

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0233

In re: Lawrence C. Wallach, a/k/a
Larry Wallach,

Respondent

Order of Dismissal

This matter is before the Administrative Law Judge upon the Request of the Complainant to vacate the exchange deadlines established in this action by my Order dated October 10, 2012. The Request, filed by Complainant's Counsel on November 5, 2012, three days before the date established for the Complainant's exchange, represents that the parties are engaged in settlement negotiations and that complying with the deadlines might require the parties to expend resources needlessly in the event a settlement is reached.

This action was instituted on February 13, 2012 by the filing of a Complaint by Kevin Shea, the Acting Administrator of the Animal and Plant Health Inspection Service, alleging that Respondent violated the Animal Welfare Act, 7 U.S.C. §2131, *et seq.*, (the Act or AWA) on a number of occasions between May 13, 2008 and August 31, 2011. The Complaint, which alleges multiple violations over the identified period, states that the gravity of the offenses is great including repeated failures to handle animals in accordance with the applicable regulations, and indicates that Respondent has not shown good faith. As sanctions, Complaint seeks a cease and desist order, civil penalties and either suspension or revocation of Respondent's AWA License. Respondent's Answer

was filed with the Hearing Clerk on March 12, 2012. No further pleadings having been filed indicating progress in moving the case forward, on October 10, 2012, I entered the Order establishing exchange deadlines.

In Complainant's request, which fails to indicate whether opposing counsel was consulted concerning a possible vacation or extension of the deadlines and it will be noted was not joined in by Respondent,¹ Complainant's Counsel questions my authority to establish exchange deadlines in absence of a prehearing conference. As a reading of the language of Section 1.140 (7 C.F.R. §1.140) makes prehearing conferences permissive, I find Counsel's suggestion both inappropriate given the time the case has been pending and without merit.

It appearing that no Order was entered vacating the exchange deadline prior to the date established for Complainant's exchange and that the Complainant has failed to comply with my Order of October 10, 2012, rather than excluding the Complainant's exhibits or witnesses as might be appropriate under the Order, this action will instead be **DISMISSED**, without prejudice.

Copies of this Order will be served upon the parties by the Hearing Clerk.

November 9, 2012

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Colleen A. Carroll, Esquire
Ellis W. Peetluk, Esquire

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¹ The timing of the filing of the Request did not allow sufficient time before the deadline for Respondent's Counsel to have filed a Response.