

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	A.Q. Docket No. 06-0007
)	
)	
Mitchell Stanley d/b/a Stanley Brothers,)	
)	
)	
Respondent.)	
)	Default Decision
)	and Order

This is an administrative proceeding for the assessment of a civil penalty for violations of the Animal Health Protection Act (7 U.S.C. §§ 8301 et seq.), 7 U.S.C. § 1901 note, 9 C.F.R. part 75, and 9 C.F.R. part 88 in accordance with the Rules of Practice in 7 C.F.R. §§ 1.130 et seq. and 380.1 et seq.

On January 18, 2006, the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, instituted this proceeding by filing an administrative complaint against respondent Mitchell Stanley d/b/a Stanley Brothers. The complaint was served on respondent on January 23, 2006. Pursuant to section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), respondent was informed in the complaint and the letter accompanying the complaint that an answer should be filed with the Hearing Clerk within twenty (20) days after service of the complaint, and that failure to file an answer within twenty (20) days after service of the complaint constitutes an admission of the allegations in the complaint and waiver of a hearing. Respondent's answer thus was due no later than February 13, 2006, twenty days after service of the complaint (7 C.F.R. § 136(a)). Respondent never filed

an answer to the complaint and the Hearing Clerk's Office mailed him a No Answer Letter on February 23, 2006.

Therefore, respondent Mitchell Stanley d/b/a Stanley Brothers failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a) and failed to deny or otherwise respond to an allegation of the complaint. Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) or to deny or otherwise respond to an allegation of the complaint shall be deemed an admission of the allegations in the complaint. Furthermore, since the admission of the allegations in the complaint constitutes a waiver of hearing (7 C.F.R. § 1.139) and respondent's failure to file an answer is deemed such an admission pursuant to the Rules of Practice, respondent's failure to answer is likewise deemed a waiver of hearing. Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.139).

Findings of Fact

1. Mitchell Stanley is an individual who engages in the commercial transportation of equines to slaughter under the name of Stanley Brothers. He handles more than 20 horses per year in interstate commerce and resides at 747 Highway 8 West, Hamburg, Arkansas 71646.

2. (a) On or about October 20, 2003, respondent shipped horses in commercial transportation from Louisiana to Dallas Crown in Kaufman, Texas (hereinafter referred to as Dallas Crown), for slaughter. Two horses in the shipment, USDA backtag numbers USAU 3602 and USAU 3616, bore a brand on the left side of their necks, 72A, which identified them as

positive reactors for Equine Infectious Anemia, but they were not accompanied by the required Permit for Movement of Restricted Animals, VS Form 1-27, in violation of 9 C.F.R. § 75.4(b).

(b) On or about October 20, 2003, respondent shipped horses in commercial transportation from Louisiana to Dallas Crown for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) the license plate number of the conveyance and the name of the driver of the conveyance were not listed, in violation of 9 C.F.R. § 88.4(a)(3)(iv); (2) the form did not list 72A brands on the two positive reactors for Equine Infectious Anemia and thereby failed to list all of the physical characteristics, including permanent brands, that could be used to identify those horses, in violation of 9 C.F.R. § 88.4(a)(3)(v); and (3) the boxes indicating the fitness of the horses to travel at the time of loading were not checked off, in violation of 9 C.F.R. § 88.4(a)(3)(vii).

Conclusion

By reason of the Findings of Fact set forth above, respondent Mitchell Stanley d/b/a Stanley Brothers violated the Animal Health Protection Act (7 U.S.C. §§ 8301 et seq.) and 7 U.S.C. § 1901 note. Therefore, the following Order is issued.

Order

Respondent Mitchell Stanley d/b/a Stanley Brothers are hereby assessed a civil penalty of twelve thousand eight hundred dollars (\$12,800.00) for all violations which occurred on or about June 10, 2003, and August 25, 2003. This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent Mitchell Stanley d/b/a Stanley Brothers shall indicate that payment is in reference to A.Q. Docket No. 06-0007.

This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent Mitchell Stanley d/b/a Stanley Brothers unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.145).

Done at Washington, D.C.
this ____ day of _____, 2006.

PETER M. DAVENPORT
Administrative Law Judge