

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/HCO
2023 OCT 6 2:00 PM

In re:

Troy Hyde, an individual, d/b/a
Animals of Montana, Inc.,

Respondent.

AWA Docket No. 23-J-0071

**AMENDED¹ DECISION AND ORDER
WITHOUT HEARING BY REASON OF DEFAULT**

Appearance:

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

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. Part 3) (“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 Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (“Complainant”), initiated this proceeding on July 7, 2023 by filing an order to show cause (“Complaint”)² why the Animal Welfare Act license of Troy Hyde, an individual doing business as Animals of Montana, Inc. (“Respondent”), should not be terminated.

¹ A Decision and Order Without Hearing by Reason of Default was filed on October 2, 2023, but a clerical error in that Order required correction. Accordingly, on October 6, 2023, I vacated that Decision and Order Without Hearing by Reason of Default and replaced it with the instant Amended Decision and Order Without Hearing by Reason of Default.

² See 7 C.F.R. § 1.132 (“*Complaint* means the formal complaint, order to show cause, or other document by virtue of which a proceeding is instituted.”).

Respondent was 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).³

On August 8, 2023, 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). Complainant requests that I issue an order “finding that Respondent violated the Act and its regulations and terminating AWA license 81-C-0055.”⁴

Respondent has not filed any objections to Complainant’s Motion for Default or Proposed Decision.⁵

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.⁶ Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of

³ United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on July 17, 2023. Respondent 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, Respondent’s answer was due on or before August 7, 2023. Respondent has not filed an answer.

⁴ Motion for Default at 4.

⁵ United States Postal Service records reflect that Complainant’s Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on August 24, 2023. Respondent 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, Respondent’s objections were due on or before September 13, 2023. Respondent has not filed any objections.

⁶ 7 C.F.R. § 1.136(c).

an untimely answer where, as in the present case, no meritorious objections have been filed.⁷

As Respondent failed to file an 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 Troy Hyde ("Respondent") is an individual doing business as Animals of Montana, Inc. ("AOM").
2. AOM is a Montana corporation whose registered address is 170 Nixon Peak Road, Bozeman, Montana 59715-9713.
3. At all times mentioned in the Order to Show Cause Why Animal Welfare Act License 81-C-0055 Should Not Be Terminated ("Show Cause Order"), Respondent owned and operated AOM and was its responsible corporate officer.
4. Respondent was, at all material times mentioned in the Show Cause Order, operating as an exhibitor, as defined in the AWA and Regulations, and held AWA license number 81-C-0055.
5. On August 31, 2017, the Montana Department of Fish, Wildlife, and Parks ("FWP") Hearing Officer Andres Halady issued findings of fact, conclusions of law, and a proposed order determining that AOM committed twenty-two violations of Montana rules and regulations, which included violations pertaining to the transportation, ownership, neglect, or welfare of animals, and revoked Respondent's permit (No. 13042809111) without right of renewal.
6. On July 31, 2018, FWP Director Martha Williams issued a final agency order revoking Respondent's menagerie permit without opportunity for renewal.

⁷ See *supra* note 4 and accompanying text.

7. On January 17, 2020, following Respondent’s filing of a petition for appeal, the First Judicial District Court, Lewis and Clark County, District Court Judge Michael F. McMahon, issued an order affirming the FWP’s final decision to revoke Respondent’s permit, ordering that the “permit is revoked and cannot be renewed.”⁸
8. On May 25, 2021, the Supreme Court of the State of Montana affirmed the District Court decision to revoke Respondent’s FWP permit in *Animals of Mont., Inc., Troy Hyde v. State of Montana, Department of Fish, Wildlife, and Parks*.⁹

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. The Secretary has the authority under 9 C.F.R. § 2.11(a)(6), 9 C.F.R. § 2.11(a)(7), and 9 C.F.R. § 2.12 to terminate AWA license number 81-C-0055, held by Respondent Troy Hyde.
3. Respondent’s actions render him unfit to continue operating as an exhibitor under the AWA, as Respondent: (1) would be operating in violation or in circumvention of state or local laws, in violation of 9 C.F.R. § 2.11(a)(6); and (2) has been found to have violated state or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, in violation of 9 C.F.R. § 2.11(a)(7).
4. The Administrator determined that Respondent’s continuous possession of an AWA license would be contrary to the purposes of the AWA and that said license should be terminated.

ORDER

1. Complainant’s Motion for Default is GRANTED.
2. AWA license number 81-C-0055 is hereby TERMINATED.

⁸ Docket No. BDV-2015-999.

⁹ Docket No DA 20-0065.

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 6th day of October 2023

Tierney Carlos

Tierney Carlos

Acting Chief Administrative Law Judge

for Channing D. Strother, Chief Administrative Law Judge

Hearing Clerk's Office
United States Department of Agriculture
Stop 9203, South Building, Room 1031
1400 Independence Avenue, SW
Washington, DC 20250-9203
Tel: 202-720-4443
Fax: 844-325-6940
SM.OHA.HearingClerks@USDA.GOV