

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
HUGO T. LIEBEL, an individual) AWA Docket No. 19-J-0077
doing business as)
GREAT AMERICAN FAMILY)
CIRCUS, LLC, FLORIDA STATE)
FAMILY CIRCUS, LIEBLING)
BROTHERS CIRCUS, and)
LIEBLING BROTHERS FAMILY) MOTION FOR ADOPTION
CIRCUS,) OF DECISION AND ORDER
) BY REASON OF DEFAULT
Respondents.)

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(the “Act”), by an order to show cause filed on May 6, 2019, by the Administrator, Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (complainant), alleging that respondent Hugo T. Liebel is unfit to hold an AWA license and continued licensure of respondent would be contrary to the purposes of the Act.

On May 7, 2019, the Hearing Clerk sent copies of the Order to Show Cause by certified mail to the respondent’s mailing address provided on his latest AWA license renewal form. The United States Postal Service (USPS) tracking number for the mailing was 70182290000086072390. *See* Certified Mail Receipt attached to Hearing Clerk’s Letter dated May 7, 2019. The USPS Tracking web site reports that the Order to Show Cause was delivered to respondent’s address in Davenport, FL on May 17, 2019 at 3:24 p.m. *See* Exhibit A. Therefore, service was effected on respondent on May 17, 2019. *See in re: Huxtable's Kitchen, Inc.*, Docket No. 18-0007, 2019 WL 2345425, at *2 (U.S.D.A. May 16, 2019)(accepting, as proof of service of the Complaint, a copy of the USPS Tracking Report downloaded from

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the USPS official website); *In re: Raymond Frank Christie*, Docket No. 18-0020, 2019 WL 2345426, at *5 (U.S.D.A. Mar. 18, 2019)(accepting USPS tracking report as proof of service); *In re: Dennis v. Chavez, L.L.C., & Barrera & Co., L.L.C.*, Docket Nos.: 16-0080, 16-0081, 2016 WL 3077694, at *1 (U.S.D.A. Apr. 27, 2016)(likewise accepting USPS tracking report showing delivery as proof of service).

The cover letter signed by Caroline Hill, Hearing Clerk (and on letterhead of the Office of the Hearing Clerk), advised respondent as follows:

To assist you in responding to the Order to Show Cause, please refer to the rules of practice which govern the conduct of these proceedings found at 7 C.F.R. Part 1, 1.130 through 1.51 (“the Rules”).

The rules specify that you have 20 days from the receipt of this letter to file with the Hearing Clerk your written Answer to the Order to Show Cause signed by you or your attorney of record... Failure to file a timely answer or filing an answer which does not deny the allegations of the Order to Show Cause may constitute an admission of those allegations and waive your right to an oral hearing.

Therefore, respondent was informed in the letter of service accompanying the complaint that failure to file an answer within twenty (20) days after service of the complaint may constitute an admission of the allegations in the complaint and waiver of a hearing. 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). Therefore, the respondent’s answer was due on June 6, 2019. On June 11, 2019, five days past the deadline for answering, the respondent filed an answer.

Pursuant to section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)), the respondent’s failure to file an answer within twenty days constitutes an admission of the

allegations in the complaint. *See generally in re: Rocky Roy McCoy*, 2016 WL 3434032 (U.S.D.A. June 2, 2016)(16-3482, slip op. at 4-5 (6th Cir. 2017)(Order Den. Pet. for Review) (holding that the Judicial Officer properly granted default decision where respondent's answer was filed late due to delay in retaining counsel); *Morrow v. Dep't of Agric.*, No. 94-3793, 65 F.3d 168 (Table), 1995 WL 523336, at **2-3 (6th Cir. Sept. 5, 1995)(holding that default judgment was properly issued where respondent conceded that his answer was filed three days late); *In re: Eric John Drogosch*, 2004 WL 2619832 (2004)(default properly entered where respondent failed to file timely answer); *In re: Beth Lutz*, 60 Agric. Dec. 53 (2001) (default decision properly issued where respondent filed her answer 3 days after answer was due); *In re: Ron Morrow*, 53 Agric. Dec. 144 (1994)(default decision was properly issued where respondent was given extension of time to file answer, but answer was not filed until 3 days after deadline), *aff'd per curiam*, 65 F.3d 168 (Table), 1995 WL 523336 (6th Cir. 1995).

The Animal Welfare Act, 7 U.S.C. 2131 *et seq.* vests the USDA with the authority to regulate the transportation, purchase, sale, housing, care, handling and treatment of animals subject to the Act. Pursuant to the Act, persons who sell and transport regulated animals, or who use animals for research or exhibition, must obtain a license or registration issued by the Secretary of the USDA. 7 U.S.C. 2133. Further, the Act authorizes USDA to promulgate appropriate regulations, rules, and orders to promote the purposes of the AWA. 7 U.S.C. 2151. Section 2.12 of the Regulations, through section 2.11, authorizes the Department to terminate any license issued to a person who:

“[h]as made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect or welfare of animals, or is otherwise unfit to be licensed and the Administrator

determines that the issuance of a license would be contrary to the purposes of the Act.” 9 C.F.R. § 2.11(a)(6).

Accordingly, complainant moves for adoption of the attached Proposed Decision and Order terminating Animal Welfare Act license 58-C-0288. This remedy is appropriate in this case, in light of the respondent’s unfitness for licensure and the Administrator’s determination that continuing to license respondent under the Act would be contrary to the purposes of the Act.

Therefore, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), complainant hereby files the attached proposed Default Decision and Order and moves for its adoption.

[REDACTED]

[REDACTED]