SOAH DOCKET NO. 554-06-3074

IN THE MATTER OF THE TEXAS ANIMAL HEALTH COMMISSION'S NOTICE OF VIOLATION ISSUED TO TERRY SAULTERS **BEFORE THE STATE OFFICE**

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff for the Texas Animal Health Commission (Staff/Commission) brought this action to assess Terry Saulters (Respondent) an administrative penalty of \$2,000. Staff alleged that Respondent violated quarantine restrictions for a horse with equine infectious anemia (EIA) and failed to maintain dealer records of his buying, selling, and trading horses. The Administrative Law Judge (ALJ) recommends that the Commission impose the \$2,000 administrative penalty.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

Staff sent Respondent a notice of violation with the assessed penalty of \$2,000, which he received on June 2, 2006. After Respondent declined signing an agreed order, Staff referred the matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

On September 26, 2006, ALJ Georgie B. Cunningham convened the hearing at SOAH, 300 West 15th Street, Austin, Texas. Gene Snelson, General Counsel to the Commission, represented Staff. Appellant appeared *pro se*. The parties did not dispute notice or jurisdiction in this proceeding. Therefore, those matters are set out in the findings of fact and conclusions of law without further discussion here. Following the receipt of evidence, the hearing was closed on the date it convened.

II. DISCUSSION

A. Introduction

The Texas Legislature directed the Commission to protect all livestock, domestic animals, and domestic fowl from certain diseases including EIA.¹ The Commission has the authority to

¹ TEX. AGRIC. CODE ANN. (Code) § 161.041(a)(11).

quarantine an affected area, including a pasture, or an animal.² A quarantine that has been established has the effect of quarantining all livestock of the kind mentioned in the quarantine notice that are on or enter that location regardless of who owns or controls them.³ A person may not move quarantined livestock from the place in which they are quarantined except with a permit issued by the Commission or its designee, such as a veterinarian.⁴

A person is subject to these provisions if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located or exercises care or control over the animal.⁵ A person is presumed to control the animal if the person is the owner, lessee of the pasture or space where the animal is kept or provides care for the animal.⁶

A dealer is a person engaged in the business of buying or selling animals in commerce on his own account, as an employee or agent, or on a commission basis. A dealer must maintain records of equine purchased and sold. The records shall show the buyer's and seller's name and address, county of origin, number of animals, and a description of each animal, including sex, age, color and color markings, registration number, if any, and any individual identification such as tattoo, brand, or microchip number. Dealer records must be maintained for a minimum of two years after the date of the transaction.⁷ The Commission may inspect and copy the records of a livestock dealer.⁸

EIA is a virus, similar to HIV, that affects the immune system of an infected equine. The virus may be transmitted from an infected equine to another equine, but not to humans. There is no known vaccine or cure. If not controlled, the disease could have a negative impact on the equine industry in Texas.

² Code § 161.061.

³ Code § 161.064.

⁴ Code § 161.065.

⁵ Code § 161.002.

⁶ Code § 161.002.

⁷ 49 Tex. Admin. Code § 49.3.

⁸ Code § 161.049.

Any equine found to be a reactor to the test will be ordered quarantined by a representative of the Commission until natural death, disposition by euthanasia, slaughter, or disposition to a Commission approved, diagnostic or research facility. The quarantine restricts the infected equine to isolation at least 200 yards from other equine. A permit is required for moving a quarantined animal. All animals in contact with a positive animal must also be quarantined for 60 days and must be retested.

At the hearing, Staff presented the testimony of Commission Investigator Richard Wagner and documentary evidence including its hearing notice, quarantine order, Respondent's written interview statement, and a February 2004 letter from the Commission to Respondent. Additionally, Staff called Respondent as a witness, and Respondent testified on his own behalf.

B. Discussion

Staff alleged that Respondent violated quarantine restrictions for a horse with EIA and failed to maintain records of his buying, selling, and trading horses. The facts of the case are set out in considerable detail in the Findings of Fact section. The evidence is only briefly summarized and discussed here.

1. The Quarantine Allegation

The evidence established that the Commission quarantined Respondent's horses after one tested positive for EIA. Shortly thereafter, Respondent purchased another horse in Oklahoma, and the Oklahoma horse was subsequently added to the quarantined herd and then sold.

Respondent testified it was not his fault that the Oklahoma horse was added to the quarantined herd. His son, Trent, and Trent's girlfriend, Michelle Hoffman lived at his home while feeding and caring for the horses. Ms. Hoffman moved the horse from the "house" pasture to the "barn" pasture. Thereafter, she sold the horse. According to Respondent, she had no business moving or selling the horse. She spent the money from the sale, and Respondent had to reimburse the purchaser. In his opinion, he is "just in the middle" with no control over what occurred. He added that one

⁹ The 2004 letter was offered to establish that a prior violation had occurred.

¹⁰ Respondent did not offer any documentary evidence or call any other witnesses.

Commission staff member told him all the horses were restricted and another Commission staff member said only the one was restricted.

2. Recording Keeping Allegation

In his April 2006 written statement to the Commission, Respondent admitted he did not have a purchase record for the infected horse. Although he admitted he bought the infected horse without proof of a negative EIA test, Respondent asserted it is not unlawful to buy one without the test documentation. Nevertheless, he recognizes the reason the test is important. However, he testified he keeps dealer records, and the purchase record should be in his records "somewhere." He has records dating to 1998, but it would be pointless to look for the record. He purchases two to three thousand horses each year, and, with his eighth grade education, he does the best he can to keep up.

Respondent argued that he has already suffered great financial harm when he had to kill 30 horses rather than feed them during the quarantine. According to Respondent, he has lost about \$10,000, and it would be "crazy" to fine him \$2,000. As to the record keeping, he has boxes and boxes of records in closets. It is just a matter of not having a record on one horse.

C. Analysis

1. The Quarantine Violation

Although Respondent believes he is not responsible for the Oklahoma horse being exposed to EIA before it was sold, the evidence shows he was responsible. On March 20, 2006, the Commission placed all of his property in McLennan County under quarantine and gave him a copy of the notice. In spite of this notice, Respondent purchased the horse in Oklahoma and brought it to the property knowing that he could not move it from the premises without a permit or until the quarantine was lifted. Putting the horse in a pasture other than the one where the infected horse was pastured did not relieve Respondent of his responsibility because the entire premise was under quarantine.

It was never clearly established whether Ms. Hoffman was his employee or his agent. Nevertheless, she, along with Trent Saulters, cared for the horses. As the owner of the premises, Respondent cannot blame his employee or agent and avoid liability. Although Ms. Hoffman may face liability also, Respondent, as owner, is responsible according to the Code.

2. Record Keeping Violation

The Agriculture Code directs the Commission to protect all livestock from certain diseases including EIA. In order to control its spread, it is necessary to maintain dealer records and impose strict quarantines on infected or exposed animals. Through testimony and the admission of the 2004 letter to Respondent, Staff established that Respondent has previous violations. Furthermore, the Commission has had repeated contacts with Respondent in an effort to secure his compliance with keeping dealer records.

Respondent's testimony that he has boxes of records dating back to 1998 suggests he does not yet understand the Commission's requirements. Maintaining organized records for two years, as required by rule, might be preferable to maintaining records for many years and not being able to locate the records needed. One's educational level is simply not a factor in considering compliance or penalty assessment. Compliance is required of all dealers.

3. Administrative Penalty

The evidence clearly established that the violations occurred. The Commission may impose an administrative penalty of \$1,000 per violation for each day a violation continues. The amount of the violation shall be based on the seriousness of the violation, economic harm, the history of previous violations, the amount necessary to deter future violations, efforts to correct the violation, and any other matter that justice may require.¹¹

Even though Respondent argued the Commission should not assess an administrative penalty because he has already suffered great financial loss, the financial loss is a business expense. The administrative penalty is a state sanction imposed because of his failure to comply with regulations. Considering the seriousness of the offense of potentially exposing numerous horses to the incurable disease, the maximum \$1,000 penalty for violating the quarantine is not unreasonable. Likewise, the same penalty amount for not maintaining dealer records to enable the Commission to trace the infected horse to its source and potentially control the spread of the disease, is equally serious. Based on the testimony, it appears that the Commission likewise incurred considerable expense in an attempt to control the spread of the disease.

¹¹ Code § 161.148.

These violations are not Respondent's first ones. Staff has put him on notice previously about the record keeping requirements, and Respondent acknowledged their importance. In spite of recognizing their importance, Respondent failed to comply. Furthermore, no evidence was offered to show Respondent attempted to correct the violations. Thus, the assessment of the penalty appears to be necessary to assure Respondent's future compliance with these regulations.

Although it may be a severe financial burden placed on Respondent considering his losses, the law mandates that the Commission shall protect all livestock from EIA. For the reasons specified in detail in the proposed findings of fact and conclusions of law, the ALJ recommends that the Commission assess the \$2,000 administrative penalty.

III. FINDINGS OF FACT

- 1. The Texas Animal Health Commission (Commission) is charged with protecting livestock in Texas from diseases such as equine infectious anemia (EIA).
- 2. EIA is a virus, similar to HIV, that affects the immune system of an infected equine.
- 3. EIA may be transmitted from an infected equine to another equine, but not to humans.
- 4. There is no known vaccine or cure for EIA.
- 5. In Texas, horses are required to have a current negative EIA test, also known as a Coggins test, for a horse to be sold.
- 6. Horses consigned to a market without a negative Coggins test document must be tested or sold for slaughter.
- 7. A horse with unknown health status may pose a disease threat to other horses.
- 8. Terry Saulters (Respondent) is in the business of buying, selling, and trading horses in numerous Texas counties.
- 9. Respondent occasionally purchases horses in other states for resale in Texas.

The Violations

- 10. On March 16, 2006, Respondent consigned 14 horses at GLG Horse Sale in Cleburne, Texas.
- 11. Respondent's horses at the GLG Horse Sale did not have EIA test documentation.
- 12. Matt Imel, D.V.M., administered a Coggins test to Respondent's horses at the GLG Horse Sale.

- 13. One of Respondent's horses at the GLG Horse Sale, a paint gelding with Back Tag Number 3751, tested positive for EIA.
- 14. All horses in Respondent's consignment were returned to his property in McLennan County, Texas.
- 15. Commission Inspector Torrinda May drew a second blood sample from the horse with the positive test at the GLG Horse Sale.
- 16. The second blood sample was sent to the Texas Veterinary Medical Laboratory (TVML) in College Station, Texas.
- 17. On March 16, 2006, Inspector May issued an Order to Hold, restricting movement of the exposed horses.
- 18. Respondent and his son, Trent Saulters, gave Commission staff different information about the possible origin of the positive horse.
- 19. On March 20, 2006, the TVML test results confirmed that Respondent's paint gelding, Back Tag Number 3751, was infected with EIA.
- 20. On March 20, 2006, the Commission imposed a quarantine on Respondent's premises in McLennan County, Texas.
- 21. The quarantine prohibited the removal of equine from the premise until the quarantine was released or without the written permit of the Commission or its representative.
- 22. On March 26, 2006, the Commission's staff branded the positive horse.
- 23. An April 5, 2006, Respondent confirmed in writing that he had purchased the infected horse from an individual in the parking lot at the Navasota Livestock Auction.
- 24. Respondent did not know the name of the person from whom he purchased the infected horse, where the person lives, or how to contact him.
- 25. The previous owner of the infected horse did not provide Respondent a copy of a negative Coggins test when the sale occurred.
- 26. Respondent did not have a dealer record for the infected horse.
- 27. Respondent did not know the date on which he purchased the infected horse.
- 28. On April 5, 2006, Respondent purchased a horse in Oklahoma (the Oklahoma horse).
- 29. Respondent put the Oklahoma horse on his quarantined premise.
- 30. On April 16, 2006, Michelle Hoffman sold the Oklahoma horse to Kay Huntsman of Louisiana.
- 31. Kay Huntsman expected the EIA test documentation would be sent to her in Louisiana.

- 32. Michelle Hoffman was Trent Saulters' girlfriend.
- When she sold the Oklahoma horse, Michelle Hoffman was residing at Respondent's home and, with Trent Saulters, managing Respondent's horses.

Aggravating Factors

- 34. The Commission is unable to locate other horses or herds of horses which may have been exposed to EIA prior to Respondent's purchasing the infected horse.
- 35. Other horses or herds of horses may have been exposed to EIA after the infected horse was sold from Respondent's premises.
- 36. On January 22, 2004, Respondent failed to have dealer records for the Commission to inspect.
- 37. On October 14, 2004, Respondent failed to provide requested records for a horse or to contact Commission staff regarding the situation.
- 38. On November 29, 2004, Respondent failed to make his dealer records from January 1 through July 31, 2004, available for inspection by Commission staff.
- 39. Respondent has failed to develop a system of record keeping.
- 40. Respondent did not maintain control of his agents or employees in observing the quarantine.

Notice

- 41. On May 30, 2006, Staff sent Respondent a notice of violation and proposed agreed order.
- 42. On June 2, 2006, Respondent received the violation notice and proposed order.
- 43. Respondent declined entering into an agreed settlement of the matter.
- 44. On August 6, 2006, Staff referred the matter to the State Office of Administrative Hearings for a hearing on the merits.
- 45. On August 7, 2006, Staff sent Respondent a hearing notice at his address, 730 Old Axtell Road, Waco, Texas, 76705.
- 46. The hearing notice was sent by regular mail and by certified mail, return receipt requested.
- 47. The hearing notice contained a statement of the date, time, and place of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; and a statement of the matters asserted.
- 48. Respondent received the hearing notice on August 10, 2006.
- 49. Respondent and Staff appeared at the hearing, which was conducted on September 26, 2006.

IV. CONCLUSIONS OF LAW

- 1. The Texas Animal Health Commission has jurisdiction over this matter according to the provisions of the Tex. Agric. Code Ann. ch. 161.
- 2. The State Office of Administrative Hearings has jurisdiction over all matters relating to the contested case hearing, including the authority to issue a proposal for decision, pursuant to Tex. Gov't Code Ann. ch. 2003 and Tex. Agric. Code Ann. § 161.148(h).
- 3. The notice of hearing conforms with the provisions of Tex. Gov't Code Ann. §§ 2001.051 and 2001.052.
- 4. The Commission is directed to protect all livestock and domestic animals from specified diseases including equine infectious anemia (EIA) and is authorized to adopt necessary rules to carry out those provisions in Tex. AGRIC. CODE ANN. § 161.041.
- 5. Respondent is a dealer, as defined by Tex. Agric. Code Ann. § 161.049 and 49 Tex. Admin. Code § 49.3(a).
- 6. Respondent failed to maintain dealer records, as required by Tex. AGRIC. CODE ANN. § 161.147.
- 7. Respondent failed to comply with a quarantine order, as prohibited by Tex. AGRIC. CODE ANN. § 161.065.
- 8. The Commission is authorized to impose an administrative penalty against a person who violates its rules or orders, pursuant to Tex. Agric. Code Ann. § 161.148.
- 9. The Commission may impose a penalty of \$1,000 for each violation, pursuant to Tex. AGRIC. CODE ANN. \$ 161.148 (b).
- 10. Based on the Findings of Fact and Conclusions of Law, the Commission is authorized to impose an administrative penalty of \$2,000 in this matter.

SIGNED November 27, 2006.

GEORGIE B. CUNNINGHAM ADMINISTRATIVE LAW JUDGE STATE OFFICE OF ADMINISTRATIVE HEARINGS