

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

AWA DOCKET NO. 05-0018

In re: PETER GRONBECK and
ROSEMARY GRONBECK,
individuals d/b/a L & J KENNELS,

Respondents

DECISION AND ORDER

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*) (the “Act”), by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the Respondents willfully violated the Act and the regulations and standards (9 C.F.R. § 1.1 *et seq.*) (the “Regulations”) issued thereunder.

On May 8, 2006, respondents Peter Gronbeck and Rosemary Gronbeck were personally served with a copy of the Complaint. (See Notice of Service, filed May 30, 2006.) Respondents were also provided a copy of the Rules of Practice (See id. Exs. 1-2), section 1.141(e) of which provides that, “[a] respondent who, after being duly notified, fails to appear at the hearing without good cause, shall be deemed to have waived the right to an oral hearing in the proceeding and to have admitted any facts

which may be presented at the hearing. Such failure by the respondent shall also constitute an admission of all the material allegations of fact contained in the complaint.”

7 C.F.R. § 1.141(e).

On February 14, 2007, a hearing was convened in Washington, D.C. Respondents, who had been duly notified, failed to appear at the hearing;¹ thus, the material facts alleged in the Complaint, which are admitted by Respondents’ default, are adopted and set forth herein as Findings of Fact. This Decision and Order is issued pursuant to sections 1.141(e) and 1.139 of the Rule of Practice. 7 C.F.R. §§ 1.141(e), 1.139.

The Act and the Regulations authorize the Secretary of Agriculture, among other things, to impose civil penalties and to revoke an Animal Welfare Act license and thus disqualify persons from becoming licensed. *See* 7 U.S.C. § 2149(b); *In re: Mary Bradshaw*, 50 *Agric. Dec.* 499, 507 (1991) (“The power to require and issue licenses under the Animal Welfare Act includes power to deny a license, to suspend or revoke a license, to disqualify a person from becoming licensed, and to withdraw a license.”). In imposing a civil penalty, however, the Act requires the Secretary to give due consideration to the appropriateness of the penalty with respect to the gravity of the violations, the size of the business of the person involved, the person’s good faith and the person’s history of previous violations. 7 U.S.C. § 2149(b).

The gravity of the violations herein is great, as the violations frustrate the purposes of the Act. The purposes of the Act are “(1) to insure that animals

¹ Pursuant to the Order, dated January 30, 2007, personal appearance by Respondents was not required: “At their option, the Respondents may appear in person or to participate by telephone, provided they provide counsel for Complainant and the Hearing Clerk’s Office with a telephone number at which they may be reached on the date of the hearing.” *See* Order, dated Jan. 30, 2007. Respondents were served with a copy of said Order by overnight delivery. *See id.*

intended...for pets are provided humane care and treatment; (2) to assure the humane treatment of animals during transportation in commerce; and (3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.” 7 U.S.C. § 2131. Respondents violated the Act and the Regulations by operating as an unlicensed dealer and selling, in commerce, at least 176 dogs and puppies, of various breeds, including sales to licensed dealers.² Such violations are serious as they undercut the Secretary’s ability to carry out the purposes of the Act and ensure that animals intended for use in commerce “are provided humane care and treatment” and thus risked the health and well-being of their animals. The failure to maintain “an Animal Welfare Act license before operating as a dealer is a serious violation because enforcement of the Animal Welfare Act and the Regulations and Standards depends upon the identification of persons operating as dealers.” *In re: Shaffer*, 60 *Agric. Dec.* 444, 478 (2001).

The Respondents operated a medium-size business, selling no fewer than 176 dogs and puppies of at least 14 different breeds during the 8½-month period (March 2003 - January 2004) described herein and grossing at least \$40,000 from selling 230 animals between February 2001 and February 2002, Respondents demonstrated a disregard for, and unwillingness to abide by, the requirements of the Act and the Regulations. Specifically, despite having voluntarily surrendered their license, Respondents continued to engage in regulated activity without a license and sold

² The Respondents’ Answer suggests that some of these unlicensed sales may have taken place wholly within the State of Iowa; however, that fact does not “does not preclude the jurisdiction of the Secretary of Agriculture”. *In re Marilyn Shepard*, 61 *Agric. Dec.* 478, 482 (2002), (*citing, inter alia*, 3 Att’y Gen. Mem. 326, available at 1979 WL 16592); *see also In re Lloyd A. Good, Jr.*, 49 *Agric. Dec.* 156, 168-169, (1990) (opinion of Judicial Officer holding wholly-intrastate transaction to affect interstate commerce and thus fall within the jurisdiction of the Secretary of Agriculture under the Animal Welfare Act).

numerous dogs and puppies, of various breeds, including sales to licensed dealers. Such an ongoing pattern of violations demonstrates an abject lack of good faith for purposes of section § 2149(b) of the Act, 7 U.S.C. § 2149(b).

Accordingly, after considering the entire record herein, section 2149(b) of the Act, and the recommendations of the Complainant, the following Findings of Fact, Conclusions of Law and Order will be entered.

FINDINGS OF FACT

1. Respondent Peter Gronbeck is an individual whose mailing address is 3906 410th Avenue, Emmetsburg, Iowa 50536.
2. Respondent Rosemary Gronbeck is an individual whose mailing address is 3906 410th Avenue, Emmetsburg, Iowa 50536.
3. Respondents Peter Gronbeck and Rosemary Gronbeck, collectively and individually do business as L & J Kennels, believed to be an unincorporated association or partnership with the mailing address 3906 410th Avenue, Emmetsburg, Iowa 50536.
4. Respondents Peter Gronbeck, Rosemary Gronbeck and L & J Kennels (collectively, “Respondents”), at all material times mentioned herein, were operating as dealers as defined in the Act and the Regulations.
5. Between February 28, 2002 and March 11, 2003, Respondents held Animal Welfare Act license number 42-B-0202, issued to “PETER & ROSEMARY GRONBECK DBA: L & J KENNELS.”
6. On March 11, 2003, Respondents voluntarily surrendered said license.

7. Respondents operated a medium-sized business, selling no fewer than 176 dogs and puppies of at least 14 different breeds during the 8½-month period (March 2003 - January 2004) described herein. According to information contained on the Respondents application for an Animal Welfare Act license, they sold 230 animals and grossed at least \$40,000 from the sales of those animals between February 2001 - February 2002.

8. Respondents have no previous history of violations; however, Respondents' conduct over the period described herein reveals a consistent disregard for, and unwillingness to abide by, the requirements of the Act and the Regulations. Despite having voluntarily surrendered their license, Respondents continued to engage in regulated activity without a license and sold numerous dogs and puppies, of various breeds, including to licensed dealers.

9. On or about March 26, 2003, only a few weeks after voluntarily terminating their license, Respondents, without being licensed, sold, in commerce, at least 20 puppies of various breeds to Betty Curb, a licensed dealer d/b/a Betty's Puppies (Animal Welfare Act license number 33-B-0349) ("Curb"), for resale for use as pets or breeding purposes.

10. On or about March 26, 2003, Respondents, without being licensed, sold, in commerce, at least 71 assorted dogs and puppies of various breeds, including Jack Russell Terriers, Australian Cattle Dogs, English Springer Spaniels, German Pointers, Labrador Retrievers, Golden Retrievers and Rottweilers, to Rhonda Mandat, for resale for use as pets.

11. On or about May 22, 2003, Respondents, without being licensed, sold, in commerce, at least 46 puppies of various breeds, including Cocker Spaniels, Miniature Schnauzers, English Springer Spaniels, Labrador Retrievers, Jack Russell Terriers, German Short Hair Pointers, Silkie/Cocker Mixes, Dachshunds, Bichons, Scottish Terriers, Australian Cattle Dogs and Rottweilers, to Curb, for resale for use as pets or breeding purposes.

12. On or about August 13, 2003, Respondents, without being licensed, sold, in commerce, at least 24 adult dogs to Paul and Shelia Haag, licensed dealers d/b/a Valley View Kennels (Animal Welfare Act license number 41-A-0281), for resale for use as pets or breeding purposes.

13. On or about January 7, 2004, Respondents, without being licensed, sold, in commerce, at least 15 dogs of various breeds, including Australian Cattle Dogs and English Springer Spaniels, to Ross and Sandra Jurgenson, licensed dealers d/b/a Jurgenson Kennels (Animal Welfare Act license number 41-B-0229), for resale for use as pets or breeding purposes.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. Between March 2003 and May 2003, only a few weeks after voluntarily surrendering their license, Respondents, violated the Act and the Regulations by selling in commerce at least 66 puppies of various breeds to Betty Curb, a licensed dealer d/b/a Betty's Puppies (Animal Welfare Act license number 33-B-0349), for resale use as pets or breeding purposes, without being licensed, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. §

2.1(a)(1). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b). These violations took place on or about the following dates: March 26, 2003 and May 22, 2003.

3. On or about March 26, 2003, also only a few weeks after voluntarily surrendering their license, Respondents, violated the Act and the Regulations by selling in commerce at least 71 assorted dogs and puppies of various breeds, including Jack Russell Terriers, Australian Cattle Dogs, English Springer Spaniels, German Pointers, Labrador Retrievers, Golden Retrievers and Rottweilers, to Rhonda Mandat, for resale for use as pets, without being licensed, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b).

4. On or about August 13, 2003, Respondents, violated the Act and the Regulations by selling in commerce at least 24 adult dogs to Paul and Shelia Haag, licensed dealers d/b/a Valley View Kennels (Animal Welfare Act license number 41-A-0281), for resale for use as pets or breeding purposes, without being licensed, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b).

5. On or about January 7, 2004, Respondents, without being licensed, sold, in commerce, at least 15 dogs of various breeds, including Australian Cattle Dogs and English Springer Spaniels, to Ross and Sandra Jurgenson, licensed dealers d/b/a Jurgenson Kennels (Animal Welfare Act license number 41-B-0229), for resale for use as pets or breeding purposes, in willful violation of section 2134 of the Act and section

2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b).

ORDER

1. Respondents' AWA license, license number 42-B-0202, issued to "PETER & ROSEMARY GRONBECK DBA: L & J KENNELS," is hereby revoked and Respondents are hereby disqualified from obtaining an AWA license.

2. Respondents, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the Regulations issued thereunder, and, in particular, shall cease and desist from engaging in activities for which an Animal Welfare Act license is required.

3. Respondents are jointly and severally assessed a civil penalty of \$10,400.00, of which \$8,400 shall be suspended and held in abeyance, provided Respondents do not engage in any activity regulated under the Act and/or Regulations, and \$2,000 shall be paid within 45 days of service of this order by certified check or money order made payable to the Treasurer of the United States and sent to:

United States Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW.
Washington, DC 20250-1417

Respondent shall state on the certified check or money order that the payment is in reference to AWA Docket No. 05-0018.

4. The provisions of this order shall become effective on the first day after this decision becomes final. This decision becomes final without further

proceedings 35 days after service as provided in sections 1.142 and 1.145 of the Rules of Practice. Copies of this decision shall be served upon the parties.

Done at Washington, D.C.
February 27, 2007

PETER M. DAVENPORT
Administrative Law Judge

Copies to: Babak Rastgoufard, Esquire
 Peter Gronbeck
 Rosemary Gronbeck

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