

was permanently disqualified from obtaining a license under the Animal Welfare Act by Decision and Order dated November 18, 1998, In re David Zimmerman, 57 Agric. Dec. 1038, 1072 (1998) and being sufficiently advised, the Petitioner's request will be **GRANTED** and this action will be DISMISSED.

Copies of this Order will be served upon the parties by the hearing Clerk.

**In re: HAROLD AGRESTI and DEBBIE ASSALI AGRESTI.
FCIA Docket No. 05-0005 and FCIA Docket No. 05-0006.
Dismissal Order.
Filed November 28, 2005.**

Donald Brittenham, Jr. for Complainant.
Darin T. Judd, for Respondent.
Dismissal Order by Administrative Law Judge Peter M. Davenport.

ORDER

This matter is before the Administrative Law Judge upon the Complainant's Request for a Dismissal of the above styled actions as a result of settlement. Having reviewed the Settlement Agreements and being otherwise sufficiently advised, these actions are DISMISSED as settled. Copies of this Order shall be served upon the Parties by the Hearing Clerk's Office.

**In re: CHAD WAY, AN INDIVIDUAL, AND CHAD WAY
STABLES, INC., A TENNESSEE CORPORATION.
HPA Docket No. 03-0005.
Remand Order.
Filed July 15, 2005.**

HPA – Horse Protection Act – Remand order.

The Judicial Officer stated the United States Court of Appeals for the Sixth Circuit

remanded the proceeding based upon the Secretary of Agriculture's certification that he would accept jurisdiction from the court to proceed with an administrative hearing sought by the parties. *Chad Way v. United States Dep't of Agric.*, No. 05-3536 (6th Cir. July 8, 2005) (Order). Therefore, the Judicial Officer vacated *In re Chad Way*, 64 Agric. Dec. 401 (2005), and remanded the proceeding to the administrative law judge to whom the case had been previously assigned for further proceedings in accordance with the Rules of Practice.

Bernadette R. Juarez, for Complainant.

Aubrey B. Harwell, III, Nashville, TN, for Respondents.

Remand Order issued by William G. Jenson, Judicial Officer.

The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on January 10, 2003. Complainant instituted the proceeding under the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) [hereinafter the Horse Protection Act]; the regulations issued under the Horse Protection Act (9 C.F.R. pt. 11) [hereinafter the Horse Protection Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice]. On May 9, 2003, Complainant filed an Amended Complaint.

On April 11, 2005, I issued a Decision and Order: (1) finding Chad Way and Chad Way Stables, Inc. [hereinafter Respondents], failed to file a timely answer to the Amended Complaint; (2) holding Respondents are deemed, based on their failure to file a timely answer, to have admitted the allegations of the Amended Complaint; (3) concluding Respondents violated the Horse Protection Act and the Horse Protection Regulations as alleged in the Amended Complaint; and (4) assessing Respondents a civil penalty and disqualifying Respondents from showing, exhibiting, or entering any horse and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction.¹

Respondents sought judicial review of *In re Chad Way*, 64 Agric. Dec. 401 (2005). On July 8, 2005, the United States Court of Appeals for the Sixth Circuit remanded the proceeding to me based upon the Secretary of Agriculture's certification that he would accept jurisdiction

¹*In re Chad Way*, 64 Agric. Dec. 401 (2005).

CHAD WAY & CHAD WAY STABLES, INC.
64 Agric. Dec. 1683

from the court to proceed with an administrative hearing sought by the parties (Attach. A).²

As the United States Court of Appeals for the Sixth Circuit has remanded the case to me for further proceedings, the April 11, 2005, Decision and Order should be vacated and the proceeding should be remanded to the administrative law judge to whom the case was previously assigned for further proceedings in accordance with the Rules of Practice.

For the foregoing reasons, the following Order should be issued.

ORDER

1. The Judicial Officer's April 11, 2005, Decision and Order is vacated.
2. This proceeding is remanded to Administrative Law Judge Peter M. Davenport for further proceedings in accordance with the Rules of Practice.

ATTACHMENT A

June 28, 2005

Ms. Jill Colyer
Office of the Clerk
United States Court of Appeals
for the Sixth Circuit
532 Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, OH 45202-3988

Subject: Chad Way v. United States Department of Agriculture,
No. 05-3536 (6th Cir).

I have been delegated authority by the Secretary of the United States

²*Chad Way v. United States Dep't of Agric.*, No. 05-3536 (6th Cir. July 8, 2005) (Order) (Attach. B).

Department of Agriculture (USDA), to act as the final deciding officer in USDA's adjudicatory proceedings subject to 5 U.S.C. §§ 556 and 557. 7 C.F.R. § 2.35. The position of Judicial Officer was established pursuant to the Act of April 4, 1940 (7 U.S.C. §§ 450c-450g); section 4(a) of Reorganization Plan No. 2 of 1953, 18 Fed. Reg. 3219, 3221 (1953), reprinted in, 5 U.S.C. app. § 4(a) at 1491 (1994); and section 212(a)(1) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6912(a)(1)).

In accordance with the agreement reached between the parties to the above-captioned case, I certify that the Secretary will accept jurisdiction from the United States Court of Appeals for the Sixth Circuit to proceed with an administrative hearing on the merits in the case captioned In re Chad Way, an individual and Chad Way Stables, Inc., a Tennessee Corporation, HPA Docket No. 03-0005.

Sincerely,

William G. Jenson
Judicial Officer

cc: Aubrey B. Harwell, III, Esq.
Leslie K. Lagomarcino, Esq.

ATTACHMENT B

FILED JUL 08 2005
LEONARD GREEN, Clerk

No. 05-3536

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHAD WAY and CHAD WAY)
STABLES, INC.)

ORDER

ENTERED PURSUANT TO RULE 33(d)
RULES OF THE SIXTH CIRCUIT

Leonard Green, Clerk