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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 15-0041-HPA

In re:

TRACY ESSARY,

Respondent.

DECISION AND ORDER

This disciplinary proceeding instituted under the Horse Protection Act, as amended (15 U.S.C. § 1821 et seq.)(Act), was initiated by a complaint filed by the Administrator, Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (Complainant) alleging that Tracy Essary (Respondent) violated the Act and the regulations promulgated thereunder (9 C.F.R. §§11.1-11.40).

The Complaint alleges that on August 25, 2012, Respondent entered for the purpose of showing or exhibiting the horse known as "Jose's Diamond Doll" as entry number 820, class number 76 at the 74th Annual Tennessee Walking Horse National Celebration in Shelbyville, Tennessee, while the horse was sore. The Complaint further alleges that on August 26, 2012, Respondent, owner of the horse "Out on a Date", allowed the entry of the horse for the purpose of showing or exhibiting the horse as entry number 819 in class number 91A at the 74th Annual Tennessee Walking Horse National Celebration, in Shelbyville, Tennessee, while the horse was sore.

I. PROCEDURAL HISTORY

The complaint was filed on December 8, 2014. Respondent filed an Answer on March 11, 2015. The Respondent's Answer was a general denial of all allegations. On April 24, 2015, I issued an Order Setting Deadlines for the Exchange of Evidence. Complainant filed the required

information with the Hearing Clerk for the Office of Administrative Law Judges (OALJ) on July 17, 2015, and sent the submissions to Respondent. Respondent failed to exchange evidence or file submission by the deadline of 4:30 p.m. E.S.T., on September 18, 2015.

On December 22, 2015, I issued an Order directing Respondent to Show Cause Why Decision on the Record Should Not Be Entered and Setting Date for Submission of evidence. I instructed the parties to file with the Hearing Clerk all evidence and argument by not later than that date.

On January 29, 2016, Complainant filed a Motion for Decision on the Record, exhibits in support of the Motion for a Decision on the Record, Memorandum of Points and Authorities, and requested the issuance of a proposed Decision and Order. I hereby admit to the record Complainant's evidence identified as CX-1 to CX-14. The motion was served upon Respondent by certified mail and receive on February 23, 2016, as confirmed by the United States Postal Service's online tracking system. Respondent did not object to the motion and did not file any evidence.

The record is now closed, and the Motion for a Decision on the Record is hereby GRANTED. This Decision and Order is issued on unopposed motion of Complainant, and incorporates all of the pleadings of the parties and all other evidence of record.

II. FINDINGS OF FACT

1. Respondent Tracy Essary's mailing address is in Mississippi.
2. On August 25, 2012, the 74th Annual Tennessee Walking Horse National Celebration took place in Shelbyville, Tennessee.
3. Respondent Tracy Essary entered for the purpose of showing or exhibiting the horse known as "Jose's Diamond Doll" as entry number 820, class number 76 at the 74th Annual Tennessee Walking Horse National Celebration in Shelbyville, Tennessee.
4. Jose's Diamond Doll's registration number was 20311914. His Entry number was 820 and he was in Class number 76.

5. On or about August 25, 2012, Respondent Tracy Essary presented the horse Jose's Diamond Doll for pre-show examination.
6. Jose's Diamond Doll was inspected by Jeffrey Baker, Veterinary Medical Officer, Animal Care, Animal and Plant Health Inspection Service, USDA.
7. Jeffrey Baker is a Doctor of Veterinary Medicine.
8. Prior to Dr. Baker's inspection, Designated Qualified Person (DQP) Mitchell Butler had examined the horse and found it unilateral sore and in violation of the scar rule.
9. Dr. Baker noted that Jose's Diamond Doll did not demonstrate any gait abnormalities during his inspection.
10. Dr. Baker noted that upon palpating the left posterior pastern, the horse exhibited consistent withdrawal responses.
11. Dr. Baker observed non-uniformly thickened areas of epithelial tissue along the left posterior pastern. Upon palpating that area, he identified scars.
12. Dr. Baker looked at his hand after palpation of the left posterior pastern and saw that his right thumb had a black substance on its surface.
13. Dr. Baker proceeded to palpate the anterior, lateral and medial aspects of the left pastern. Upon palpating the lateral area, the horse exhibited consistent withdrawal responses.
14. Dr. Baker then proceeded to examine the right leg of Jose's Diamond Doll.
15. Dr. Baker noted that upon palpating the right posterior pastern, the horse exhibited consistent withdrawal responses.
16. Dr. Baker observed non-uniformly thickened areas of epithelial tissue along the right posterior pastern. Upon palpating that area, he identified scars.

17. Dr. Baker proceeded to palpate the anterior, lateral and medial aspects of the right pastern. He did not identify any reactions or abnormalities upon palpating these areas of the right pastern.
18. Based on his examination, it is Dr. Baker's professional opinion that Jose's Diamond Doll was sore under the HPA.
19. Dr. Baker informed the custodian Tracy Essary that the horse was in violation of the HPA and would be excused from the class and the rest of the show.
20. Respondent Tracy Essary is the owner of the horse known as Out on a Date.
21. On August 26, 2012, the 74th Annual Tennessee Walking Horse National Celebration took place in Shelbyville, Tennessee.
22. Respondent Tracy Essary allowed the entry of "Out on a Date" for the purpose of showing or exhibiting the horse known as "Out on a Date" as entry number 819, class number 91A at the 74th Annual Tennessee Walking Horse National Celebration in Shelbyville, Tennessee.
23. The Entry Form and Class Sheet for the 74th Annual Tennessee Walking Horse National Celebration indicate that Tracy Essary was the owner of Out on a Date.
24. Out on a Date's registration number was 20802812. His Entry number was 819 and he was in Class number 91A.
25. On or about August 26, 2012, Out on a Date was presented for a pre-show inspection.
26. Out on a Date was inspected by Bart Sutherland, Veterinary Medical Officer, Animal Care, Animal and Plant Health Inspection Service, USDA.
27. Bart Sutherland is a Doctor of Veterinary Medicine.
28. Dr. Sutherland noted that Out on a Date did not demonstrate any gait abnormalities during his inspection.

29. Dr. Sutherland noted that upon palpating the left posterior pastern he did not observe a reaction.

30. Dr. Sutherland noted that upon palpating the left posterior pastern, the horse made repeated and consistent pain withdrawal responses.

31. Dr. Sutherland noted that upon palpating the left anterior pastern area, the horse made repeated and consistent pain withdrawal responses.

32. Dr. Sutherland then proceeded to examine the right leg of Out on a Date.

33. Dr. Sutherland noted that upon palpating the right posterior pastern, the horse made repeated and consistent withdrawal responses.

34. Based on his examination, it is Dr. Sutherland's professional opinion that Out on a Date was sore and that such soring was caused by chemical, mechanical, and/or action devices.

III. CONCLUSIONS OF LAW

1. The Secretary has jurisdiction over this matter.

2. Respondent Tracy Essary entered for the purpose of showing or exhibiting the horse known as "Jose's Diamond Doll" as entry number 820 in class number 76, at the 74th Annual Tennessee Walking Horse National Celebration in Shelbyville, TN, in violation of section 5(2)(B) of the Act (15 U.S.C. § 1824(2)(B)) and of section 5(7) of the Act (15 U.S.C. § 1824(7)), while the horse was sore (9 C.F.R. § 11.3(b)).

3. Respondent Tracy Essary, in violation of section 5(2)(D) of the Act (15 U.S.C. § 1824(2)(D)), allowed the entry for the purpose of showing or exhibiting the horse known as "Out on a Date" as entry number 819 in class number 91A, at the 74th Annual Tennessee Walking Horse National Celebration in Shelbyville, TN, while the horse was sore.

ORDER

By reason of the Findings of Fact set forth above, the Respondent has violated the Act and therefore, the following Order is issued.

1. The Respondent is disqualified for a period of two (2) uninterrupted years from showing, exhibiting, or entering 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 a spectator, and includes, without limitation, transporting or arranging for the transportation of horses to or from equine events, personally giving instructions to exhibitors, being present in the warm-up or inspection areas, or in any area where spectators are not allowed, and financing the participation of others in equine events.

2. The Respondent is assessed a civil penalty of four thousand and four hundred dollars ($4,400.00). The assessed civil penalty shall be payable by certified check or money order to the Treasurer of the United States with the notation "HPA Docket No.: 15-0041".

This Order shall have the same force and effect as if entered after a full hearing. The provisions of this Order shall be final and effective thirty five (35) days after service of this Decision and Order upon the Respondents, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

Copies of this Order shall be served upon the parties.

So Ordered this 12th day of April, 2016, in Washington, D.C.

[redacted]

Janice K. Bullard
Administrative Law Judge