

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [P&S-D]
) Docket No. 11-0387
 Philip Ambrose)
)
 Respondent) **Decision and Order by**
) **Reason of Admissions**

Appearances:

Jonathan D. Gordy, Esq. with the Office of the General Counsel (Regulatory Division), United States Department of Agriculture, Washington, D.C., for the Complainant (Packers and Stockyards); and

Philip Ambrose, an individual, the Respondent, representing himself (appearing *pro se*).

Decision Summary

1. For Respondent Philip Ambrose’s failures to comply with the Packers and Stockyards Act, I impose the remedies requested by Packers and Stockyards: (a) a cease and desist order; (b) a 180 day suspension (which is held in abeyance for three years on conditions), and (c) civil penalties totaling \$4,000.00. *See* paragraphs 18, 19, and 20.

Parties and Allegations

2. The Complainant is the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (frequently herein “Packers and Stockyards” or “Complainant”).

3. The Respondent is Philip Ambrose, an individual (herein frequently “Philip Ambrose” or “Respondent”).
4. The Complaint, filed on September 9, 2011, alleged there is reason to believe that the Respondent, Philip Ambrose, from about September 29, 2010 through February 24, 2011, willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181, *et seq.*) (frequently herein the “Packers and Stockyards Act” or the “Act”), and the regulations promulgated thereunder, 9 C.F.R. § 201.1 *et seq.*
5. The Respondent, Philip Ambrose, timely filed his Answer on September 27, 2011, stating: “I mailed a check to International Sureties today for a \$40,000.00 bond. As soon as I Recieve (sic) the bond, I will mail it to Denver.”

Procedural History

6. Packers and Stockyards filed a Motion for Decision Without Hearing by Reason of Default, accompanied by a proposed Decision,¹ on November 21, 2011. *See* 7 C.F.R. § 1.139. Philip Ambrose had through January 17, 2012, to respond to Packers and Stockyards’ Motion and failed to respond. Based upon careful consideration, Packers and Stockyards’ Motion is granted, and I issue this Decision and Order without hearing or further procedure.
7. The Complaint, and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*) (Rules of Practice), and the Hearing Clerk’s notice letter dated September 12,

¹ The proposed Decision recites requested remedies, the essence of which I have imposed, in paragraphs 18, 19, and 20.

2011, were mailed to the Respondent via certified mail on September 12, 2011 and received by the Respondent on September 16, 2011, as indicated by the return date on the return receipt card. The Hearing Clerk's notice letter informed the Respondent that he had 20 days from receipt to file with the Hearing Clerk his Answer. The Hearing Clerk's notice letter informed him that his Answer must set forth any defense he wished to claim and must admit or deny each allegation. Further, the Hearing Clerk's notice letter stated: "Failure to file an Answer or filing an Answer which does not deny the material allegations of the Complaint shall constitute an admission of those allegations and waive your right to an oral hearing."

8. Respondent Philip Ambrose's Answer failed to deny any part of the allegations of the Complaint. Therefore, the factual allegations of the Complaint are admitted by the Respondent's failure to deny those allegations and are adopted and set forth herein as Findings of Fact. This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

9. The Respondent, Philip Ambrose, also known as Philip W. Ambrose and Philip William Ambrose, is an individual with an address in Colorado.

10. The Respondent's registration with the Secretary of Agriculture as a dealer buying livestock for his own account or the accounts of others was in an inactive status, when, during about September 29, 2010 through about February 24, 2011, he was engaged in the business of a market agency purchasing livestock in commerce on a commission basis.

11. On November 25, 1994, the Respondent had consented to the entry of a Decision in P&S Docket No. D-94-46 that ordered him to cease and desist from operating subject to the Act without a bond. The order provides:

Respondent Philip W. Ambrose, his agents and employees, directly or indirectly through any corporate or other device, in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations.

12. On December 24, 2008, the Respondent was notified by certified mail that Respondent's surety bond would terminate on January 22, 2009. The letter referenced §312 of the Act (7 U.S.C § 213) and sections 201.29-201.30 of the regulations (9 C.F.R §§ 201.29-201.30), and notified the Respondent of his obligation to secure a bond or bond equivalent unless he intended to terminate his operations subject to the Act. The letter also stated that, unless the Respondent provided proof of suitable bond or bond equivalent to the Packers and Stockyards Program, Respondent must discontinue all livestock operations for which bonding is required under the Act upon termination of his bond.

13. On December 27, 2008, the Respondent returned the letter with his signed "Statement of Operations" that certified that he had discontinued livestock operations. Notwithstanding this certification, the Respondent resumed operations subject to the Act as

a market agency buying on commission in the fall of 2010 without obtaining a bond or bond equivalent.

14. During the period from about September 29, 2010 through about February 24, 2011, Respondent Philip Ambrose engaged in the business of a market agency, purchasing livestock on a commission basis, for the account of the JBS Packerland meatpacking plant, which operates subject to the Act, located in Tolleson, Arizona. During this period, in approximately 47 transactions, the Respondent purchased approximately 2,584 head of cattle for the account of JBS Packerland at a gross cost of \$2,070,198.40. In return for his services as a market agency he received a commission of \$.35 per cwt for cattle he purchased, in the total amount of \$12,548.60.

15. Respondent Philip Ambrose was, from about September 29, 2010 through about February 24, 2011:

- (a) operating as a dealer, engaged in the business of a market agency purchasing livestock in commerce on a commission basis; within the jurisdiction of the Secretary of Agriculture, subject to the provisions of the Packers and Stockyards Act and the regulations promulgated thereunder;
- (b) while his registration as a dealer with the Secretary of Agriculture was in an inactive status; and
- (c) while he failed to maintain an adequate bond or bond equivalent as required.

Conclusions

16. The Secretary of Agriculture has jurisdiction over the parties and the subject matter.

17. Respondent Philip Ambrose engaged in operations subject to the Packers and Stockyards Act without maintaining an adequate bond or bond equivalent, thereby willfully engaging in an “unfair practice” in violation of section 312(a) of the Act (7 U.S.C. §213(a)); and willfully violating sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29, 201.30).

Order

18. Respondent Philip Ambrose, his agents and employees, directly or indirectly through any corporate or other device, in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations promulgated thereunder, without filing and maintaining an adequate bond or bond equivalent, as required by the Act and the regulations, and particularly sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29, 201.30). Further, Respondent Philip Ambrose is prohibited from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act without first becoming properly registered under the Act.

19. Respondent Philip Ambrose shall be suspended as a registrant under the Act for a period of **180 days**, which will be held in abeyance for three years on the condition (a) that he complies with the registration and bonding provisions of the Act and regulations and (b)

that he timely files all annual and special reports, and (c) that he pay in full the assessed civil penalties as specified in paragraph 20.

20. Respondent Philip Ambrose is assessed civil penalties totaling **\$4,000.00** (four thousand dollars), in accordance with section 312(b) of the Act. 7 U.S.C. § 213(b). The civil penalty payment instrument(s) shall be made payable to the order of the **United States Department of Agriculture**, marked with **PS-D-11-0387**, and sent to:

USDA-GIPSA
P.O. Box 790335
St. Louis, Missouri 63179-0335

Payment(s) shall be completed within 180 days from the date this Order is final and effective (*see* next paragraph).

Finality

21. This Decision and Order shall be final and effective 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix A).

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

Done at Washington, D.C.
this 26th day of January 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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