

**In re: SAND CREEK FARMS, INC., A TENNESSEE CORPORATION.**

**HPA Docket No. 01-C022.**

**Ruling Denying Motion to Stay Sanctions.**

**Filed August 2, 2005.**

**HPA – Horse protection – Stay denied.**

The Judicial Officer denied Respondent's motion to stay sanctions imposed by Administrative Law Judge Jill S. Clifton (ALJ). The Judicial Officer concluded the ALJ's decision was not final or effective because Respondent had appealed the decision to the Judicial Officer pursuant to 7 C.F.R. § 1.145. Consequently, Respondent's motion to stay sanctions was premature.

Colleen A. Carroll, for Complainant.

John H. Norton, III, Shelbyville, TN, for Respondent.

*Ruling issued by William G. Jenson, Judicial Officer.*

#### **PROCEDURAL HISTORY**

On April 11, 2005, Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] issued a Decision and Order Upon Admission of Facts concluding Sand Creek Farms, Inc. [hereinafter Respondent], violated the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) and imposing sanctions on Respondent for its violation. The ALJ issued the Decision and Order Upon Admission of Facts in accordance with 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] and, more specifically, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

On July 1, 2005, Respondent appealed the ALJ's Decision and Order Upon Admission of Facts to the Judicial Officer pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145) and filed a Motion to Stay Sanctions Pending Appeal. On July 5, 2005, the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], filed a response to Respondent's appeal petition and a response to Respondent's Motion to

Stay Sanctions Pending Appeal. On July 11, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Respondent's Motion to Stay Sanctions Pending Appeal.

### **CONCLUSION BY THE JUDICIAL OFFICER**

The Rules of Practice provide that an administrative law judge's decision issued in accordance with section 1.139 the Rules of Practice (7 C.F.R. § 1.139) becomes final and effective without further proceedings 35 days after the date the decision is served on the respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145). Moreover, the ALJ expressly states that the Decision and Order Upon Admission of Facts is not final if appealed to the Judicial Officer, as follows:

This Decision and Order shall have the same force and effect as if entered after a full hearing. The Decision shall be final thirty five (35) days after service, unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (30) days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145 . . .). The Order shall be effective on the first day after the Decision becomes final.

Decision and Order Upon Admission of Facts at 4.

Respondent appealed the ALJ's Decision and Order Upon Admission of Facts to the Judicial Officer pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145). Consequently, the ALJ's April 11, 2005, Decision and Order Upon Admission of Facts is not final or effective. As the sanctions imposed by the ALJ on Respondent are not final or effective, Respondent's Motion to Stay Sanctions Pending Appeal is premature and should be denied.

For the foregoing reason, the following Ruling should be issued.

### **RULING**

Respondent's July 1, 2005, Motion to Stay Sanctions Pending Appeal

is denied.

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**In re: SAND CREEK FARMS, INC., A TENNESSEE CORPORATION.**

**HPA Docket No. 01-C022.**

**Remand Order filed August 11, 2005.**

**HPA – Horse protection – Technical pleading defect – Remand.**

The Judicial Officer vacated Administrative Law Judge Jill S. Clifton's (ALJ) Ruling Denying Motion to Amend First Amended Answer and remanded the proceeding to the ALJ for proceedings in accordance with the Rules of Practice. The Judicial Officer agreed with the ALJ that Respondent denied a statutory provision that was not alleged in the Complaint; nonetheless, the Judicial Officer found Respondent's incorrect citation of 15 U.S.C. § 1824(2)(A), rather than 15 U.S.C. § 1824(2)(B), was only a technical pleading defect and Respondent put Complainant on notice that Respondent denied the material allegations of the Complaint. The Judicial Officer stated he has long held technical defects, including incorrect citations to statutes and regulations, are not fatal to a complaint in an administrative proceeding before the Secretary of Agriculture, as long as the respondent is reasonably apprised of the issues in controversy. Similarly, technical defects should not be fatal to an answer as long as the complainant is not misled.

Colleen A. Carroll, for Complainant.  
John H. Norton, III, Shelbyville, TN, for Respondent.  
*Order issued by William G. Jenson, Judicial Officer.*

Bobby R. Acord, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on June 28, 2001. Complainant instituted the proceeding under the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) [hereinafter the Horse Protection Act]; 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].

Complainant alleges that on or about May 27, 2000, Sand Creek Farms, Inc. [hereinafter Respondent], entered a horse known as "JFK All Over" in the 30th Annual Spring Fun Show in Shelbyville, Tennessee,