

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

AWA Docket No. 10-0046

In re: Julie McGuire, d/b/a
Shelty Acres,

Respondent

Default Decision and Order

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 et seq.), by an complaint filed by the Administrator, Animal and Plant Health Inspection Service ("APHIS"), United States Department of Agriculture, alleging that the Respondent willfully violated the Act and the regulations issued thereunder (9 C.F.R. § 1.1 et seq.). Copies of the complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were served on the Respondent by regular mail on December 29, 2009 after the attempt to serve the Complaint by certified mail was returned as unclaimed. The Respondent was informed in the letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

The Respondent failed to file an answer to the complaint within the time prescribed in Section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) and the failure to deny or otherwise respond to an allegation of the complaint shall be deemed an admission of the allegations in the complaint. Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) provides that the failure to file

an answer constitutes a waiver of hearing. Accordingly, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Julie McGuire, hereinafter referred to as the Respondent, is an individual with a mailing address in Hermitage, Missouri.
2. The Respondent, at all times material herein, was operating as a dealer as defined in the Act and the regulations.
3. The Respondent at various times since 1999 has held a license which has either been terminated or expired. The respondent's last license expired on September 3, 2004. While the Respondent was licensed and annually she received copies of the Act and the regulations and standards issued thereunder and agreed in writing to comply with them.
4. On or about December 28, 2004 and continuing thereafter the Respondent sold dogs without a valid USDA license, in willful violation of section 2.1(a)(1) of the regulations (9 C.F.R. § 2.1(a)(1)). The Respondent sold, in commerce, at least 19 animals for resale for use as pets. The sale of each animal constituted a separate violation.
5. On January 13, 2005, APHIS inspected Respondent's premises and found that the Respondent had failed to maintain programs of adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine, in willful violation of section 2.40(a)(1) of the regulations (9 C.F.R. § 2.40(a)(1)).
6. On January 13, 2005, APHIS inspected Respondent's premises and found that Respondent had failed to identify all live dogs on the premises, in willful violation of section 2.50(a)(1) of the regulations (9 C.F.R. § 2.50(a)(1)).

7. On January 13, 2005, APHIS inspected Respondent's premises and found that Respondent had failed to keep and maintain records which fully and correctly disclose information concerning each dog purchased or held, in willful violation of section 2.75(a)(1) of the regulations (9 C.F.R. § 2.75(a)(1)).

8. On January 13, 2005, APHIS inspected the Respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

a. Respondent failed to keep and maintain interior surfaces impervious to moisture, in willful violation of section 3.2(d) of the regulations (9 C.F.R. § 3.2(d));

b. Outdoor housing facilities failed to provide shelter which provided wind and rain breaks at the entrance, in willful violation of section 3.4(b)(3) of the regulations (9 C.F.R. § 3.4(b)(3));

c. Respondent failed to provide clean and dry bedding to dogs housed in outdoor shelters, in willful violation of section 3.4(b)(4) of the regulations when the temperature was in the 30 degrees Fahrenheit range (9 C.F.R. § 3.4(b)(4));

d. Respondent failed provide primary enclosures which securely contained the animals, in willful violation of section 3.6(a)(2)(iii) of the regulations (9 C.F.R. § 3.6(a)(2)(iii)); and

e. Respondent failed to provide housing that was clean and free from an accumulation of junk, in willful violation of section 3.11 (c) of the regulations (9 C.F.R. § 3.11 (c)).

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. By reason of the facts set forth in the “Findings of Fact” above, the Respondent has willfully violated the Act and regulations promulgated under the Act.

Order

1. Respondent, her 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, and in particular, shall cease and desist from:

a. Engaging in any activity for which a license is required under the Act and regulations without being licensed as required;

b. Failing to establish and maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine;

c. Failing to individually identify animals, as required;

d. Failing to maintain records of the acquisition, disposition, description, and identification of animals, as required.

e. Failing to construct and maintain housing facilities for animals so that surfaces may be readily cleaned and sanitized or be replaced when necessary;

f. Failing to provide animals with adequate shelter from the elements;

g. Failing to keep the premises clean and in good repair and free of accumulations of trash, junk, waste, and discarded matter, and to control weeds, grasses and bushes; and

h. Failing to construct and maintain housing facilities for animals so that they are structurally sound and in good repair in order to protect the animals from injury, contain them securely, and restrict other animals from entering.

2. The Respondent is assessed a civil penalty of \$18,225.00.00 which shall be paid by a certified check or money order made payable to the Treasurer of United States.
3. The Respondent is disqualified from getting a license under the Act and regulations for three years and is prohibited from engaging in any activity requiring a license under the Act. The Respondent is disqualified from obtaining a license under the Act until the civil penalty assessed in this order is paid.
4. Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this Default Decision and Order shall be served upon the parties.

November 5, 2010

Peter M. Davenport
Chief Administrative Law Judge