

ORDER

1. a. This proceeding is remanded to Administrative Law Judge Peter M. Davenport for entry of Complainant's and Respondent Hyneman's proposed Consent Decision and Order as to William Russell Hyneman, unless the ALJ finds an error is apparent on the face of the proposed Consent Decision and Order as to William Russell Hyneman. Prior to entry of the Consent Decision and Order as to William Russell Hyneman, the ALJ shall vacate the June 8, 2005, Decision and Order Upon Admission of Facts by Reason of Default as it relates to Respondent Hyneman.

b. As soon as practicable after Administrative Law Judge Peter M. Davenport files a Consent Decision and Order as to William Russell Hyneman, Complainant and Respondent Hyneman shall provide a copy of the Consent Decision and Order as to William Russell Hyneman to the Judicial Officer, at which time I will consider Complainant's and Respondent Hyneman's request that I dismiss Respondent Hyneman's appeal petition.

2. If Administrative Law Judge Peter M. Davenport finds an error is apparent on the face of the proposed Consent Decision and Order as to William Russell Hyneman: the ALJ shall issue a ruling denying Complainant's and Respondent Hyneman's request that the ALJ enter the Consent Decision and Order as to William Russell Hyneman; the Hearing Clerk shall transmit the record to the Judicial Officer; and jurisdiction of this proceeding shall revert to the Judicial Officer.

IN RE: GWAIN WILSON, d/b/a DREAM STABLES; WILLIAM RUSSELL HYNEMAN; AND JOHN R. LEGATE, SR., AND JUSTIN LEGATE, d/b/a GATEWAY FARMS.

HPA Docket No. 02-0003.

Remand Order as to John R. LeGate, Sr.

Filed October 3, 2005.

HPA – Horse Protection Act – Remand order – Default decision – Consent decision.

The Judicial Officer remanded the proceeding to Administrative Law Judge Peter M.

Davenport (ALJ) to issue a Consent Decision and Order as to John R. LeGate, Sr., unless the ALJ finds an error is apparent on its face. The Judicial Officer stated the entry of a consent decision is preferable to the issuance of a default decision. The Judicial Officer further stated, under 7 C.F.R. § 1.138, the parties may agree to the entry of a consent decision at any time before the administrative law judge files a decision; therefore, prior to the ALJ's entry of the Consent Decision and Order as to John R. LeGate, Sr., the ALJ must vacate his previously-issued default decision.

Robert A. Ertman, for Complainant.
Respondent John R. Legate, Sr., Pro se.
Initial Decision issued by Administrative Law Judge Peter M. Davenport.
Order issued by William G. Jenson, Judicial Officer.

PROCEDURAL HISTORY

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 September 5, 2002. 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 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].

Complainant alleges that, on March 24, 2001, John R. LeGate, Sr. [hereinafter Respondent LeGate], violated the Horse Protection Act and the Regulations. Respondent LeGate failed to file a timely answer to the Complaint. On December 15, 2004, in accordance section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a Motion for Adoption of a Proposed Decision and Order and a proposed Decision and Order Upon Admission of Facts by Reason of Default.

On June 8, 2005, in accordance section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] filed a Decision and Order Upon Admission of Facts by Reason of Default: (1) concluding Respondent LeGate violated the Horse Protection Act and the Regulations as alleged in the Complaint; (2) assessing Respondent LeGate a \$2,200 civil penalty; and

(3) disqualifying Respondent LeGate from showing, exhibiting, or entering any horse and from participating in any horse show, horse exhibition, horse sale, or horse auction for 1 year.

On June 29, 2005, Respondent LeGate appealed to the Judicial Officer. On September 29, 2005, Complainant and Respondent LeGate filed a Joint Motion and Request for Remand requesting that I: (1) remand the proceeding to the ALJ for the purpose of vacating the June 8, 2005, Decision and Order Upon Admission of Facts by Reason of Default as it relates to Respondent LeGate and entering the proposed Consent Decision and Order as to John R. LeGate, Sr., attached to the Joint Motion and Request for Remand; and (2) dismiss Respondent LeGate's appeal petition as moot, upon the ALJ's entry of the proposed Consent Decision and Order as to John R. LeGate, Sr. On September 30, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on the Joint Motion and Request for Remand.

CONCLUSION BY THE JUDICIAL OFFICER

Voluntary settlements are highly favored in proceedings instituted under the Rules of Practice. Therefore, I conclude Complainant's and Respondent LeGate's proposed Consent Decision and Order as to John R. LeGate, Sr., should be entered by the ALJ, unless the ALJ finds an error is apparent on the face of the proposed Consent Decision and Order as to John R. LeGate, Sr. Section 1.138 of the Rules of Practice (7 C.F.R. § 1.138) provides that the parties may agree to the entry of a consent decision at any time before the administrative law judge files a decision. Therefore, prior to the ALJ's entry of the proposed Consent Decision and Order as to John R. LeGate, Sr., the ALJ must vacate his June 8, 2005, Decision and Order Upon Admission of Facts by Reason of Default as it relates to Respondent LeGate.

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

ORDER

1. a. This proceeding is remanded to Administrative Law Judge Peter M. Davenport for entry of Complainant's and Respondent

LeGate's proposed Consent Decision and Order as to John R. LeGate, Sr., unless the ALJ finds an error is apparent on the face of the proposed Consent Decision and Order as to John R. LeGate, Sr. Prior to entry of the Consent Decision and Order as to John R. LeGate, Sr., the ALJ shall vacate the June 8, 2005, Decision and Order Upon Admission of Facts by Reason of Default as it relates to Respondent LeGate.

b. As soon as practicable after Administrative Law Judge Peter M. Davenport files a Consent Decision and Order as to John R. LeGate, Sr., Complainant and Respondent LeGate shall provide a copy of the Consent Decision and Order as to John R. Legate, Sr., to the Judicial Officer, at which time I will consider Complainant's and Respondent LeGate's request that I dismiss Respondent LeGate's appeal petition.

2. If Administrative Law Judge Peter M. Davenport finds an error is apparent on the face of the proposed Consent Decision and Order as to John R. LeGate, Sr., the ALJ shall issue a ruling denying Complainant's and Respondent LeGate's request that the ALJ enter the Consent Decision and Order as to John R. LeGate, Sr.; the Hearing Clerk shall transmit the record to the Judicial Officer; and jurisdiction of this proceeding shall revert to the Judicial Officer.

**In re: TIM GRAY, AN INDIVIDUAL.
HPA Docket No. 01-D022.
Order Denying Late Appeal.
Filed October 17, 2005.**

HPA – Horse protection – Late appeal – Administrative law judge authority – Sever – Assignment of docket numbers.

The Judicial Officer denied Respondent's late-filed appeal. The Judicial Officer concluded he had no jurisdiction to hear Respondent's appeal filed the day after Administrative Law Judge Jill S. Clifton's (ALJ) decision became final. The Judicial Officer rejected Respondent's contention that the ALJ's decision was not final because she had no authority to sever the proceeding against Respondent and Sand Creek Farms, Inc., and as the proceeding as to Sand Creek Farms, Inc., is not yet final, the proceeding as to Respondent would not be final until it is final as to all issues and all respondents.