

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Tony Kendall Cook,) CTESA Docket No. 20-J-0140
)
Respondent.)

REC'D - USDA/OALJ/OHC
2021 JAN 26 AM 9:40

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Tracey Manoff, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Administrator of the Animal and Plant Health Inspection Service.

Preliminary Statement

This proceeding was initiated under the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note) (“CTESA”); the regulations promulgated thereunder (9 C.F.R. §§ 88.1 *et seq.*); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 *et seq.*) (“Rules of Practice”).

The Complainant, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (“APHIS”), initiated this proceeding against Respondent Tony Kendall Cook by a Complaint filed on July 9, 2020. The Complaint alleged that Respondent violated CTESA regulations in that he: (1) failed to observe the equines as frequently as circumstances allow, but not less than once every six (6) hours, to check the physical condition of the equines and ensure that all requirements of this part are being followed, in violation of 9 C.F.R. § 88.4(b)(2); (2) failed to obtain veterinary assistance as soon as possible from an equine veterinarian for any equines in obvious physical distress, in violation of 9 C.F.R. § 88.4(b)(2);

(3) failed to ensure equines that became nonambulatory en route are euthanized by an APHIS or equine veterinarian, in violation of 9 C.F.R. § 88.4(b)(2); (4) failed to contact the nearest APHIS office as soon as possible when the equines died en route and allow an APHIS veterinarian or an equine veterinarian to examine the equines, per 9 C.F.R. § 88.4(b)(2); and (5) failed to handle all equines for slaughter as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma, in violation of 9 C.F.R. § 88.4(c).

Complainant requested that an Administrative Law Judge issue an order assessing civil penalties against Respondent as authorized by section 903(c)(3) of the CTESA (7 U.S.C. § 1901 note) and 9 C.F.R. § 88.6, including such other provisions as are warranted by the facts and circumstances of the case, for violations of the CTESA and the regulations promulgated thereunder.

Respondent was duly served with a copy of the Complaint and did not file an answer within the twenty-day period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).¹

On August 19, 2020, Complainant filed Motion for Adoption of Proposed Default Decision and Order (“Motion for Default”) and Proposed Default Decision and Order (“Proposed Decision”). Respondent has not filed any objections to Complainant’s Motion for Default or Proposed Decision.²

¹ United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on July 24, 2020. Respondent had twenty (20) days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following workday. 7 C.F.R. § 1.147(h). In this case, Respondent’s answer was due on or before August 13, 2020. Respondent has not filed an answer in this matter.

² USDA Hearing Clerk’s Office records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail on August 19, 2020 which was returned to

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision. 7 C.F.R. § 1.136(c). Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely filed answer where, as in the present case, no meritorious objections have been filed.³

As Respondent failed to answer the Complaint, and upon Complainant's motion for the issuance of a decision without hearing by reason of default, this Decision and Order is issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Michael Tony Kendall Cook, (herein Respondent), was and is an individual whose business activities include the commercial transport of equines intended for slaughter. The Respondent loads these equines into tractor trailer vehicles and transports the equines

the Hearing Clerk's Office marked "Vacant, Unable to Forward." USDA Hearing Clerk's Office records further reflect that the Motion for Default and Proposed Decision were again sent to Respondent via certified mail on October 1, 2020 but United States Postal Service records as of October 19, 2020 reflected that the mail was "Available for Pickup" with no further updates thereafter. At the request of Complainant, the Hearing Clerk's Office resent the Motion for Default and Proposed Decision via certified mail on November 17, 2020 which was returned marked "Unclaimed." Pursuant to 7 C.F.R. § 1.147(c)(1), the Hearing Clerk's Office re-mailed the Motion for Default and Proposed Decision by ordinary mail on December 23, 2020. Respondent had twenty (20) days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal holidays shall not be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following workday. 7 C.F.R. § 1.147(h). In this case, Respondent's objections were due by January 12, 2020. Respondent has not filed any objections.

³ 7 C.F.R. § 1.139; *see supra* note 2.

from Arkansas to Texas for export to and slaughter in Mexico. Respondent's address will be furnished to the Hearing Clerk's Office under separate cover.

2. Respondent worked cooperatively with Blake Wilf to commercially ship and transport horses intended for slaughter from Arkansas to Texas, and then for export to Mexico. Mr. Wilf owns and operates Wilf Horse Company, a business that includes buying and selling equines for slaughter. Mr. Wilf has used the export horse pens at Chula Vista, near Eagle Pass, Texas, to facilitate export of slaughter horses to Mexico.
3. The Respondent qualifies as an "owner/shipper," as defined in the Regulations.⁴
4. As an owner-shipper, the Respondent is responsible to control the work being done in connection with transporting horses to slaughter.
5. The CTESA regulations outline the requirements for the safe, secure and humane commercial transportation of equines for slaughter. Prior to the commercial transportation of equines for slaughter, the owner/shipper must prepare an owner-shipper certificate (VS 10-13 form) for each equine being transported. 9 C.F.R. § 88.4(a)(3). The detailed information required on the certificate includes the fitness of each equine to travel, including whether the equine can bear weight on all four limbs. 9 C.F.R. § 88.4(a)(3)(vii). An owner/shipper certificate must be prepared for each transportation segment from origin, off-loading and reloading and to the final destination.
6. The equines must be observed as frequently as circumstances allow, but not less than once every 6 hours to check on their physical condition. 9 C.F.R. § 88.4(b)(2). Veterinary assistance must be obtained as soon as possible from an equine veterinarian for any equines

⁴ 9 C.F.R. § 88.1 ("Owner/shipper. Any individual, partnership, corporation, or cooperative association that engages in the commercial transportation of more than 20 equines per year to slaughtering facilities, except any individual or entity who transports equines to slaughtering facilities incidental to his or her principal activity of production agriculture (production of food or fiber).").

in obvious physical distress. 9 C.F.R. § 88.4(b)(2). Equines that became nonambulatory en route must be euthanized by an equine veterinarian. 9 C.F.R. § 88.4(b)(2). The nearest APHIS office must be contacted as soon as possible, when an equine dies en route, to allow an APHIS veterinarian or an equine veterinarian to examine the equine. 9 C.F.R. § 88.4(b)(2).

7. All equines commercially transported and intended for slaughter must be handled as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, stress, physical harm or trauma. 9 C.F.R. § 88.4(c).
8. On April 3, 2018, the Respondent and Blake Wilf loaded into a tractor trailer vehicle, identified as “Blake Wilf Ranch, Romance AR, USDOT 2054798 VIN-6R159197”, license plate AR 166514, fifty (50) equines, with the intent to commercially transport these equines intended for slaughter from Romance, Arkansas to the Chula Vista export pens at Eagle Pass, Texas, and then export the animals to Mexico.
9. On April 4, 2018, in Maverick County, Texas, near Eagle Pass, Texas, Department of Public Safety (“DPS”) Trooper Corporal Osvaldo Guajardo initiated a traffic stop on a tractor trailer vehicle hauling a shipment of livestock from Romance, Arkansas to Eagle Pass, Texas. The vehicle had the insignia “Blake Wilf Ranch, Romance AR, USDOT 2054798 VIN-6R159197” with the license plate AR 166514. The Respondent was the driver of the tractor trailer.
10. Trooper Guajardo issued citation # TX558DOVBECI to the Respondent for driving without a valid commercial license, driving without a logbook or a false log entry, and driving an unregistered motor vehicle trailer.

11. In the course of his traffic stop, Trooper Guajardo inspected the trailer and observed several equine downed or dead in the trailer. He escorted Mr. Cook to the export pens at Chula Vista so the horses could be off-loaded quickly and he could complete his inspection.
12. Present at the pens were Texas Animal Health Commission Inspectors Dee Kirkpatrick and Tom Brewer, and APHIS Investigative and Enforcement Services (“IES”) Investigators Jeanene M. Biggs and Mark Bills. The horses were off-loaded and the trailer was inspected by Trooper Guajardo and the state and federal officials.
13. The trailer was divided into three different sections. In the rear trailer section, investigators observed one donkey lying on the trailer floor that appeared unable to get up. The donkey had the backtag USNF 5641. As the horses were off-loaded from the middle section of the trailer, investigators observed one deceased red horse on the floor of the trailer. This horse had no backtag. Finally, after the horses were off-loaded from the front section of the trailer, investigators observed a second deceased brown horse, with a black mane, on the floor of the trailer. The brown horse with a black mane had the backtag USNF5609. The downed donkey was unable to stand and was euthanized later that day.
14. The veterinary official from the Secretaria de Agricultura Ganaderia, Desarrollo Rural, Pesca y Alimentacion (“SAGARPA”) advised investigators that the brown horse had been dead for at least three to four (3-4) hours and the red horse had been dead for thirty to forty (30-40) minutes. The investigator observed that the brown horse was stiff and bloated.
15. On April 4, 2018, the Respondent provided a brief statement to the investigators. He acknowledged that the horses were loaded in Romance, Arkansas, and that he drove the tractor trailer to Forney, Texas, where the horses were unloaded for ten hours. He loaded the

horses back onto the truck and drove from Forney to Eagle Pass, Texas to the Chula Vista pens. The horses were unloaded at the Chula Vista pens.

16. The Respondent provided a VS form 10-13 certificate showing the fifty (50) horses in his load were loaded on April 3, 2018 at 10:30 p.m. in Romance, Arkansas. The consignor (owner/shipper) name was M & M Livestock, c/o Blake Wilf, 11026 CR 213A, Forney, Texas 75126 and destined for Mexico. The Veterinary Certificate of Export, number 1841A02602, stated that the horses originated in Romance, Arkansas and the point of embarkation was Eagle Pass, Texas or Presidio, Texas. The Respondent had no 10-13 certificate to show that he did stop at Forney, Texas, off-load the equine, and check the equines for signs of physical distress. The distance between Romance, Arkansas and Eagle Pass, Texas is approximately 775 miles and takes about eleven and a half (11.5) hours to drive from one location to the other.
17. The Respondent advised investigators that he worked for Blake Wilf as a truck driver but also did other ranch work. The Respondent admitted that he hauls livestock for Mr. Wilf and is paid \$0.60/mile for driving the livestock but nothing for the return trip.
18. On April 18, 2018, Texas Animal Health Commission Inspector Dee Kirkpatrick issued a livestock shipment inspection report, stating that the Respondent violated federal animal health statutes and/or regulations by unsafely transporting equines, including the death and injury to animals and failed to have a VS form 10-13 certificate documenting transport from Romance, Arkansas to Forney, Texas.
19. On June 18, 2018, Blake Wilf, the owner of the horses, gave a statement to APHIS investigators stating that Mr. Cook, the Respondent, did not stop in Forney, Texas for ten (10) hours and off-load the horses, but drove directly from Romance, Arkansas to Eagle Pass,

Texas. Mr. Wilf normally ships about seventy to seventy-five (70-75) equine, or about two truckloads per week. Previously, Mr. Wilf paid Mike McBarron to assist him with completing documents for shipment. Mr. McBarron charges Mr. Wilf \$200 per shipment and writes “M and M Livestock c/o Blake Wilf” on the paperwork.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent failed to observe the equines as frequently as circumstances allow, but not less than once every six (6) hours, to check the physical condition of the equines and ensure that all requirements of the Regulations are being followed, in violation of 9 C.F.R. § 88.4(b)(2).
3. Respondent failed to obtain veterinary assistance as soon as possible from an equine veterinarian for any equines in obvious physical distress, in violation of 9 C.F.R. § 88.4(b)(2).
4. Respondent failed to ensure equines that became nonambulatory en route were euthanized by an APHIS or equine veterinarian, in violation of 9 C.F.R. § 88.4(b)(2).
5. Respondent failed to contact the nearest APHIS office as soon as possible when the equines died en route and failed to allow an APHIS veterinarian or an equine veterinarian to examine the equines, in violation of 9 C.F.R. § 88.4(b)(2).
6. Respondent failed to handle all equines for slaughter as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma, in violation of 9 C.F.R. § 88.4(c).

ORDER

1. Complainant’s Motion for Adoption of Proposed Default Decision and Order is GRANTED IN PART.⁵
2. The Respondent, Tony Kendall Cook, is assessed a civil penalty of thirty thousand dollars (\$30,000.00) payable within thirty (30) days from the effective date of this Order. The Respondent shall pay the civil penalty by bank check or money order and make it payable to the “Treasurer of the United States.” The check or money order should include the Docket Number of the case, APHIS Docket Number 20-J-0140. The check shall be mailed to:

USDA-APHIS-GENERAL
P.O. Box 979043
St. Louis, MO 63197-9000

This Decision and Order shall be final and effective without further proceedings thirty-five (35) days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (30) days after service, as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties, with courtesy copies provided via email where available.

Done at Washington, D.C.,
this 26th day of January 2021



Channing D. Strother
Chief Administrative Law Judge

⁵ Complainant’s motion is referred to as being granted “in part” because Complainant’s Proposed Decision was not adopted verbatim.

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