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UNITED STATES DEPARTMENT OF AGRICULTURE 7/1/2011 AM 9:30

BEFORE THE SECRETARY OF AGRICULTURE RECEIVED

Docket Nos. 11-0256 and 11-0257

In re:

JACK L. RADER and BARBARA L. RADER, individuals  
and d/b/a RADER STABLES<sup>1</sup>,

Respondents,

DECISION AND ORDER ENTERING DEFAULT JUDGMENT

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes ("Rules of Practice"), set forth at 7 C.F.R. § 1.130 et seq., apply to the adjudication of the instant matter. The case involves a complaint involving the Horse Protection Act, 7 U.S.C. § 1821 et seq. (the Act"), filed by the Assistant Administrator of United States Department of Agriculture's Animal and Plant Health Inspection Service ("USDA"; "APHIS"; "Complainant"; "Administrator") against Jack L. Rader and Barbara L. Rader, doing business as Rader's Stables, ("Respondents").

**Procedural History**

On May 26, 2011, Complainant filed with the Hearing Clerk for USDA's Office of Administrative Law Judges (OALJ)("Hearing Clerk") a Complaint alleging violations of the Act. The Hearing Clerk assigned the matter two case numbers, and the matter was subsequently assigned to me. On May 27, 2011, the Hearing Clerk sent the Complaint by certified mail to Respondents. When no answer was received, on June 30, 2011<sup>2</sup>, the Hearing Clerk advised

<sup>1</sup> The caption is hereby amended to reflect the accurate spelling of Respondents' names.

<sup>2</sup> My Order issued August 3, 2011 mistakenly identified this date as May 30, 2011. The record reflects that the letter from the Hearing Clerk was issued June 30, 2011. That letter is attached hereto as "Appendix 1."

Respondents by regular mail that their answer was considered untimely under the Rules of Practice. On July 5, 2011, an answer was filed by Respondents.

On August 3, 2011 I issued an Order to show cause why default judgment should not be entered against Respondents and directed the parties to submit their positions in writing within twenty (20) days of August 3, 2011. I also consolidated Respondents' cases for purposes of adjudication. On August 22, 2011, Complainant moved for adoption of a proposed Decision and Order of Default Judgment. On September 6, 2011, the Hearing Clerk docketed Respondents' response to my Order.

### **Discussion**

Pursuant to the Rules of Practice, Respondents are required to file an answer within twenty days after the service of a complaint. 7 C.F.R. § 1.136(a). Failure to file a timely answer or failure to deny or otherwise respond to an allegation in the Complaint shall be deemed admission of all the material allegations in the Complaint, and default shall be appropriate. 7 C.F.R. § 1.136(c). The Rules provide that Saturdays, Sundays and Federal holidays shall be included in computing the time allowed for filing of any document or paper, except when the time expires on those dates, the period shall be extended to include the next business day. 7 C.F.R. § 1.147(h.). The Rules further provide that a document sent by the Hearing Clerk's office "shall be deemed to be received by any party to a proceeding. . . on the date of delivery by certified or registered mail. . ." 7 C.F.R. § 1.147(c)(1).

The record reflects that the certified mailing of the Complaint to both Respondents was received by Barbie Rader on June 9, 2011. According, the time for Respondents to file an Answer to the Complaint was June 29, 2011. Neither Respondent filed an answer until July 5, 2011, which is clearly beyond the twenty (20) days allowed by the Rules. Although

communication from the Hearing Clerk's office was sent to an incorrect address (mail was addressed to "7 Tunnel Fork Road, Gassaway, WV 26624" while the United States Post Office and Respondents have noted the correct address is "40 Tunnel Fork Road, Gassaway, WV 26624"), Respondents clearly received the Complaint and failed to timely file an Answer.

In their opposition to the entry of Default for failure to file a timely Answer, Respondents acknowledge the 20 day regulatory time frame, but nevertheless stated that "[a]ccording to [their] calculations [they] had until July 13<sup>3</sup> to respond to [the] complaint". See, Respondents' submission filed September 6, 2011. In their opposition, Respondents assert that they had not "picked up the letter until after June 13, 2011". Id. However, the domestic return receipt card, PS Form 3811, clearly documents that the Complaint was delivered on June 9, 2011, which is the date that the Complaint is deemed received pursuant to 7 C.F.R. §1.147(c)(1). There is no evidence documenting actual receipt of the letter on June 13, 2011, and no reason to impute that date from the correspondence comprising Respondents' Answer, which is dated June 20, 2011.

Respondents attribute their delay in responding to the Complaint to their inability to understand the Complaint and to a two week period<sup>4</sup> when they were unable to communicate with a member of the Hearing Clerk's staff. See, Respondents' response to my Order issued August 3, 2011.<sup>5</sup> If I credit Respondents' assertions about a two week delay, then it is axiomatic that they received the Complaint before June 13, 2011 because their Answer dated June 19, 2011 was filed on June 20, 2011, which constitutes a period of six days, not two weeks. Moreover,

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<sup>3</sup> Respondents confusedly used a thirty day period from the date they allegedly retrieved the Complaint to calculate the date that their Answer was due.

<sup>4</sup> If I credit Respondents' assertions about a two week delay, then it is axiomatic that they received the Complaint before June 13, 2011 because their Answer dated June 19, 2011 was filed on June 20, 2011, which constitutes a period of six days, not two weeks.

<sup>5</sup> I note that this document specifically responds to my August 3, 2011 Order was also untimely filed on September 4, 2011, as my Order directed the parties to respond by not more than twenty (20) days after August 3, 2011.

Respondents provide no rationale for the delay in the date of their Answer, June 20, 2011, and the date it was filed, July 5, 2011.

The doctrine of equitable tolling allows for consideration of whether good cause exists to deem pleadings timely filed despite non-compliance with a time limitation. Equitable tolling is generally reserved for situations "where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass." Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96 (1990).

I find that the grounds presented by Respondents fail to constitute good cause to extend the regulatory time period within which to file an Answer.

#### Findings of Fact

1. Respondent Jack L. Rader is an individual whose mailing address is 40 Tunnel Fork Road Gassaway, WV 16624. At all times material herein, Jack L. Rader :
  - (a) used the business name of Rader's Stables.
  - (b) was the owner of the horse known as "Thumbs Up".
2. Respondent Barbara L. Rader is an individual whose mailing address is 40 Tunnel Fork Road Gassaway, WV 16624. At all times material herein, Barbara L. Rader :
  - (c) used the business name of Rader's Stables.
  - (d) was the owner of the horse known as "Thumbs Up".
3. At all times material herein, Jack L. Rader was the trainer of "Thumbs Up".
4. On or about July 2, 2009, Respondent Jack L. Rader transported "Thumbs Up" to the Owingsville Lions Club Horse Show in Owingsville, Kentucky for the purpose of entering, showing and exhibiting the horse.

5. On or about July 2, 2009, Respondent Jack L. Rader transported, shipped, moved, delivered or received the horse known as "Thumbs Up" in violation of section 5(1) of the Act (15 U.S.C. §1824(1)) while it was sore as defined in the Act so that the horse could be shown or exhibited at the Owingsville Lions Club Horse Show in Owingsville, Kentucky in Class No. 20 as entry 381.
6. On July 2, 2009, Respondents Jack L. and Barbara L. Rader, in violation of sections 5(2)(B) and (D) of the Act (15 U.S.C. § 1824(2)(B) and (D)), entered and allowed the entry for the purpose of showing or exhibiting the horse known as "Thumbs Up" as entry 381 in Class No. 20 at the Owingsville Lions Club Horse Show in Owingsville, Kentucky while the horse was sore.

#### Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts alleged in paragraphs 1 through 6, supra., Respondents have violated the Act. See, 15 U.S.C. § 1824 (2)(B) and (D).
3. The following Order is authorized by the Act and warranted under the circumstances described herein:

#### **ORDER**

1. Respondent Jack L. Rader is assessed a civil penalty of \$2,200.00
2. Respondent Barbara L. Rader is assessed a civil penalty of \$2,200.00
3. Respondents are disqualified for one uninterrupted year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or other means, and from judging, managing or otherwise participating in any horse show, horse exhibition, horse sale or horse auction. "Participating" means engaging in any



activity beyond that of a spectator, and includes, without limitation, transporting or arranging for the transportation of horses to or from equine events; personally giving instructions to exhibitors; being present in the warm-up or inspection areas, or in any area where spectators are not allowed; and financing the participation of others in equine events. The disqualification shall continue until the civil penalty is paid in full.

This Decision shall become final and effective without further proceedings 35 days after the date of service upon Respondent, unless it is appealed to the Judicial Officer by a party to the proceeding within thirty (30) days, pursuant to the Rules, 7 C.F.R. §1.145.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk.

The Hearing Clerk shall correct the record to reflect Respondents' correct address, which is 40 Tunnel Fork Road, Gassaway, WV 26624, and correct the spelling of Respondents' names to reflect Rader.

So ORDERED this 21<sup>st</sup> day of September, 2011 at Washington, D.C.



Janice K. Bullard  
Administrative Law Judge