

MITCHELL STANLEY d/b/a STANLEY BROTHERS 1171
65 Agric. Dec. 1171.

Rick Herndon for Complainant.
Respondent Pro se.
Order filed by Administrative law Judge Peter M. Davenport.

Complainant's Motion to Dismiss is granted. It is ordered that the complaint be dismissed without prejudice.

In re: MITCHELL STANLEY, d/b/a STANLEY BROTHERS.
A.Q. Docket No. 06-0007.
Order Denying Petition for Reconsideration.
Filed December 5, 2006.

A.Q. – Animal Health Protection Act – Commercial Transportation of Equine for Slaughter Act – Petition to reconsider – Late-filed petition to reconsider.

The Judicial Officer denied Respondent's Petition for Reconsideration because it was not filed within 10 days after the date the Hearing Clerk served Respondent with the Decision and Order, as required by 7 C.F.R. § 1.146(a)(3).

Thomas N. Bolick for Complainant.
Respondent, Pro se.
Initial Decision issued by Administrative Law Judge Peter M. Davenport.
Order issued by William G. Jenson, Judicial Officer.

PROCEDURAL HISTORY

W. Ron DeHaven, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on January 18, 2006. Complainant instituted the proceeding under the Animal Health Protection Act (7 U.S.C. §§ 8301-8321 (Supp. IV 2004)); the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note); regulations issued under the Animal Health Protection Act (9 C.F.R. pt. 75); regulations issued under the Commercial Transportation of Equine for Slaughter Act (9 C.F.R. pt. 88); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

Complainant alleges that on or about October 20, 2003, Mitchell Stanley, d/b/a Stanley Brothers [hereinafter Respondent], shipped horses

in commercial transportation from Louisiana to Dallas Crown in Kaufman, Texas, for slaughter without a permit for movement of restricted animals, in violation of 9 C.F.R. § 75.4(b), and without a completed owner-shipper certificate, in violation of 9 C.F.R. § 88.4(a)(3)(iv)-(v), (vii) (Compl. ¶ III). The Hearing Clerk served Respondent with the Complaint, the Rules of Practice, and a service letter on January 23, 2006.¹ Respondent failed to file an answer to the Complaint within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). In a letter dated February 23, 2006, the Hearing Clerk informed Respondent that he had failed to file a timely answer and that he would be informed of any future action taken in the proceeding.

On April 4, 2006, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a Motion for Adoption of Proposed Default Decision and Order [hereinafter Motion for Default Decision] and a Proposed Default Decision and Order [hereinafter Proposed Default Decision]. The Hearing Clerk served Respondent with Complainant's Motion for Default Decision, Complainant's Proposed Default Decision, and a service letter on April 19, 2006.² Respondent failed to file objections to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision within 20 days after service, as required by section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). In a letter dated May 16, 2006, the Hearing Clerk informed Respondent that he had failed to file timely objections to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision and that the file would be referred to an administrative law judge for consideration and decision.

On June 14, 2006, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued a Default Decision and Order [hereinafter Initial Decision]: (1) finding Respondent violated 9 C.F.R. §§ 75.4(b) and 88.4(a)(3)(iv)-(v), (vii), as alleged in the Complaint; and (2) assessing Respondent a \$12,800 civil penalty (Initial Decision at 2-4).

¹United States Postal Service Domestic Return Receipt for Article Number 7003 1010 0003 0642 2261.

²United States Postal Service Domestic Return Receipt for Article Number 7003 3110 0003 7112 2724.

On August 15, 2006, Respondent appealed the ALJ's Initial Decision to the Judicial Officer. On August 30, 2006, Complainant filed a response to Respondent's appeal petition. On October 20, 2006, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision. On October 26, 2006, I issued a Decision and Order in which I affirmed the ALJ's Initial Decision.³

On November 1, 2006, the Hearing Clerk served Respondent with the Decision and Order.⁴ On November 14, 2006, Respondent filed a "Petition For Reconsideration" of *In re Mitchell Stanley*, 65 Agric. Dec. ___ (Oct. 26, 2006). On November 30, 2006, Complainant filed "Complainant's Response To Respondent's Petition For Reconsideration." On December 1, 2006, the Hearing Clerk transmitted the record to the Judicial Officer for reconsideration of *In re Mitchell Stanley*, 65 Agric. Dec. ___ (Oct. 26, 2006).

CONCLUSION BY THE JUDICIAL OFFICER ON RECONSIDERATION

Section 1.146(a)(3) of the Rules of Practice provides that a petition to reconsider the Judicial Officer's decision must be filed within 10 days after the date of service of the decision, as follows:

§ 1.146 Petitions for reopening hearing; for rehearing or reargument of proceeding; or for reconsideration of the decision of the Judicial Officer.

(a) *Petition requisite. . . .*

. . . .
(3) *Petition to rehear or reargue proceeding, or to reconsider the decision of the Judicial Officer.* A petition to rehear or reargue the proceeding or to reconsider the decision of the Judicial Officer shall be filed within 10 days after the date of service of such decision upon the party filing the petition. Every

³*In re Mitchell Stanley*, 65 Agric. Dec. ___ (Oct. 26, 2006).

⁴United States Postal Service Domestic Return Receipt for Article Number 7004 1160 0004 4086 2339.

petition must state specifically the matters claimed to have been erroneously decided and alleged errors must be briefly stated.

7 C.F.R. § 1.146(a)(3).

Respondent's petition to reconsider, which Respondent filed 13 days after the date the Hearing Clerk served *In re Mitchell Stanley*, ___ Agric. Dec. ___ (Oct. 26, 2006), on Respondent, was filed too late, and, accordingly, Respondent's petition to reconsider must be denied.⁵

⁵See *In re Heartland Kennels, Inc.*, 61 Agric. Dec. 562 (2002) (Order Denying Second Pet. for Recons.) (denying, as late-filed, a petition to reconsider filed 50 days after the date the Hearing Clerk served the respondents with the decision and order); *In re David Finch*, 61 Agric. Dec. 593 (2002) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition to reconsider filed 15 days after the date the Hearing Clerk served the respondent with the decision and order); *In re JSG Trading Corp.*, 61 Agric. Dec. 409 (2002) (Rulings as to JSG Trading Corp. Denying: (1) Motion to Vacate; (2) Motion to Reopen; (3) Motion for Stay; and (4) Request for Pardon or Lesser Sanction) (denying, as late-filed, a petition to reconsider filed 2 years 2 months 26 days after the date the Hearing Clerk served the respondent with the decision and order on remand); *In re Jerry Goetz*, 61 Agric. Dec. 282 (2002) (Order Lifting Stay) (denying, as late-filed, a petition to reconsider filed 4 years 2 months 4 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Beth Lutz*, 60 Agric. Dec. 68 (2001) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition to reconsider filed 2 months 2 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Mary Meyers*, 58 Agric. Dec. 861 (1999) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition to reconsider filed 2 years 5 months 20 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Anna Mae Noell*, 58 Agric. Dec. 855 (1999) (Order Denying the Chimp Farm Inc.'s Motion to Vacate) (denying, as late-filed, a petition to reconsider filed 6 months 11 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Paul W. Thomas*, 58 Agric. Dec. 875 (1999) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition to reconsider filed 19 days after the date the Hearing Clerk served the applicants with the decision and order); *In re Nkiambi Jean Lema*, 58 Agric. Dec. 302 (1999) (Order Denying Pet. for Recons. and Mot. to Transfer Venue) (denying, as late-filed, a petition to reconsider filed 35 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Kevin Ackerman*, 58 Agric. Dec. 349 (1999) (Order Denying Pet. for Recons. as to Kevin Ackerman) (denying, as late-filed, a petition to reconsider filed 17 days after the date the Hearing Clerk served the respondent with the order denying late appeal as to Kevin Ackerman); *In re Marilyn Shepherd*, 57 Agric. Dec. 1280 (1998) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition to reconsider filed 11 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Jack Stepp*, 57 Agric. Dec. 323 (1998) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition to reconsider filed 16 days after the date the Hearing Clerk served the

(continued...)

For the foregoing reason, the following Order should be issued.

ORDER

Respondent's Petition for Reconsideration, filed November 14, 2006, is denied.

In re: JEWEL BOND, d/b/a BONDS KENNEL.
AWA Docket No. 04-0024.
Order Denying Petition to Reconsider.
Filed July 6, 2006.

AWA – Animal Welfare Act – Willful – Frequency of inspection – Correction of violations – Credibility determinations.

The Judicial Officer denied Jewel Bond's (Respondent's) petition to reconsider. The Judicial Officer found irrelevant Respondent's contention that the United States Department of Agriculture inspector who inspected her facilities, animals, and records on August 25, 2003, "was a little harsh." The Judicial Officer also rejected

⁵(...continued)

respondents with the decision and order); *In re Billy Jacobs, Sr.*, 55 Agric. Dec. 1057 (1996) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition to reconsider filed 13 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Jim Fobber*, 55 Agric. Dec. 74 (1996) (Order Denying Respondent Jim Fobber's Pet. for Recons.) (denying, as late-filed, a petition to reconsider filed 12 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Robert L. Heywood*, 53 Agric. Dec. 541 (1994) (Order Dismissing Pet. for Recons.) (dismissing, as late-filed, a petition to reconsider filed approximately 2 months after the date the Hearing Clerk served the respondent with the decision and order); *In re Christian King*, 52 Agric. Dec. 1348 (1993) (Order Denying Pet. for Recons.) (dismissing, as late-filed, a petition to reconsider, since it was not filed within 10 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Charles Crook Wholesale Produce & Grocery Co.*, 48 Agric. Dec. 1123 (1989) (Order Dismissing Untimely Pet. for Recons.) (dismissing, as late-filed, a petition to reconsider filed more than 4 months after the date the Hearing Clerk served the respondent with the decision and order); *In re Toscony Provision Co.*, 45 Agric. Dec. 583 (1986) (Order Denying Pet. for Recons. and Extension of Time) (dismissing a petition to reconsider because it was not filed within 10 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Charles Brink*, 41 Agric. Dec. 2147 (1982) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition to reconsider filed 17 days after the date the Hearing Clerk served the respondent with the decision and order).