**UNITED STATES DEPARTMENT OF AGRICULTURE**
**BEFORE THE SECRETARY OF AGRICULTURE**

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Docket No. 16-0012 P&S

In re:

JOE JOHN GARCIA, doing business as
ISLETA FEED & LIVESTOCK,

Respondent.

**DECISION WITHOUT HEARING BY REASON OF ADMISSIONS**

## I. PRELIMINARY STATEMENT

The instant matter involves allegations by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration ("GIPSA") of the United States Department of Agriculture ("USDA"; "Complainant") that Joe John Garcia, d/b/a Isleta Feed & Livestock ("Respondent") violated provisions of the Packers & Stockyards Act, 1921, as amended and supplemented, 7 U.S.C. §181 et seq. ("the Act").

## II. ISSUES

1. Whether entry of default Decision and Order is appropriate, and if so;
2. Whether Complainant's recommended sanctions should be imposed.

## III. PROCEDURAL HISTORY

On October 15, 2015, Complainant filed a complaint with the Hearing Clerk, Office of Administrative Law Judges ("OALJ"; "Hearing Clerk"). On the same date, the Hearing Clerk sent the complaint to Respondent by certified mail, and informed Respondent that an Answer should be filed pursuant to the Rules of Practice Governing Formal Adjudications before the Secretary of USDA ("the Rules of Practice"). Respondent signed for receipt of the complaint and correspondence on October 22, 2015.

Respondent did not file an answer. On November 30, 2015, Complainant filed a motion for a decision on the record by reason of default. The motion was sent to Respondent by certified mail on December 1, 2015. United States Postal Service records reflect that the certified mail was refused. On December 17, 2015, the motion was re-mailed to Respondent by regular mail. That mail was not returned as undelivered. Respondent did not file a response to Complainant's motion.

## IV. AUTHORITIES

Pursuant to the Rules of Practice, a respondent is required to file an Answer within twenty (20) days after service of a Complaint. 7 C.F.R. § 1.136(a). The Rules of Practice also provide that an Answer "shall . . . [c]learly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent." 7 C.F.R. § 1.136(b)(1). The failure to timely file an Answer or failure to deny or otherwise respond to an allegation proffered in the Complaint shall be deemed admission of all the material allegations in the Complaint; in such situation, default shall be appropriate. 7 C.F.R. § 1.136(c).

Additionally, the Rules of Practice prescribe that, when computing the time permitted for a party to file a document or other paper, Saturdays, Sundays, and Federal holidays are to be included except when the time expires on one of those days; should such situation occur, the time period shall be extended to include the next business day. 7 C.F.R. § 1.147(h). The Rules of Practice also state that a document sent by the Hearing Clerk "shall be deemed to be received by any party to a proceeding . . . on the date of delivery by certified or registered mail. . ." 7 C.F.R. § 1.147(c)(1).

The Rules of Practice further provide that "[t]he failure to file an answer … shall constitute a waiver of the hearing. Upon such. . . failure to file, complainant shall file a proposed

decision along…Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto." 7 C.F.R. § 1.139

## V. DISCUSSION

The record reflects that Respondent received a copy of the complaint filed against him, and also received notice of the requirement to file a timely answer to the complaint, because Respondent signed the certified return receipt acknowledging receipt of the mail. Accordingly, service was properly effected. Respondent failed to file an answer, and refused to accept the mail that sent him a copy of Complainant's motion for entry of a decision by reason of default.

Pursuant to 7 C.F.R. § 1.136 (c), Respondent is hereby deemed to have admitted the allegations set forth in the complaint, and entry of Decision and Order by reason of admissions is appropriate, pursuant to 7 C.F.R. §1.139. Complainant's proposed sanctions are warranted.

## VI. FINDINGS OF FACT

1. Joe John Garcia is an individual with a mailing address in the United States of America.
2. Respondent received a copy of the complaint that initiated the instant action.
3. Respondent failed to file an answer or respond to Complainant's motion for default.
4. At all times material to the allegations raised here, Respondent was engaged in the business of a livestock dealer buying and selling livestock in commerce on his own account.
5. Respondent was registered with the Secretary of Agriculture as a livestock dealer to buy or sell livestock in commerce for his own account.
6. Respondent was registered with the Secretary of Agriculture as a dealer buying livestock in commerce on a commission basis.

7. On or about January 16, 2014, Respondent purchased 87 head of livestock from Cattlemens Livestock Auction Co., Inc. in Belen, New Mexico, and failed to pay, when due, the purchase price of $9,578.43.
8. On or about February 4, 2014, Respondent purchased 20 head of livestock from Valley Livestock Auction, LLC. in Sun Valley Arizona, and failed to pay, when due, the purchase price of $15,763.23
9. Respondent issued a check in the amount of $15,763.23 in payment for the February 5, 2014, transaction, and the check was returned unpaid by the bank (b) (4) [redacted]
10. As of the date of this Decision and Order, there remained a total of $25,341.66 unpaid for these two livestock transactions.

## VII. CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. Default Decision and Order is appropriate, and Respondent is deemed to have admitted the allegations set forth in the complaint.
3. Respondent willfully violated the Act (7 U.S.C. §§ 213(a) and 228b) and regulations (9 C.F.R. § 201.43) by failing to pay for livestock transactions when due, and by failing to maintain sufficient funds to pay for transactions.
4. Respondent's violations of the Act and regulations support the imposition of sanctions.

## ORDER

Respondent Joe John Garcia doing business as Isleta Feed & Livestock, his agents, and employees, directly or indirectly through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from failing to pay

the full amount of the purchase price for livestock before the close of the next business day following each purchase of livestock, as required by 7 U.S.C. §§ 213(a) and 228b, and 9 C.F.R. § 201.43.

Respondent Joe John Garcia doing business as Isleta Feed & Livestock, his agents, and employees, directly or indirectly through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from issuing checks in purported payment of livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented, as required by 7 U.S.C. § 213(a).

Respondent Joe John Garcia is hereby suspended as a registrant under the Act for a period of one (1) year; provided, however, that upon application to the Packers and Stockyards Program, a supplemental order may be issued terminating the suspension of Respondent at any time after the expiration of 30 days of the suspension period upon Respondent's demonstration, to the satisfaction of the Packers and Stockyards Program, that all unpaid livestock sellers identified in the complaint have been paid in full, or a reasonable schedule of restitution has been arranged with the unpaid livestock sellers identified in the complaint.

Pursuant to the Rules, this Decision and Order shall become final and effective without further proceedings 35 days after the date of service upon Respondent, unless it is appealed to the Judicial Officer by a party to the proceeding within thirty (30) days after service, pursuant to the Rules, 7 C.F.R. §§1.139 and 1.145.

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

So ORDERED this 14th day of January, 2016, at Washington, D.C.

Janice K. Bullard
Administrative Law Judge