

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

AQ Docket No. 09-0027

In re: GEORGE BAKER,
d/b/a GEORGE BAKER STABLES,

Respondent

DECISION AND ORDER

Preliminary Statement

Kevin Shea, then the Acting Administrator of the Animal and Plant Inspection Service (APHIS) commenced this action on November 17, 2008 by the filing of a Complaint against the Respondent alleging violations of the Commercial Transportation of Equines for Slaughter Act, 7 U.S.C. § 1901 note (the Act) and the Regulations promulgated thereunder (9 C.F.R. § 88 *et seq.*) and seeking civil penalties authorized by section 903(c) of the Act and 9 C.F.R. § 88.6.

The Respondent answered by the filing of a Response on January 5, 2009 indicating that he could find no records of him being a shipper of 32 horses on June 22, 2005 and accordingly denied any violation(s) on that date and similarly had no records of the allegations on April 27, 2006 and demanded strict proof thereof.

An oral hearing was conducted on December 15, 2009 by three way audio-visual teleconference between the United States Department of Agriculture Courtroom in Washington, D.C., the United States Attorney's Office in Tulsa, Oklahoma and the United States Attorney's Office in Peoria, Illinois. The Administrator was represented by

Thomas Neil Bolick, Esquire, Office of the General Counsel, United States Department of Agriculture. Mr. Baker was represented by Richard D. Gibbon, Esquire, Gibbon, Barron and Barron, PLLC of Tulsa, Oklahoma. Ten witnesses testified and 20 exhibits were admitted into evidence.¹

Discussion

The Complaint filed by the Administrator alleges that on two instances Baker commercially transported horses as an “owner/shipper²” from Stroud, Oklahoma to Cavel International in DeKalb, Illinois for slaughter, the first being a load of 32 horses on June 22, 2005 and the second being a load of 35 horses shipped on April 26, 2006. During the first shipment of 32 horses in June of 2005, it was alleged that too many horses were loaded on the conveyance, aggressive horses were not segregated, and a mare having a pre-existing puncture wound suffered further injury during the trip causing her to die during the transportation. The alleged violation during the second shipment with 35 horses in April of 2006 involved three stallions that were not segregated to prevent them from coming into contact with the other horses.

The evidence introduced at the hearing amply established the fact that 32 horses in the June 2005 shipment from Stroud, Oklahoma to Cavel International in DeKalb, Illinois were shipped for slaughter, that the trailer containing the horses was overcrowded, aggressive animals were not segregated, and that a mare with a pre-existing

¹ Seven witnesses testified for the Administrator; three testified for the Respondent George Baker. References to the transcript of the proceedings will be Tr. and the page. The Complainants exhibits are indicated as CX and the Respondent’s RX.

² 7 U.S.C. ¶ 1901 Sec. 902 "(3) Person. - The term 'person' - "(A) means any individual, partnership, corporation, or cooperative association that regularly engages in the commercial transportation of equine for slaughter;. . . and in 9 C.F.R. ¶ 88 *Owner/shipper*. Any individual, partnership, corporation, or cooperative association that engages in the commercial transportation of more than 20 equines per year to slaughtering facilities,

puncture wound died during the shipment; however, the evidence introduced to establish George Baker as the “owner/shipper³” and thus responsible for violations under the Act however fell short of meeting the Administrator’s burden of proof. Baker’s position that he was neither the owner nor the shipper of the horses in 2005 is corroborated in part by the fact that in a case decided by United States Administrative Law Judge Jill S. Clifton the Secretary previously identified Charles Carter as being the owner/shipper and imposed liability upon him for the same shipment of horses.⁴

No evidence was introduced that Baker and Carter had joined together in a joint venture or in any type of partnership. Baker contended that he was only a buying agent for Carter in 2005 and that he was not tainted by any offenses committed by Carter.

Douglas Hoffman, an Animal Health Technician formerly employed by APHIS Veterinary Services during 2005 and 2006 (now currently an employee of the Department of Homeland Security, Customs and Border Protection) testified that the VS Form 10-13 for the June 22, 2005 load of 32 horses listed Charles Carter as the owner shipper of the horses and that James Carpenter informed him that he drove for Charles Carter.⁵ Tr. 16,

³ Baker acknowledged purchasing horses for Carter as his agent, but testified that the equipment and driver used belonged to Carter and that he had no further involvement or control over the transportation of the horses once the horses were made available to the driver for loading at his facility in Stroud, Oklahoma.

⁴ A Default Decision and Order was entered against Charles A. Carter on October 23, 2009 in *In re: Charles A. Carter, d/b/a C.C. Horses Transport; and Jeremy Pollitt, d/b/a Wildcat Trucking*, 68 Agric. Dec. ____ (2009); AQ Docket No. 09-0024. Paragraph 45 of that decision involves the same shipment of 32 horses from Stroud, Oklahoma to Cavel International in DeKalb, Illinois. *Slip Opinion* at 20. Subparagraphs (b) and (c) of that decision identify the driver as being Carter’s driver. *Id.* at 20-21. No appeal was made of that decision and it is now final. While it is possible for more than one individual to found to be culpable for a violation of the Act, the identification of the driver as being Carter’s in the earlier case serves to corroborate the Respondent’s claim that he had no control or authority over the driver and that the rig was not his. For reasons that are not clear, the position of the Secretary in the prior action was not disclosed at any time during the hearing.

⁵ Hoffman’s testimony concerning his questioning of James Carpenter makes it clear that Carpenter took his orders from Carter and not from Baker. Hoffman testified “Being as that he drives for Mr. Carter, Mr. Carter had told his drivers not to sign any official documents from me so I didn’t even attempt to take an affidavit from him, but I had requested that they fill out the basic information on the owner/shipper the driver form.” Tr. 53.

53-54, CX-1, 2, 3. Although he testified at the hearing that he “believed” the equipment used to transport the June 2005 shipment belonged to George Baker,⁶ in retrospect through what must be regarded as a monumental oversight, his investigation lamentably failed to include pertinent ownership information concerning the tractor or trailer used to transport the horses. Moreover, none of the other documentation prepared by Hoffman mentioned Baker as having any control or other involvement other than as a point of origin for the horses.⁷ Tr. 56.

Joseph W. Bauman, an Investigator with APHIS Investigative and Enforcement Services, testified that he had prepared an affidavit in connection with his involvement in the investigation and provided it to Doug Hoffman. Tr. 89, CX-5. His affidavit also fails to suggest any involvement by George Baker and he confirmed in this testimony under cross examination that his investigation did not include the development of information as to whose vehicle or trailer had been used in the transport of the horses for the shipment on June 22, 2005. Tr. 98-99.

Adina Baker testified that for the June 22, 2005 shipment of 32 horses Carter had the contract with Cavel, he determined the shipment date, provided the equipment and driver, and that his driver supervised the loading of the horses from inside the trailer, determining how many horses went into each part of the trailer. Tr. 232-235, 238. The driver operated on instructions from Carter, a fact corroborated by the testimony of Hoffman, and the Bakers had no means of contacting the driver. Tr. 53, 238.

⁶ The testimony at trial casts doubt upon Hoffman’s account of providing a binder to Baker concerning regulatory requirements as the testimony at the hearing indicated that Baker does not possess a Commercial Driver’s License (CDL) which would be required for such transportation. Tr. 59, 256. Moreover, Baker denied ever traveling to DeKalb, Illinois which is where Hoffman is stationed. Tr. 256.

⁷ Hoffman’s affidavit and testimony incorrectly also indicated that he was at the Cavel facility on June 22, 2005 when the load arrived when in fact the evidence indicated that the load left Stroud, Oklahoma on June 22, 2005 and arrived in DeKalb, Illinois on June 23, 2005. Tr. 21, CX-2, 4-6. Only when specifically asked about the date in relation to the amount of time required for the trip did he correct the date. Tr. 78.

By way of contrast, the same degree of control by Carter was not exercised in the case of the April 24, 2006 shipment as that load of 35 horses was driven from the Baker facility in Stroud, Oklahoma to Cavel International in DeKalb, Illinois by Baker's step son Kory Pierson who was working for Baker at the time. While Douglas Hoffman testified that he observed that there were three stallions in the load, contrary to his usual thoroughness, he did not take any photographs of the animals.⁸ Tr. 34-35. His testimony was corroborated however by Cavel's records reflecting the gender of the horses. CX-14. Given the explicitness of the regulatory requirements set forth in 9 C.F.R. §88.4(a)(4)(ii) and the number of horses in the load, although no injuries were sustained by the horses during the transport (Tr. 247), it is clear that a violation did occur on that occasion and that it is attributable to the Respondent George Baker.

Based upon the entire record of all evidence presented, including the testimony of the witnesses and the exhibits introduced during the hearing, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. The Respondent George Baker is an individual who operates a tack and horse receiving business which includes the buying and selling horses under the name of George Baker Stables. He is a resident of Stroud, Oklahoma.
2. Adina Agnew (Toots) Baker is George Baker's wife and assists him in the operation of his business. She completed the VS Form 10-13 for the June 22, 2005 shipment of 32 horses and signed the form as the agent of Charles Carter. Tr. 231, 237, CX-8.

⁸ Hoffman was generally regarded as a thorough investigator according to Randy Beasley, a former Cavel employee who in his affidavit provided an encomium indicating that every time Hoffman issued any type of violation he would fill out the paperwork and take multiple photos of the said violation... RX-2.

3. Kory Pierson is George Baker's step son; the Bakers provide him a place to live and the facilities to keep his horses. He works for his step father driving trucks and handling horses, as well as buying and selling horses and tack for himself. CX-16.
4. George Baker acts as an agent of Charles A. Carter on numerous occasions to purchase horses for Carter. On June 22, 2005, he delivered 32 head of horses purchased for Carter to Carter's driver, James Carpenter at his place of business in Stroud, Oklahoma. The load of 32 horses included a mare with a pre-existing puncture wound. Tr. 232-235, 237.
5. Acting on instructions from Carter and using Carter's equipment, Carter's driver James Carpenter supervised the loading of 32 horses at Baker's facility in Stroud, Oklahoma and their placement in the trailer on June 22, 2005 and transported the horses to Cavel International in DeKalb, Illinois for slaughter. Tr. 232-235.
6. During the course of their transportation, the horses were crowded in the trailer transporting them, aggressive animals were not segregated and the mare with the pre-existing puncture wound died as a result of injuries sustained during the transport. CX-2.
7. As previously found in *In re: Charles A. Carter, d/b/a C.C. Horses Transport; and Jeremy Pollitt, d/b/a Wildcat Trucking*, 68 Agric. Dec. ____ (2009); AQ Docket No. 09-0024, Charles A. Carter (and not George Baker) was the owner/shipper of the horses for the load of 32 horses shipped on June 22, 2005 to Cavel International in DeKalb, Illinois for slaughter.
8. On April 27, 2006, Kory Pierson, working as his step father's employee, transported a load of 35 horses purchased for Charles Carter from the Baker facility in

Stroud, Oklahoma to Cavel International in DeKalb, Illinois for slaughter. Tr. 246-247, 264, 267, CX-16.

9. Although there were no reported injuries to the horses transported, the load of 35 horses shipped on April 27, 2006 in Baker's equipment by Pierson from Stroud, Oklahoma to Cavel International in DeKalb, Illinois included three stallions that were not segregated from the other horses as required by 9 C.F.R. §88.4(a)(4)(ii). Tr. 34-35, CX-14.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. George Baker as the individual responsible for shipment of the horses in equipment owned by him and driven by his employee failed to segregate the three stallions from the other horses during the shipment of 35 horses from the Baker facility in Stroud, Oklahoma to Cavel International in DeKalb, Illinois on April 27, 2006, in violation of 9 C.F.R. §88.4(a)(4)(ii).

Order

1. The Respondent George Baker is assessed a civil penalty of \$1,200 for the violation of 9 C.F.R. §88.4(a)(4)(ii). Payment of the civil penalty shall be made to the **Treasurer of the United States** and be paid within 30 days from the effective date of this Order by certified check or money order sent to:

United States Department of Agriculture
APHIS, Accounts Receivable
P.O. Box 3334
Minneapolis, MN 55403

The certified check or money order should include the docket number of this proceeding.

2. This Order shall become final and effective thirty (30) days after date of service of this Order on the Respondent unless appealed to the Judicial Officer pursuant to 7 C.F.R. § 1.145.

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

Done at Washington, D.C.
February 23, 2010

PETER M. DAVENPORT
Acting Chief Administrative Law Judge

Copies to: Thomas Neil Bolick, Esquire
Richard D. Gibbon, Esquire

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