SUMMARY OF MAJOR DECISIONS BY THE JUDICIAL OFFICER

Fiscal Year 2001

In *In re Reginald Dwight Parr*, AWA Docket No. 99-0022, decided by the Judicial Officer on October 17, 2000, the Judicial Officer denied the Respondent's Petition for Reconsideration. The Judicial Officer rejected the Respondent's contention that he did not violate 9 C.F.R. § 2.40 and 9 C.F.R. § 2.75(b)(1) because he maintained the required written program of veterinary care and the required records at his residence. The Judicial Officer held that the written program of veterinary care required by 9 C.F.R. § 2.40 and the records of acquisition, disposition, and identification of animals required by 9 C.F.R. § 2.75(b)(1) must be maintained at an exhibitor's facility where they are readily available to Animal and Plant Health Inspection Service officials during inspections of the exhibitor's facility. The Judicial Officer also rejected the Respondent's contention that he was not provided with sufficient notice that he was required to maintain the written program of veterinary care and records at his facility. The Judicial Officer stated the Respondent had actual and constructive notice of the requirement that he maintain the written program of veterinary care and records at his facility. The Judicial Officer rejected the Respondent's contention that the conclusions that he violated 9 C.F.R. § 3.125(a) were error. The Judicial Officer also rejected the Respondent's contention that the conclusions that he violated the Animal Welfare Act and the Regulations and Standards were error because he was erroneously instructed by an Animal and Plant Health Inspection Service inspector that the correction of violations eliminates the violations. The Judicial Officer stated that it is well settled that a correction of a violation of the Animal Welfare Act or the Regulations and Standards does not eliminate the fact that the violation occurred. In addition, the Judicial Officer found that the Secretary of Agriculture was not estopped from concluding that the Respondent violated the Animal Welfare Act and the Regulations and Standards because an Animal and Plant Health Inspection Service inspector erroneously instructed the Respondent that his correction of violations eliminated the violations.

In *In re William J. Reinhart*, HPA Docket No. 99-0013, decided by the Judicial Officer on November 9, 2000, the Judicial Officer affirmed the decision by Judge Edwin S. Bernstein (ALJ): (1) concluding William J. Reinhart violated 15 U.S.C. § 1824(2)(B) by entering a horse at a horse show, for the purpose of showing or exhibiting the horse, while the horse was sore; (2) assessing Mr. Reinhart a $2,000 civil penalty; and (3) disqualifying Mr. Reinhart for 5 years from exhibiting, showing, or entering any horse, and from participating, in any horse show, exhibition, sale, or auction. The Judicial Officer held palpation alone is a reliable method by which to determine whether a horse is "sore" under the Horse Protection Act (HPA) and rejected Respondents' contention that palpation does not comply with the HPA because palpation is not conducted while the horse is moving. The Judicial Officer held that United States Department of Agriculture (USDA) veterinary medical officers' hearsay statements are admissible. The Judicial Officer found that 7 C.F.R. § 1.147(g), which provides that a document is deemed to be filed at the time when it reaches the Hearing Clerk, was not disparately applied to the parties and that *Carroll v. C.I.R.*, 71 F.3d 1228 (6th Cir. 1995), *cert. denied*, 518 U.S. 1017 (1996), does not require the Secretary of Agriculture to adopt the mailbox rule to determine the timeliness of filings in USDA proceedings. The Judicial Officer found an agency may combine investigative,

adversarial, and adjudicative functions, as long as an employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case does not participate in or advise in the decision or agency review in the case or a factually related case (5 U.S.C. § 554(d)). The Judicial Officer found, with minor exceptions, that the ALJ's findings are supported by the evidence. The Judicial Officer rejected Respondents' contentions that: (1) the HPA violates the Commerce Clause of the United States Constitution and the Tenth Amendment; (2) the HPA is unnecessary because the National Horse Show Commission prohibits the showing of sore horses; (3) the HPA encroaches upon the sovereignty of Tennessee, which prohibits the soring of horses; (4) the ALJ erroneously excluded the Atlanta Protocol from evidence; (5) USDA does not admit evidence that contradicts testimony by USDA veterinarians or challenges USDA's "agenda"; and (6) the ALJ and the Judicial Officer are biased in favor of USDA. The Judicial Officer denied Respondents' requests: (1) that the Judicial Officer refer the case to a United States district court, stating the Judicial Officer has no authority to make such a referral; (2) for the citations to decisions in administrative proceedings instituted under the HPA in the United States Court of Appeals for the Fifth Circuit, stating administrative proceedings under the HPA are instituted before the Secretary of Agriculture; and (3) for a free transcript, stating 7 C.F.R. § 1.141(i)(3) provides that transcripts shall be made available at the cost of duplication. The Judicial Officer found Complainant failed to prove by a preponderance of the evidence that Reinhart Stables was a partnership and violated the HPA.

In *In re RME Farms*, 00 AMA Docket No. F&V 928-1, decided by the Judicial Officer on December 5, 2000, the Judicial Officer affirmed the decision by Judge Dorothea A. Baker (ALJ) dismissing the Amended Petition instituted under 7 U.S.C. § 608c(15)(A). The Judicial Officer struck one of the Petitioners, Johnson & Sons, from the Amended Petition based on the Petitioners' admission that Johnson & Sons was not a handler and did not have standing to institute a proceeding under 7 U.S.C. § 608c(15)(A). The Judicial Officer found the Amended Petition: (1) failed to address claims that can be raised in a proceeding under 7 U.S.C. § 608c(15)(A); (2) failed to request modification of or exemption from the Papaya Marketing Order; (3) failed to reference specific terms, provisions, or interpretations of the Papaya Marketing Order that are not in accordance with law; (4) failed to allege facts sufficient to support the conclusion that the United States Department of Agriculture (USDA) violated 7 C.F.R. §§ 928.61 and 928.62; (5) failed to allege facts sufficient to support the conclusion that the Papaya Administrative Committee (PAC) violated 7 C.F.R. §§ 928.31(n), 928.61, and 928.62; and (6) failed to set forth the manner in which Petitioners, in their capacities as handlers, were, or could be, affected by any action alleged in the Amended Petition. Moreover, the Judicial Officer rejected Petitioners' contention that USDA and PAC violated the equal protection clause of the 14th Amendment to the United States Constitution. The Judicial Officer stated the 14th Amendment, by its terms, applies to the states and neither the USDA nor the PAC is a state or an instrumentality of a state. The Judicial Officer also rejected Petitioners' contention that the ALJ summarily dismissed many of Petitioners' claims without articulating the basis for the dismissal of the claims.

In *In re Kreider Dairy Farms, Inc.*, 98 AMA Docket No. M 4-1, decided by the Judicial Officer on December 21, 2000, the Judicial Officer ruled, in response to a question certified by

Administrative Law Judge Baker, that Respondent's Motion to Dismiss Amended Petition should be granted in part and denied in part. The Judicial Officer stated that Petitioner litigated the issue of its status as a producer-handler under Milk Marketing Order No. 2 in *In re Kreider Dairy Farms, Inc.*, 94 AMA Docket No. M 1-2 (*Kreider I*), and the Decision and Order on Remand in *Kreider I* decided the issue of Petitioner's status under Milk Marketing Order No. 2 during the period January 1991 through April 1997 when Petitioner sold fluid milk products to Ahava Dairy Products, Inc. (Ahava). The Judicial Officer concluded that issue preclusion bars relitigation, in *In re Kreider Dairy Farms, Inc.*, 98 AMA Docket No. M 4-1 (*Kreider II*), of Petitioner's status under Milk Marketing Order No. 2 during the period January 1991 through April 1997. The Judicial Officer found that Petitioner is not barred by issue preclusion from litigating Petitioner's status under Milk Marketing Order No. 2 during the period May 1997 through December 1999 when Petitioner did not sell fluid milk products to Ahava. The Judicial Officer also found that Petitioner was not barred by claim preclusion from litigating in *Kreider II* Petitioner's status under Milk Marketing Order No. 2 during the period May 1997 through December 1999 and found no basis for dismissing the Amended Petition for failure to comply with 7 C.F.R. § 900.52b.

In *In re William J. Reinhart*, HPA Docket No. 99-0013, decided by the Judicial Officer on January 23, 2001, the Judicial Officer denied William J. Reinhart's (Respondent) Petition for Reconsideration. The Judicial Officer rejected the Respondent's contentions that: (1) the administrative proceeding deprived him of property without due process of law; (2) the Secretary of Agriculture's authority under the Horse Protection Act is limited to presenting facts to a court; (3) Judge Bernstein (ALJ) and the Judicial Officer were biased against the Respondent; (4) the record contains overwhelming evidence that digital palpation is not a reliable method by which to determine whether a horse is "sore" as defined by the Horse Protection Act; (5) the ALJ erroneously excluded the Atlanta Protocol; (6) the United States Department of Agriculture (Department) relies on digital palpation as the only method by which to determine whether a horse is sore under the Horse Protection Act; (7) the examinations of Double Pride Lady (the Respondent's horse) by Department veterinarians were not in compliance with the Horse Protection Act because they were conducted while Double Pride Lady was standing still; (8) the Respondent did not violate the Horse Protection Act because he did not "present" Double Pride Lady in a "cruel or inhumane condition;" (9) the Horse Protection Act is an unconstitutional exercise of power under the Commerce Clause of the Constitution of the United States; (10) *Young v. United States Dep't of Agric.*, 53 F.3d 728 (5th Cir. 1995), is controlling; and (11) the Secretary of Agriculture has not enforced the Horse Protection Act within the jurisdiction of the United States Court of Appeals for the Fifth Circuit since *Young* was decided on June 7, 1995. The Judicial Officer also rejected the Respondent's contention that "entry" under the Horse Protection is an event. The Judicial Officer stated that "entry" is a process which includes all activities required to be completed before a horse can be shown or exhibited and the process generally begins with the payment of the fee to enter a horse in a horse show and includes pre-show examinations by Designated Qualified Persons and Department veterinarians. The Judicial Officer found that the Respondent raised the issue of Double Pride Lady's "conditioned reflex" for the first time in his Petition for Reconsideration and held that new arguments cannot be raised for the first time on appeal to the Judicial Officer. The Judicial Officer also rejected the

Respondent's contention that the evidence was not sufficient to conclude that the Respondent violated the Horse Protection Act. The Judicial Officer stated that the Complainant proved by a preponderance of the evidence that the Respondent violated 15 U.S.C. § 1824(2)(B) and that the Complainant need not prove that soring improved or would have improved Double Pride Lady's performance. The Judicial Officer denied the Respondent's request that the proceeding be dismissed. The Judicial Officer also denied the Respondent's request that the Judicial Officer refer the proceeding to a district court of the United States or to the United States Court of Appeals for the Sixth Circuit, stating that the Judicial Officer has no authority under the Rules of Practice (7 C.F.R. §§ 1.130-.151) to make such a referral.

In *In re Beth Lutz*, AWA Docket No. 00-0017, decided by the Judicial Officer on January 24, 2001, the Judicial Officer affirmed the Default Decision issued by Chief Administrative Law Judge James W. Hunt (Chief ALJ) assessing the Respondent a $5,000 civil penalty, permanently disqualifying the Respondent from obtaining an Animal Welfare Act license, and ordering the Respondent to cease and desist from violating the Regulations (9 C.F.R. §§ 1.1-2.133). The Judicial Officer deemed the Respondent's failure to file a timely answer to the Complaint an admission of the allegations in the Complaint (7 C.F.R. § 1.136(c)) and a waiver of hearing (7 C.F.R. § 1.139). The Judicial Officer rejected the Respondent's contentions that no one read the Respondent's filings and that the proceeding was designed to harass the Respondent. The Judicial Officer stated that he had read the entire record, including all of the Respondent's filings, and that the Complainant's responses to the Respondent's filings and the Chief ALJ's filings indicated that the Complainant and the Chief ALJ had read the Respondent's filings. The Judicial Officer also found that the proceeding reflected the Complainant's good faith effort to properly administer and enforce the Animal Welfare Act and the Regulations.

In *In re Cynthia Twum Boafo*, P.Q. Docket No. 00-0014, decided by the Judicial Officer on February 21, 2001, the Judicial Officer affirmed the Default Decision issued by Chief Administrative Law Judge James W. Hunt (Chief ALJ): (1) concluding that Respondent imported 8 pounds of beef from Ghana into the United States in violation of 9 C.F.R. § 94.1; (2) concluding that Respondent imported 20 pounds of yams from Ghana into the United States in violation of 7 C.F.R. § 319.56-2; (3) concluding that Respondent imported 5 pounds of avocados from Ghana into the United States in violation of 7 C.F.R. § 319.56-2; and (4) assessing Respondent a $250 civil penalty. The Judicial Officer rejected Respondent's contention that she had settled the proceeding with the payment of $50 and held that Respondent failed to prove, by producing documents, that she was not able to pay the $250 civil penalty. The Judicial Officer rejected Respondent's assertion that her violations occurred on or about January 6, 2000. The Judicial Officer stated that, under the Rules of Practice (7 C.F.R. § 1.136(c)), Respondent's failure to file a timely answer is deemed an admission, for the purposes of the proceeding, that her violations occurred on or about February 29, 2000, as alleged in the complaint.

In *In re Rafael Dominguez*, P.Q. Docket No. 00-0017, decided by the Judicial Officer on February 26, 2001, the Judicial Officer affirmed the Default Decision issued by Chief Administrative Law Judge James W. Hunt (Chief ALJ): (1) concluding that the Respondent moved 6 boxes of Mexican Hass avocados from Illinois to Missouri in violation of the Plant

Quarantine Act, the Federal Plant Pest Act, and 7 C.F.R. §§ 301.11(b) and 319.56-2ff; and (2) assessing the Respondent a $6,000 civil penalty. The Judicial Officer rejected the Respondent's contention that his lack of knowledge of the Plant Quarantine Act and the Federal Plant Pest Act should affect the disposition of the proceeding. The Judicial Officer stated the Plant Quarantine Act and the Federal Plant Pest Act are published in the statutes at large and the United States Code and the Respondent is presumed to know the law. The Judicial Officer also stated the regulations prohibiting the movement of Mexican Hass avocados from Illinois to Missouri are published in the *Federal Register*; thereby constructively notifying the Respondent of the prohibition on the movement of Mexican Hass avocados from Illinois to Missouri. The Judicial Officer held that the Respondent's intention to close his business and start a new business are neither defenses to his violations of the Plant Quarantine Act, the Federal Plant Pest Act, and 7 C.F.R. §§ 301.11(b) and 319.56-2ff nor mitigating circumstances to be taken into account when determining the amount of the civil penalty to assess against the Respondent. The Judicial Officer also held that the Respondent failed to prove, by producing documents, that he was not able to pay the $6,000 civil penalty.

In *In re Fred Hodgins*, AWA Docket No. 95-0022 (Decision and Order on Remand), decided by the Judicial Officer on April 4, 2001, the Judicial Officer assessed the Respondents a $325 civil penalty and directed the Respondents to cease and desist from violating the Animal Welfare Act (Act) and the Regulations and Standards issued under the Act. The Judicial Officer's Decision and Order on Remand was precipitated by *Hodgins v. United States Dep't of Agric.*, 238 F.3d 421 (Table), 2000 WL 1785733 (6th Cir. 2000), in which the Court vacated *In re Fred Hodgins*, 56 Agric. Dec. 1242 (1997), and remanded the proceeding to the Judicial Officer. The Court found that the Respondents committed 15 violations of the Act and the Regulations and Standards, but that none of the Respondents' violations were willful and all of the Respondents' violations were minor. The Court found that the Respondents violations would, at most, support a small civil penalty.

In *In re PMD Produce Brokerage Corp.*, PACA Docket No. D-99-0004, decided by the Judicial Officer on April 6, 2001, the Judicial Officer denied the Respondent's petition to reopen the hearing stating the Respondent did not state the nature and purpose of the evidence to be adduced or set forth a good reason for the Respondent's failure to adduce evidence at the November 17, 1999, hearing. The Judicial Officer found that Administrative Law Judge Edwin S. Bernstein did not afford the Respondent a reasonable opportunity to submit for consideration proposed findings of fact, conclusions, order, and a brief in accordance with 7 C.F.R. § 1.142(b). Therefore, the Judicial Officer remanded the proceeding to the Chief Administrative Law Judge to assign the case to an administrative law judge and ordered that the administrative law judge provide the Respondent a reasonable opportunity to submit proposed findings of fact, conclusions, order, and a brief, as provided in 7 C.F.R. § 1.142(b), and issue a decision.

In *In re Rafael Dominguez*, P.Q. Docket No. 00-0017 (Order Denying Petition for Reconsideration), decided by the Judicial Officer on April 19, 2001, the Judicial Officer denied the Respondent's Petition for Reconsideration. The Judicial Officer rejected the Respondent's

contention that his lack of knowledge of the Plant Quarantine Act, the Federal Plant Pest Act, and 7 C.F.R. §§ 301.11(b) and 319.56-2ff should affect the disposition of the proceeding. The Judicial Officer stated the Plant Quarantine Act and the Federal Plant Pest Act are published in the United States Statutes at Large and the United States Code, and the Respondent is presumed to know the law. The Judicial Officer also stated the regulations prohibiting the interstate movement of Mexican Hass avocados from Illinois to Missouri are published in the *Federal Register*; thereby constructively notifying the Respondent of the prohibition on the movement of Mexican Hass avocados from Illinois to Missouri.

In *In re American Raisin Packers, Inc.,* I&G Docket No. 99-0001, decided by the Judicial Officer on May 1, 2001, the Judicial Officer affirmed the Initial Decision and Order of Chief Administrative Law Judge James W. Hunt (Chief ALJ) ordering Respondent debarred for 1 year from receiving inspection services under the Agricultural Marketing Act of 1946 (Act) and the Regulations issued pursuant to the Act (7 C.F.R. pt. 52). The Judicial Officer rejected Respondent's arguments (1) that debarment was erroneously ordered because the required willfulness was not shown under the controlling Regulation (7 C.F.R. § 52.54); (2) that a warning letter was erroneously admitted and considered by the Chief ALJ; and (3) that debarment would end Respondent's business, which is an excessive penalty, in violation of the Eighth Amendment to the Constitution of the United States. The Judicial Officer held that willfulness is not required under 7 C.F.R. § 52.54(a)(1)(ii); that warning letters are routinely admitted into evidence and considered in fashioning sanctions; and that a 1-year debarment is not an excessive fine under the Eight Amendment to the Constitution of the United States. Complainant raised three arguments on appeal: (1) that Respondent should not be allowed to consider a debarment from government contracting to be part of the sanction in the proceeding; (2) that the Chief ALJ erroneously did not find willfulness; and (3) that the evidence should result in a 4-year debarment. The Judicial Officer rejected these arguments because the Chief ALJ did not confuse government contracting debarment with the sanction in the proceeding, willfulness was correctly not found, and the Chief ALJ's 1-year debarment sanction is appropriate.

In *In re Beth Lutz*, AWA Docket No. 00-0017 decided by the Judicial Officer on May 7, 2001, the Judicial Officer denied Respondent's Petition for Reconsideration because it was not timely filed (7 C.F.R. § 1.146(a)(3)).

In *In re Herman E. Hoffman, Jr.* (Decision as to Billy G. Turner, d/b/a Wes and Mom Trucking), P.Q. Docket No. 00-0010, decided by the Judicial Officer on June 12, 2001, the Judicial Officer affirmed the Default Decision issued by Chief Administrative Law Judge James W. Hunt (Chief ALJ): (1) concluding Respondent Billy G. Turner moved articles regulated to prevent the interstate spread of imported fire ant from the quarantined area of Montgomery County, Texas, into the nonquarantined area of Arizona without a certificate or limited permit in violation of 7 C.F.R. §§ 301.81-.81-10; and (2) assessing Respondent Billy G. Turner a $1,000 civil penalty. The Judicial Officer deemed Respondent Billy G. Turner's failure to file a timely answer to the Complaint an admission of the allegations in the Complaint (7 C.F.R. § 1.136(c)). The Judicial Officer rejected Respondent Billy G. Turner's contention that

an answer that was not signed by Respondent Billy G. Turner or Respondent Billy G. Turner's attorney was Respondent Billy G. Turner's timely-filed answer (7 C.F.R. § 1.136(a)).

In *In re Karl Mitchell*, AWA Docket No. 01-0016, decided by the Judicial Officer on June 13, 2001, the Judicial Officer affirmed, except with respect to three conclusions of law, the Default Decision issued by Administrative Law Judge Dorothea A. Baker (ALJ) assessing Respondents a civil penalty, revoking Respondents' Animal Welfare Act (AWA) license, and ordering Respondents to cease and desist from violating the AWA and the Regulations and Standards issued under the AWA. The Judicial Officer deemed Respondents' failure to file a timely answer to the Complaint an admission of the allegations in the Complaint (7 C.F.R. § 1.136(c)) and a waiver of hearing (7 C.F.R. § 1.139). The Judicial Officer rejected Respondents' contention that Complainant's counsel granted Respondents an extension of time within which to file Respondents' answer. The Judicial Officer held that under 7 C.F.R. § 1.147(f) only an administrative law judge or the Judicial Officer may grant extensions of time. The Judicial Officer also stated that Respondents' reliance on the Federal Rules of Civil Procedure for their contention that they should be allowed to file a late answer, was misplaced. The Judicial Officer stated that the Federal Rules of Civil Procedure are not applicable to administrative proceedings instituted under the AWA and the Rules of Practice. The Judicial Officer also rejected Respondents' contention that the Complaint did not provide Respondents with adequate notice of the facts involved in the proceeding. The Judicial Officer found the Complaint met the requirements of 5 U.S.C. § 554(b) and 7 C.F.R. § 1.135(a) and complied with the Due Process Clause of the Fifth Amendment to the Constitution of the United States. The Judicial Officer concluded that, as a matter of law, Respondents could not have committed three of the violations alleged in the Complaint. Based on the conclusion that Respondents did not commit all the violations alleged in the Complaint, the size of Respondents' business, and the lack of any allegation that Respondents' animals actually suffered injury, dehydration, or malnutrition, the Judicial Officer reduced the $27,500 civil penalty assessed by the ALJ to $15,250.

In *In re Herminia Ruiz Cisneros*, P.Q. Docket No. 99-0054, decided by the Judicial Officer on July 11, 2001, the Judicial Officer affirmed the Initial Decision and Order of Administrative Law Judge Dorothea A. Baker assessing the Respondent a $9,600 civil penalty for importing 32 live mango trees without a written PPQ permit as required by 7 C.F.R. § 319.37-3(a), without meeting the postentry quarantine conditions as required by 7 C.F.R. § 319.37-7, without ensuring that the mango trees were free of soil as required by 7 C.F.R. § 319.37-8(a), and at a port that was not a designated port of entry as required by 7 C.F.R. § 319.37-14(a). The Judicial Officer concluded that the Complainant proved the violations by a preponderance of the evidence and that the $9,600 civil penalty recommended by the Complainant was justified by the facts and circumstances. The Judicial Officer found that the Respondent had actual knowledge of the regulations prior to her March 17, 1997, violations. Further, the Judicial Officer stated the Plant Quarantine Act and the Federal Plant Pest Act are published in the United States Statutes at Large and the United States Code and the Respondent is presumed to know the law. The Judicial Officer also stated that the regulations regarding the importation and offer for entry of prohibited and restricted articles (7 C.F.R. §§ 319.37-.37-14) are published in the *Federal Register*, thereby constructively notifying the Respondent of the

requirements for the importation of mango trees. The Judicial Officer rejected the Respondent's contention that she did not import the mango trees for a commercial purpose. The Judicial Officer also held that the Respondent failed to prove, by producing documents, that she was not able to pay the $9,600 civil penalty.

In *In re Wallace Brandon* (Decision as to Jerry W. Graves and Kathy Graves), HPA Docket No. 98-0011, decided by the Judicial Officer on July 19, 2001, the Judicial Officer affirmed the decision by Chief Administrative Law Judge James W. Hunt (Chief ALJ): (1) concluding that Jerry W. Graves allowed the entry and exhibition of a horse at a horse show while the horse was sore, in violation of 15 U.S.C. § 1824(2)(D); (2) concluding that Kathy Graves allowed the entry of and exhibited a horse at a horse show while the horse was sore, in violation of 15 U.S.C. § 1824(2)(A) and (D); (3) assessing Jerry W. Graves and Kathy Graves (Respondents) a civil penalty of $2,000 each; and (4) disqualifying Respondents for 1 year from exhibiting, showing, or entering any horse and from managing, judging, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction. The Judicial Officer rejected Respondents' contention that Complainant's Exhibit 8 (CX 8), an excerpt from the *Walking Horse Report*, was not the sort of evidence upon which responsible persons are accustomed to rely. The Judicial Officer also rejected Respondents' contention that, under the tests adopted in *Burton v. United States Dep't of Agric.*, 683 F.2d 280 (8th Cir. 1982), and *Baird v. United States Dep't of Agric.*, 39 F.3d 131 (6th Cir. 1994), the Chief ALJ erroneously concluded that they allowed the entry and exhibition of a horse at a horse show while the horse was sore, in violation of 15 U.S.C. § 1824(2)(D). The Judicial Officer stated that Respondents did not meet the three-pronged test in *Burton* because Respondents' testimony that they directed the trainer not to sore their horse was contradicted by Respondents' affidavits. Further, the Judicial Officer agreed with the Chief ALJ's conclusion that Respondents' testimony that they instructed the trainer not to sore their horse was not credible. The Judicial Officer stated that Respondents did not meet the "affirmative steps" test in *Baird* because Respondents' failed to introduce credible evidence that they took an affirmative step to prevent the soring of their horse. Finally, the Judicial Officer rejected Respondents' contention that the Chief ALJ's credibility determinations were error. The Judicial Officer stated that, while he is not bound by an administrative law judge's credibility determinations, he gives great weight to the credibility determinations of administrative law judges because they have the opportunity to see and hear the witnesses testify. The Judicial Officer found that the record supported the Chief ALJ's credibility determinations.

In *In re Karl Mitchell*, AWA Docket No. 01-0016, decided by the Judicial Officer on August 8, 2001, the Judicial Officer granted Complainant's petition for reconsideration and increased the civil penalty assessed against Respondents in *In re Karl Mitchell*, 60 Agric. ___ (June 13, 2001). The Judicial Officer concluded that, when he assessed Respondents a $15,250 civil penalty, he erroneously failed to take into account the regulations issued under the Federal Civil Penalties Inflation Adjustment Act, as amended (28 U.S.C. § 2461 note (Supp. V 1999)) (7 C.F.R. § 3.91). Pursuant to the regulations, the Secretary of Agriculture increased the maximum civil penalty that may be assessed under section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) for each violation of the Animal Welfare Act and the regulations and

standards issued under the Animal Welfare Act by 10 percent from $2,500 to $2,750 (7 C.F.R. § 3.91(b)(2)(v)). Accordingly, the Judicial Officer increased the civil penalty which he assessed against Respondents by 10 percent from $15,250 to $16,775.

In *In re Lamers Dairy, Inc.*, AMA Docket No. M 30-2, decided by the Judicial Officer on August 16, 2001, the Judicial Officer affirmed the decision by Chief Administrative Law Judge James W. Hunt (Chief ALJ) dismissing the Petition instituted under 7 U.S.C. § 608c(15)(A). The Judicial Officer rejected Petitioner's contentions that: (1) marketwide pooling required by Milk Marketing Order No. 30 (7 C.F.R. pt. 1030) constitutes an unfair trade practice in violation of 7 U.S.C. § 608c(7)(A); (2) the failure to exempt Petitioner from the requirements of Milk Marketing Order No. 30 violates Petitioner's constitutional right to equal protection of the laws; and (3) the Class I price differential must be reduced. The Judicial Officer stated that public officials are presumed to have properly discharged their official duties and rejected Petitioner's unsupported contention that the Chief ALJ failed to consider Petitioner's evidence and Petitioner's unsupported contention that the Secretary of Agriculture was incapable of making impartial decisions regarding marketing orders and unfair trade practices. The Judicial Officer further stated that the premium paid by Petitioner to induce producers to sell milk to Petitioner is not regulated by the Agricultural Marketing Agreement Act or Milk Marketing Order No. 30. The Judicial Officer also rejected Petitioner's contention that Milk Marketing Order No. 30 was required to be promulgated in accordance with the procedures in 7 U.S.C. § 608c(17). The Judicial Officer pointed out that Congress waived the hearing requirement in 7 U.S.C. § 608c(17) in 7 U.S.C. § 7253(b)(1) which provides that the Secretary of Agriculture shall use the notice and comment procedures provided in 5 U.S.C. § 553 to reform federal milk marketing orders.

In *In re Kirby Produce Company, Inc.*, PACA Docket No. D-98-0002, decided by the Judicial Officer on August 27, 2001, the Judicial Officer remanded the proceeding to Chief ALJ James W. Hunt for further proceedings in accordance with the instructions in *Kirby Produce Company, Inc. v. United States Dep't of Agric.*, 256 F.3d 830 (D.C. Cir. 2001).

In *In re Derwood Stewart* (Decision as to Derwood Stewart), HPA Docket No. 99-0028, decided by the Judicial Officer on September 6, 2001, the Judicial Officer reversed the decision by Chief Administrative Law Judge James W. Hunt (Chief ALJ). The Judicial Officer: (1) concluded that Respondent entered a horse for the purpose of showing or exhibiting the horse in a horse show, while the horse was sore, in violation of 15 U.S.C. § 1824(2)(B); (2) assessed Respondent a $2,200 civil penalty; and (3) disqualified Respondent for 1 year from exhibiting, showing, or entering any horse and from managing, judging, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction. The Judicial Officer stated that pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note (Supp. V 1999)), the Secretary of Agriculture, by regulation, adjusted the civil monetary penalty that may be assessed for each violation of 15 U.S.C. § 1824 by increasing the maximum civil penalty from $2,000 to $2,200 (7 C.F.R. § 3.91(b)(2)(vii)). The Judicial Officer held the Chief ALJ erred by assessing Respondent $2,000 rather than the maximum civil penalty. Further, the Judicial Officer found no extraordinary circumstances that warranted departure from the established Department policy of imposing the minimum disqualification period for the first

violation of the Horse Protection Act. The Judicial Officer found that Respondent personally performed at least one of the steps necessary for the entry of Respondent's horse in a horse show. Thus, Respondent personally violated 15 U.S.C. § 1824(2)(B). Further, the Judicial Officer found Respondent entered the horse through an employee who performed numerous steps in the entry process. The Judicial Officer rejected Respondent's contention that he was not liable for the violation of 15 U.S.C. § 1824(2)(B) under *Baird v. United States Dep't of Agric.*, 39 F.3d 131 (6th Cir. 1994), and *Burton v. United States Dep't of Agric.*, 683 F.2d 280 (8th Cir. 1982). The Judicial Officer stated that *Baird* and *Burton* hold that a horse owner cannot be found to have violated 15 U.S.C. § 1824(2)(D) if certain factors are shown to exist. The Judicial Officer concluded that *Baird* and *Burton* were not applicable to Respondent who was found to have violated 15 U.S.C. § 1824(2)(B). Finally, the Judicial Officer rejected Respondent's contention that Complainant's appeal petition was late-filed.

In *In re J. Wayne Shaffer*, AWA Docket No. 01-0027, decided by the Judicial Officer on September 26, 2001, the Judicial Officer affirmed the Default Decision issued by Chief Administrative Law Judge James W. Hunt (Chief ALJ) assessing the Respondents, jointly and severally, a $20,150 civil penalty and ordering the Respondents to cease and desist from violating the Animal Welfare Act and the Regulations. The Judicial Officer deemed Respondents' failure to file a timely answer to the Complaint an admission that Respondents operated as dealers, as defined by the Animal Welfare Act (7 U.S.C. § 2132(f)) and the Regulations (9 C.F.R. § 1.1) without obtaining an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a)(1). The Judicial Officer rejected Respondents' arguments that J. Wayne Shaffer was not a dealer because he did not gain monetarily from the sale of any of the animals. The Judicial Officer stated a person need not have actually profited from the sale of an animal to fall within the definition of the term "dealer" under the Animal Welfare Act and the Regulations; even if a person suffers a loss on the sale of an animal, that person could be a dealer under the Animal Welfare Act and the Regulations, as long as the sale was made for the purpose of compensation or profit. The Judicial Officer also stated that Michael Leigh Stanley's purported inability to pay the civil penalty was not a basis for setting aside or reducing the civil penalty. The Judicial Officer held that the advice Michael Leigh Stanley purportedly received from local government offices regarding the need for a license "to farm" animals was not relevant to the proceeding. The Judicial Officer further held that Michael Leigh Stanley's purported disability and need for income do not constitute defenses to his violations of the Animal Welfare Act and the Regulations or mitigating circumstances to be considered when determining the amount of the civil penalty to be assessed for his violations of the Animal Welfare Act and the Regulations. The Judicial Officer also held that Michael Leigh Stanley's purported lack of actual knowledge that he was required to obtain an Animal Welfare Act license before operating as a dealer was not a defense to Respondents' violations of the Animal Welfare Act and the Regulations. The Judicial Officer stated the Animal Welfare Act is published in the United States Statutes at Large and the United States Code, and Michael Leigh Stanley is presumed to know the law. Moreover, the Regulations are published in the Federal Register; thereby constructively notifying Michael Leigh Stanley of the licensing requirements. Finally, the Judicial Officer held that the assessment of a $20,150 civil penalty and the issuance of a cease and desist order comport with the United States Department of Agriculture's sanction policy.