ORIGINAL

USDA
OALJ/OHC

2016 MAR 18 AM 9:25

RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

| | | |
|---|---|---|
| In re: | ) | AWA Dockets 15-0157, 15-0158, 15-0159 |
| BARBARA HAMMEN, an individual; MARTIN HAMMEN, an individual; and BARBARA HAMMEN MARTIN HAMMEN, an Iowa general partnership doing business as SRK Kennel, | ) | |
| Respondents. | ) | CONSENT DECISION AND ORDER |

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(AWA or Act), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (APHIS), on August 6, 2015, alleging that the respondents willfully violated the Act and the regulations and standards issued pursuant thereto (9 C.F.R. § 1.1 et seq.)(Regulations and Standards). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

Respondents admit the jurisdictional allegations in the complaint, specifically admit that the Secretary has jurisdiction in this matter, admit the remaining allegations as set forth herein as findings of fact and conclusions of law, waive oral hearing and further procedure, and consent and agree, for the purpose of settling this proceeding, to the entry of this decision. The complainant agrees to the entry of this decision.

Findings of Fact

1. Respondent Barbara Hammen is an individual doing business as SRK Kennel, and whose business address is 2171 220th Street, Jolley, Iowa 50551. At all relevant times, respondent Barbara Hammen was a dealer as that term is defined in the Act and the Regulations and, together

with the other respondents herein, operated a dog breeding facility at the Jolley, Iowa address.

2. Respondent Martin Hammen is an individual doing business as SRK Kennel, and whose business address is 2171 220th Street, Jolley, Iowa 50551. At all relevant times, respondent Martin Hammen was a dealer as that term is defined in the Act and the Regulations and, together with the other respondents herein, operated a dog breeding facility at the Jolley, Iowa address.

3. Respondent Barbara Hammen Martin Hammen (Hammen Partnership) is an Iowa general partnership whose partners are respondents Barbara Hammen and Martin Hammen, and whose business address is 2171 220th Street, Jolley, Iowa 50551. At all relevant times, the Hammen Partnership was a dealer, as that term is defined in the Act and the Regulations, and held AWA license 42-A-1048, and together with the other respondents herein, operated a dog breeding facility at the Jolley, Iowa address.

4. On August 12, 2014, respondents interfered with an APHIS Animal Care Inspector in the course of carrying out her duties, and specifically, respondent Barbara Hammen refused to permit the APHIS inspector to take photographs of respondents' facility and animals, and refused to permit the inspector to enter the facilities to conduct an inspection unless the inspector agreed not to cite respondents for any noncompliance.

5. On March 2, 2015, and April 21, 2015, respondents failed to provide APHIS officials with access to conduct AWA inspections of their facilities, animals and records, or to make an authorized person available to accompany APHIS officials on such inspections.

6. On August 12, 2014, respondents failed to provide APHIS officials with access to conduct AWA inspections of their records, and specifically, respondents could not produce a current written program of veterinary care, and the most recent written program of veterinary care that respondents produced was from 2004 and was obsolete.

7. On or about August 12, 2014, respondents failed to establish and maintain programs of adequate veterinary care that included the use of appropriate methods to prevent, control, and treat diseases and injuries, and adequate guidance to personnel involved in the care and use of animals regarding euthanasia, and specifically, respondents failed to obtain adequate veterinary care for a dog with mastitis, and respondents intended to "euthanize" that dog and several others by gunshot, although respondents' only available written program of veterinary care (2004) stated that gunshot was approved only in the case of "dire emergencies when the vet was unavailable."

8. On or about the following dates, respondents failed to provide adequate veterinary care to the following animals and/or failing to establish programs of adequate veterinary care that included the availability of appropriate services, the use of appropriate methods to prevent, control, and treat diseases, and daily observation of animals, and a mechanism of direct and frequent communication in order to convey timely and accurate information about animals to the attending veterinarian:

a. August 18, 2014. A female Maltese dog (#101352819) had thick yellow-brown material over her cheek teeth and over approximately one-third of the surface area of her upper canine teeth, her upper gums were observed to be red and swollen, and there was a milky grey/white substance along the gum line, and respondents had not had this dog seen by their attending veterinarian for these conditions.

b. November 5, 2014. A male Poodle dog (#4843707F25) had thick yellow-brown material over his cheek teeth and over approximately one-third of the surface area of his upper canine teeth, and his upper gums were observed to be red and swollen, and respondents had not had this dog seen by their attending veterinarian for these conditions.

c. May 28, 2015. A male Yorkshire terrier dog (#109833886) had a build-

up of thick brownish material on his canine and cheek teeth, and two teeth were loose, and respondents had not had this dog seen by their attending veterinarian for these conditions.

d. May 28, 2015. A female Shih-Tzu dog (#0A02380041) was observed to have crusty material around both eyes, and the dog's right eye had an area of irregular opacity, and respondents had not had this dog seen by their attending veterinarian for these conditions.

9. On or about August 18, 2014, respondents failed to meet the Standards for dogs, as follows:

a. The outdoor enclosure housing a St. Bernard dog was in disrepair, with a large hole in the concrete floor.

b. There was a build-up of old and fresh fecal material in an outdoor enclosure housing three St. Bernard dogs.

c. An outdoor enclosure housing three St. Bernard dogs was in disrepair with (1) a damaged gate; (2) damaged fencing; and (3) damaged flooring, and each of these areas had broken wires that were accessible to the dogs.

d. There was a significant build-up of fecal material and urine under the outdoor enclosures housing fifty-one (51) dogs.

Conclusions of Law

1. On August 12, 2014, respondents willfully violated the Act and the Regulations (7 U.S.C. § 2146(a); 9 C.F.R. § 2.126; 9 C.F.R. § 2.4).

2. On March 2, 2015, and April 21, 2015, respondents willfully violated the Act and the Regulations (7 U.S.C. § 2146(a); 9 C.F.R. § 2.126).

3. On August 12, 2014, respondents willfully violated the Regulations (9 C.F.R. §

2.126(a)(2)).

4. On or about August 12, 2014, respondents willfully violated the Regulations (9 C.F.R. § 2.40(b)(2), 9 C.F.R. § 2.40(b)(4)).

5. On or about the following dates, respondents willfully violated the Regulations governing attending veterinarian and adequate veterinary care (9 C.F.R. § 2.40), with respect to the following animals:

a. August 18, 2014. A female Maltese dog (#101352819). 9 C.F.R. § 2.40(a), 9 C.F.R. § 2.40(b)(1), 9 C.F.R. § 2.40(b)(2), 9 C.F.R. § 2.40(b)(3).

b. November 5, 2014. A male Poodle dog (#4843707F25). 9 C.F.R. § 2.40(a), 9 C.F.R. § 2.40(b)(1), 9 C.F.R. § 2.40(b)(2), 9 C.F.R. § 2.40(b)(3).

c. May 28, 2015. A male Yorkshire terrier dog (#109833886). 9 C.F.R. § 2.40(a), 9 C.F.R. § 2.40(b)(1), 9 C.F.R. § 2.40(b)(2), 9 C.F.R. § 2.40(b)(3).

d. May 28, 2015. A female Shih-Tzu dog (#0A02380041). 9 C.F.R. § 2.40(a), 9 C.F.R. § 2.40(b)(1), 9 C.F.R. § 2.40(b)(2), 9 C.F.R. § 2.40(b)(3).

6. On or about August 18, 2014, respondents willfully violated the Regulations, 9 C.F.R. § 2.100(a), by failing to meet the Standards for dogs, with respect to housing:

a. The outdoor enclosure housing a St. Bernard dog was in disrepair. 9 C.F.R. § 3.1.

b. There was a build-up of old and fresh fecal material in an outdoor enclosure housing three St. Bernard dogs. 9 C.F.R. § 3.1(c)(3).

c. An outdoor enclosure housing three St. Bernard dogs was in disrepair with (1) a damaged gate; (2) damaged fencing; and (3) damaged flooring, and each of these areas had broken wires that were accessible to the dogs. 9 C.F.R. § 3.1, 9 C.F.R. §

3.6(a)(2)(i).

d. There was a significant build-up of fecal material and urine under the outdoor enclosures housing fifty-one (51) dogs. 9 C.F.R. § 3.11(a).

7. Respondents having admitted the findings and conclusions set forth above, and the parties having agreed to the entry of this decision, such decision will be entered.

Order

1. Respondents, their 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.

2. AWA license 42-A-1048 is hereby suspended, beginning March 15, 2016, for two weeks, and continuing thereafter until respondents are determined by APHIS to be in compliance with the Act and the Regulations and Standards.

3. Respondents are jointly and severally assessed a civil penalty of $5,000, to be made payable to the Treasurer of the United States, and to be remitted on or before March 30, 2016.

////

////

////

////

////

////

////

////

////

The provisions of this order shall become final and effective on March 10, 2015. Copies of this decision shall be served upon the parties.

BARBARA HAMMEN MARTIN HAMMEN
An Iowa general partnership

By [redacted]
Its _____
Respondent

[redacted]
Martin Hammen Respondent

[redacted]
Barbara Hamman
Respondent

[redacted]
Colleen A. Carroll
Attorney for Complainant

Done at Washington, D.C.,
this 18th day of MARCH 2016

[redacted]
Administrative Law Judge

JANICE K. BULLARD