

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0242

In re: Nicholas Plafcan,

Respondent

Default Decision and Order

Preliminary Statement

This disciplinary proceeding was instituted under the Horse Protection Act, as amended (15 U.S.C. § 1821 *et seq.*), by a Complaint filed on May 20, 2013, by Kevin Shea, then the Acting Administrator, Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, alleging that Respondent violated the Act.

The Complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130) (rules of practice) were sent to the Respondent by certified mail on May 21, 2013; however the mailing was returned by the United States Postal Service as “unclaimed.” The Respondent was then consistent with the Rules served by regular mail on June 26, 2013.

Respondent was informed in the Complaint and the accompanying letter of service that an Answer should be filed pursuant to the rules of practice and that failure to answer would constitute an admission of all the material allegations contained in the complaint and a waiver of hearing.

Respondent failed to file an Answer and is deemed to have admitted the material facts alleged in the complaint and waived his right to a hearing. Accordingly, the following Findings

of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the rules of practice applicable to this proceeding (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Nicholas Plafcan is an individual with a mailing address in Van Buren, Missouri.
2. On or about August 9, 2011, Respondent entered for the purpose of showing or exhibiting the horse known as “Watch My Expression” as entry number 172, class number 251 at the Missouri State Fair Society Horse Show in Sedalia, Missouri.
3. On or about August 9, 2011, Respondent showed or exhibited the horse known as “Watch My Expression” as entry number 172, class number 251 at the Missouri State Fair Society Horse Show in Sedalia, Missouri.
4. On or about August 9, 2011, Respondent entered for the purpose of showing or exhibiting the horse known as “Watch My Expression” as entry number 172, class number 251 at the Missouri State Fair Society Horse Show in Sedalia, Missouri, while the horse was sore.
5. On or about August 9, 2011, Respondent showed or exhibited the horse known as “Watch My Expression” as entry number 172, class number 251 at the Missouri State Fair Society Horse Show in Sedalia, Missouri, while the horse was sore.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent Nicholas Plafcan violated sections 5(2)(A) and 5(2)(B) of the Act (15 U.S.C. §§ 1824(2)(A) and (2)(B)).

Order

1. Respondent is disqualified for a period of one year, from entering, showing or exhibiting any horse, directly or indirectly through any agent, employee, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, or horse sale or auction. "Participating" means engaging in any activity beyond that of being a spectator, and includes, without limitation, transporting or arranging for the transportation of horse to or from equine events, personally giving instructions to exhibitors, being present in warm-up or inspection areas, or in any area where spectators are not allowed, and financing the participation of others in equine events.
2. Respondent is assessed a civil penalty in the amount of two thousand, two hundred dollars (\$2,200.00). Respondents shall send a certified check or money order for fifteen thousand dollars (\$2,200.00), payable to the Treasurer of the United States and sent U.S. Department of Agriculture, to Darlene M. Bolinger, Office of the General Counsel, Room 2343, South Building, 1400 Independence Avenue, SW, Washington, DC 20250. Respondent shall indicate on the certified check or money order that payment is in reference to Docket No. 13-0242.
3. This decision shall become final and effective without further proceedings 35 days after the date of service upon respondents, unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to Section 1.145 of the rules of practice (7 C.F.R § 1.145).

Copies of this decision shall be served upon the parties.

November 7, 2013

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge