

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

In re:	)	HPA Docket No. 01-C022
	)	(formerly HPA Docket No. 01-A022;
SAND CREEK FARMS, INC., a	)	formerly HPA Docket No. 01-0022)
Tennessee corporation,	)	
	)	<b>Decision and Order</b>
Respondent	)	<b>Upon Admission of Facts</b>

[1] Complainant, the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (APHIS), is represented by Colleen A. Carroll, Esq. Respondent, Sand Creek Farms, Inc., is represented by John H. Norton, III, Esq.

[2] This proceeding was instituted under the Horse Protection Act (15 U.S.C. § 1821 et seq.) (the “Act”), by a complaint filed on June 28, 2001, alleging, among other things, that on or about May 27, 2000, Respondent Sand Creek Farms, Inc. violated section 5(2)(**B**) of the Act by *entering* a horse named “JFK All Over” in a horse show while the horse was sore.

[3] Respondent Sand Creek Farms, Inc. timely filed an answer to the complaint, and thereafter was permitted to file an amended answer to the complaint, on February 2 and 6, 2004 (First Amended Answer), which, among other things, denied *showing* the horse while he was sore, as prohibited by section 5(2)(**A**) of the Act.

[4] See HPA Docket No. 01-0022 and HPA Docket No. 01-A022, by which this case was formerly known, and which contain the majority of the case file.

[5] I have carefully considered APHIS's Motion filed March 3, 2005, requesting the issuance of a Decision and Order Upon Admission of Facts; Respondent's response filed March 23, 2005; and Complainant's Opposition to Respondent's Motion to File Second Amended Answer, filed April 4, 2005. Earlier, I ruled that it would be futile to allow Sand Creek Farms, Inc. to file its proposed Second Amended Answer. The proposed Second Amended Answer still failed to deny adequately the allegation that Sand Creek Farms, Inc. *entered* the horse while he was sore.

[6] I conclude that the First Amended Answer fails to deny the material allegations of the complaint, specifically, that Sand Creek Farms, Inc. entered the horse while he was sore. The First Amended Answer denies a statutory section that is not alleged, the section that prohibits "showing" rather than the section that prohibits "entering".

[7] Consequently, I issue this Decision and Order Upon Admission of Facts, in accordance with the Rules of Practice. *See* 7 C.F.R. § 1.130 *et seq.*; especially 7 C.F.R. § 1.136 and 7 C.F.R. § 1.139.

#### Findings of Fact

[8] Respondent Sand Creek Farms, Inc. is a Tennessee corporation with a mailing address of 3125 Highway 231 North, Shelbyville, Tennessee 37160, which was, at all times material to this Decision, engaged in the business of breeding, boarding, training and showing Tennessee Walking Horses.

[9] On or about May 27, 2000, Respondent Sand Creek Farms, Inc. entered "JFK All Over" in the 30<sup>th</sup> Annual Spring Fun Show in Shelbyville, Tennessee, (the "Fun Show"), as entry number 252 in class number 34 ("Three-Year-Old Walking Stallions") for the purpose of showing the horse in that class.

[10] On or about May 27, 2000, Respondent Sand Creek Farms, Inc. entered “JFK All Over” in the Fun Show, as entry number 252 in class number 34, while the horse was “sore,” as that term is defined in the Act, for the purpose of showing the horse in that class, in violation of section 5(2)(B) of the Act (15 U.S.C. § 1824(2)(B)).

#### Conclusions

[11] The Secretary of Agriculture has jurisdiction in this matter.

[12] Respondent Sand Creek Farms, Inc. has violated section 5(2)(B) of the Horse Protection Act. 15 U.S.C. § 1824(2)(B).

[13] The following order is authorized by the Act and warranted under the circumstances.

#### Order

[14] Respondent Sand Creek Farms, Inc. is assessed a civil penalty of **\$2,200**, which shall be paid by a certified check or money order or cashier’s check, made payable to the order of, the Treasurer of the United States.

[15] Such check shall be marked with HPA Docket No. 01-C022 and forwarded to counsel for APHIS as follows:

Colleen A. Carroll, Esq.  
Office of the General Counsel  
United States Department of Agriculture  
South Building, Mail Stop 1417  
1400 Independence Avenue SW  
Washington DC 20250-1417

[16] Respondent Sand Creek Farms, Inc. is ***disqualified for two years*** from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, corporation, partnership, or other device, and from judging, managing, or otherwise participating in any horse

show, horse exhibition, or horse sale or auction.<sup>1</sup>

[17] Respondent Sand Creek Farms, Inc., its agents and employees, successors and assigns, directly or indirectly or through any corporate or other device, shall cease and desist from violating the Act and the regulations issued thereunder.

[18] This Decision and Order shall have the same force and effect as if entered after a full hearing. The Decision shall be final thirty five (35) days after service, unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (30) days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A). The Order shall be effective on the first day after the Decision becomes final.

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.  
this 11th day of April 2005

Jill S. Clifton  
Administrative Law Judge

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<sup>1</sup> [Participating] means engaging in any activity beyond that of a spectator, and includes, without limitation, transporting or arranging for the transportation of horses to or from equine events, personally giving instructions to exhibitors, being present in any area where spectators are not allowed, and financing the participation of others in equine events.

**APPENDIX A**

**7 C.F.R.:**

**TITLE 7—AGRICULTURE**

**SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE**

**PART 1—ADMINISTRATIVE REGULATIONS**

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**SUBPART H—RULES OF PRACTICE GOVERNING FORMAL**

**ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER**

**VARIOUS STATUTES**

...

**§ 1.145 Appeal to Judicial Officer.**

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time

for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145.