UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

A.Q. Docket No.: 10-0083

In re: Robert Solomon a.k.a. Robbie Solomon
d/b/a Solomon Horse Sale,

Respondent

**Default Decision and Order**

This is an administrative proceeding for the assessment of a civil penalty for violations of the Commercial Transportation of Equine for Slaughter Act, 7 U.S.C. § 1901 note, and the regulations promulgated thereunder (9 C.F.R. part 88), in accordance with the Rules of Practice applicable to this proceeding as set forth in 7 C.F.R. §§ 1.130 et seq. and 380.1 et seq.

On January 29, 2010, the Administrator of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), initiated this proceeding by filing an administrative complaint against Respondent. The complaint was mailed to Respondent at the address provided by the Complainant in Belmont, Mississippi as his last known residence, via certified mail, return receipt requested. On February 24, 2010, the complaint was returned to the Hearing Clerk marked by the U.S. Postal Service as unclaimed or refused. Section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)) provides that any document that is initially sent to a person by certified mailed to make that person a party Respondent in a proceeding but is returned marked by the postal service as unclaimed or refused shall be deemed to have been received by said person on the date that it is re-mailed by ordinary mail to the same address. Accordingly, the Hearing Clerk re-mailed the complaint to Respondent at the same

address via regular mail on February 25, 2010 and the Respondent **was deemed to have been properly served with the complaint on February 25, 2010**.

Section 1.136 of the Rules of Practice (7 C.F.R. § 1.136) states that an answer to a complaint should be filed with the Hearing Clerk within twenty (20) days after service of the complaint, and that failure to file an answer within twenty (20) days after service of the complaint constitutes an admission of the allegations in the complaint and waiver of a hearing. Respondent's answer thus was due no later than March 17, 2010, twenty days after service of the complaint (7 C.F.R. § 136(a)). Respondent never filed an answer to the complaint and the Hearing Clerk mailed him a no answer letter on March 19, 2010.

On April 12, 2010, the no answer letter was returned to the Hearing Clerk marked by the U.S. Postal Service as return to sender and unable to forward or deliver. On April 14, 2010, **although not necessary as service of the Complaint had already been effected**[1] acting out of an overabundance of caution, the Hearing Clerk asked Counsel for the Complainant to provide a more current mailing address for Respondent. On April 16, 2010, Counsel for Complainant gave the Hearing Clerk a new address in Belmont, Mississippi, and on April 20, 2010, the Hearing Clerk again mailed the complaint to Respondent at the new address via certified mail, return receipt requested.[2] On April 27, 2010, the complaint mailed to the new address was returned to

[1] Once a Respondent is properly served under the Rules of Practice, jurisdiction over that person or entity attaches and a case may proceed on to judgment regardless of whether subsequent mailings are received by that Respondent. Parties to litigation are expected to apprise the Hearing Clerk, opposing Counsel and the judge of any change of address or location. The Rules do require that proposed decisions, initial decisions, and final decisions be served by certified or regular mail be sent to the last known principal place or business, the last known principal place of business of the attorney or representative of such party, or last known residence if an individual. Rule 1.147(c)(1), 7 C.F.R. §1.147(c)(1). *See also:* Rule 1.142(c)(3) and (4), 7 C.F.R. §1.142(c)(3) and (4).

[2] On April 19, 2010, the Hearing Clerk also mailed a copy of the no answer letter dated

the Hearing Clerk marked by the U.S. Postal Service as attempted-not known.

On June 11, 2010, Counsel for the Complainant obtained and gave the Hearing Clerk a third address for Respondent, this one in Dennis, Mississippi. On June 14, 2010, the Hearing Clerk mailed the complaint to Respondent at this address via certified mail, return receipt requested, and on July 14, 2010, the complaint was returned to the Hearing Clerk marked by the U.S. Postal Service as unclaimed or refused. Pursuant to section 1.147(c)(1) of the Rules of Practice, the Hearing Clerk re-mailed the complaint to Respondent at the same address by regular mail on July 21, 2010, and Respondent was deemed again to have been properly served with the complaint on that date. Pursuant to section 1.136 of the Rules of Practice, Respondent's answer to the complaint was due on August 10, 2010, but Respondent failed to file a timely answer to the complaint and the Hearing Clerk mailed him a no answer letter on August 16, 2010.

The record is clear that on both occasions (the initial service and the second mailing of July 21, 2010) Respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a) and thus failed to deny or otherwise respond to an allegation of the complaint. Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) or to deny or otherwise respond to an allegation of the complaint shall be deemed an admission of the allegations in the complaint. Furthermore, because the admission of the allegations in the complaint constitutes a waiver of hearing (7 C.F.R. § 1.139) and Respondent's failure to file an answer is deemed such an admission pursuant to the Rules of Practice, Respondent's failure to answer is likewise deemed a

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March 19, 2010, to the new address. The final disposition of this copy of the no answer letter is unknown.

waiver of hearing.

Notwithstanding his failure to file a timely answer, I have considered Mr. Solomon's typed response dated September 30, 2010. In his response, Mr Solomon denied having personal knowledge of the transportation of the 19 horses, including the 13 stallions on July 26, 2006. His knowledge and description of the events is based upon a conversation with Adam Morgan, his truck driver. Based upon the account provided to him by his employee, Mr. Solomon suggests that after a horse trailer mishap (multiple blown tires), the co-mingling of the stallions was the act of, variously, the Arkansas Highway Patrol, The Humane Society, or the Texas Department of Agriculture. Mr. Solomon's response fails to indicate that his horse conveyance had adequate stallion separation devices/ techniques prior to the trailer tire blow-out or that the stallions were in fact segregated before the mishap. Indeed, the stallions were together in the conveyance through part of Mississippi and most of Arkansas. Despite what may have happened after the mishap, it is clear that there were violations under the regulations before the mishap. There is no provision in the regulations requiring physical separation which distinguishes stallions which are from different herds and those from the same farm. Accordingly, the material allegations in the complaint are adopted and set forth in this default decision as the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

## Findings of Fact

1. Respondent Robert Solomon a.k.a. Robbie Solomon d/b/a Solomon Horse Sale commercially transports horses to slaughter and has a mailing address in Dennis, Mississippi. The record further supports a finding that Respondent earlier had a mailing address in Belmont, Mississippi.

2. On or about July 26, 2006, Respondent shipped 19 horses in commercial transportation to the BelTex Corporation Processing Plant in Forth Worth, Texas, for slaughter. The shipment included 13 stallions which were not completely segregated from the other horses including other stallions on the conveyance so as to prevent them from coming into contact with any other horse on the conveyance, in violation of 9 C.F.R. § 88.4(a)(4)(ii).

## Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. By reason of the Findings of Fact set forth above, Respondent violated the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note).

## Order

1. Respondent Robert Solomon a.k.a. Robbie Solomon d/b/a Solomon Horse Sale is hereby assessed a civil penalty of ten thousand four hundred dollars ($10,400.00). 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

Respondent Robert Solomon a.k.a. Robbie Solomon d/b/a Solomon Horse Sale shall indicate that payment is in reference to A.Q. Docket # 10-0083.

2. This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this default decision and order upon Respondent unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the

Rules of Practice applicable to this proceeding (7 C.F.R. § 1.145).

Copies of this Decision and Order shall be served on the parties.

November 9, 2010

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Peter M. Davenport
Chief Administrative Law Judge