

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
Michael Lee McBarron, d/b/a)	A.Q. Docket No. 06-0003
T&M Horse Company)	
)	
Respondent)	Decision and Order

Decision Summary

1. I decide that Michael Lee McBarron, doing business as T&M Horse Company, was an owner/shipper of horses (9 C.F.R. § 88.1) who, during 2003 and 2004, failed to comply with the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note) and the regulations promulgated thereunder, when he (and/or his partner or their agents) commercially transported horses for slaughter to Dallas Crown, Inc., in Kaufman, Texas. The testimony of Dr. Timothy Cordes (D.V.M.) persuades me that a \$21,000 civil penalty (9 C.F.R. § 88.6), for remedial purposes, is appropriate, justified, necessary, proportionate and not excessive.

Procedural History

2. The Complainant is the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (frequently herein “APHIS” or “Complainant”). The Complaint, filed on December 5, 2005, alleged violations of the Commercial Transportation of Equine for Slaughter Act, 7 U.S.C. § 1901 note (frequently herein the “Act”), and the regulations promulgated thereunder (9 C.F.R. § 88 *et seq.*) (frequently herein the “Regulations”).

3. APHIS is represented by Thomas Neil Bolick, Esq., Office of the General Counsel, Regulatory Division, United States Department of Agriculture, South Building, 1400 Independence Ave. SW, Washington, D.C. 20250.

4. The Respondent, Michael Lee McBarron, d/b/a T&M Horse Company (frequently herein “Respondent McBarron” or the “Respondent”), represented himself at the hearing (appeared *pro se*) and is represented by Mark J. Calabria, Esq., 201 W. Mulberry, Kaufman, Texas 75142.

5. Respondent McBarron’s Answer, filed on June 14, 2006, generally denied the allegations of the Complaint. The Answer also raised general defenses, that Respondent McBarron was not the true owner/shipper of the horses in question because he did not pay for them until after they had been unloaded, weighed, and processed at the horse slaughter plant; and that Respondent McBarron was not present when the horses were loaded onto conveyances for commercial transportation to slaughter and thus was unaware of (and cannot be held accountable for) violations involving those horses.

6. The hearing was conducted by audio-visual telecommunication¹ between the Little Rock, Arkansas site and the Washington, D.C. site, on February 27, 2007, Administrative Law Judge Jill S. Clifton presiding. The record includes one transcript volume (379 pages), prepared by Neal R. Gross & Co., Inc., Court Reporters, received by the Hearing Clerk on March 20, 2007.

7. The following exhibits (Complainant’s exhibits) were admitted into evidence: CX 1 through CX 25, CX 27, CX 32, and CX 38 through CX 41.

¹ See section 1.141 of the Rules of Practice (7 C.F.R. § 1.141) regarding using **audio-visual** telecommunication.

Introduction

8. Four shipments of horses are addressed here, two from Clovis Livestock, Inc., in Clovis, New Mexico (one in 2003 and one in 2004); and two from Southwest Livestock Auction in Los Lunas, New Mexico (one in 2003 and one in 2004). The two most serious allegations (for which APHIS asks \$5,000 apiece) involve the same horse, a palomino horse (the yellow horse) that Respondent McBarron bought for \$25 from Clovis Livestock on August 24, 2003 (CX 10), that was then transported on or about August 25, 2003 to Dallas Crown, Inc., in Kaufman, Texas. CX 13.

9. The yellow horse had a bad left rear leg, and two days after Respondent McBarron bought the yellow horse in New Mexico, the yellow horse was evaluated and photographed at Dallas Crown, Inc., in Kaufman, Texas. The yellow horse was obviously not weight-bearing on all four limbs on August 26, 2003. CX 20, CX 15. Mr. Joey Astling testified that the yellow horse was not able to bear weight on all four limbs, not at all, that the way it walked was to hop on three legs. Tr. 172-73.

10. Respondent McBarron testified that he knew the yellow horse had a leg injury when he bought the horse but that it² was weight-bearing on all four limbs (even if the hurt leg was not bearing as much weight as the other 3 legs). Tr. 311-12, CX 25. A statement taken from the Clovis Livestock Night Manager, Samuel Drager, showed agreement with Respondent McBarron that the yellow horse had a hurt leg but was able to walk and put weight on the leg

² The yellow horse (sale barn tag 1141) was identified as a gelding by the Clovis Livestock "Purchase Sheet" (CX 10), and as a mare on the VS 10-13 Fitness to Travel Certificate signed by Brian Jones (back tag 691, CX 13).

when he brought the horse from the holding area to the loading area which is about 100 yards away. CX 22.

11. But the yellow horse could not have borne weight on that left rear leg when Respondent McBarron bought it at Clovis Livestock, based on the evidence from two veterinarians, T. R. Tunnell, D.V.M., and Timothy Cordes, D.V.M. Both veterinarians concluded that the chronic injury to the bone of the horse's left hind leg, disclosed by x-ray (CX 24), precluded weight-bearing and had existed for at least several weeks before the horse arrived at Dallas Crown. CX 23. Tr. 191-95. Dr. Tunnell wrote: "Based on Radiograph information I feel this horse was probably non-weight bearing and unable/unwilling to walk or support weight on this leg. As such, it would have been very difficult and painful for this horse to endure forced movement or a trailer ride in which the horse would have to use this leg for balance or support of body weight." CX 23.

12. The first noncompliance regarding the yellow horse was the failure to take the horse to a veterinarian immediately upon purchase, and the second noncompliance was subjecting the yellow horse to transport when it did not have the use of all its legs to stand on. The swelling and infection in the left hind leg were grotesque when the yellow horse was photographed on August 26, 2003 at Dallas Crown; even if Respondent McBarron is correct in his testimony that the swelling and infection were not that bad when he bought the horse two days before, they were certainly bad enough to require having the horse seen by a veterinarian and making sure that the horse was not transported.

13. The next most serious allegation is the failure to segregate each stallion (an estimated seven unsegregated stallions, for which APHIS asks another \$5,000 in civil penalty) during the

shipping of 43 horses in commercial transportation on June 10, 2003, from Southwest Livestock Auction in Los Lunas, New Mexico, to Dallas Crown, Inc., in Kaufman, Texas. CX 1 - CX 9. Animal Health Technician Chandler was responsible for identifying stallions, and he observed external genitalia on from seven to ten stallions in the trailer load that arrived at Dallas Crown on June 10, 2003.³ Dr. Cordes used the lower figure (seven stallions), calculated the civil penalty at \$800 per unsegregated stallion,⁴ and rounded down to the nearest thousand, equaling \$5,000. Tr. 300.

14. APHIS requested another \$5,000 for transporting 43 horses from Southwest Livestock Auction to Dallas Crown with (a) no owner/shipper certificates (\$100 each for the lack of owner/shipper certificates (VS 10-13s), rounded down to the nearest thousand, equaling \$4,000) and (b) no back tags (\$25 each for the lack of back tags, rounded down to the nearest thousand, equaling \$1,000).

15. The remaining \$1,000 requested by APHIS involved noncompliant paperwork regarding a total of 85 horses.

16. Respondent McBarron found the total of \$21,000 recommended by APHIS for the noncompliance to be “just absolutely preposterous,” and “highly preposterous and unethical,”

³ Mr. Leslie Chandler testified that studs were mixed in the load, in the shipment - - stallions, intact males, adult male horses. Mr. Chandler specifically checked for testicles and personally thought that he counted roughly seven to ten stallions in the load. Mr. Chandler added that the brand inspector, who checked to make sure there were no stolen horses (for the Texas Southwest Cattle Raisers Inspection Report), noticed there were at least four stallions in the load. Tr. 106-108.

⁴ APHIS does not hold Respondent McBarron responsible for what happened in the yard at Dallas Crown, the savaging of a mare by one of those stallions, savaging so severe that the mare had to be euthanized. The incident in the Dallas Crown yard does illustrate the need for the requirement that stallions be segregated. Tr. 298-99.

stating that \$21,000 takes a man's livelihood from him. Tr. 318-20, 358. Respondent McBarron stated that he did not feel that he owed money, that he would hate to give \$500, but that \$5,000 would be all that he could pay. Tr. 368-71.

Findings of Fact and Conclusions

17. Paragraphs 18 through 27 contain intertwined Findings of Fact and Conclusions.
18. The Secretary of Agriculture has jurisdiction.
19. Respondent Michael Lee McBarron is an individual with a mailing address of 154 Stanley Road, Hamburg, Arkansas 71646.
20. Respondent McBarron is now, and at all times material herein was, a commercial buyer and seller of slaughter horses who on the dates set forth below, was doing business in partnership with Trent Wayne Ward as T&M Horse Company, 1037 Lakeview Circle, Kaufman, Texas 75142.⁵
21. Respondent McBarron is responsible not only for what he himself did or failed to do in violation of the Act and Regulations, but also for what others did or failed to do on his behalf, as his agents, in violation of the Act and Regulations. His agents include not only his partner Trent Wayne Ward acting in furtherance of partnership activities, but also others acting as agents on behalf of Respondent McBarron or his partner or the partnership. Thus, actions described below as having been done by Respondent McBarron may have been done by such agents.

⁵ In his answer, Respondent McBarron stated that he had not been affiliated with T&M Horse Company since October 2005. *But see* Tr. 27-28, 32-33. The evidence proved that the transactions involved here (all of which occurred during 2003 and 2004) were T&M Horse Company transactions while Respondent McBarron was the partner of Trent Wayne Ward in that business.

22. After careful consideration of all the evidence, I find credible the testimony of Mr. Wesley James Cummings, Mr. David Green, Mr. Leslie Chandler, Mr. Joseph Thomas Astling, Dr. Timothy Cordes, and Respondent McBarron, except that I find Respondent McBarron was mistaken in thinking the yellow horse was weight-bearing on all four limbs when he bought it.

23. On or about June 10, 2003, Respondent McBarron shipped 43 horses in commercial transportation from Southwest Livestock Auction in Los Lunas, New Mexico, to Dallas Crown, Inc., in Kaufman, Texas:

(a) for slaughter without applying a USDA back tag to each horse in the shipment, in violation of 9 C.F.R. § 88.4(a)(2).

(b) for slaughter without the required owner-shipper certificate, VS Form 10-13, in violation of 9 C.F.R. § 88.4(a)(3)(i-x).

(c) for slaughter, including in the shipment at least seven (7) stallions, and Respondent McBarron did not load the horses on the conveyance so that each stallion was completely segregated from the other horses to prevent it from coming into contact with any other horse on the conveyance, in violation of 9 C.F.R. § 88.4(a)(4)(ii).

24. On or about August 25, 2003, Respondent McBarron shipped 30 horses from Clovis Livestock, Inc., in Clovis, New Mexico, to Dallas Crown, Inc., in Kaufman, Texas:

(a) for slaughter, and one of the horses, a palomino gelding with USDA back tag # USAZ 0691 (and sale barn tag #1141),⁶ had an old injury to its left hind foot such that it could not bear weight on all four limbs, yet Respondent McBarron

⁶ CX 40 is back tag USAZ 0691, and CX 41 is sale barn tag 1141.

shipped the horse in commercial transportation to the slaughtering facility in spite of its injuries. By transporting it in this manner, Respondent McBarron failed to handle the injured horse as expeditiously and carefully as possible in a manner that did not cause it unnecessary discomfort, stress, physical harm or trauma, in violation of 9 C.F.R. § 88.4(c).

(b) for slaughter, and one of the horses, a palomino gelding with USDA back tag # USAZ 0691 (and sale barn tag #1141), had an old injury to its left hind foot such that it could not bear weight on all four limbs, yet Respondent McBarron shipped the horse in commercial transportation to the slaughtering facility in spite of its injuries. By reason of the above, the injured horse was in obvious physical distress, yet Respondent McBarron failed to obtain veterinary assistance as soon as possible from an equine veterinarian, in violation of 9 C.F.R. § 88.4(b)(2).

(c) for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13, which form had the following deficiencies:

- (1) the owner/shipper's address and telephone number were not properly completed, in violation of 9 C.F.R. § 88.4(a)(3)(i);
- (2) the license plate number of the conveyance was not properly listed, in violation of 9 C.F.R. § 88.4(a)(3)(iv);
- (3) the time the horses were loaded onto the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ix); and
- (4) one of the horses, a palomino gelding with USDA back tag # USAZ 0691 (and, at Dallas Crown, also a plant tag # 1141), had an

old injury to its left hind foot such that it could not bear weight on all four limbs; yet Respondent McBarron did not describe this pre-existing injury on the VS 10-13, in violation of 9 C.F.R. § 88.4(a)(3)(viii).

25. On August 26, 2003, Joey Astling observed the yellow horse at Dallas Crown, and his testimony described the horse as emaciated, and the horse's ankle appeared to be fused, and it had two holes oozing pus. Tr. 172, CX 15, CX 20.

26. On or about March 14, 2004, Respondent McBarron shipped 15 horses in commercial transportation from Southwest Livestock Auction in Los Lunas, New Mexico, to Dallas Crown, Inc., in Kaufman, Texas:

(a) for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiency: the prefix for each horse's USDA back tag number was not recorded properly, in violation of 9 C.F.R. § 88.4(a)(3)(vi).

CX 32.

27. On or about March 21, 2004, Respondent McBarron shipped 40 horses from Clovis Livestock, Inc., in Clovis, New Mexico, to Dallas Crown, Inc., in Kaufman, Texas, for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiency: it did not indicate the breed or type of each horse, one of the physical characteristics that could be used to identify each horse, in violation of 9 C.F.R. § 88.4(a)(3)(v).

CX 38.

Discussion

28. Respondent McBarron testified that he has been in the horse business practically all his life, that he is a horseman, and a horse lover. This excerpt of his testimony is from Tr. 305-07.

Mr. McBarron: And I do everything in my power to save one's life before I put them on one of them trucks to get killed. There is no telling how many of them I've got off in my life from getting killed. Back to business, I used to live there in Kaufman, everybody knows that. I sent horses to Dallas Crown. There would be people bringing horses to the packing house to be killed, and before this USDA business took over, I would switch like a horse I had, I would go to the owner of the plant and I'd say, look, that horse don't need to be killed. That's a good horse, and I would switch the horses. You with me. I'd put a bad horse in for a good one. So, I mean, I'm horse-minded. I mean, I feel like I'm a professional in this business. I mean, I've been doing it all my life, it's all I know how to do.

I understand everybody makes mistakes. We're all human, and I'm not going to say that I haven't made any mistakes since this USDA business has took place. But for the crimes that I'm being accused of here today, I, myself, have specifically not committed them crimes.

Now my name was in the way of the paperwork as it all funneled through, and got down to the final person in the food chain, but as far as me specifically committing any of these crimes, I don't feel like I've committed them.

Tr. 305-07.

29. Respondent McBarron does not feel responsible for what Dennis Chavez did. Dennis Chavez at Southwest Livestock Auction in Los Lunas, New Mexico (20 to 30 miles south of

Albuquerque, Tr. 42) loaded 43 horses on June 10, 2003, without segregating the stallions and without the back tags and without the proper paperwork. Tr. 307-09. *See* paragraph 23.

Respondent McBarron testified that he told Dennis Chavez not to put studs in the load, and that he told Dennis Chavez the horses “had to have them green tags on there, they had to be wrote up in paperwork, and the whole nine yards.” Tr. 307. Respondent McBarron testified that the 43 horses belonged to Dennis Chavez until they got to the Dallas Crown plant. Tr. 307-308. I find to the contrary, that Respondent McBarron bought the horses from Dennis Chavez over the phone, sight unseen, before Dennis Chavez loaded them, and that Dennis Chavez was Respondent McBarron’s agent during the loading of those horses for shipping to Dallas Crown. Tr. 331-337. I conclude that Respondent McBarron was the owner/shipper of the 43 horses and responsible for purposes of the Act, for Dennis Chavez’s failure to segregate each stallion from the other horses, Dennis Chavez’s failure to applying a USDA back tag to each horse in the shipment, and Dennis Chavez’s failure to initiate and forward the required owner-shipper certificate (VS Form 10-13), which required Respondent McBarron’s signature.

30. I disagree with and reject Respondent McBarron’s defense that he was not the true owner/shipper of the horses in question because he did not pay for them until after they had been unloaded, weighed, and processed at the horse slaughter plant. Tr. 54. CX 1. I find that Respondent McBarron’s purchase occurred when he made his deal over the phone, even though he did not pay for the horses until later.

31. I disagree with and reject Respondent McBarron’s defense that, if he was not present when the horses were loaded onto conveyances for commercial transportation to slaughter and thus was unaware of any violations involving those horses, he cannot be held accountable for

those violations. To the contrary, Respondent McBarron remains responsible for errors and omissions of those who acted as agents on his behalf, or on behalf of his partner, or on behalf of the partnership. Tr. 344-345. Respondent McBarron's agents include: regarding paragraph 23, Dennis Chavez; regarding paragraph 24, Respondent McBarron himself and his partner, and their truckers and paperwork completers (including but not limited to Brian Jones and his wife, plus whoever drove "the gooseneck load" (CX 21, p. 2), including whoever drove the yellow horse); and, regarding paragraphs 26 & 27, Charlie Battles.

32. When Brian Jones or his wife, or Charlie Battles, or others doing work on behalf of Respondent McBarron or his partner or his partnership, failed to complete paperwork in compliance with the Act and Regulations (Tr. 313-14), they were acting as agents on behalf of Respondent McBarron, or on behalf of his partner, or the partnership, thereby making Respondent McBarron responsible for the noncompliance, even when Respondent McBarron had instructed them properly. Respondent McBarron testified, "But the stuff that I'm getting charged for here today, I personally have not done. I promise to God, or under oath, or whatever you want me to say. I didn't do none of it personally. It got funneled down through my name." Tr. 315. Respondent McBarron was a good witness, and I believe his testimony, except that I find he was mistaken when he thought the yellow horse was weight bearing on all four limbs. As a businessman, as an owner/shipper, Respondent McBarron is responsible to control the work being done in connection with transporting horses to slaughter.

33. Dr. Timothy Cordes is Senior Staff Veterinarian with USDA APHIS Veterinary Services, where he has worked for 12 years. Tr. 187. Dr. Cordes is the National Coordinator for Equine

Programs within the agency. Tr. 187. Dr. Cordes' background is impressive, as found at Tr. 187-88.

Mr. Bolick: Can you please describe your educational background and any training that you've received that enabled you to perform your duties in this capacity?

Dr. Cordes: I did my undergrad at the University of Illinois, with a Bachelor of Science. I did my graduate school at the University of Illinois College of Veterinary Medicine. I'm a Doctor of Veterinary Medicine with post-graduate work in orthopedic surgery. I did both an internship and a residency in equine surgery at Iowa State University. I then went on to own and operate my own surgical referral practice for 20 years, most of that time being a veterinarian to the United States Equestrian Team. I currently still continue as Federation Equestrian Internationale Veterinarian. This is a group of select veterinarians that oversee olympic-level competitions. Tr. 187-88.

34. Dr. Cordes explained what he saw looking at the X-ray marked as CX 24, which showed a portion of the yellow horse's severed left hind leg. Tr. 191-195.

Mr. Bolick: I just want your opinion of that film.

Dr. Cordes: Well, first of all, I would point out that neither Dr. Tunnell, nor I, were attending, and so Dr. Tunnell, of course, simply saw the severed extremity, and read the radiographs, as I have done. I probably have the advantage in that I am also looking at photographs, and I see two draining lesions draining very purulent material. The x-rays clearly reveal a chronic injury, a tremendous amount of periosteal new bone production, and while it might be caused by any number of different possible entities, the end result is a longstanding fusion of the joint most

likely based on the radiographic evidence, caused by sepsis. And by that, I mean an infection of the joint itself.

The reason I say that is that the periosteal new bone growth, and the radiographic changes that are evident here are so dramatic that we rarely see radiographic lesions of this nature unless there's an infection within the joint itself. The bacteria literally eats away at the bone, and literally causes the sort of erosions and the sort of new bone growth that is demonstrated here.

I believe that radiographic opinion is corroborated by the photographs which show at least one, possibly two draining tracks.

Mr. Bolick: Dr. Cordes, you referred to photographs showing those draining tracks. Can you identify where in the evidence you saw those photographs?

Dr. Cordes: Sure. I believe Mr. Astling referred to page 5 of 6 on Exhibit 15. And, clearly, you see the anterior medial, the front inside of the left hind leg at the metacarpal phalangeal bone, or what we call the ankle, the fetlock. You see a very swollen joint with a very thick viscous purulent discolored substance coming out of the joint, as opposed to joint fluid, which would be clear.

Mr. Bolick: Dr. Cordes, does this look like an injury that likely occurred during transportation?

Dr. Cordes: Absolutely not. The radiographic lesions would put it at a minimum, a minimum of three weeks. I would think it was much longer standing than that.

Mr. Bolick: So, in your opinion, this horse had to be like this at the time it was loaded.

Dr. Cordes: Correct.

Mr. Bolick: And in your opinion, was this horse able to bear weight on all four limbs?

Dr. Cordes: Absolutely not. A joint infection always is excruciating in nature.

Mr. Bolick: In your opinion, should this horse have been loaded for transportation to slaughter?

Dr. Cordes: Never should have been put on the truck in the first place.

Mr. Bolick: Okay. And, again, in your opinion, should this horse have received some kind of veterinary attention?

Dr. Cordes: Well, the veterinarian -- yes. I'm sorry, the answer is yes. Whether or not, from an orthopedic standpoint that surgery and levaging that joint would affect the outcome at all, is highly unlikely.

Mr. Bolick: So what would you say was the recommended course of treatment had it received veterinary treatment?

Dr. Cordes: Well, the attending veterinarian would have immediately noticed that this horse was not able to bear weight. Not only that, but if the horse in a swaying trailer were forced to step on that limb, it would probably fall down, as it tried to get all of its weight off it. And, of course, these results could be catastrophic in a situation where there are other horses around, because when one horse goes down, of course, you can have that horse knocking other horses down, not only as it goes down, but additionally as it scrambles and attempts to get up.

Mr. Bolick: Okay.

Dr. Cordes: So the course of treatment would undoubtedly have been euthanasia, in the sale barn setting.

Tr. 191-95.

Order

35. The **cease and desist** provisions of this Order (paragraph 36) shall be effective on the first day after this Decision and Order becomes final.⁷ The remaining provisions of this Order shall be effective on the tenth day after this Decision and Order becomes final.

36. Respondent McBarron, and his agents and employees, successors and assigns, directly or indirectly, or through any corporate or other device or person, shall cease and desist from violating the Commercial Transportation of Equine for Slaughter Act, 7 U.S.C. § 1901 note, and the Regulations promulgated thereunder (9 C.F.R. § 88 et seq.).

37. Respondent McBarron is assessed a civil penalty of **\$21,000.00** (twenty-one thousand dollars),⁸ which he shall pay by certified check(s), cashier's check(s), or money order(s), made payable to the order of "**Treasurer of the United States.**"

38. Respondent McBarron shall reference **A.Q. Docket No. 06-0003** on his certified check(s), cashier's check(s), or money order(s). Payments of the civil penalties shall be sent to, and received by, APHIS, at the following address:

United States Department of Agriculture
APHIS, Accounts Receivable
P.O. Box 3334
Minneapolis, Minnesota 55403.

⁷ See paragraph 43.

⁸ The Slaughter Horse Transport Program recommended a \$21,000.00 civil penalty. The Program recommendations were presented by Dr. Timothy Cordes (D.V.M.), the National Coordinator of Equine Programs within USDA APHIS Veterinary Services. Tr. 286-304, 187.

39. Paragraph 40 offers Respondent McBarron an opportunity to cut in half the civil penalty he must pay, on certain conditions; and paragraph 41 offers Respondent McBarron an opportunity to pay that one-half in installments, on those same conditions.

40. One-half (\$10,500.00) of Respondent McBarron's civil penalty is **held in abeyance** on condition that Respondent McBarron pay \$10,500.00 of his civil penalty **in full, timely, as required**; and on condition that Respondent McBarron, during the 5 years following the hearing, that is, **through February 27, 2012, commit no further violations** of the Act and the Regulations promulgated thereunder (9 C.F.R. § 88 et seq.). If Respondent McBarron fails to comply with either of these two conditions, the remaining balance of the full \$21,000.00 civil penalty will become due and payable 60 days following APHIS's filing of an application herein, supported by Declaration. Respondent McBarron shall file with the Hearing Clerk any change in mailing address or other contact information; otherwise, a copy of any filings will be sent to Respondent McBarron at the address in paragraph 19.

41. So long as Respondent McBarron complies with paragraph 40, with regard to the \$10,500.00 of his civil penalty that he shall pay within the 60 days following the effective date of this Order [*see* paragraph 35], he may, at his option, pay the \$10,500.00 of his civil penalty in installments, as follows:

\$2,500.00 within the 60 days following the effective date of this Order;

\$2,500.00 within the year thereafter;

\$2,500.00 within the year thereafter;

\$2,500.00 within the year thereafter; and

\$500.00 within the 90 days thereafter.

42. If Respondent McBarron fails to meet the conditions specified in paragraph 40 and is consequently required to pay his full \$21,000.00 civil penalty, Respondent McBarron's obligation shall be reduced by the amount of civil penalty paid by Trent Wayne Ward in this case as of the date APHIS's application and Declaration are filed (*see* paragraph 40).

Finality

43. This Decision and Order shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties. **Respondent McBarron shall be served both at his own address (paragraph 19) and his attorney's address (paragraph 4).**

Done at Washington, D.C.
this 10th day of May 2007

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Bldg Room 1031
1400 Independence Ave SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition,

and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145