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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	[HPA]
	)	Docket No. **16-0026**
Rocky Roy McCoy	)	
	)	
Respondent	)	**Ruling Denying Default Judgment**

Appearances:

Buren W. ("Chip") Kidd, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant (APHIS); [1] and

David F. Broderick, Esq., and R. Taylor Broderick, Esq., Broderick & Davenport, PLLC, Bowling Green, KY, for Respondent Rocky Roy McCoy.

1. The Complaint was filed on December 11, 2015, and a copy served on Respondent Rocky Roy McCoy on February 12, 2016.

2. Respondent Rocky Roy McCoy failed to file an answer with the Hearing Clerk by March 3, 2016. Respondent Rocky Roy McCoy filed his Answer on March 22, 2016.

3. APHIS had filed a Motion for Adoption of Proposed Decision and Order on March 10, 2016. Respondent Rocky Roy McCoy filed his Response and Objection to that Motion on March 22, 2016, at the same time he filed his Answer.

4. Respondent Rocky Roy McCoy filed his Amended Answer on March 25, 2016 (which is identical to his Answer except to correct the spelling of his street address).

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1. The Complainant is the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture ("APHIS" or "Complainant").

5. APHIS filed a Response to Rocky Roy McCoy's Response and Objection on April 5, 2016. Rocky Roy McCoy filed his Memorandum of Law in support of his Response and Objection on April 6, 2016.

6. Meritorious objections to entry of a Default Judgment have been timely filed. *See* Rocky Roy McCoy's Memorandum of Law in support of his Response and Objection filed on April 6, 2016; his Response and Objection filed on March 22, 2016; and his Answer and Amended Answer. I DENY the Motion for Adoption of Proposed Decision and Order, filed on March 10, 2016, with four supporting reasons.

7. Supporting Reason No. 1 for Denying Default Judgment: Respondent Rocky Roy McCoy's financial difficulties which kept him from immediately procuring counsel, have no doubt now been exacerbated by his having obtained counsel. I appreciate having good lawyers on both sides of a case, as we now have here. I do not prefer that Respondent Rocky Roy McCoy's expenditures to obtain counsel go to waste.

8. Supporting Reason No. 2 for Denying Default Judgment: APHIS is not prejudiced by Rocky Roy McCoy being 2-1/2 weeks late in filing his Answer. If Rocky Roy McCoy, while he was representing himself (appearing *pro se*), had only known to telephone to request more time, he would have been instructed to file such request and would have been granted at least that 2-1/2 weeks.

9. Supporting Reason No. 3 for Denying Default Judgment: Default Judgments are not preferred, because they are not decided on the merits. I would prefer to hold a hearing and decide the issues based on evidence. Further, if the parties are given time to negotiate, many Horse Protection Act cases such as this are resolved by the parties themselves, who prepare and sign a proposed Consent Decision for the judge's consideration. When the judge issues a Consent Decision, there is no further litigation: there is no appeal to the Judicial Officer, and there is no appeal to the U.S. Court of Appeals.

10. Supporting Reason No. 4 for Denying Default Judgment: Rocky Roy McCoy has already dealt with this same alleged Horse Protection Act violation through the Horse Industry Organization SHOW. *See* p. 3 of Rocky Roy McCoy's Memorandum of Law. While that action will not bar this action, I would prefer that some explanation be provided to Rocky Roy McCoy.

11. **The parties shall deliver all filings directly to the Hearing Clerk**. The Hearing Clerk's contact information is at the bottom of the last page, including not only address, but also FAX number. Filings should ordinarily be submitted in quadruplicate and must ***arrive*** in the Hearing Clerk's office earlier than 4:30 pm Eastern to be stamped "Received" on the arrival date. Please use a next-business-day delivery service through a commercial carrier

such as FedEx or UPS to ensure timely filing. [Mail through the U.S. Postal Service is diverted for irradiation and will be delayed.]

For short filings (a few pages), you may instead utilize the Hearing Clerk's FAX number. Or, e-mail to OALJHearingClerks@ocio.usda.gov if that proves convenient. When FAXing or emailing to the Hearing Clerk, submit once [NOT in quadruplicate].

Copies of this Ruling Denying Default Judgment shall be sent by the Hearing Clerk to each of the parties (by ordinary mail or other ordinary delivery).

Done at Washington, D.C.
this 21st day of April 2016

Jill S. Clifton
Administrative Law Judge

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