UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 15-0015

USDA
RECEIVED
JAN 11 2016
OALJ / HCO
WASH, DC

In re:

BETH ANN TINSLEY,

Respondent.

Appearances:

Sharlene Deskins, Esq. for Complainant

Beth Ann Tinsley, pro se Respondent

Before:

Janice K. Bullard
Administrative Law Judge

DECISION AND ORDER ON THE RECORD

The above captioned matter involves a complaint filed by the Administrator of the Animal and Plant Health Inspection Service ("APHIS"), an agency of the United States Department of Agriculture ("USDA"; "Complainant"), against Beth Ann Tinsley ("Respondent"), alleging violations of the Animal Welfare Act, as amended (7 U.S.C. §§ 2131- 2159)("the Act"). Respondent filed an answer.

Upon review of the record, I have concluded that there are no material facts in dispute, that Respondent admitted to the allegations, and that a Decision on the Record is appropriate. The instant decision[1] is based upon consideration of the pleadings, arguments and explanations of the parties, and controlling law.

[1]In this Decision & Order, Complainant's ' evidence shall be denoted as "PX-[exhibit #]"and Respondents' evidence shall be denoted as "RX-[exhibit number]". Exhibits admitted to the record sua sponte shall be denoted as "ALJX-[exhibit number]".

I. ISSUES

1. Whether Respondent violated the AWA, and if so;
2. The nature of sanctions, if any, that should be imposed.

II. STATEMENT OF THE CASE

1. Procedural History

On October 23, 2014, Complainant filed a complaint against Respondent with the Hearing Clerk for the Office of Administrative Law Judges of the United States Department of Agriculture ("OALJ"), alleging violations of the AWA. On November 24, 2014, Respondent filed correspondence with handwritten notations that I deem to be an Answer[2], together with some documents that I hereby identify as RX-1. By Order issued February 27, 2015, I set deadlines for the parties to exchange evidence and exhibit and witness lists, and to file copies of the lists with the Hearing Clerk. By notice filed May 26, 2015, counsel for Complainant advised that submissions had been exchanged and lists were filed. Respondent did not file lists.

By Order issued October 8, 2015, I concluded that an Order on the Record was appropriate and directed the parties to file all documents. On October 29, 2015, Complainant filed CX-1 through CX-7. On November 19, 2015, Complainant filed a motion for adoption of its proposed Decision and Order on the Record. Respondent did not file any additional evidence, and did not file a response to Complainant's motion.

2. Statutory and Regulatory Authority

The AWA vests USDA with the authority to regulate the transportation, purchase, sale, housing, care, handling and treatment of animals subject to the Act. Pursuant to the AWA, persons who sell and transport regulated animals, or who use animals for research or exhibition,

[2] Respondent made hand-written notations on a copy of the complaint and the letter forwarding the complaint, and attached documents.

must obtain a license or registration issued by the Secretary of the USDA. 7 U.S.C. §2133. Further, the Act authorizes USDA to promulgate appropriate regulations, rules, and orders to promote the purposes of the AWA. 7. U.S.C. § 2151. The Act and regulations fall within the enforcement authority of the Animal Plant Health Inspection Service ("APHIS"), an agency of USDA, that is authorized to regulate and inspect AWA licensees to determine compliance with the AWA.

The AWA provides that sanctions may be assessed for violations of the Act. 7 U.S.C. § 2149. Sanctions may consist of civil money penalties of up to $10,000 per violation, license suspension or revocation, and an Order to cease and desist from further violating the Act.

3. Summary of the Evidence

A. Documentary Evidence

RX-1	Statements of Respondent on Complaint and other written statements;
RX-2	Medical records from Respondent's hospitalization (these documents are filed under seal to protect Respondent's privacy)
RX-4	Handwritten announcement of intent to close the business and sell animals
RX-5	APHIS Form 7006 dated March 12, 2011, Record of Disposition of Dogs and Cats and attached auction documents
CX-1	Inspection Report dated July 21, 2010
CX-2	Photographs from inspection of July 21, 2010
CX-3	November 13, 2010, Affidavit of Respondent Beth Ann Tinsley
CX-4	Veterinary Care forms
CX-5	Inspection Report of July 21, 2010 with notations from Respondent
CX-6	Copy of AWA license No 48-A-207 issued to Respondent Beth Ann Tinsley, expiration date January 30, 2011

CX-7 Respondent Beth Ann Tinsley's January 13, 2010, application to renew AWA license

4. Discussion

At all times relevant to this adjudication, Respondent operated a breeding business that brought her within the scope of the AWA, and that required her to be licensed and her premises to be inspected by APHIS. Respondent held a valid AWA license on July 21, 2010, when she refused access to her facility to allow inspection by APHIS Inspector Karl Thorton. Respondent admitted that she had directed Mr. Thorton to leave her premises and interrupted the inspection. She admitted using vulgar expletives in her conversation with Mr. Thorton, and attributed her conduct to her physical condition, for which she had been hospitalized. CX-3; CX-5; RX-1. Respondent also admitted that she had prevented Mr. Thorton from inspecting her records on July 21, 2010. CX-3; CX-5; RX-1.

Respondent further admitted that some of her animals needed to be groomed, and she contended that she took care of this. An AKC Compliance Report dated June 8, 2011, found her in compliance with AKC rules and regulations. RX-3.

Respondent contends that she has closed her business. Documents support that Respondent sold or otherwise disposed of her animals in March 2011. RX-4 and RX-5.

There is no dispute that Respondent interfered with APHIS officials, failed to properly groom dogs in a manner establishing adequate veterinary care, and failed to provide access and inspection of records and property to APHIS officials. Complainant has met its burden of proving that Respondent willfully violated the AWA and regulations set forth at 9 C.F.R. §

Sanctions

APHIS has recommended that Respondent be Ordered to cease and desist from violating the Act and regulations and that her license be revoked. It is not entirely clear from the

record before me that Respondent currently holds a valid AWA license. However, in an abundance of caution, I find it appropriate to impose the sanctions recommended by APHIS, as they are supported by the record.

III. FINDINGS OF FACT

1. Respondent Beth Ann Tinsley is an individual with a mailing address in Kansas..
2. At all times relevant to this adjudication, Respondent operated as a Class A licensee under the AWA, as defined by 9 C.F.R. § 1.1.
3. Respondent's license is No. 48-A-2077.
4. On July 21, 2010, Respondent interrupted an inspection of her facility by an APHIS inspector, and refused to allow APHIS to inspect her animals, facilities and records.
5. The brief inspection that the inspector had conducted revealed four dogs with matted fur.

IV. CONCLUSIONS OF LAW

1. The Secretary has jurisdiction over this matter.
2. There is no factual dispute involving the material issue in this matter, and no need for an oral hearing in this matter.
3. Respondent's refusal to allow APHIS to inspect her animals, facilities and records constitutes a willful violation of the AWA, 7 U.S.C. § 2146 and the regulations set forth at 9 C.F.R. § 2.126.
4. Respondent's failure to maintain a program of adequate veterinary care constitutes a willful violation of 9 C.F.R. § 2.40, as at least four dogs demonstrated lack of daily observation and care.
5. Respondent's interference with APHIS inspectors, and her threatening and abusive conduct to an APHIS employee constitutes a willful violation of 9 C.F.R. § 2.4.

ORDER

Beth Ann Tinsley and her agents, employees, successors and assigns, directly or indirectly through any individual, corporate or other device is hereby ORDERED to cease and desist from further violations of the Act and controlling regulations.

Respondent's AWA license is hereby revoked to further the purposes of the Act, as explained in this Decision and Order. Respondent is permanently disqualified from applying for or obtaining a license under the Animal Welfare Act. Respondent may not individually, through any partnership or through any corporate device engage in any activities requiring a license under the Animal Welfare Act.

This Decision and Order shall become final and effective without further proceedings thirty-five (35) days after service on Respondents, unless appealed to the Judicial Officer for the U.S. Department of Agriculture by a party to the proceeding within thirty (30) days after service, pursuant to 7 C.F.R. §§ 1.139, 1.145.

The Hearing Clerk shall serve copies of this Decision and Order upon the parties.

So ORDERED this 11th day of January, 2015, in Washington, D.C.

Janice K. Bullard
Administrative Law Judge