

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/HCO
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In re:)
)
Amos S. Stoltzfus individual; and) AWA Docket No. 22-J-0038
Katie Stoltzfus, an individual,) AWA Docket No. 22-J-0039
)
Respondents.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearances:

Danielle Park, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Administrator of the Animal and Plant Health Inspection Service (“APHIS”)

Respondents Amos S. Stoltzfus and Katie Stoltzfus, pro se

Preliminary Statement

This is a proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131 *et seq.*) (“AWA”); the regulations promulgated thereunder (9 C.F.R. §§ 1.1 *et seq.*)

(“Regulations”); and the Rules of Practice Governing Formal Adjudicatory Proceedings

Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) (“Rules of Practice”).

The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (“Complainant”), initiated this proceeding by filing a complaint against Amos S. Stoltzfus and Katie Stoltzfus (“Respondents”) on March 22, 2022. The Complaint alleges that Respondents willfully violated the AWA and Regulations and requested “that such order or orders be issued as are authorized by the Act (7 U.S.C. § 2149) and warranted under the circumstances.”¹

¹ Complaint at 6.

Respondents were duly served with a copy of the Complaint and did not file an answer within the twenty-day period as prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).²

On April 21, 2022, Complainant filed a proposed default decision and order (“Proposed Decision”) and motion for adoption thereof (“Motion for Default”) pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). In its Motion, Complainant requested an order “assessing Respondents a total of six thousand six hundred dollars (\$6,600) in civil penalties in accordance with the Rules of Practice applicable to this proceeding.”³

Respondents did not file any objections to Complainant’s Motion for Default.⁴ However, on May 2, 2022—thirteen days after the answering deadline—Respondents filed an untimely answer to the Complaint.⁵ The Answer states, in its entirety:

Dear Hearing Clerk

In answer to the complaint letter we received, dated March 22, 2022

² United States Postal Service records reflect that the Complaint was sent to Respondents via certified mail and delivered on March 30, 2022. Respondents had twenty days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondents’ answer was due on or before April 19, 2022. Respondents did not file an answer until May 2, 2022.

³ Motion for Default at 7.

⁴ United States Postal Service records reflect that Complainant’s Motion for Default and Proposed Decision were sent to Respondents via certified mail and delivered on April 25, 2022. Respondents had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondents’ objections were due on or before May 16, 2022. Respondents have not filed any objections.

⁵ See *supra* note 2 and accompanying text.

All our Accusations and issues have been addressed. And we had good inspection reports from our inspector. We are also using Straley LA Veterinary for our veterinary needs.

We are wondering if we could settle this case for \$2,000.00 and then have the case closed.

Sincerely,
Amos. S Stoltzfus
Katie S. Stoltzfus

Answer at 1.

On May 17, 2022, Complainant filed a response in opposition to Respondents' late answer ("Complainant's Response") and a second proposed default decision and order ("Second Proposed Decision"). Complainant asks that I grant the Motion for Default and adopt Complainant's Second Proposed Decision, which "assess[es] Respondents a total of two thousand five hundred dollars (\$2,500) in civil penalties to be paid in twelve (12) monthly installments in accordance with the Rules of Practice."⁶ Respondents have not responded to either filing.⁷

⁶ Complainant's Response at 3; *see* Second Proposed Decision at 8. I note that the proposed civil-penalty amount is significantly less in Complainant's Second Proposed Decision. *See* Proposed Decision at 7 (assessing Respondents a total of \$6,600 in civil penalties); Complainant's Response at 3 n.3 ("Complainant . . . modifies its request as to the amount of the civil penalty as set forth in the revised proposed default decision."). As set forth herein below, Second Proposed Decision is adopted.

⁷ United States Postal Service records reflect that Complainant's Response and Second Proposed Decision were sent to Respondents via certified mail; the mailing was delivered to Respondent Amos S. Stoltzfus on May 20, 2022 and to Respondent Katie Stoltzfus on May 23, 2022. Respondents had twenty days from the date of service to file a response or objections thereto. 7 C.F.R. § 1.139; *see* 7 C.F.R. 1.143(d). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent Amos S. Stoltzfus's response was due on or before June 9, 2022, and Respondent Katie

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision.⁸ Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an unfiled answer where, as in the present case, no meritorious objections have been filed.⁹

Default would be appropriate in this case even if Respondents' Answer had been timely filed. The Answer does not "[c]learly admit, deny, or explain each of the allegations of the Complaint," as required by the Rules of Practice.¹⁰ Therefore, Respondents' "failure to deny or otherwise respond to" the material allegations in the Complaint are deemed admissions thereof, and Respondents have waived their rights to a hearing.¹¹

As Respondents failed to file a timely answer to the Complaint, and upon Complainant's motion for the issuance of a decision without hearing, this Decision and Order is issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Amos S. Stoltzfus is an individual whose business mailing address is 2404 W.

Winter Road, Loganton, Pennsylvania 17747. At all times material herein, Respondent Amos

Stoltzfus's response was due on or before June 13, 2022. Respondents have not filed any response or objections to Complainant's Response or Second Proposed Decision.

⁸ 7 C.F.R. § 1.136(c).

⁹ See *supra* notes 4, 7, and accompanying text.

¹⁰ 7 C.F.R. § 1.136(b)(1).

¹¹ 7 C.F.R. § 1.139.

S. Stoltzfus operated as a breeder as that term is defined in the AWA and the Regulations and held license number 23-A-0653.

2. Respondent Katie Stoltzfus is an individual whose business mailing address is 2404 W. Winter Road, Loganton, Pennsylvania 17747. At all times material herein, Respondent Katie Stoltzfus operated as a breeder as that term is defined in the AWA and the Regulations and held license number 23-A-0653.

3. On or about the following dates, Respondents willfully violated the veterinary care Regulations as specified below:

a. January 9, 2020. Respondents failed to establish and maintain programs of adequate veterinary care that included the use of appropriate methods to prevent, control, diagnose, and treat injuries. Specifically, Respondents failed to identify and contact the attending veterinarian about a guinea pig with a one- to two-centimeter mass under its chin and a guinea pig with a two-centimeter mass under its chin. The written program of veterinary care did not address animals with masses. 9 C.F.R. § 2.40(b)(2).

b. October 13, 2020. Respondents failed to establish and maintain programs of adequate veterinary care that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries. Specifically, Respondents failed to identify and contact the attending veterinarian about two guinea pigs that exhibited increased respiratory effort and were lethargic and one guinea pig that was reluctant to bear weight on its front legs and observed with moderately swollen and red feet. 9 C.F.R. § 2.40(b)(2).

4. On or about the following dates, Respondents willfully violated the records Regulations as specified below:
 - a. January 9, 2020. Respondents failed to make, keep, and maintain records or forms that fully and correctly disclosed any offspring born of and any deaths of any animal in their possession or under their control. 9 C.F.R. § 2.75(b)(1).
 - b. October 13, 2020. Respondents failed to make, keep, and maintain records or forms that fully and correctly disclosed the address of the dealer or person to whom the guinea pigs were sold or given. 9 C.F.R. § 2.75(b)(1)(iv).
 - c. November 22, 2021. Respondents failed to make, keep, and maintain records or forms that fully and correctly disclosed the number of animals held, owned, and acquired or disposed. Specifically, there were no inventory records indicating the number of adults, weanlings, or newborns present since August 2021. 9 C.F.R. § 2.75(b)(1).
5. On or about August 7, 2019, Respondents willfully violated the AWA and Regulations, 7 U.S.C. § 2146(a), 9 C.F.R. § 2.126(b), by failing to have a responsible adult available to accompany APHIS officials during the inspection process.
6. On or about the following dates, Respondents willfully violated the Regulations (9 C.F.R. § 2.100), by failing to meet the Standards, as follows:
 - a. January 9, 2020. Respondents failed to adequately ventilate indoor housing facilities for guinea pigs to provide for the health and comfort of the animals at all times. Specifically, a strong ammonia odor was observed throughout an indoor housing facility with only a small opening in one window that was not sufficient to provide adequate ventilation. 9 C.F.R. § 3.26(b).

- b. February 18, 2020. Respondents failed to adequately ventilate indoor housing facilities for guinea pigs to provide for the health and comfort of the animals at all times. Specifically, a strong ammonia odor was observed throughout an indoor housing facility without any vents, doors, or windows observed to be open to allow adequate ventilation. 9 C.F.R. § 3.26(b).
 - c. July 7, 2021. Respondents failed to adequately ventilate indoor housing facilities for guinea pigs and ensure that the ambient temperature does not rise above 85 degrees Fahrenheit. Specifically, the ambient temperature in the indoor housing facility was 87 degrees Fahrenheit and several windows, vents, and a garage door were open but did not provide sufficient ventilation. 9 C.F.R. § 3.26(b).
7. On or about the following dates, Respondents willfully violated the Regulations (9 C.F.R. § 2.100), by failing to meet the Standards, as follows:
- a. November 22, 2021. Respondents failed to provide each guinea pig a minimum amount of floor space in any primary enclosure. Specifically, Respondents failed to provide each weanling a minimum of 60 square inches of floor space. 9 C.F.R. § 3.28(c)(iii).
8. On or about the following dates, Respondents willfully violated the Regulations (9 C.F.R. § 2.100), by failing to meet the Standards, as follows:
- a. February 18, 2020. Respondents failed to locate food receptacles so as to minimize contamination by excreta and failed to keep all food receptacles clean. Specifically, the self-feeders attached to the inside of the guinea pig enclosures contained fecal

material mixed in with the feed and some feeding troughs with little to no pelleted feed available. 9 C.F.R. § 3.29(d).

- b. November 22, 2021. Respondents failed to locate food receptacles so as to minimize contamination by excreta and failed to keep all food receptacles clean. Specifically, approximately a third of the self-feeders were empty and contained an accumulation of fecal material. 9 C.F.R. § 3.29(d).

9. On or about the following dates, Respondents willfully violated the Regulations (9 C.F.R. § 2.100), by failing to meet the Standards, as follows:

- a. February 18, 2020. Respondents failed to provide potable water daily except as might otherwise be required to provide adequate veterinary care and failed to sanitize water receptacles when dirty. Specifically, the PVC piping used as drip pans for the water bottles contained an accumulation of fecal material, debris, and bedding. 9 C.F.R. § 3.30.

- b. October 13, 2020. Respondents failed to provide potable water daily except as might otherwise be required to provide adequate veterinary care and failed to sanitize water receptacles when dirty. Specifically, the PVC piping used as drip pans for the water bottles contained an accumulation of fecal material, dirt, and debris, on the drip pans and around the surface of the pipes. 9 C.F.R. § 3.30.

10. On or about the following dates, Respondents willfully violated the Regulations (9 C.F.R. § 2.100), by failing to meet the Standards, as follows:

- a. January 9, 2020. Respondents failed to clean and sanitize primary enclosures enough to prevent an accumulation of excreta or debris. Specifically, several primary

enclosures housing guinea pigs had wet, dirty, and soiled bedding by the water bottles and self-feeders. 9 C.F.R. § 3.31(a)(1).

- b. October 13, 2020. Respondents failed to clean and sanitize primary enclosures enough to prevent an accumulation of excreta or debris. Specifically, the majority of the guinea pig enclosures had an accumulation of excess fecal material, dirt, and debris with little or no clean bedding available. 9 C.F.R. § 3.31(a)(1).
- c. July 7, 2021. Respondents failed to maintain an effective program for the control of insects, ectoparasites, and avian and mammalian pests. Specifically, numerous flies and gnats were observed in the indoor housing facility. No methods of fly or insect control were being utilized and there were three windows open with no screens and the garage door was open with only the approximately lower three feet screened. 9 C.F.R. § 3.31(c).

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondents Amos S. Stoltzfus and Katie Stoltzfus violated sections 2.40(b)(2), 2.75(b)(1)(iv), 2.75(b)(1), 2.100(a), 2.126(b), 3.26(b), 3.28(c)(iii), 3.29(d), 3.30, 3.31(a)(1), and 3.31(c) of the Regulations (9 C.F.R. §§ 2.40(b)(4), 2.75(b)(1)(iv), 2.75(b)(1), 2.100(a), 2.126(b), 3.26(b), 3.28(c)(iii), 3.29(d), 3.30, 3.31(a)(1), and 3.31(c)).

ORDER

1. Complainant's Motion for Default is GRANTED.
2. Respondent Amos S. Stoltzfus and Katie Stoltzfus are assessed a total of two-thousand, five-hundred dollars (\$2,500) in civil penalties. Respondents shall pay the \$2,500 civil penalty in

twelve monthly installments of two-hundred, eight dollars and thirty-three cents (\$208.33) for a period of twelve (12) months, with the first installment being due on or before June 30, 2022 and continuing on or before the last day of each month thereafter until the \$2,500 is paid in full. Each monthly payment shall be made by certified check or money order made payable to the U.S. Department of Agriculture, to USDA APHIS, P.O. Box 979043, St. Louis, Missouri 63197-9000. Respondents shall indicate on the certified check or money order that this payment is in reference to AWA Docket Nos. 22-J-0038 and 22-J-0039.

3. This Order shall have the same effect as if entered after a full hearing.

This Decision and Order shall be final and effective without further proceedings 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 as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

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

Done at Washington, D.C.,
this 14th day of June 2022

**CHANNING
STROTHER**

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CHANNING STROTHER
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Channing D. Strother
Chief Administrative Law Judge

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