

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

A.Q. Docket No.: 09-0026

In re: DENNIS R. SMEBAKKEN,
d/b/a RUSHMORE LIVESTOCK, INC.;
RANDALL C. BRUMBAUGH,
d/b/a RANDALL'S TRANSPORTATION; and
ROBERT PAULSON,

Respondents

**DEFAULT DECISION AND ORDER
AS TO ROBERT PAULSON**

Preliminary Statement

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, the regulations promulgated thereunder (9 C.F.R. part 88), and 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 November 18, 2008, 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 Paulson. The complaint was mailed to Respondent Paulson at P.O. Box 134, Geddes, South Dakota 57342, his last known residence, via certified mail, return receipt requested. On December 1, 2008, the complaint mailed to Respondent Paulson was returned to the Hearing Clerk marked by the U.S. Postal Service as "unable to forward", and the next day the Hearing Clerk sent counsel for the complainant a notice of unsuccessful service. Counsel for the Complainant was able to secure another address for Respondent Paulson, and on December 10, 2008, the Hearing Clerk re-mailed the complaint

to Respondent Paulson at 106 East 7th Street, P.O. Box 113, Platte, South Dakota 57369, via certified mail, return receipt requested. On January 7, 2009, the complaint mailed to Respondent Paulson's second address 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 registered mail 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 Paulson at the same address via regular mail on January 8, 2009. Therefore, Respondent Paulson is deemed to have been properly served with the complaint on January 8, 2009.

Section 1.136 of the rules of practice (7 C.F.R. § 1.136) provides 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 Paulson's answer thus was due no later than January 28, 2009, twenty days after service of the complaint (7 C.F.R. § 136(a)). Respondent Paulson never filed an answer to the complaint and the Hearing Clerk mailed him a no answer letter on January 29, 2009.

Respondent Paulson failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a) and accordingly 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 Paulson's failure to file an answer is deemed such an admission pursuant to the rules of practice, Respondent Paulson's failure to answer is likewise deemed a waiver of hearing. Accordingly, the material allegations in the complaint are deemed admitted and 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. Robert Paulson, hereinafter referred to as Respondent Paulson, is a truck driver for loads of horses being commercially transported to slaughter. He has a mailing address in Platte, South Dakota 57369.

2. (a) On or about March 28, 2005, Respondent Paulson shipped a load of 45 horses in commercial transportation from Billings, Montana, to Cavel International in Dekalb, Illinois (hereinafter, Cavel), for slaughter. Respondent Paulson unloaded the horses in Platte, South Dakota, at 2 a.m. on March 29, 2005, and reloaded them about 12 hours later for commercial transportation to Cavel, but did not prepare a second owner-shipper certificate, VS Form 10-13, showing that date, time, and location that the horses initially were offloaded, in violation of 9 C.F.R. § 88.4(b)(4).

(b) On or about March 28, 2005, Respondent Paulson shipped a load of 45 horses in commercial transportation from Billings, Montana, to Cavel for slaughter. One of the horses in the shipment, bearing USDA back tag # USBZ 6891, went down about 300 miles outside of Platte, South Dakota, indicating that it was in obvious physical distress, yet Respondent Paulson

did not obtain veterinary assistance as soon as possible from an equine veterinarian, in violation of 9 C.F.R. § 88.4(b)(2).

3. On or about April 4, 2005, Respondent Paulson shipped a load of 56 horses in commercial transportation from Aberdeen, South Dakota, and Mobridge, South Dakota, to Cavel for slaughter. One of the horses in the shipment, an old mare bearing USDA back tag # USAW 1282, went down at least three times during said transportation, indicating that it was in obvious physical distress, yet Respondent Paulson did not obtain veterinary assistance as soon as possible from an equine veterinarian, in violation of 9 C.F.R. § 88.4(b)(2).

4. (a) On or about May 10, 2005, Respondent Paulson shipped a load of 44 horses in commercial transportation from St. Onge, South Dakota, to Cavel for slaughter. One of the horses in the shipment, a palomino mare bearing USDA back tag # USBJ 7961, went down right after loading and several times during said transportation, indicating that it was in obvious physical distress, yet Respondent Paulson did not obtain veterinary assistance as soon as possible from an equine veterinarian, in violation of 9 C.F.R. § 88.4(b)(2).

(b) On or about May 10, 2005, Respondent Paulson shipped a load of 44 horses in commercial transportation from St. Onge, South Dakota, to Cavel for slaughter. One of the horses in the shipment, a palomino mare bearing USDA back tag # USBJ 7961, went down right after loading and several times during said transportation, and died while en route to the slaughter facility. Respondent Paulson thus failed to handle this horse as expeditiously and carefully as possible in a manner that did not cause it unnecessary discomfort, stress, physical harm or trauma, in violation of 9 C.F.R. § 88.4(c).

5. (a) On or about June 28, 2005, Respondent Paulson shipped 42 horses in commercial

transportation for slaughter from Loveland, Colorado, to Cavel for slaughter. Four (4) of the horses were transported inside a removable/collapsible section of the conveyance, commonly known as the “dog house” or “jail box,” that did not provide the horses with adequate headroom. Respondent Paulson thus transported these four (4) horses to slaughter in a section of the conveyance that did not have sufficient interior height in its animal cargo space to allow each horse in that space to stand with its head extended to the fullest normal postural height, in violation of 9 C.F.R. § 88.3(a)(3).

(b) On or about June 28, 2005, Respondent Paulson shipped 42 horses in commercial transportation for slaughter from Loveland, Colorado, to Cavel for slaughter. Four (4) of the horses were transported inside a removable/collapsible section of the conveyance, commonly known as the “dog house” or “jail box,” that did not provide the horses with adequate headroom. One of these four (4) horses, bearing USDA back tag # USCI 2393, became stuck in the “dog house” or “jail box” during the commercial transportation to slaughter and suffered cuts, scrapes, and bruises along its back and around its left eye. Respondent Paulson thus failed to handle this horse as expeditiously and carefully as possible in a manner that did not cause it unnecessary discomfort, stress, physical harm or trauma, in violation of 9 C.F.R. § 88.4(c).

6. (a) On or about August 18, 2005, Respondent Paulson shipped a load of 42 horses in commercial transportation from Loveland, Colorado, to Cavel for slaughter. The conveyance had an elliptical air hole/vent opening with sharp edges that was located about two feet above the top deck floor. During said transportation, one of the horses in the shipment, a gray gelding with USDA back tag # USCO 3467, caught its foot in this hole, fell down, and was trampled to death by the other horses. Respondent Paulson thus failed to transport the horses to slaughter in a

conveyance the animal cargo space of which was designed, constructed, and maintained in a manner that at all times protected the health and well-being of the horses being transported, in violation of 9 C.F.R. § 88.3(a)(1).

(b) On or about August 18, 2005, Respondent Paulson shipped a load of 42 horses in commercial transportation from Loveland, Colorado, to Cavel for slaughter. The conveyance had an elliptical air hole/vent opening with sharp edges that was located about two feet above the top deck floor. During said transportation, one of the horses in the shipment, a gray gelding with USDA back tag # USCO 3467, caught its foot in this hole, fell down, and was trampled to death by the other horses. Respondent Paulson thus failed to handle this horse as expeditiously and carefully as possible in a manner that did not cause it unnecessary discomfort, stress, physical harm or trauma, in violation of 9 C.F.R. § 88.4(c).

7. (a) On or about September 21, 2005, Respondent Paulson shipped 44 horses in commercial transportation from Loveland, Colorado, to Cavel for slaughter. One of the horses in the shipment, bearing USDA back tag # USBP 1971, had a severe pre-existing head injury at the time that it was loaded onto the conveyance, yet Respondent Paulson failed to obtain veterinary assistance as soon as possible from an equine veterinarian, in violation of 9 C.F.R. § 88.4(b)(2).

(b) On or about September 21, 2005, Respondent Paulson shipped 44 horses in commercial transportation from Loveland, Colorado, to Cavel for slaughter. One of the horses in the shipment, bearing USDA back tag # USBP 1971, had a severe pre-existing head injury at the time that it was loaded onto the conveyance, yet Respondent Paulson shipped it with the other horses. Respondent Paulson thus failed to handle the injured horse as expeditiously and

carefully as possible in a manner that did not cause it unnecessary discomfort, stress, physical harm or trauma, in violation of 9 C.F.R. § 88.4(c).

8. (a) On or about October 2, 2005, Respondent Paulson shipped 39 horses in commercial transportation from Gordon, Nebraska, to Cavel for slaughter in a conveyance that had a loose chain hanging from the roof of the conveyance. Respondent Paulson thus failed to transport the horses to slaughter in a conveyance the animal cargo space of which was designed, constructed, and maintained in a manner that at all times protected the health and well-being of the horses being transported, in violation of 9 C.F.R. § 88.3(a)(1).

(b) On or about October 2, 2005, Respondent Paulson shipped 39 horses in commercial transportation from Gordon, Nebraska, to Cavel for slaughter in a conveyance that had a loose chain hanging from the roof of the conveyance. One of the horses in the shipment, bearing USDA back tag # USBP 1763, suffered a head injury consistent with being struck on the head by the chain during commercial transportation to slaughter. Respondent Paulson thus failed to handle the injured horse as expeditiously and carefully as possible in a manner that did not cause it unnecessary discomfort, stress, physical harm or trauma, in violation of 9 C.F.R. § 88.4(c).

9. On or about November 8, 2005, Respondent Paulson shipped 39 horses in commercial transportation from Sisseton, South Dakota, to Cavel for slaughter. The shipment included at least one (1) stallion bearing USDA back tag # USBS 7958, but Respondent Paulson did not load the horses on the conveyance so that the stallion was completely segregated from the other horses to prevent it from coming into contact with any other horse on the conveyance, in violation of 9 C.F.R. § 88.4(a)(4)(ii).

10. (a) On or about December 13, 2005, Respondent Paulson shipped 42 horses in

commercial transportation from Presko, South Dakota, to Cavel for slaughter. The owner-shipper certificate, VS Form 10-13, for this shipment indicated that the horses had been loaded on the conveyance at 5 p.m. on December 13, but they were not unloaded from the conveyance until 5 a.m. on December 15, indicating that they were on the trailer for 36 consecutive hours. Respondent Paulson thus allowed the horses to be on the conveyance more than 28 consecutive hours without being offloaded and provided with food, water, and the opportunity to rest for at least six (6) consecutive hours, in violation of 9 C.F.R. § 88.4(b)(3).

(b) On or about December 13, 2005, Respondent Paulson shipped 42 horses in commercial transportation from Presko, South Dakota, to Cavel for slaughter. Respondent Paulson delivered the horses outside of Cavel's normal business hours and left the slaughter facility, but they did not return to Cavel to meet the USDA representative upon his arrival, in violation of 9 C.F.R. § 88.5(b).

11. (a) On or about January 25, 2006, Respondent Paulson shipped 37 horses in commercial transportation from Mitchell, South Dakota, to Cavel for slaughter but did not apply USDA back tags to 28 of the horses, in violation of 9 C.F.R. § 88.4(a)(2).

(b) On or about January 25, 2006, Respondent Paulson shipped 37 horses in commercial transportation from Mitchell, South Dakota, to Cavel for slaughter. The shipment contained one (1) stallion, USDA back tag # USBS 9051, but Respondent Paulson did not load the stallion on the conveyance so that it was completely segregated from the other horses to prevent it from coming into contact with any other horse on the conveyance, in violation of 9 C.F.R. § 88.4(a)(4)(ii).

12. On or about March 22, 2006, Respondent Paulson shipped 42 horses in commercial

transportation from an unknown location to Cavel for slaughter. The shipment contained two (2) stallions, one bearing USDA back tag #s USCS 5089 and the other having no USDA backtag but bearing Cavel tag # 2535, but Respondent Paulson did not load the two stallions on the conveyance so that they were completely segregated from each other and the other horses 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).

13. On or about June 13, 2006, Respondent Paulson was the driver of a shipment of 46 horses being commercially transported from St. Onge, South Dakota, to Cavel for slaughter. The top rear deck of the conveyance used to transport the horses was so overcrowded with horses that they did not have enough room to turn around and come off the conveyance at the slaughter plant. Respondent Paulson started poking the horses with a sorting stick in an effort to make them off-load, which caused a horse bearing USDA back tag # USCS 4974 to start kicking and injure its right hind leg. Respondent Paulson thus failed to transport the injured horse and the other horses as expeditiously and carefully as possible in a manner that did not cause them unnecessary discomfort, stress, physical harm or trauma, in violation of 9 C.F.R. § 88.4(c).

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. By reason of the Findings of Fact set forth above, Respondent Paulson violated the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note).

Order

Respondent Robert Paulson is hereby assessed a civil penalty of Sixty-Four Thousand Seven Hundred Twenty Five Dollars (\$64,725.00). 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 Paulson shall indicate that payment is in reference to A.Q. Docket No. 09-0026.

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 Robert Paulson 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).

Done at Washington, D.C.
May 7, 2009

PETER M. DAVENPORT
Administrative Law Judge