USDA
OALJ/OHC
2016 FEB 17 PM 1:46
RECEIVED

**UNITED STATES DEPARTMENT OF AGRICULTURE**
**BEFORE THE SECRETARY OF AGRICULTURE**

Docket No. 15-0074 HPA

In re:

MARVIN NORTH,

Respondent.

**DECISION WITHOUT HEARING BY REASON OF ADMISSIONS**

## I. PRELIMINARY STATEMENT

The instant matter involves allegations by the Administrator, Animal and Plant Health Inspection Service ("APHIS") of the United States Department of Agriculture ("USDA"; "Complainant") that Marvin North ("Respondent") violated provisions of the Horse Protection Act as amended and supplemented, 15 U.S.C. §§ 18121-1831 ("the Act").

## II. ISSUES

1. Whether entry of default Decision and Order is appropriate, and if so;
2. Whether Complainant's recommended sanctions should be imposed.

## III. PROCEDURAL HISTORY

On February 10, 2015, Complainant filed a complaint with the Hearing Clerk, Office of Administrative Law Judges ("OALJ"; "Hearing Clerk"), alleging that Respondent had violated the Act. On the same date, the Hearing Clerk sent the complaint to Respondent by certified and regular mail, and informed Respondent that an Answer should be filed pursuant to the Rules of Practice Governing Formal Adjudications before the Secretary of USDA ("the Rules of Practice"). The mail was returned as "undeliverable, addressee unknown".

A new address was located for Respondent, and the complaint was resent. Tracking records maintained by the United States Postal Service ("USPS") reflect that the certified mail

was delivered on March 3, 2015, but delivery of the certified mail was refused. By Order issued April 1, 2015, I directed Complainant to deliver the complaint personally to Respondent. On November 3, 3015, an employee of APHIS went to the known address of Respondent and left a copy of the complaint with Respondent's brother, who agreed to give Respondent the documents.

Respondent did not file an answer. On December 10, 2015, Complainant filed a motion for a Decision and Order on the record by reason of default. The certified return receipt for the delivery of the motion was signed on December 14, 2015, by an individual identifying himself as "agent". Respondent did not file an objection to the motion.

## IV. AUTHORITIES

Pursuant to the Rules of Practice, a respondent is required to file an Answer within twenty (20) days after service of a Complaint. 7 C.F.R. § 1.136(a). The Rules of Practice also provide that an Answer "shall . . . [c]learly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent." 7 C.F.R. § 1.136(b)(1). The failure to timely file an Answer or failure to deny or otherwise respond to an allegation proffered in the Complaint shall be deemed admission of all the material allegations in the Complaint; in such situation, default shall be appropriate. 7 C.F.R. § 1.136(c).

The Rules of Practice also state that a document sent by the Hearing Clerk "shall be deemed to be received by any party to a proceeding . . . on the date of delivery by certified or registered mail. . ." 7 C.F.R. § 1.147(c)(1). The Rules of Practice further provide that "[t]he failure to file an answer … shall constitute a waiver of the hearing. Upon such. . . failure to file, complainant shall file a proposed decision along…Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto." 7 C.F.R. § 1.139

## V. DISCUSSION

The record reflects that service was personally made at the known address of the Respondent, and pursuant to 7 C.F.R. § 1.147(c), I deem that service was properly effected. Respondent failed to file an answer. The record further reflects that Respondent failed to file a response to Complainant's motion. By failing to file an Answer to the complaint, Respondent has waived his right to a hearing, and pursuant to 7 C.F.R. § 1.136 (c), Respondent is hereby deemed to have admitted the allegations set forth in the complaint. Entry of Decision and Order by reason of admissions is appropriate, pursuant to 7 C.F.R. §1.139. Complainant's proposed sanctions are warranted.

## VI. FINDINGS OF FACT

1. Marvin North is an individual with a mailing address in the state of Tennessee.
2. Respondent failed to file an answer to Complainant's complaint.
3. On April 27, 2013, Respondent Marvin North entered a horse known as "Perfection of Jazz" as Entry No. 302, Class No. 58, at the 2013 Gulf Coast Charity Trainers Show in Panama City, Florida, for the purpose of showing or exhibiting the horse.
4. The horse was determined to be sore upon inspection.

## VII. CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. Default Decision and Order is appropriate, and Respondent is deemed to have admitted the allegations set forth in the complaint.
3. Respondent violated the Act (15 U.S.C. § 1824(2)(B)) by entering for the purposes of showing or exhibiting the horse known as "Perfection of Jazz" as Entry No. 302, Class No. 58, at the 2013 Gulf Coast Charity Trainers Show in Panama City, Florida, while the horse was sore.

4. Respondent's violation of the Act supports the imposition of sanctions.

**ORDER**

1. Respondent Marvin North is assessed a penalty of $2,200.00, which shall be paid by certified check or money order made payable to the Treasurer of the United States, and marked with the docket number of the instant cause of action.
2. Respondent Marvin North is disqualified for one year 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 of 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. The disqualification shall continue after the end of the five year disqualification period until the civil penalty assessed in this order is paid in full. The disqualification shall start on the date this Order is final..

Pursuant to the Rules of Practice, this Decision becomes final without further proceedings 35 days after service, in accordance with 7 C.F.R. §§ 1.142 and 1.145. The provisions of this Order shall become effective on the first day of the month after this Decision shall become final.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk.

So ORDERED this 17th day of February, 2016, at Washington, D.C.

Janice K. Bullard
Administrative Law Judge