 20 days after service, as required by the Rules of Practice (7 C.F.R. § 1.139).

On August 12, 2011, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ], in accordance with the Rules of Practice (7 C.F.R. § 1.139), issued a Default Decision and Order concluding Mr. Stanley violated the Commercial Transportation of Equine for Slaughter Act and the Regulations, as alleged in the Complaint, and assessing Mr. Stanley an \$11,525 civil penalty.

On September 8, 2011, Mr. Stanley appealed the Chief ALJ's Default Decision and Order to the Judicial Officer. On September 23, 2011, the Administrator filed Complainant's Response to Respondent's Appeal. On September 28, 2011, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision. Based upon a careful review of the record, I affirm the Chief ALJ's Default Decision and Order.

DECISION

Statement of the Case

Mr. Stanley failed to file an answer to the Complaint within the time prescribed in the Rules of Practice (7 C.F.R. § 1.136(a)). The Rules of Practice (7 C.F.R. § 1.136(c))

³United States Postal Service Domestic Return Receipt for article number 7009 1680 0001 9852 7836.

provide the failure to file an answer within the time provided in 7 C.F.R. § 1.136(a) shall be deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to 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, constitutes a waiver of hearing. Accordingly, the material allegations in the Complaint are adopted as findings of fact. I issue this Decision and Order pursuant to 7 C.F.R. § 1.139.

Findings of Fact

1. Mitchell Stanley, d/b/a Stanley Brothers Livestock, owns and operates Stanley Brothers Livestock and has a mailing address in Hamburg, Arkansas.
2. On or about May 10, 2007, Mr. Stanley commercially transported 27 horses from Bastrop, Louisiana, to Cavel, for slaughter but failed to properly fill out the required owner/shipper certificate, VS 10-13. The form had the following deficiencies: (1) the prefix and tag number for one horse's USDA back tag were not recorded, in violation of 9 C.F.R. § 88.4(a)(3)(vi); (2) the form did not indicate the breed or type of any of the horses, in violation of 9 C.F.R. § 88.4(a)(3)(v); and (3) Mr. Stanley did not sign the form on the owner/shipper signature line, in violation of 9 C.F.R. § 88.4(a)(3).
3. On or about August 13, 2009, Mr. Stanley commercially transported 36 horses from Hamburg, Arkansas, to Carnicos, a commercial horse slaughter plant, for

slaughter. None of the horses in the shipment were tagged with a USDA back tag, in violation of 9 C.F.R. § 88.4(a)(2).

4. On or about August 13, 2009, Mr. Stanley commercially transported 36 horses from Hamburg, Arkansas, to Carnicos for slaughter but did not properly fill out the required owner/shipper certificate, VS 10-13. The form had the following deficiencies: (1) the form did not list the date and time that the horses were loaded onto the conveyance, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

5. On or about August 13, 2009, Mr. Stanley commercially transported 36 horses from Hamburg, Arkansas, to Carnicos for slaughter. Mr. Stanley's driver developed engine trouble while en route to the land border port in Eagle Pass, Texas, so he offloaded the horses at Atascosa Livestock Auction in Pleasanton, Texas, and took his truck in for repairs. Mr. Stanley sent a relief driver to Pleasanton, Texas, to load the horses onto a conveyance and take them to the border, but the relief driver did not prepare a second owner/shipper certificate, VS 10-13, noting the date, time, and place when and where the offloading occurred, in violation of 9 C.F.R. § 88.4(b)(4).

6. On or about August 13, 2009, Mr. Stanley commercially transported 36 horses from Hamburg, Arkansas, to Carnicos for slaughter. One of the horses in the shipment, bearing Louisiana back tag # 72DL3 285, had a severe laceration on the inside of its left rear leg that was causing the horse obvious physical distress. A USDA representative informed Mr. Stanley about the injured horse and directed him to seek

veterinary assistance to alleviate the suffering of the horse. Despite being informed about the horse's injury and directed to obtain veterinary assistance for the injured horse from an equine veterinarian, Mr. Stanley did not obtain veterinary assistance for the horse and the horse had to be euthanized. Mr. Stanley thus failed to obtain veterinary assistance as soon as possible from an equine veterinarian for a horse that was in obvious physical distress, in violation of 9 C.F.R. § 88.4(b)(2). Mr. Stanley also failed to comply with the directions of a USDA representative to take appropriate actions to alleviate the suffering of the injured horse, in violation of 9 C.F.R. § 88.4(e).

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. By reason of the Findings of Fact set forth in this Decision and Order, Mr. Stanley violated the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note) and the Regulations (9 C.F.R. pt. 88).

Mr. Stanley's Appeal Petition

Mr. Stanley raises three issues in his letter filed September 8, 2011 [hereinafter Appeal Petition]. First, Mr. Stanley denies some of the allegations of the Complaint (Appeal Pet. at 1).

The Hearing Clerk served Mr. Stanley with the Complaint on June 15, 2011.⁴ Mr. Stanley was required by the Rules of Practice to file a response to the Complaint

⁴See note 2.

within 20 days after the Hearing Clerk served him with the Complaint;⁵ namely, no later than July 5, 2011. The Rules of Practice provide that failure to file a timely answer shall be deemed, for purposes of the proceeding, an admission of the allegations in the complaint.⁶ Mr. Stanley's denial of the allegations of the Complaint in his Appeal Petition, filed September 8, 2011, 2 months 3 days after Mr. Stanley was required to file an answer, comes far too late to be considered. As Mr. Stanley has failed to file a timely answer, Mr. Stanley is deemed to have admitted the material allegations of the Complaint, and I reject his late-filed denial of the allegations of the Complaint.

Second, Mr. Stanley asserts he is not able to pay the \$11,525 civil penalty assessed by the Chief ALJ. Mr. Stanley requests that I reduce the \$11,525 civil penalty assessed by the Chief ALJ to an amount that he is able to pay. Mr. Stanley asserts he can pay a \$1,000 civil penalty in installments. (Appeal Pet. at 1.)

Neither the Commercial Transportation of Equine for Slaughter Act nor the Regulations provide that a respondent's ability to pay a civil penalty is a factor that must be considered when determining the amount of the civil penalty to be assessed for violations of the Commercial Transportation of Equine for Slaughter Act and the Regulations. I have consistently rejected requests that I consider a respondent's ability to pay a civil penalty when determining the amount of the civil penalty to be assessed in

⁵See 7 C.F.R. § 1.136(a).

⁶See 7 C.F.R. § 1.136(c).

cases involving violations of the Commercial Transportation of Equine for Slaughter Act and the Regulations.⁷ Therefore, I reject Mr. Stanley's request that I reduce the \$11,525 civil penalty assessed by the Chief ALJ based upon Mr. Stanley's inability to pay that civil penalty.

Third, Mr. Stanley states the Chief ALJ's findings have made him physically ill and emotionally upset (Appeal Pet. at 1-2).

I have no reason to doubt Mr. Stanley's assertions regarding the impact of the Chief ALJ's findings on his physical health and emotional state. While I empathize with Mr. Stanley, the impact of an administrative law judge's decision on a respondent's physical and emotional health is not a basis for setting aside that decision.

For the foregoing reasons, the following Order is issued.

ORDER

Mitchell Stanley, d/b/a Stanley Brothers Livestock, is assessed a civil penalty of \$11,525. This civil penalty shall be paid by certified check or money order payable to the "Treasurer of the United States" and sent to:

U.S. Bank
P.O. Box 979043
St. Louis, MO 63197

⁷See *In re William Richardson* (Order Denying Pet. to Reconsider), __ Agric. Dec. ___, slip op. at 11-12 (Oct. 28, 2010); *In re Leroy H. Baker, Jr.* (Order Denying Pet. to Reconsider), 67 Agric. Dec. 1259, 1261-62 (2008).

Payment of the civil penalty shall be sent to, and received by, the U.S. Bank within 30 days after service of this Order on Mr. Stanley. Mr. Stanley shall state on the certified check or money order that payment is in reference to Docket No. 11-0235.

Done at Washington, DC

October 4, 2011

William G. Jenson
Judicial Officer