

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

A.Q. Docket No. 10-0310

In re: Billy E. Rowan,

Respondent

DECISION AND ORDER

Preliminary Statement

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the handling of all equines in commercial transportation to slaughter, (9 C.F.R. § 88 et seq.), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. §§380.1 et seq. and 7 C.F.R. §§ 1.130 et seq. The action was initiated under the Commercial Transportation of Equines for Slaughter Act, (7 U.S.C. § 1901 note)(Act) and the regulations promulgated thereunder, by a complaint filed on June 4, 2010, by the Acting Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

On July 12, 2010, Respondent filed an Answer. On July 22, 2010, the Complainant filed a Motion for Adoption of Proposed Default Decision and Order arguing that the Answer that was filed was untimely; that the Answer failed to clearly admit, deny, or explain the material allegations of fact contained in the complaint; and that an answer which fails to meet the fundamental requirements of an Answer under the Rules of Practice constitutes an admission of the material allegations of fact contained in the complaint and a waiver of hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

As the Answer which was filed by the unrepresented Respondent does present a question of material fact only as to the events of August 23, 2006, I will defer ruling on the Motion for Adoption of Proposed Default Decision and Order as to those allegations at this time, but will enter a judgment as to the balance of the allegations contained in the Complaint.

With the exception of the events occurring on August 23, 2006, Mr. Rowan's Answer admits the balance of the allegations of the Complaint, not denying that the horses suffered head trauma as was alleged to have occurred on September 24, 2006, October 3, 2006, October 8, 2006 and February 4, 2007, but merely opining that the injuries might have occurred due to improper operation of the tailgate and not denying that the pregnant mare was improperly transported on June 11, 2007, but disclaiming knowledge that the mare was in foal. Mr. Rowan's discussion of an event which occurred on a Friday is superfluous and does not relate to any of the allegations contained in the Complaint as I will take notice that none of the dates mentioned in the Complaint occurred on a Friday.

With the exception of the allegations raised in the Complaint as to August 23, 2006, I consequently will find that there are no issues of material fact and will enter the following Findings of Fact, Conclusions of Law and Order.

Findings of Fact

1. The Respondent Billy E. Rowan is a resident of the State of Mississippi and lives in New Albany, Mississippi 38652. Respondent is a commercial slaughter horse buyer who has been in the business of buying and selling horses for over 35 years.
2. On or about September 24, 2006, Respondent shipped approximately 38 horses in commercial transportation to Cavel International for slaughter which resulted in causing unnecessary discomfort, stress, physical harm or trauma to two horses (USDD 1207 and 1233)

being transported, in violation of 9 C.F.R. §88.4(a)(4)(i); 9 C.F.R. §88.4(c); and 9 C.F.R. §88.3(a)(3).

3. On or about October 3, 2006, Respondent shipped approximately 37 horses in commercial transportation to Cavel International for slaughter which resulted in causing unnecessary discomfort, stress, physical harm, or trauma to two horses (USDD 1355 and USDD 1372) being transported, in violation of 9 C.F.R. §88.3(a)(3).

4. On or about October 8, 2006, Respondent shipped approximately 44 horses in commercial transportation to Cavel International for slaughter which resulted in causing unnecessary discomfort, stress, physical harm, or trauma to two horses (USDD 1418 and 1432) being transported, in violation of 9 C.F.R. §88.4(c) and 9 C.F.R. §88.3(a) (3).

5. On or about February 4, 2007, Respondent shipped approximately 34 horses in commercial transportation to Cavel International for slaughter which caused unnecessary discomfort, stress, physical harm, or trauma, in two horses (USDO# 3568 and 3581) being transported, in violation of 9 C.F.R. §88.4(c) and 9 C.F.R. §88.3(a) (3).

6. On or about June 11, 2007, Respondent shipped approximately 36 horses in commercial transportation to Cavel International for slaughter causing unnecessary discomfort, stress, physical harm, or trauma to one horse (USDO 3686), which was unfit to travel as it foaled shortly after arriving at the slaughter facility, in violation of 9 C.F.R. §88.4(c).

7. The Respondent has a history of prior violations. *In re Billy E. Rowan*, 67 Agric. Dec. _____ (2008).

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. By reason of the Findings of Fact set forth above, the Respondent has violated the Act and the regulations issued under the Act (9 C.F.R. § 88 et seq.).

Order

1. For the foregoing violations, the respondent is hereby assessed a civil penalty of forty thousand dollars (\$40,000.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

2. Respondent shall indicate that payment is in reference to A.Q. Docket No. 10-0310.

3. Counsel for the Complainant may, at the option of the Administrator, within 30 days move to dismiss the remaining unresolved allegations, or request a hearing date as to those allegations.

Peter M. Davenport
Chief Administrative Law Judge

August 25, 2010