

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0235

In re: Mitchell Stanley d/b/a Stanley Brothers
Livestock,

Respondent.

Default Decision and Order

This is an administrative proceeding for the assessment of a civil penalty for violations of the Commercial Transportation of Equine for Slaughter Act, 7 U.S.C. § 1901 note,¹ and the regulations promulgated thereunder (9 C.F.R. part 88), in accordance with the rules of practice applicable to this proceeding as set forth in 7 C.F.R. §§ 1.130 et seq. and 380.1 et seq.

On May 18, 2011, the Administrator of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), initiated the instant proceeding by filing its fourth administrative complaint against Respondent.² The complaint alleged that in May of 2007, and August of 2009 Respondent committed violations of the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note)(hereinafter, the Act)³ and its accompanying regulations in 9 C.F.R. part 88 A copy of the complaint and the Rules of Practice were mailed to the Respondent at his last known address, via certified mail, return receipt

¹Pub. L. 104-127, title IX, subtitle A, April 4, 1996, 110 Stat. 1184.

² *In re Mitchell Stanley, d/b/a Stanley Brothers*, 65 Agric. Dec. 822 (2006) (Initial Decision by Judge Davenport), 65 Agric. Dec. 1171 (2006) (*Aff'd* by Judicial Officer Jenson); *In re Mitchell B. Stanley*, 67 Agric. Dec. 121 (2008) (Initial Decision by Judge Jill S. Clifton); and on November 10, 2009, Judge Clifton issued a default decision and order making respondent and co-respondent Robert Estelle jointly and severally liable to pay a civil penalty of \$5,200.00.

requested. On June 15, 2011, the U.S. Postal Service returned the complaint to the Hearing Clerk marked as unclaimed. Section 1.147(c)(1) of the rules of practice (7 C.F.R. § 1.147(c)(1)) states that any document that is initially sent to a person by registered mail to make that person a party respondent in a proceeding but is returned marked by the postal service as unclaimed or refused shall be deemed to have been received by said person on the date that it is re-mailed by ordinary mail to the same address. Accordingly, the Hearing Clerk re-mailed the complaint and Rules to Respondent at the same address via regular mail on June 15, 2011.

Section 1.136 of the Rules of Practice (7 C.F.R. § 1.136) states that an answer to a complaint 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 July 5, 2011, twenty days after service of the complaint (7 C.F.R. § 136(a)). Respondent failed to file an answer to the complaint and the Hearing Clerk's Office mailed him a no answer letter on July 8, 2011. Complainant thereafter filed its Motion for Adoption of Proposed Default Decision.

Accordingly, no Answer having been filed, the Motion will be granted and the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Mitchell Stanley d/b/a Stanley Brothers Livestock owns and operates Stanley Brothers Livestock and has a mailing address in Hamburg, Arkansas.
2. On or about May 10, 2007, the Respondent Stanley commercially transported 27 horses from Bastrop, Louisiana, to Cavel International in Dekalb, Illinois (hereinafter, Cavel), for

³Pub. L. 104-127, title IX, subtitle A, April 4, 1996, 110 Stat. 1184.

slaughter but failed to properly fill out the required owner/shipper certificate, VS 10-13. The form had the following deficiencies: (1) the prefix and tag number for one horse's USDA back tag were not recorded, in violation of 9 C.F.R. § 88.4(a)(3)(vi); (2) the form did not indicate the breed or type of any of the horses, in violation of 9 C.F.R. § 88.4(a)(3)(v); and (3) respondent Stanley did not sign the form on the owner/shipper signature line, in violation of 9 C.F.R. § 88.4(a)(3).

3. On or about August 13, 2009, Respondent Stanley commercially transported 36 horses from Hamburg, Arkansas, to Carnicos de Jeres S.A. de C.V. (hereinafter, Carnicos), a commercial horse slaughter plant in Jerez, Zacatecas, Mexico, for slaughter. None of the horses in the shipment was tagged with a USDA back tag, in violation of 9 C.F.R. § 88.4(a)(2).

4. On or about August 13, 2009, Respondent Stanley commercially transported 36 horses from Hamburg, Arkansas, to Carnicos for slaughter but did not properly fill out the required owner/shipper certificate, VS 10-13. The form had the following deficiencies: (1) it did not list the date and time that the horses were loaded onto the conveyance, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

5. On or about August 13, 2009, Respondent Stanley commercially transported 36 horses from Hamburg, Arkansas, to Carnicos for slaughter. Respondent Stanley's driver developed engine trouble while en route to the land border port in Eagle Pass, Texas, so he offloaded the horses off at Atascosa Livestock Auction in Pleasanton, Texas, and took his truck in for repairs. Respondent sent a relief driver to Pleasanton to load the horses onto a conveyance and take them to the border, but the relief driver did not prepare a second owner/shipper certificate, VS 10-13, noting the date, time, and place when and where the offloading occurred, in violation of 9 C.F.R. § 88.4(b)(4).

6. On or about August 13, 2009, Respondent Stanley commercially transported 36 horses from Hamburg, Arkansas, to Carnicos for slaughter. One of the horses in the shipment, bearing Louisiana back tag # 72DL3 285, had a severe laceration on the inside of its left rear leg that was causing it obvious physical distress. A USDA representative informed Respondent Stanley about the injured horse and directed him to seek veterinary assistance to alleviate the suffering of the horse. Despite being informed about the horse's injury and directed to obtain veterinary assistance for the injured horse from an equine veterinarian, Respondent Stanley did not obtain veterinary assistance for the horse and it had to be euthanized. Respondent Stanley thus failed to obtain veterinary assistance as soon as possible from an equine veterinarian for a horse that was in obvious physical distress, in violation of 9 C.F.R. § 88.4(b)(2). Respondent Stanley also failed to comply with the directions of a USDA representative to take appropriate actions to alleviate the suffering of the injured horse, in violation of 9 C.F.R. § 88.4(e).

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. By reason of the Findings of Fact set forth above, respondent violated the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note).

Order

1. Respondent Mitchell Stanley d/b/a Stanley Brothers Livestock is hereby assessed a civil penalty of eleven thousand five hundred and twenty five dollars (\$11,525.00). 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:

U.S. Bank
P.O. Box 979043
St. Louis, Missouri 63197

Respondent Mitchell Stanley d/b/a Stanley Brothers Livestock shall indicate that payment is in reference to A.Q. Docket # 11-0235.

2. 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 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).

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

Peter M. Davenport
Chief Administrative Law Judge