

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0242

In re: Nicholas Plafcan,

Respondent

**Order**

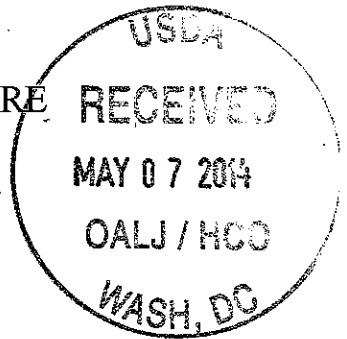
This disciplinary proceeding was instituted under the Horse Protection Act, as amended (HPA), 15 U.S.C. § 1821 *et seq.*, by a Complaint filed on May 20, 2013, by Kevin Shea, then the Acting Administrator, Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, alleging that Respondent violated the Act.

The Complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130) (Rules of Practice) were sent to the Respondent by certified mail on May 21, 2013; however the certified mailing was returned by the United States Postal Service as “unclaimed.” Consistent with the Rules, the Complaint and the copy of the Rules of Practice were then sent by regular mail on June 26, 2013.

No Answer was timely received in response to the mailing sent by regular mail<sup>1</sup> and on November 7, 2013, I issued a Default Decision and Order concluding that the HPA had been violated, assessing a \$2,200 civil penalty, and disqualifying the Respondent for a period of a year from showing, exhibiting, or entering any horse and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction.

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<sup>1</sup> In August of 2013, Respondent contacted Leslie Whitfield, at that time the Hearing Clerk, by telephone and email following receipt of the Motion for Adoption of Proposed Default Decision; however, Mr. Whitfield failed to place a copy of the email in the record or to advise the Administrative Law Judge of its having been sent.



Mr. Plafcan was served with the Default Decision and Order by certified mail on February 10, 2014 and on February 19, 2014, filed a Petition to Reconsider the Default Decision and Order. The Complainant filed its Opposition to the Petition. On March 4, 2014, Respondent filed an Appeal to the Judicial Officer and on March 11, 2014, the Administrator filed Complainant's Opposition Response to Appeal.

On April 18, 2014, the Judicial Officer remanded the case to me to provide me with an opportunity to consider and rule on the Motion to Reconsider the Default Decision and Order.

The case having been remanded to me and having reviewed the record again in its totality, I will assume *pro arguendo* that the Respondent was not in fact afforded notice that the disciplinary action have been instituted against him, and I will **VACATE** the Default Decision and Order of November 7, 2013 and direct that exhibit copies, exhibit lists and witness lists be exchanged between the parties in accordance with the following deadlines to provide disclosure of evidence that may be presented at the hearing. The exhibit copies should not be filed; however the exhibit lists and witness lists will be filed with the Hearing Clerk's Office. Exhibits shall be pre-marked, on the lower right corner, as CX-1, CX-2 *et seq.* (for Complainant's exhibits<sup>2</sup>); RX-1, RX-2 *et seq.* (for the Respondents' exhibits). Multi-page exhibits shall be paginated with numbers placed at the bottom of the pages. **At the hearing, both parties are requested to provide copies of the exhibit list and witness list for use by the judge and the court reporter.**

By **Thursday, June 5, 2014**, Counsel for the Complainant will file with the Hearing Clerk a list of exhibits and a list of witnesses. Counsel will also deposit for next day business day delivery to Counsel for the Respondent(s), by commercial carrier such as Fed Ex, UPS or other

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<sup>2</sup> Alternatively, standard Government Exhibit stickers may be used and numbered sequentially.

comparable service, copies of Complainant's proposed exhibits, a list of the exhibits and a list of anticipated witnesses together with a short statement as to the nature of their testimony.

By **Thursday, July 3, 2014**, Counsel for the Respondent will file with the Hearing Clerk his list of exhibits and list of witnesses. Counsel will also deposit for next day business day delivery to Counsel for the Complainant, by commercial carrier such as Fed Ex, UPS or other comparable service, copies of the Respondents' proposed exhibits, a list of exhibits and a list of anticipated witnesses together with a short statement as to the nature of their testimony.

Failure to file the above lists, as directed, without good cause, may constitute grounds for excluding an exhibit or the testimony of a witness.

This matter will be set for oral hearing to commence at **9:00 AM Local Time, August 5, 2014 in Nashville, Tennessee**, or such other location as courtroom space may be found. The hearing will continue from day to day, until resolved or recessed. It is anticipated at this time that two days may be required for the hearing.

Copies of this Order shall be served upon the parties.

May 7, 2014

*Peter M. Davenport*

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**Peter M. Davenport**  
Chief Administrative Law Judge