

**INDIANA HORSE RACING COMMISSION
BEFORE AN ADMINISTRATIVE LAW JUDGE**

INDIANA HORSE RACING)	
COMMISSION STAFF,)	
)	
Petitioner,)	
)	
v.)	ADMINISTRATIVE COMPLAINT # 217004
)	
DUANE WILCOX, D.V.M.,)	
)	
Respondent.)	

RECOMMENDED ORDER OF DEFAULT JUDGMENT

This matter comes before the Administrative Law Judge (“ALJ”) following the filing by the Indiana Horse Racing Commission Staff (Commission Staff”) of a Motion for Default Judgment, on May 15, 2017, pursuant to Indiana Code § 4-21.5-3-24 and 71 IAC 10-3-20(d).

The ALJ, being duly advised, hereby grants said motion and finds grounds for the proposed default as follows:

1. The Commission filed Administrative Complaint # 217004 against Respondent, Duane Wilcox, D.V.M., on April 3, 2017. The copy served by mail was returned unclaimed. However, service by hand delivery to Dr. Wilcox was obtained on April 17, 2017.
2. Pursuant to 71 IAC 10-3-20(d), Dr. Wilcox had twenty (20) days in which to respond or pay the administrative penalty. He did neither.
3. On May 15, 2017, the Staff filed its motion for a Recommended Order of Default and obtained personal service.
4. On May 25, 2017, the ALJ issued Service of Proposed Order of Default Judgment pursuant to Ind. Code § 4-21.5-3-24(b).
5. Pursuant to Ind. Code § 4-21.5-3-24(b), Dr. Wilcox had seven (7) days to respond and request that default not be imposed. He did not do so.
6. Dr. Wilcox is not known to be on active duty in any of the armed service of the United States.
7. Dr. Wilcox is not a minor nor otherwise legally incompetent.

8. On or about June 2, 2017, Dr. Wilcox left a voice mail message for the ALJ asking where to “send the money.” The ALJ then emailed both counsel for the Commission Staff and Dr. Wilcox to note that no order of default judgment had been issued, although it would be forthcoming if Dr. Wilcox declined to file a timely motion in opposition.

9. Also on June 2, 2017, the Commission Staff informed the ALJ that Dr. Wilcox had submitted payment of the proposed penalty of \$1,000.00.

10. Dr. Wilcox did not otherwise respond to Service of Proposed Fault.

11. Pursuant to Ind. Code § 4-21.5-3-24(d), in such circumstances where a party fails to respond to proposed default, the ALJ shall issue an order of default.

Recommended Order

It is, therefore, recommended that the Commission Staff’s Motion for Default Judgment be GRANTED in favor of the Indiana Horse Racing Commission and against Dr. Wilcox.

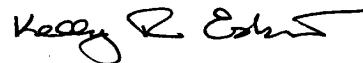
It is further recommended that the Indiana Horse Racing Commission enter an Order stating that Dr. Wilcox’s failure to timely respond to Administrative Complaint # 217004 as required by Ind. Code § 4-21.5-3-24 and 71 IAC 10-3-20(d) resulted in a waiver of his right to a hearing on the administrative penalty and therefore waived his right to judicial review.

It is further recommended that the Indiana Horse Racing Commission enter Judgment against Dr. Wilcox as follows:

a. Dr. Wilcox is assessed a \$1,000.00 fine.

Pursuant to Ind. Code § 4-21.5-3-29(3), Dr. Wilcox, or any party hereto, has fifteen (15) days following the receipt of this Recommended Order to file written exceptions with the Indiana Horse Racing Commission.

So recommended, on June 12, 2017.



Kelly R. Eskew
Administrative Law Judge

Distribution by 1st class mail:

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