

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF AGRICULTURE AND)
CONSUMER SERVICES,)
)
Petitioner,)
)
vs.) Case No. 97-3366
)
SHIRLEY FIFER,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on February 24, 1998, in Brooksville, Florida, before the Division of Administrative Hearings, by its designated Administrative Law Judge, Diane Cleavinger.

APPEARANCES

For Petitioner: Floyd A. Hennen, Esquire
Department of Agriculture and
Consumer Services
Mayo Building, Room 515
Tallahassee, Florida 32399-0800

For Respondent: Shirley Fifer, pro se
1606 C 476 West
Bushnell, Florida 33513

STATEMENT OF THE ISSUE

Whether Respondent violated Section 585.145(2), Florida Statutes, and Rule 5C-18010(3)(b), Florida Administrative Code, by failing to provide, upon sale or transfer of a horse a report of a negative Equine Infectious Anemia (EIA) test on VS

Form 10-11.

PRELIMINARY STATEMENT

On June 16, 1997, Petitioner issued an administrative complaint, alleging that Respondent, Shirley Fifer, violated Section 585.145, Florida Statutes and Rule 5C-18.010, Florida Administrative Code. Specifically, the Administrative Complaint alleged that Respondent should be fined \$1,000.00 for selling a horse to another without providing a report of a negative Coggin's test on USDA VS Form 10-11 to the buyer. Respondent disputed the allegations of the Administrative Complaint and requested a formal administrative hearing. The case was forwarded to the Division of Administrative Hearings.

At the hearing Petitioner offered the testimony of two (2) witnesses and offered four (4) exhibits into evidence. Respondent offered the testimony of two (2) witnesses and offered two (2) exhibits into evidence.

After the hearing, Petitioner filed a Proposed Recommended Order on April 3, 1998. Respondent did not file a Proposed Recommended Order. The Petitioner's proposed findings of fact have been considered and utilized in the preparation of this recommended order except where the proposed findings of fact were cumulative, immaterial, irrelevant, or not shown by the evidence.

FINDINGS OF FACT

1. Equine Infectious Anemia (EIA) is a highly contagious viral disease in the horse family. It is transmitted primarily

by blood sucking insects, such as horse flies, stable flies, deer flies, and mosquitoes. The disease is transferred from infected horses to non-infected horses through the bite of the insect.

2. If EIA does not kill an infected animal it will generally impact the health of an infected horse the rest of its life. One symptom of an infected animal is staggering. However, there are rare instances when an infected animal shows no symptoms of the disease but still carries the virus in its blood.

3. There are only three options for horses infected with EIA. First, they can be euthanatized. Second, they can be sent to a slaughtering plant and processed for non-human consumption. Third, they can be quarantined on premises which separate the infected horse at least two hundred yards from any other animal and which are approved by the Division of Animal Industry and inspected monthly by a member of the Department of Agriculture and Consumer Services.

4. The test for EIA is the Coggin's Diffusion Test (Coggin's test). A negative result demonstrates that the horse does not currently carry EIA. A positive result means the horse is infected with EIA. The results of the Coggin's Diffusion Test are reported on USDA VS Form 10-11. The use of the form is required by Rule 5C-18.010, Florida Administrative Code.

5. In Florida, in order to control and prevent the spread of EIA, a negative Coggin's Diffusion Test done within the prior twelve months reported on USDA VS Form 10-11 is required before a

horse may be sold or its possession transferred. See Rule 5C-18.010, Florida Administrative Code.

6. A blank USDA VS Form 10-11 is not prepared or in the possession of a horse owner such as Ms. Fifer. It is initially prepared by the veterinarian taking the blood sample. The blood sample, along with the form is sent to a regional diagnostic and testing lab with the paperwork from the veterinarian. The horse owner or seller then receives a copy of the form in the mail with the test results.

7. Prior to May 29, 1997, Charlene Booth desired to purchase a gentle horse for herself and her family. Towards that goal and because she knew little about horses she enlisted the help of Therman Tolbert, who was knowledgeable about horses.

8. At some point Ms. Booth was introduced to Ms. Fifer by Mr. Tolbert.

9. Ms. Fifer had recently (within the prior two weeks) purchased an aged horse (probably over 18 years of age) named Big Red. Bid Red was in very poor condition. The horse was grossly undernourished to the point that his bones protruded, and he was, as a result missing nine teeth. As a result Big Red was in very poor condition. Ms. Fifer placed Big Red on a feeding regimen. He seemed to be doing all right under her care. She had purchased the horse with the idea of feeding him and bringing him back to a good condition for resale. She had done the same with other horses.

10. Big Red's Coggin's Diffusion Test had expired and Ms. Fifer had her veterinarian pull a blood sample for a Coggin's Diffusion Test on May 20, 1997. The test was forwarded to the appropriate lab by the veterinarian.

11. On May 27, 1997, Ms. Booth, her family, and Mr. Tolbert came to see Big Red. Because she had not received a copy of the Coggin's Diffusion Test result for Big Red, Ms. Fifer called the testing lab to find out the result of the Coggin's Diffusion Test. She was told the test was negative.

12. The Booths and Mr. Tolbert stayed at least an hour or two riding and petting Big Red. Mr. Tolbert checked its teeth and agreed the horse was aged. Without knowledge of the birthday of a horse, the age of a horse cannot be determined once it passes 12 or 15 years old. The best that can be said is that the horse is aged.

13. Even though Big Red was a very risky purchase because of his condition, the Booths fell in love with him. They wanted to take him home as soon as possible in order to care and love him, and bring him back to health. Ms. Booth gave Respondent a \$100.00 deposit and made arrangements for Mr. Tolbert to transport the horse.

14. On May 29, 1997, Ms. Booth paid the remaining \$350.00 of the purchase price for Big Red and took possession of him from Shirley Fifer. Mr. Tolbert loaded him in his trailer and transported him to the Booth's home.

15. At the time of the sale and transfer of possession on May 29, 1997, Ms. Booth did not receive a copy of the Coggin's Diffusion Test on USDA VS Form 10-11 from Shirley Fifer. Ms. Fifer was unaware that the form was required at the time of actual transfer of a horse. She was generally aware that a negative Coggin's result and test were required every twelve months.

16. At the time of the transfer and sale on May 29, 1997, Charlene Booth received from Therman Tolbert a receipt which stated at the bottom that "Horse was transported without Coggin's Papers."

17. Additionally, at the time of transfer and sale on May 29, 1997, Ms. Booth received from Shirley Fifer a Bill of Sale signed by Shirley Fifer which stated "Received \$450.00 for ("Big Red") gelding from Kevin and Charlene Booth. Neg. Cog. Test is guaranteed and will be mailed as soon as I get it back." Additionally, both Mr. Tolbert and Ms. Booth were orally told on May 27, 1997, that the Coggin's Diffusion Test was negative. Ms. Booth did not understand the statement at the time and relied on Mr. Tolbert.

18. Other than the Bill of Sale, Charlene Booth received no other documents from Shirley Fifer at the time of the purchase of and taking possession of Big Red.

19. However Ms. Fifer, once she received the Coggin's Diffusion Test results from the lab or her veterinarian,

attempted to mail the test results to Ms. Booth via certified mail. For unknown reasons Ms. Booth either did not accept or did not receive the certified mail. The certified mail was eventually returned to Ms. Fifer.

20. Ms. Booth obtained a Coggin's Certificate at her own expense, for which the sample was drawn on June 16, 1997. However, the sample was drawn for diagnosis of Big Red's medical condition. As with Ms. Fifer's test results, Ms. Booth's test results were negative. Eventually Big Red died from old age and poor health related to being grossly underfed prior to purchase by either Respondent or Ms. Booth. Big Red did not die from anything related to Ms. Fifer's failure to use the appropriate reporting form for the Coggin's test.

21. Shirley Fifer technically violated Section 585.145(2), Florida Statutes, and Rule 5C-18.010(3)(b), Florida Administrative Code, by failing to supply USDA VS Form 10-11 at the time of sale and transfer of possession of Big Red. A verbal report of the horse's negative Coggin's test was given to the buyer upon the date of purchase. A written report of the horse's negative Coggin's test was given on the Bill of Sale when the horse was transported. Ms. Fifer was unaware of the rule's requirement that a particular form be used for reporting the result of a Coggin's test. She did not intentionally violate the rule. Moreover, the horse did have a negative Coggin's test at the time of sale. Clearly, the violation is de minimus.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. Section 120.57(1), Florida Statutes.

23. As stated in Section 585.145(2), Florida Statutes:

No animal shall be imported into the state, moved within the state, or the ownership thereof transferred within the state without the owner, broker, or transferor first obtaining such health tests, official certificates of veterinary inspection, or other certificates and documents as shall be required by rules adopted by the department. Evidence of compliance with this subsection shall accompany the owner or agent having jurisdiction of such animals imported, moved intrastate, or to which ownership is being transferred. However, unless an emergency is declared, the department may not require Florida residents to carry evidence of compliance in intrastate travel for privately owned domestic canines or domestic felines which are not offered for sale. The department may provide by rule specific exceptions to this subsection upon finding that certain importations, intrastate movements, or transfers pose no threat to affected industries in Florida.

24. Rule 5C-18.010(3)(b), Florida Administrative Code, states:

"[f]or private sale . . . the VS Form 10-11 (Apr 90) must be provided to the new owner or custodian at the time of change of location or ownership."

25. Shirley Fifer technically violated Section 585.145(2), Florida Statutes, and Rule 5C-18.010(3)(b), Florida Administrative Code, by failing to supply USDA VS Form 10-11 at

the time of sale and transfer of possession of Big Red. A verbal report of the horse's negative Coggin's test was given to the buyer upon the date of purchase. A written report of the horse's negative Coggin's test was given on the Bill of Sale when the horse was transported. Ms. Fifer was unaware of the rule's requirement that a particular form be used for reporting the result of a Coggin's test. She did not intentionally violate the rule. Moreover, the horse did have a negative Coggin's test at the time of sale.

26. Section 585.007(1), Florida Statutes, provides for an administrative fine up to \$10,000.00 for violations of Chapter 585, Florida Statutes, or Rule 5C-18.010, Florida Administrative Code. However, failure to use the appropriate form as required by Rule 5C-18.010, Florida Rules of Administrative Procedure is a de minimus violation and only warrants a de minimus fine. Therefore, a fine of \$50.00 for Respondent's failure to use the appropriate form for reporting a negative Coggin's test would be appropriate.

RECOMMENDATION

Based upon the findings of fact and conclusions of law, it is,

RECOMMENDED:

That the Department enter a final order finding Respondent guilty of a de minimus violation of Section 585.145, Florida

Statutes, and Rule 5C-18.010, Florida Administrative Code, and impose a fine of \$50.00 for this offense.

DONE AND ENTERED this 6th day of May, 1998, in Tallahassee, Leon County, Florida.

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of May, 1998.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.