

AGRICULTURE DECISIONS

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THIS IS A COMPILATION OF DECISIONS ISSUED BY THE
SECRETARY OF AGRICULTURE AND THE COURTS
PERTAINING TO STATUTES ADMINISTERED BY THE
UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURE DECISIONS

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The published decisions and orders may be cited by giving the volume number, page number and year, e.g., 1 Agric. Dec. 472 (1942). It is unnecessary to cite a decision's docket number, e.g., AWA Docket No. 99-0022, and the use of such references generally indicates that the decision has not been published in *Agriculture Decisions*.

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Beginning in Volume 63, all **Initial Decisions** decided in the calendar year by the Administrative Law Judge(s) will be arranged by the controlling statute and will be published chronologically along with appeals (if any) of those ALJ decisions issued by the Judicial Officer.

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PACKERS AND STOCKYARDS ACT

DEPARTMENTAL DECISIONS

**In re: TODD SYVERSON, d/b/a SYVERSON LIVESTOCK
BROKERS.**

P&S Docket No. D-05-0005.

Decision and Order.

Filed August 27, 2008.

P&S – Cease and desist – Suspended as registrant – Failure to keep and produce records – Unfair, unjustly discriminatory, or deceptive practices – Receiving, marketing, buying, or selling on commission basis – Cost basis.

Charles S. Spicknall and Gary F. Ball, for GIPSA.

E. Lawrence Oldfield, Oak Brook, IL, for Respondent.

Initial decision issued by Jill S. Clifton, Administrative Law Judge.

Decision and Order issued by William G. Jenson, Judicial Officer.

PROCEDURAL HISTORY

On December 14, 2004, the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter GIPSA], filed a complaint alleging Todd Syverson, doing business as Syverson Livestock Brokers, violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act]. The complaint alleges that Mr. Syverson violated section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)) by “engag[ing] in . . . unfair, unjustly discriminatory, or deceptive practice[s] . . . in connection with . . . receiving, marketing, buying, or selling on a commission basis or otherwise . . . livestock.” (7 U.S.C. § 213(a).) Specifically, the complaint alleges that on eight occasions, between June and August 2002, Mr. Syverson purchased 24 cows at auction, consigned the cattle back to the auction for sale the next day, then repurchased the cattle out of his own consignment at a higher price than he originally paid for the cattle and used the repurchase invoice to bill his customers who were buying on a cost plus \$15 basis.

Mr. Syverson filed an answer on January 19, 2005, in which he denied the allegations of the complaint and stated affirmatively, among other things, that “there was no obligation on either party for cattle to change hands on a first cost basis or on any basis” and that “[a]t no time was Mr. Syverson hired to fill an order for or purchase cattle on an at cost plus commission basis for [Lance Quam].”

Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] conducted a hearing in Red Wing, Minnesota, on April 4-5, 2006. Charles E. Spicknall and Gary F. Ball, Office of the General Counsel, United States Department of Agriculture, represented GIPSA. E. Lawrence Oldfield, Oldfield & Fox, P.C., Oak Brook, Illinois, represented Mr. Syverson. During the hearing, GIPSA entered 22 exhibits into evidence while Mr. Syverson entered nine exhibits.¹ GIPSA and Mr. Syverson each called four witnesses.²

On August 31, 2007, after the parties filed post-hearing briefs, the ALJ issued a Decision and Order [hereinafter Initial Decision] in which she concluded that Mr. Syverson violated the fair dealing requirement of section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)) and that Mr. Syverson violated section 401 of the Packers and Stockyards Act (7 U.S.C. § 221) when he failed to produce his records for examination. However, the ALJ found that Mr. Syverson was not acting as an “order buyer” or market agent, rather his purchases of cows were for his own inventory. The ALJ assessed Mr. Syverson a \$5,000 civil penalty for his violations of the Packers and Stockyards Act. In

¹GIPSA’s exhibits are identified as: EX 1; CX 1 at 1; CX 2 at 1-2; CX 3; CX 4 (limited purposes); CX 5 (limited purposes); and CX 6 through CX 21. Mr. Syverson’s exhibits are identified as RX 1 through RX 9.

²GIPSA called: Mr. Quam who purchased the cows from Mr. Syverson; William Arce, a senior marketing specialist with GIPSA based in Des Moines, Iowa; Robert Merritt, the resident agent for GIPSA in Minnesota; and Branard England, an auditor with GIPSA in Washington, DC, who was GIPSA’s sanction witness. Mr. Syverson called: Tom Webster who was an owner of Zumbrota Livestock Auction Market when the sales in question took place; Marilyn Syverson, Mr. Syverson’s wife; and Sterling Sibley, who worked for Mr. Syverson “off and on” since 1978. Mr. Syverson testified on his own behalf.

addition, the ALJ ordered Mr. Syverson to cease and desist from further violations of the Packers and Stockyards Act.

On September 27, 2007, GIPSA filed a timely appeal of the ALJ's Initial Decision. On October 17, 2007, Mr. Syverson filed a Response to Complainant's Appeal Petition. In this response, Mr. Syverson questioned the ALJ's conclusions that he violated the Packers and Stockyards Act and suggested that no sanction be assessed.

FACTS

Lance Quam and Todd Syverson were neighbors who lived approximately 3 miles apart (Tr. 123). They had engaged in the cattle business with one another for approximately 15 years (Tr. 452). Mr. Syverson is an individual who, during 2002 and 2003, farmed in Minnesota and was registered as a livestock dealer and market agency who did business under the name of Syverson Livestock Brokers (EX 1). Mr. Quam is an individual who, during 2002 and 2003, bought and sold real estate, rented apartments, operated a car lot and car repair shop, and drove a school bus. Mr. Quam also farmed and dealt in dairy cattle. (Tr. 43-44, 117, 420.) Mr. Quam's place was "about seven miles from Zumbrota Livestock barn." (Tr. 123.)

In April or May 2002, Mr. Quam went to Mr. Syverson's facility to discuss obtaining cattle through Syverson Livestock Brokers (Tr. 43-46). Mr. Quam's understanding of the agreement with Mr. Syverson was that Mr. Syverson was a market agency "order-buying" cows for Mr. Quam.

[BY MR. SPICKNALL:]

Q. Do you recall anything about your initial conversation with Mr. Syverson regarding the cattle?

[BY MR. QUAM:]

A. Yes, I basically had talked to him at different times, I guess it was a Saturday or a Sunday afternoon I stopped out to his place, the farm where he was living, and asked him about if he could

buy some, you know, cows that were open or short bred dairy cows on the -- on the Tuesday dairy sale and any farm auctions he was at or whatever.

Q. Was anything else discussed?

A. Yeah, I guess expenses. I agreed to pay whatever he paid for them plus a \$15 commission, trucking and any expenses that occurred, basically expenses.

Tr. 44-45.

Mr. Syverson's recollection of the meeting with Mr. Quam is somewhat different.

[BY MR. OLDFIELD:]

Q. When were you first contacted by Lance Quam with respect to any cattle dealings you had with him?

[BY MR. SYVERSON:]

A. If I remember, it was late April-early May, spring of 2002.

Q. Can you recall the circumstances, the time of day?

A. I believe it was a weeknight. During that time me and Mr. Sibley were burning trash -- I shouldn't say trash. Rubbish and stuff around the buildings there and brush and stuff like that. And Mr. Quam drove in that early evening and come up where we were at.

....

Q. You were describing when Lance Quam came to your

place April or May 2002.

A. Yes, we were doing some burning, me and Mr. Sibley, and Mr. Quam drove in, out to actually a small pasture I have north of my house where we were doing this, and asked what cattle that I had for sale at that time.

Q. Did you show him any cattle?

A. Yes, we proceeded -- there was another yard that's adjacent to that yard. There was cattle out in that yard and we walked down to it and pointed out cattle that he was interested in and talked about them and looked at them.

....

Q. Did you sell any cattle to Mr. Quam on that particular day in April or May of 2002?

A. No.

....

Q. Did you talk about any possibility of selling Mr. Quam cattle in the future?

A. Yes, he said that he would stop back at a later time during the summer. He said that he needed to line up financing first.

Tr. 453-55. Mr. Quam and Mr. Syverson each understood that Mr. Quam intended to obtain approximately 60 cows during the summer of 2002 (Tr. 48, 489-90).³

³Mr. Quam obtained approximately 60 cows from Mr. Syverson during the summer of 2002. However, only 24 cows are identified in the complaint (CX 6). William Arce, (continued...)

While Mr. Quam and Mr. Syverson disagree regarding the agreement covering Mr. Quam's purchase of cows from Mr. Syverson during the summer of 2002, there is no dispute regarding Mr. Syverson's acquisition of the cows. Mr. Syverson attended the Zumbrota Livestock Auction Market in Zumbrota, Minnesota, on Mondays (Tr. 453, 456, 515). Zumbrota's letterhead indicates the Monday auction is for "Cattle and Sheep." (CX 14 at 1.) The Monday auction is also referred to as the "cull" auction or the "slaughter" auction (Tr. 49-50, 217, 362). On these Mondays, Mr. Syverson would buy "mostly Holstein cows that [he] thought had the potential to take home to breed or to hopefully were bred back at the time that looked like sound young uddered dairy cows." (Tr. 456.) Mr. Syverson would then take the cows to "the veterinary clinic at the sale barn in Zumbrota [which] would go through a process of pregnancy-checking them, checking their overall health, checking their udders, taking blood samples, TB, tuberculosis, and they would qualify which animals that would qualify for the dairy sale on Tuesday." (Tr. 456-57.)

On Tuesday, Mr. Syverson consigned the cows he bought on Monday to the Zumbrota "dairy cattle" auction on Tuesday. At the Tuesday dairy auction, Mr. Syverson would buy his own cows at a price higher than the original amount he paid for the cows at the Monday auction. (Tr. 515.) Zumbrota Livestock Auction Market provided an invoice to Mr. Syverson that reflected the higher Tuesday price (*see, e.g.*, CX 14 at 6). On either Tuesday evening or Wednesday morning, the cows were delivered to Mr. Quam's facility.⁴ Mr. Syverson gave Mr. Quam a Syverson Livestock Brokers' invoice for the delivered

³(...continued)

GIPSA senior marketing specialist, testified that due to "Mr. Syverson's lack of records," GIPSA was able to trace the transaction history only on 24 of the cows (Tr. 247).

⁴Mr. Syverson testified Mr. Quam came to his facility and picked the specific cows to purchase (Tr. 517), while Mr. Quam testified that he did not pick out the cows but that they were delivered as part of the ongoing agreement with Mr. Syverson (Tr. 109; CX 19).

cows. The invoice showed the number of cows delivered, the price per cow, and the total (CX 14 at 11). These items correspond to the information on the Zumbrota invoice given to Mr. Syverson after the Tuesday auction. Mr. Syverson's invoices to Mr. Quam also show amounts for "commission,"⁵ veterinary fees, and trucking (CX 14 at 11). Mr. Syverson provided Mr. Quam with a copy of the Zumbrota Tuesday invoice.

Mr. Quam paid the invoices for all the cows he received during the summer of 2002 (CX 16). In February 2003, Mr. Quam obtained eight more cows from Mr. Syverson. Mr. Quam did not pay for these cows. On February 18, 2003, Jim Klecker delivered cows to Mr. Quam that were purchased from Mr. Syverson. During their conversation, Mr. Klecker said, "Oh, you're the one" telling Mr. Quam that the rumors at the Zumbrota auction were "that Todd [Syverson] was buying these cattle on Monday and turning around and running them up on Tuesday and selling them to somebody and they didn't know who. It was sort of interesting during the summer of the conversation when I was talking to Mr. Syverson he just said, Well, just keep it quiet about who we tell about where we got cattle there. Nobody else needs to know this so --" (Tr. 57).

On May 8, 2003, Mr. Quam called Robert Merritt, the Minnesota resident agent for GIPSA, complaining that he "had some problems with some cattle that Mr. Syverson had purchased for him." (Tr. 327-28.) This call led to an investigation of Mr. Syverson by Packers and Stockyards Programs. The investigation raised sufficient concern regarding Mr. Syverson's dealings with Mr. Quam that, on December 14, 2004, GIPSA filed a complaint instituting these proceedings.

DISCUSSION

On August 31, 2007, the ALJ found that "in every sale of cows to Lance Quam during 2002 and 2003 at issue here, Respondent Todd

⁵Mr. Syverson refers to the "commission" as a "handling fee." In this case, this is a distinction without a difference.

Syverson . . . was *not* acting as a market agency or ‘order-buyer’ who had bought those cows for Lance Quam but was instead acting as a cattle dealer who had bought those cows for his own account.” In addition, the ALJ concluded Mr. Syverson “did violate the fair dealing requirements of Section 312(a) of the Packers and Stockyards Act, . . . 7 U.S.C. § 213(a), on those occasions when he represented to Lance Quam that his higher, second, purchase price was his price for the cows but failed to disclose to Lance Quam his (Respondent Syverson’s) lower, initial, ‘arm’s length’ purchase price, at times one day earlier.” (Initial Decision at 1.)

GIPSA appealed both findings, first arguing that Mr. Syverson acted as a “market agency” and, second, that Mr. Syverson’s actions, representing that the invoice for the Tuesday auction was his purchase price, constituted fraud, deceit, deception, or misrepresentation sufficiently grave to be a serious violation of the Packers and Stockyards Act.

The Packers and Stockyards Act prohibits unfair, discriminatory, or deceptive practices, as follows:

§ 213. Prevention of unfair, discriminatory, or deceptive practices

(a) It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with the receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock.

7 U.S.C. § 213(a). Furthermore, the Packers and Stockyards Act defines both “market agency” and “dealer,” as follows:

§ 201. “Stockyard owner”; “stockyard services”; market

agency”; “dealer”; defined

When used in this chapter—

. . . .

(c) The term “market agency” means any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services; and

(d) The term “dealer” means any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser.

7 U.S.C. § 201(c)-(d).

Two witnesses in this case, Mr. Syverson and Mr. Quam, offer conflicting testimony about the transactions between them. This conflicting testimony is complicated by the fact that the ALJ found credibility issues with each of them (Initial Decision at 9, 15-16). After reading the transcripts, reviewing the exhibits, and studying the briefs and other filings, I agree with the ALJ that Mr. Syverson and Mr. Quam each had problems presenting credible testimony. Therefore, I give the testimony of each of them the appropriate weight (usually very little), instead relying on the testimony of unbiased witnesses, the relevant exhibits entered into evidence, and other filings in the record of the case.

The Packers and Stockyards Act defines “market agency” as “any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis.” Mr. Syverson is a person in the business of selling livestock in commerce. Mr. Syverson does not dispute that he satisfies this element of the definition. However, Mr. Syverson claims he was not selling on a commission basis but was charging a “fee” of \$15. The fee argument gives Mr. Syverson little comfort.

commission . . . 6: a fee paid to an agent or employee for transacting a piece of business or performing a service <a broker receives a ~ on each share of stock bought for a customer> <a ~

of 50 cents for each car washed>

Webster's Third New International Dictionary of the English Language, Unabridged 457 (1981). Under this definition, if Mr. Syverson was Mr. Quam's agent, then Mr. Syverson's fee was a commission.

An agent is "a person authorized by another to act for him, one intrusted with another's business." *Black's Law Dictionary* 59 (5th ed. 1979). Because I find the credibility of both Mr. Syverson and Mr. Quam suspect, I do not accept the opinion of either of them regarding the nature of the business relationship between them. Therefore, I must look at the other evidence to reach my determination.

First, I look at evidence of any agreement between Mr. Syverson and Mr. Quam. Mr. Syverson testified that there was no agreement or arrangement with Mr. Quam (Tr. 490-91). However, in his Response to Complainant's Appeal Petition at 7, Mr. Syverson states:

The deal between Respondent Syverson and Lance Quam was that the cattle that were sold to Lance Quam by Syverson were to be for the purchase price of the cattle, as established by an account of sale from the seller . . . plus the actual cost of veterinarian services, a transportation cost for hauling the cattle from Syverson's farm to Lance Quam's farm, plus a flat fee service charge of \$15.00 per head.

I interpret this statement to indicate that Mr. Syverson had an agreement with Mr. Quam prior to any sales of cattle. In addition, Mr. Syverson's listing of each expense he was including in the price, as opposed to giving Mr. Quam "a price 'laid-in' or 'delivered-in'", indicates he was acting as a market agency rather than a dealer. *Western States Cattle Co. v. U.S. Dep't of Agric.*, 880 F.2d 88, 90 (8th Cir. 1989). Conversely, Mr. Syverson argues that the fact that Mr. Quam paid Mr. Syverson rather than Zumbrota Livestock Auction Market for the cattle, points toward a conclusion that Mr. Syverson was not a market agency. However, I put little weight in this argument. Under the Packers and Stockyards Act it has long been held that "[w]ho pays for the livestock

is immaterial under the definitions of dealer and market agency in the Act.” *In re Sterling Colorado Beef Co.*, 39 Agric. Dec. 184, 221 (1980).⁶ Furthermore, it was easier for Mr. Syverson to hide his scheme of Monday purchase and Tuesday repurchase at an increased price from Mr. Quam if Mr. Syverson paid Zumbrota directly.

Furthermore, there are two other factors that should be considered in determining if Mr. Syverson acted as a market agency. First, the documentation provided to Mr. Quam “is a typical documentation that a market agency buying on commission would provide to the principal.” (Tr. 238.) When asked specifically about his experience with a dealer providing a copy of his purchase invoice to his customer, GIPSA senior marketing specialist William Arce stated: “My experience, no. Like any other business, dealers are very protective of their cost source. Like any other business, they protect this information, that they will increase the price or decrease, they can do whatever they want basically, but they will not, definitely not show this.” (Tr. 238-39.) Furthermore, Robert Merritt, GIPSA resident agent in Minnesota, testified that commission brokers are required to attach invoices showing their price and from whom they purchased the animal (Tr. 332).

Next, I find Mr. Syverson had most, if not all, of the cows he repurchased during the Tuesday Zumbrota auction, that he sold to Mr. Quam, segregated by Zumbrota into a grouping that he designated “Order 2.” (*See, e.g.*, CX 9 at 17; CX 14 at 12.) Mr. Syverson challenges this finding (Response to Complainant’s Appeal Petition at 17-18), but his argument is unconvincing. Mr. Syverson states: “As a point in fact, if one looks at Complainant’s Exhibits CX-7 to CX-14, four head of cattle were shown as ‘Order 2’ on June 25, 2002, but only one of these was sold to Lance Quam. On July 8, 2002, five head of cattle were shown as ‘Order 1’ and all were sold to Lance Quam.” (Response to Complainant’s Appeal Petition at 18.) Mr. Syverson fails

⁶The United States Court of Appeals for the Fifth Circuit held that, under Texas law, whether a person buys cattle in his own name and pays for the cattle is a factor in determining if a person is a dealer or agent. However, the Fifth Circuit did not find it a controlling factor. *Valley View Cattle Co. v. Iowa Beef Processors, Inc.*, 548 F.2d 1219, 1223 (5th Cir. 1977).

to cite to any specific document in the record to support his position. Furthermore, I find the first part of his statement, regarding the June 25, 2002, auction, inaccurate and the second part, regarding the July 8, 2002, auction, misleading.

On June 25, 2002, Mr. Syverson invoiced Mr. Quam for five cows⁷ (CX 9 at 16). Mr. Syverson provided an invoice from the Tuesday Zumbrota auction to Mr. Quam to support the price he charged Mr. Quam (CX 9 at 17). This Zumbrota invoice contained printed entries for four cows plus a handwritten fifth entry making a total of five cows. The Zumbrota invoice indicates that the four cows were designated "Order 2." Other documents show that Mr. Syverson purchased at least 10 cows at the Zumbrota Tuesday auction on June 25, 2002 (CX 9 at 8). This evidence allows me to conclude that these four "Order 2" cows were purchased by Mr. Syverson with the intent of providing them to Mr. Quam. Furthermore, the pricing of these cows on the Tuesday Zumbrota invoice (CX 9 at 17) is identical to the pricing on the invoice Mr. Syverson used to bill Mr. Quam for that sale (CX 9 at 16.) This identical pricing allows me to conclude that the cows Mr. Syverson designated as "Order 2" on June 25, 2002, were, in fact, the cows sold and delivered to Mr. Quam.

On each of the other Tuesdays that Mr. Syverson sold cows to Mr. Quam, the Zumbrota invoice provided to Mr. Quam by Mr. Syverson to support the price of each cow, indicates that the cows provided to Mr. Quam were designated as "Order 2." Further, the documents show that most of these cows were purchased at the Tuesday auction from Mr. Syverson's own inventory (CX 7 at 5, 15-16; CX 8 at 5, 14-15; CX 10 at 9, 19-20; CX 11 at 7, 15-16; CX 12 at 9, 16-17; CX 13 at 6, 14-15; CX 14 at 3, 11-12). This designation of "Order 2" cows leads me to conclude that Mr. Syverson purchased these cows for Mr. Quam.

Regarding Mr. Syverson's claim that on July 8, 2002, he designated five head of cattle "Order 1" and sold these to Lance Quam, the statement is accurate but misleading. On Monday July 8, 2002,

⁷Only one of these cows was included in the complaint.

Mr. Syverson bought cattle at the Zumbrota Monday auction. Included in his purchases were five cows that he had designated "Order 1." (CX 11 at 3.) On Tuesday July 9, 2002, Mr. Syverson consigned eight head of cattle from his own inventory for the Tuesday dairy auction (CX 11 at 7). At the auction, Mr. Syverson purchased seven of the eight head of cattle that he consigned from his own inventory (CX 11 at 7, 16). Mr. Syverson designated those seven repurchased cows as "Order 2." (CX 11 at 16.) Mr. Syverson used that July 9 "Order 2" Zumbrota invoice to prove his cost to Mr. Quam (CX 11 at 16). While it is accurate for Mr. Syverson to claim that "five head of cattle were shown as 'Order 1' and all were sold to Lance Quam," it does not tell the complete story. Mr. Syverson designated those cows "Order 1" when he first purchased them on Monday July 8, 2002 (CX 11 at 3), but then designated those same cows "Order 2" when he repurchased them at the Tuesday dairy auction (CX 11 at 16).

None of the factors discussed above is sufficient standing alone to automatically conclude that Mr. Syverson acted as a market agency in his transactions with Mr. Quam during the summer of 2002. However, when all the factors are examined together, the weight of the evidence leads me to conclude that Mr. Syverson acted as a "market agency," as that term is defined in section 301 of the Packers and Stockyards Act (7 U.S.C. § 201), in his transactions with Mr. Quam during the summer of 2002.

Mr. Syverson's actions show a great disregard for the purposes of the Packers and Stockyards Act. One of the primary reasons Congress enacted the Packers and Stockyards Act was "to assure fair competition and fair trade practices in livestock marketing. . . ." H.R. Rep. No. 1048, 85th Cong., 2d sess., *reprinted in* 1958 U.S.C.C.A.N. 5212-13. No matter what role Mr. Syverson played in the summer of 2002, either market agency or dealer, showing the Tuesday Zumbrota invoice to Mr. Quam in order to create a price basis is an unfair and deceptive practice.

Mr. Syverson's agreement with Mr. Quam was that the cattle that were sold to Lance Quam by Syverson were to be for the purchase price of the cattle, as established by an account of sale from a seller, in this case Zumbrota Livestock Auction, plus the actual cost of veterinarian

services, a transportation cost for hauling the cattle from Syverson's farm to Lance Quam's farm, plus a flat fee service charge of \$15.00 per head.

Response to Complainant's Appeal Petition at 7. Despite Mr. Syverson's claims otherwise, the price indicated on the Tuesday Zumbrota invoice that he used to establish a price for sale of the cattle to Mr. Quam, was not Mr. Syverson's purchase price. Mr. Syverson's purchase price is the price he paid at the Zumbrota Monday auction.⁸

Using the August 19-20, 2002, transaction as an example, it becomes clear that Mr. Syverson's actions fall outside the concept of "fair trade practice." On Monday August 19, 2002, Mr. Syverson bought a cow at the Zumbrota Livestock Auction Market. The cow was identified with back tag "T4827." It weighed 790 pounds and sold for \$30 per hundredweight. Mr. Syverson paid a total of \$237 for this cow (CX 14 at 1). Mr. Syverson then had the cow examined by the veterinarian at Zumbrota. After the examination, the veterinarian assigned the cow tag number 565 (CX 14 at 2 line 10).

On Tuesday, August 20, 2002, Mr. Syverson consigned three cows for sale at Zumbrota Livestock Auction Market, including the cow identified by tag number 565. At the Tuesday auction, Mr. Syverson "purchased" cow 565 from himself for \$475. (CX 14 at 3.) As purchaser of cow 565 at the Tuesday auction, Mr. Syverson had cow 565 designated to "Order 2." (CX 14 at 12.) Mr. Syverson then had cow 565 taken to Anderson Veterinary Service at Zumbrota Livestock Auction Market for various shots which cost a total of \$15.50 (CX 14 at 13). On August 20, 2002, Mr. Syverson sold cow 565 to Mr. Quam and billed him \$475 for cow 565. In addition, Mr. Syverson billed Mr. Quam a \$15 commission, \$15.50 in veterinary fees, and \$10 for trucking. The total cost to Mr. Quam for cow 565 was \$515.50 (CX 14 at 11). Mr. Syverson gave Mr. Quam a copy of the Zumbrota Tuesday, August 20, 2002, invoice and a copy of the August 20, 2002, veterinary

⁸Mr. Syverson's costs could be a bit higher, including any veterinary charges and other expenses associated with acquiring the cows.

bill to justify the price he charged for cow 565 (CX 14 at 12-13).

Mr. Syverson purchased cow 565 on Monday August 19, 2002, for \$237. Mr. Syverson's claim that his purchase price of cow 565 was \$475, based on the Tuesday invoice, is absurd. Mr. Syverson's actions are nothing more than a scheme that allows him to generate an invoice for cattle at a price significantly higher than he paid for the cattle. As a matter of law, I find that the use of a market generated invoice to establish the purchase price of cattle when the cattle are being "purchased" from the dealer's or market agency's own inventory, and using that purchase price to establish the price charged to a buyer, is an unfair and deceptive trade practice that violates section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)).

Had Mr. Syverson been a dealer, as he claimed, I still would have found his use of the Tuesday invoice to represent his purchase price a serious violation of the Packers and Stockyards Act. As a dealer, Mr. Syverson could have sold cow 565 to Mr. Quam for \$515.50 without violating the Packers and Stockyards Act—when asked the price of the cow he could have stated \$515.50, as a "laid-in" or "delivered-in" price without any explanation regarding how he arrived at that price. Such fixed pricing would not have been a violation of the Packers and Stockyards Act. *Western States Cattle Co.*, 880 F.2d at 90. However, when he used the Tuesday invoice to show a price higher than his actual costs as a justification for the higher price, Mr. Syverson was being unfair and deceptive.

As a market agency, the threshold was higher than as a dealer. Mr. Syverson had an obligation to purchase the cattle at the lowest possible price. *In re Mark V. Porter*, 47 Agric. Dec 656, 669 (1988). When a market agency buys from its own inventory, it creates an inherent conflict of interest between buying for the principal at the lowest price and selling his inventory at the highest price. The only way to resolve the conflict is to fully disclose to the principal that cattle were coming from its own inventory and get the principal's approval for the transaction. *Id.* The United States Department of Agriculture has long held that when a market agent, such as Mr. Syverson, sells cattle to a principal, such as Mr. Quam, from his own inventory without disclosing the source of the cattle, the market agency violates section 312(a) of the

Packers and Stockyards Act (7 U.S.C. § 213(a)). *In re Harry Vealey, Jr.*, 39 Agric. Dec. 8, 13 (1979). Mr. Syverson's sale of cows from his own inventory, without informing Mr. Quam of that fact, is a violation of section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)).

Furthermore, it is well settled that when a market agency deceives a principal regarding the cost of cattle, it is "one of the most serious violations that can be committed under the Act." *Spencer Livestock Comm'n Co. v. U.S. Dep't of Agric.*, 841 F.2d 1451, 1458 (1988). As a market agency, Mr. Syverson's use of the Tuesday Zumbrota invoice deceived Mr. Quam regarding the cost of the cattle. Such a deception is a violation of section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)). I find that Mr. Syverson's violations are most serious.

Further, the record establishes that the size of Mr. Syverson's business is small to medium. Based on the size of Mr. Syverson's business, I do not find that the assessment of a reasonable civil penalty would affect his ability to continue in business.

The United States Department of Agriculture's sanction policy is set forth in *In re S.S. Farms Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), *aff'd*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3):

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

The recommendations of administrative officials charged with the responsibility for achieving the congressional purpose of the regulatory statute are highly relevant to any sanction to be imposed and are entitled to great weight in view of the experience gained by administrative officials during their day-to-day supervision of the regulated industry. *In re S.S. Farms Linn County, Inc.*, 50 Agric. Dec. at 497. The

administrative officials charged with the responsibility of administering the Packers and Stockyards Act recommend that I suspend Mr. Syverson as a registrant under the Packers and Stockyards Act for a period of 5 years. However, the recommendation of administrative officials as to the sanction is not controlling.

The purpose of an administrative sanction is to accomplish the remedial purposes of the Packers and Stockyards Act by deterring future similar violations of the Packers and Stockyards Act. This case involves most serious violations of the Packers and Stockyards Act. Furthermore, Mr. Syverson committed these violations within a year of Mr. Syverson's consenting to a decision which ordered him to cease and desist from "[i]ssuing accounts of purchase or sale which fail to show the true and correct nature of the livestock transaction accounted for therein" and "causing false records to be prepared." See CX 5 at 2-3, *In re Todd Syverson*, P&S Docket No. D-99-0011 (June 12, 2001), at 2-3.

Based on the record before me, I find that Mr. Syverson's violations warrant a suspension as a registrant under the Packers and Stockyards Act for a period of 5 years. However, Mr. Syverson may apply to the Packers and Stockyards Programs for permission to be a salaried employee of another registrant or packer after serving 1 year of the suspension.

ORDER

1. Todd Syverson, his agents and employees, directly or indirectly through any corporate or other device, including but not limited to Syverson Livestock Brokers, in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from:

- a. failing to comply with the requirements of section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)), and specifically, Mr. Syverson shall not represent to any buyer that his cost of cattle is based on a "purchase price" resulting from the "purchase" of cattle from his own inventory unless he discloses that he bought the cattle from his own consignment and his initial purchase price of the cattle; and
- b. failing without good cause to produce for examination within

a reasonable time when asked by GIPSA, all of the accounts, records, and memoranda as are required to be kept under section 401 of the Packers and Stockyards Act (7 U.S.C. § 221), including, but not limited to, a purchase journal (recording, at minimum, the date of purchase; seller; number of head; description of livestock; purchase price(s); date(s) received; commission charges, if any; other fees or charges; whether the livestock were purchased for the account of another, and if so, the identity of that person or firm) together with all invoices, buyer bills, consignment sheets, and other records associated with individual livestock purchases and sales.

Paragraph 1 of this Order shall become effective on the day after service of this Order on Mr. Syverson.

2. Todd Syverson is hereby suspended as a registrant under the Packers and Stockyards Act for a period of 5 years; *Provided, however*, That this Order may be modified upon application to Packers and Stockyards Programs to permit the salaried employment of Mr. Syverson by another registrant or packer after the expiration of 1 year of this suspension term.

Paragraph 2 of this Order shall become effective on the 60th day after service of this Order on Mr. Syverson.

In re: TIMOTHY R. BAUMERT.
P. & S. Docket No. D-07-0190.
Decision and Order.
Filed October 22, 2008.

P&S – Failure to file answer – Failing to pay full purchase price – Dealer – Bond coverage – Cease and desist – Civil penalty.

Eric Paul for the Deputy Administrator, GIPSA.
Antonio D. Michetti, Trevorton, PA, for Respondent.
Initial decision issued by Peter M. Davenport, Administrative Law Judge.
Decision and Order issued by William G. Jenson, Judicial Officer.

PROCEDURAL HISTORY

Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on September 12, 2007. The Deputy Administrator instituted the proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act]; the regulations issued under the Packers and Stockyards Act (9 C.F.R. pt. 201) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Deputy Administrator alleges that Timothy R. Baumert: (1) purchased livestock and failed to pay the full purchase price of the livestock within the time period required by the Packers and Stockyards Act, in willful violation of sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b) and (2) engaged in business as a dealer without maintaining an adequate bond or bond equivalent, in willful violation of section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)) and section 201.30(b) of the Regulations (9 C.F.R. § 201.30(b)) (Compl. ¶¶ II-IV).

The Hearing Clerk served Mr. Baumert with the Complaint, the Rules of Practice, and a service letter on September 15, 2007.¹ Mr. Baumert failed to file an answer to the Complaint within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). The Hearing Clerk sent Mr. Baumert a letter dated October 10, 2007, stating Mr. Baumert had not filed a timely response to the Complaint. Mr. Baumert failed to file a response to the Hearing Clerk's October 10, 2007, letter.

On May 2, 2008, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the Deputy Administrator filed a Motion for Decision Without Hearing By Reason of Default [hereinafter Motion for Default Decision] and a Proposed Decision. The Acting Hearing Clerk

¹United States Postal Service Domestic Return Receipt for Article Number 7004 2510 0003 7023 1838.

served Mr. Baumert with the Deputy Administrator's Motion for Default Decision and the Deputy Administrator's Proposed Decision on May 15, 2008.² Mr. Baumert failed to file objections to the Deputy Administrator's Motion for Default Decision and the Deputy Administrator's Proposed Decision within 20 days after service, as required by section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

On August 13, 2008, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued a Decision and Order [hereinafter Initial Decision]: (1) concluding Mr. Baumert purchased livestock and failed to pay the full purchase price of the livestock within the time period required by the Packers and Stockyards Act, in willful violation of sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b); (2) concluding Mr. Baumert engaged in business as a dealer without maintaining an adequate bond or bond equivalent, in willful violation of section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)) and section 201.30(b) of the Regulations (9 C.F.R. § 201.30(b)); (3) ordering Mr. Baumert to cease and desist from failing to pay the full purchase price of livestock within the time period required by the Packers and Stockyards Act and from purchasing livestock without an adequate bond or its equivalent; (4) assessing Mr. Baumert a \$9,000 civil penalty; and (5) suspending Mr. Baumert as a registrant under the Packers and Stockyards Act until he demonstrates that he has obtained and filed an adequate bond or its equivalent.

On September 18, 2008, Mr. Baumert filed a timely appeal petition. On October 6, 2008, the Deputy Administrator filed a response to Mr. Baumert's appeal petition. On October 17, 2008, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision. Based upon a careful review of the record, I affirm the ALJ's Initial Decision; except that, for the reason discussed in this Decision and Order, *supra*, I modify the ALJ's sanction to eliminate the suspension of Mr. Baumert as a registrant under the Packers and Stockyards Act.

²United States Postal Service Domestic Return Receipt for Article Number 7007 0710 0001 3858 9943.

Timothy R. Baumert
67 Agric. Dec. 1343

1347

New Holland Sales Stables, Inc.	7/07/05	7/08/05	39	\$2,796.20	\$ 2,776.98			6
	7/11/05	7/12/05	103	\$7,412.70	\$ 7,398.97			2
					\$10,175.95	\$10,175.95	7/14/05	
New Holland Sales Stables, Inc.	7/21/05	7/22/05	31	\$ 2,711.30	\$ 2,696.73			7
	7/25/05	7/26/05	39	\$12,591.80	\$12,562.34			3
	7/28/05	7/29/05	11	\$ 717.50	\$ 725.37			0
					\$15,984.44	\$15,984.44	7/29/05	
New Holland Sales Stables, Inc.	8/04/05	8/05/05	38	\$ 2,460.85	\$ 2,452.91			6
	8/08/05	8/09/05	246	\$20,503.50	\$20,461.18			2
					\$22,914.09	\$22,914.09	8/11/05	
Beegle's Livestock	7/13/05	7/14/05	28	\$1,859.66	\$1,859.66			7
	7/18/05	7/19/05	8	\$ 810.19	\$ 810.19			2
	7/20/05	7/21/05	7	\$ 570.53	\$ 570.53			0
					\$3,240.38	\$3,540.38	7/21/05	
Beegle's Livestock	8/17/05	8/18/05	78	\$7,925.88	\$7,925.88	\$7,925.88	8/25/05	7
Shannon Banbury	7/13/05	7/14/05	544	\$41,584.23	\$42,128.23	\$20,000.00	7/21/05	7
	7/19/05	7/20/05	38	\$ 2,246.30	\$ 2,284.30	\$24,412.53	7/21/05	1
					\$44,412.53	\$44,412.53		
Shannon Banbury	8/17/05	8/18/05	489	\$35,931.79	\$36,601.79	\$36,601.79	8/24/05	6
Doug Boehne	7/25/05	7/26/05	101	\$7,535.70	\$5,327.70	\$5,327.70	8/2/05	7
Doug Boehne	7/25/05	7/26/05	10	\$1,067.42	\$ 1,067.42			9
	7/31/05	8/01/05	237	\$15,088.87	\$13,861.56			3
					\$14,928.98	\$14,928.98	8/4/05	

*Adjustments have been made on some of these sales invoices for freight and for lamb check off credits.

4. In a certified letter dated February 2, 1998, served upon Mr. Baumert on February 6, 1998, Lawrence D. Poss, acting regional supervisor of the Lancaster, Pennsylvania, regional office of the Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter GIPSA], informed Mr. Baumert that a recent investigation had disclosed that he was hand-delivering checks issued in payment for livestock purchases to a market 7 to 9 days after purchase instead of before the close of the next business day, as required by section 409 of the Packers and Stockyards Act (7 U.S.C. § 228b).

5. In a certified letter dated June 6, 2003, served upon Mr. Baumert on June 12, 2003, Creig F. Stephens, resident agent supervisor of the

Atlanta, Georgia, regional office of GIPSA, informed Mr. Baumert that a recent investigation had disclosed that he was hand-delivering checks issued in payment for livestock purchases to a market up to 11 days after purchase instead of before the close of the next business day, as required by section 409 of the Packers and Stockyards Act (7 U.S.C. § 228b).

6. In a certified letter dated February 13, 2003, which was served on Mr. Baumert on February 21, 2003, Creig F. Stephens, resident agent supervisor of the Atlanta, Georgia, regional office of GIPSA, informed Mr. Baumert that a recent investigation of his records disclosed that his \$20,000 bond coverage needed to be increased to \$40,000.

7. In a certified letter dated January 4, 2004, served upon Mr. Baumert on January 10, 2004, John Rollins, Trade Practices supervisor of the Atlanta, Georgia, regional office of GIPSA, informed Mr. Baumert that, based upon the volume of business shown in his last annual report, which was filed for the year ending December 31, 2002, his \$20,000 bond coverage needed to be increased to \$40,000.

8. In a certified letter dated November 22, 2005, served upon Mr. Baumert on November 25, 2005, Herple A. Ellis, IV, Trade Practices supervisor of the Atlanta, Georgia, regional office of GIPSA, informed Mr. Baumert that, based upon the volume of business shown in his last annual report, which was filed for the year ending December 31, 2004, his \$20,000 bond coverage needed to be increased to \$45,000.

9. Despite the written notices described in Findings of Fact numbers 6 through 8, at the time of the filing of the Complaint, Mr. Baumert had not increased the amount of his bond coverage above \$20,000.

10. On April 14, 2006, Mr. Baumert signed an annual report for the year ending December 31, 2005, in which he reported making livestock purchases totaling \$4,922,860.57 as a dealer. A continuation of livestock purchases at this volume would require Mr. Baumert to file a \$40,000 bond or bond equivalent to comply with the Regulations.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. By reason of the facts found in Findings of Fact numbers 3

through 5, Mr. Baumert willfully violated sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b).

3. By reason of the facts found in Findings of Fact numbers 6 through 10, Mr. Baumert willfully violated section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)), and section 201.30(b) of the Regulations (9 C.F.R. § 201.30(b)).

Mr. Baumert's Appeal Petition

Mr. Baumert argues on appeal that the ALJ erred because two facts, which Mr. Baumert asserted for the first time in his appeal petition, demonstrate that he did not willfully violate the Packers and Stockyards Act. Mr. Baumert was required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) to file an answer within 20 days after service of the Complaint; namely, no later than October 5, 2007. Mr. Baumert's assertion of facts in his appeal petition, filed September 18, 2008, 11 months 13 days after Mr. Baumert was required to file an answer comes far too late to be considered. As Mr. Baumert failed to file a timely answer, Mr. Baumert is deemed to have admitted the material allegations of the Complaint, and I reject his argument that the ALJ's conclusions are error.

Modification of the ALJ's Order

The ALJ suspended Mr. Baumert as a registrant under the Packers and Stockyards Act until he has demonstrated that he has obtained and filed a bond or approved bond equivalent in the full amount required under the Regulations (Initial Decision at 5). The Deputy Administrator asserts that he received a fully executed bond rider on the proper form from Mr. Baumert, after Mr. Baumert filed his appeal petition, and requests that I modify the ALJ's Initial Decision by eliminating the suspension of Mr. Baumert as a registrant under the Packers and Stockyards Act (Complainant's Opposition to Respondent's Appeal at 6-7). As the requested modification to the ALJ's Initial Decision benefits Mr. Baumert, I grant the Deputy Administrator's request without providing Mr. Baumert a prior opportunity to respond to the

request. In the unlikely event that Mr. Baumert objects to this modification, he may, of course, raise that objection in any petition to reconsider.

For the foregoing reasons, the following Order is issued.

ORDER

1. Timothy R. Baumert, directly or through any corporate or other devise, in connection with his operations as a dealer, shall cease and desist from:

(a) Failing to pay, within the time period required by the Packers and Stockyards Act, the full purchase price of livestock; and

(b) Purchasing livestock without filing and maintaining a bond or its equivalent in the full amount determined to be adequate by GIPSA in accordance with the Packers and Stockyards Act and the Regulations.

Paragraph 1 of this Order shall become effective on the day after service of this Order on Mr. Baumert.

2. Timothy R. Baumert is assessed a \$9,000 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the "USDA-GIPSA" and sent to:

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

Payment of the civil penalty shall be sent to the USDA-GIPSA within 30 days after service of this Order on Mr. Baumert. Mr. Baumert shall state on the certified check or money order that payment is in reference to P. & S. Docket No. D-07-0190.

Tod Syverson, d/b/a Syverson Livestock Brokers 1351
67 Agric. Dec. 1351

MISCELLANEOUS ORDERS

In re: NEWMAN LIVESTOCK, INC.
P&S Docket No. D-08-0061.
Miscellaneous Order.
Filed October 22, 2008.

PS – Dismissal.

Charles L. Kendall for GIPSA.
Respondent Pro se.
Miscellaneous Order by Administrative Law Judge Jill S. Clifton.

**Order Dismissing Complaint
Without Prejudice**

Complainant requests that the complaint filed in this case be dismissed without prejudice for the reason that the stockyard is now operated by different owners who were not implicated in the violations alleged in the Complaint filed February 15, 2008 signed by Alan R. Christian, Deputy Administrator, Packers & Stockyards Program.

Accordingly, this case is **DISMISSED**, without prejudice.

Copies of this Order shall be served upon the parties by the Hearing Clerk's Office.

Done at Washington, D.C.

**In re: TODD SYVERSON, d/b/a SYVERSON LIVESTOCK
BROKERS.**
P&S Docket No. D-05-0005.
Stay Order.
Filed October 3, 2008.

PS – Stay of action.

Charles S. Spicknall and Gary F. Ball, for GIPSA.
E. Lawrence Oldfield, Oak Brook, IL, for Respondent.
Initial decision issued by Jill S. Clifton, Administrative Law Judge.
Order issued by William G. Jenson, Judicial Officer.

On August 27, 2008, I issued a Decision and Order: (1) concluding that Todd Syverson violated the Packers and Stockyards Act; (2) ordering Todd Syverson to cease and desist from failing to comply with section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)); (3) ordering Todd Syverson to cease and desist from failing to produce for examination, when asked, all of the accounts, records, and memoranda as are required to be kept under section 401 of the Packers and Stockyards Act (7 U.S.C. § 221); and (4) suspending Todd Syverson as a registrant under the Packers and Stockyards Act.¹ On September 18, 2008, Todd Syverson filed a motion for a stay of the Order in *In re Todd Syverson*, 67 Agric. Dec. ____ (Aug. 27, 2008), pending the outcome of proceedings for judicial review. On September 30, 2008, the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, filed a response to the motion for stay stating he had no objection to the requested stay.

In accordance with 5 U.S.C. § 705, Todd Syverson's request for a stay is granted.

For the foregoing reasons, the following Order is issued.

ORDER

The Order in *In re Todd Syverson*, 67 Agric. Dec. ____ (Aug. 27, 2008), is stayed pending the outcome of proceedings for judicial review. This Stay Order shall remain effective until lifted by the Judicial Officer or vacated by a court of competent jurisdiction.

¹*In re Todd Syverson*, __ Agric. Dec. ____ (Aug. 27, 2008).

Nazem Saad d/b/a Al Badr Slaughter House
67 Agric. Dec. 1353

1353

PACKERS AND STOCKYARDS ACT

DEFAULT DECISIONS

**NAZEM SAAD, d/b/a AL BADR SLAUGHTER HOUSE.
P&S-Docket D-08-0052
Default Decision.
Filed August 1, 2008.**

PS- Default.

Tracey Manoff for GIPSA.
Respondent Pro se
Default Decision by Administrative Law Judge Peter M. Davenport.

DECISION WITHOUT HEARING BY REASON OF DEFAULT

Preliminary Statement

This disciplinary proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*; hereinafter “Act”), by a Complaint and Notice of Hearing filed on January 24, 2008, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (hereinafter “Complainant”), alleging that Respondent willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*; hereinafter “Regulations”).

The Complaint and Notice of Hearing and a copy of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*; hereinafter “Rules of Practice”) were served on Respondent by certified mail on February 26, 2008. Respondent was informed in a letter of service that an answer must be filed within twenty (20) days of service and that failure to file an answer would constitute an admission of all the material allegations contained in the Complaint and Notice of Hearing and a

waiver of the right to an oral hearing.

Respondent was also informed in a letter from Complainant's attorney, which was sent by certified mail and received by Respondent on April 5, 2008,¹ that Complainant would seek the assessment of a civil penalty in the case in the amount of \$16,000.00 against Respondent. After waiting an additional four weeks after service of the notice letter, Complainant then filed a motion for decision without hearing based on Respondent's default.

Respondent has failed to file an answer within the time period prescribed by the Rules of Practice (7 C.F.R. § 1.136), and the material facts alleged in the Complaint and Notice of Hearing, which are admitted by Respondent's failure to file an answer, 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

1. Nazem Saad, d/b/a Albadr Slaughter House (hereinafter "Respondent"), is an individual whose business mailing address was 1826 Adelaide Street, Detroit, Michigan 48207. Respondent's current mailing address is 47231 Glenhurst Drive, Canton, Michigan 48187.

2. At all times material herein, Respondent was:

(a) Engaged in the business of buying livestock in commerce for the purpose of slaughter, and of manufacturing or preparing meats or meat food products for sale or shipment in commerce; and

(b) A packer within the meaning of, and subject to the provisions of, the Act.

3. Respondent's average annual purchases of livestock exceeded \$500,000.00.

4. Respondent was notified by letter addressed to Nasser Saad, Respondent's president, dated May 5, 2004, that the Act requires all packers whose average annual purchases exceed \$500,000.00 to file and

¹ United States Postal Service Domestic Return Receipt for Article No. 7000 1670 0011 8977 6228.

maintain a surety bond or bond equivalent, and that based on the information that Respondent submitted in form P&SP 132, Packer Inquiry, Respondent was required to be bonded. The letter informed Respondent that he must obtain a condition 4 bond or bond equivalent of at least \$15,000.00 and notified Respondent of his obligation to file proof of the bond or bond equivalent with the Packers and Stockyards Program.

5. Respondent was notified by certified letter addressed to Seymour Shapiro, Respondent's general manager, dated October 28, 2004, and served on or between November 1, 2004, and November 4, 2004,² that Respondent had failed to furnish the requested bond coverage and that a continuation of livestock operations as a packer without a properly filed bond or bond equivalent was a violation of the Act and the Regulations. The letter referenced 7 U.S.C. § 203 and 9 C.F.R. §§ 201.10, 201.27-201.34 and informed Respondent that violation of the bonding provisions of the Act and Regulations could subject him to disciplinary or court action. The letter further notified Respondent of his obligation to file proof of the bond or bond equivalent with the Packers and Stockyards Program.

6. Respondent, on or about the dates and in the transactions set forth below, purchased livestock for the purpose of slaughter without maintaining an adequate bond or bond equivalent.

² The return receipt was signed and returned to the Packers and Stockyards Program, but was not dated by the recipient. The United States Postal Service stamped the return receipt on November 1, 2004. The Packers and Stockyards Program stamped the return receipt on November 4, 2004.

PACKERS AND STOCKYARDS ACT

Seller	Purchase Date	No. of Head	Livestock Amount
	8/13/06	313	\$24,051.55
	8/20/06	210	\$15,847.87
Tjernagel	9/4/06	152	\$16,953.33
Brothers	9/6/06	55	\$4,169.48
P.O. Box	9/13/06	209	\$16,898.67
87	9/20/06	248	\$23,201.80
Story	9/26/06	225	\$21,118.90
City,	10/4/06	125	\$11,956.18
Iowa	10/15/06	238	\$23,911.23
50248	10/22/06	192	\$21,608.13
	7/18/06	52	\$15,267.13
	7/25/06	98	\$23,277.90
	7/30/06	55	\$4,252.52
	8/1/06	28	\$17,186.08
	8/7/06	20	\$17,384.53
	8/23/06	18	\$8,832.63
	8/23/06	37	\$15,133.47
	8/23/06	71	\$3,719.44
	8/28/06	29	\$18,379.20
	9/4/06	54	\$10,391.76
	10/1/06	164	\$55,193.39
	10/2/06	63	\$21,017.88
Mark A.	10/6/06	30	\$2,203.00
Oberly	10/10/06	15	\$4,301.35
3223	10/16/06	75	\$13,240.92
Dennison	10/23/06	36	\$17,070.96
Road	10/30/06	66	\$3,460.33
Dundee,	10/30/06	45	\$13,602.81
Michigan	11/6/06	66	\$18,255.38
48131	11/14/06	139	\$21,202.03
	11/18/06	117	\$7,861.66
	11/27/06	123	\$14,506.51
	12/4/06	140	\$12,035.01
	12/4/06	142	\$24,723.85

Nazem Saad d/b/a Al Badr Slaughter House 1357
67 Agric. Dec. 1353

12/5/06	9	\$2,772.66
12/11/06	45	\$2,958.20
12/11/06	6	\$5,692.36
12/20/06	147	\$18,750.49
12/20/06	54	\$3,868.65
TOTAL	3,911	\$576,259.24

7. Respondent, in connection with his operations subject to the Act, in the transactions set forth in Appendices A and B and incorporated herein by reference, failed to pay the full amount of the purchase price for livestock within the time period required by the Act, with the total amount remaining unpaid of \$119,019.41.

Conclusions

By reason of the facts found in Finding of Fact 4 through 6, Respondent willfully violated section 202(a) of the Act (7 U.S.C. § 192(a)), and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30).

By reason of the facts found in Finding of Fact 7, Respondent has willfully violated sections 202(a) and 409 of the Act (7 U.S.C. §§ 192(a), 228b).

Order

Respondent Nazem Saad, d/b/a Albadr Slaughter House, as an individual, and his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Act, shall cease and desist from:

1. Engaging in business in any capacity for which bonding is required under the Act and the Regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the Regulations; and
2. Failing to pay the full amount of the purchase price for livestock within the time period required by the Act.

Pursuant to section 203(b) of the Act (7 U.S.C. § 193(b)), Respondent is assessed a civil penalty in the amount of Sixteen Thousand Dollars (\$16,000.00).

This decision and order shall become final and effective without further proceedings thirty-five (35) days after service on Respondent, unless appealed to the Judicial Officer by a party to the proceeding within thirty (30) days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139, 1.145).

Copies of this decision and order shall be served upon the parties.

Done at Washington, D.C.

In re: TIMOTHY R. BAUMERT.

P. & S. Docket No. D-07-0190.

Default Decision.

Filed August 13, 2008.

PS – Default.

Eric Paul for GIPSA.

Respondent, Pro se.

Default Decision by Administrative Law Judge Peter M. Davenport.

DECISION AND ORDER

Preliminary Statement

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*), hereinafter “the Act”, by a Complaint filed by the Deputy Administrator, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that the Respondent wilfully violated the Act. Copies of the Complaint and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes, (“Rules of Practice”)(7 C.F.R. § 1.130 *et seq.*) were sent to Respondent by the Hearing Clerk by certified mail transmittal dated September 12, 2007.

Respondent signed a receipt acknowledging service of the Complaint, but failed to file an answer with the Hearing Clerk. By letter dated

October 10, 2007, Respondent was notified that he had failed to file an answer with the Hearing Clerk within the allotted time.

Respondent has failed to file an answer within the time prescribed in the Rules of Practice, and the allegations of the Complaint, which are admitted by Respondent's failure to file an answer (7 C.F.R. § 1.136(c)), are adopted and set forth herein as findings of fact.

Findings of Fact

1. Timothy R. Baumert, hereinafter Respondent, is an individual whose business address is RR 1, Box 29, Dairy Rd., Dalmatia, PA 17017.

2. Respondent is and at all times material herein was:

(a) Engaged in the business of a dealer, buying and selling livestock for his own account; and

(b) Registered with the Secretary of Agriculture as a dealer, buying and selling livestock for his own account.

3. Respondent, on or about the dates and in the transactions set forth below, purchased livestock and failed to pay, within the time period required by the Act, the full purchase price of such livestock.

Livestock Seller	Purch. Date	Payment Due per § 409a	No. of Head	Livestock Amount	Sales Invoice Amount *	Payment Check Amount	Date issued	No. of Days Late
New Holland Sales Stables, Inc.	7/07/05	7/08/05	39	\$2,796.20	\$ 2,776.98			6
	7/11/05	7/12/05	103	\$7,412.70	<u>\$ 7,398.97</u>	\$10,175.95	7/14/05	2
					<u>\$15,984.44</u>			
New Holland Sales Stables, Inc.	7/21/05	7/22/05	31	\$ 2,711.30	\$ 2,696.73			7
	7/25/05	7/26/05	39	\$12,591.80	\$12,562.34			3
	7/28/05	7/29/05	11	\$ 717.50	<u>\$ 725.37</u>	\$15,984.44	7/29/05	0
New Holland Sales Stables, Inc.	8/04/05	8/05/05	38	\$ 2,460.85	\$ 2,452.91			6
	8/08/05	8/09/05	246	\$20,503.50	<u>\$20,461.18</u>	\$22,914.09	8/11/05	2
Beegle's Livestock	7/13/05	7/14/05	28	\$1,859.66	\$1,859.66			7
	7/18/05	7/19/05	8	\$ 810.19	\$ 810.19			2
	7/20/05	7/21/05	7	\$ 570.53	<u>\$ 570.53</u>	\$3,540.38	7/21/05	0
					<u>\$3,240.38</u>			

Beegle's Livestock	8/17/05	8/18/05	78	\$7,925.88	\$7,925.88	\$7,925.88	8/25/05	7
Shannon	7/13/05	7/14/05	544	\$41,584.23	\$42,128.23	\$20,000.00	7/21/05	7
Banbury	7/19/05	7/20/05	38	\$ 2,246.30	<u>\$ 2,284.30</u>	<u>\$24,412.53</u>	7/21/05	1
					\$44,412.53	\$44,412.53		
Shannon Banbury	8/17/05	8/18/05	489	\$35,931.79	\$36,601.79	\$36,601.79	8/24/05	6
Doug Boehne	7/25/05	7/26/05	101	\$7,535.70	\$5,327.70	\$5,327.70	8/2/05	7
Doug	7/25/05	7/26/05	10	\$1,067.42	\$ 1,067.42			9
Boehne	7/31/05	8/01/05	237	\$15,088.87	<u>\$13,861.56</u>			3
					\$14,928.98	\$14,928.98	8/4/05	

* Adjustments have been made on some of these sales invoices for freight and for lamb check off credits.

4. In a certified letter dated February 2, 1998, served upon Respondent on February 6, 1998, Lawrence D. Poss, Acting Regional Supervisor of the Lancaster, Pennsylvania regional office of Complainant, informed Respondent that a recent investigation had disclosed that Respondent was hand delivering checks issued in payment for livestock purchases to a market seven to nine days after purchase instead of before the close of the next business day as required by section 409(a) of the Act.

5. In a certified letter dated June 6, 2003, served upon Respondent on June 12, 2003, Creig F. Stephens, Resident Agent Supervisor of the Atlanta, Georgia regional office of Complainant, informed Respondent that a recent investigation had disclosed that Respondent was hand delivering checks issued in payment for livestock purchases to a market up to eleven days after purchase instead of before the close of the next business day as required by section 409 of the Act.

6. In a certified letter dated February 13, 2003, which was served on Respondent on February 21, 2003, Creig F. Stephens, Resident Agent Supervisor of the Atlanta, Georgia regional office of Complainant, informed Respondent that a recent investigation of his records disclosed that Respondent's \$20,000.00 bond coverage needed to be increased to \$40,000.00.

7. In a certified letter dated January 4, 2004, served upon Respondent on January 10, 2004, John Rollins, Trade Practices Supervisor of the Atlanta, Georgia regional office of Complainant, informed Respondent that based upon the volume of business shown in his last annual report, which was filed for the year ending December 31, 2002, that Respondent's \$20,000.00 bond coverage needed to be increased to \$40,000.00.

8. In a certified letter dated November 22, 2005, served upon Respondent on November 25, 2005, Herple A. Ellis, IV, Trade Practices Supervisor of the Atlanta, Georgia regional office of Complainant, informed Respondent that based upon the volume of business shown in his last annual report, which was filed for the year ending December 31, 2004, that Respondent's \$20,000.00 bond coverage needed to be increased to \$45,000.00.

9. Despite the above written notices, Respondent has not increased the amount of his bond coverage above \$20,000.00.

10. On April 14, 2006, Respondent signed an annual report for the year ending December 31, 2005, in which he reported making livestock purchases totaling \$4,922,860.57 as a dealer. A continuation of livestock purchases at this volume will require Respondent to file a \$40,000 bond or bond equivalent to comply with the regulations.

Conclusions

By reason of the facts found in Findings of Fact Nos. 3 through 5, Respondent has wilfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

By reason of the facts found in Findings of Fact Nos. 6 through 10, Respondent has willfully violated section 312(a) of the Act (7 U.S.C. §§ 213(a)), and section 201.30(b) of the regulations (9 C.F.R. § 201.30(b)).

Order

Respondent Timothy R. Baumert, directly or through any corporate or other devise, in connection with his operations as a dealer, shall cease and desist from:

1. Failing to pay, within the time period required by the Act, the full purchase price of livestock; and
2. Purchasing livestock without filing and maintaining a bond or its equivalent in the full amount determined to be adequate by the Packers and Stockyards Programs, GIPSA, in accordance with the Act and the regulations.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent is assessed a civil penalty in the amount of \$9,000.00. Respondent's payment shall be made out to "USDA-GIPSA" and sent to USDA-GIPSA, P.O. Box 790335, St. Louis, Missouri 63179-0335.

Respondent is suspended as a registrant until he has demonstrated that he has obtained and filed a bond or approved bond equivalent in the full amount required under the regulations. Jurisdiction is retained for the issuance of a Supplemental Order terminating Respondent's suspension following such demonstration to Packers and Stockyards Program.

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

Copies of this decision shall be served upon the parties.

Done at Washington, D.C.

In re: BILLY MIKE GENTRY.

P&S Docket No. D-07-0152.

Default Decision.

Filed October 7, 2008.

PS – Default.

Eric Paul for GIPSA.

Respondent, Pro se.

Default Decision by Administrative Law Judge Jill S. Clifton.

Billy Mike Gentry
67 Agric. Dec. 1362

1363

**Decision and Order
By Reason of Default**

The Complaint, filed on June 25, 2007, alleged that the Respondent willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (“the Act” or “the Packers and Stockyards Act”).

Parties and Counsel

The Complainant is the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (“GIPSA”), United States Department of Agriculture (frequently herein “Complainant” or “Packers and Stockyards”). Eric Paul, Esq., with the Office of the General Counsel, Trade Practices Division, United States Department of Agriculture, South Building Room 2309, 1400 Independence Avenue, SW, Washington, D.C. 20250-1413, represents the Complainant.

The Respondent is Billy Mike Gentry, an individual who does business under the name Mike Gentry, and the trade name B&M Farms or B & M Farms, and whose business address is P.O. Box 667, Houston, MS 38851-3020 (frequently herein “Respondent Gentry” or “Respondent”. The Respondent has not appeared.

Procedural History

No answer to the Complaint has been received. The time for filing an answer expired in mid-August 2007. Copies of the Complaint and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (“Rules of Practice”) (7 C.F.R. § 1.130 *et seq.*), were served on Respondent Gentry by the Hearing Clerk by mailing them to Respondent at his last known business address by ordinary mail on July 25, 2007, in accordance with section 1.147(c)(1) of the Rules of Practice after the return of a June 26, 2007 certified mailing marked by the U.S. Postal Service, “Return to Sender - UNCLAIMED”. By letter dated August 21, 2007, Respondent was

notified that he had failed to file an answer with the Hearing Clerk within the allotted time.

The Complainant's Motion for Decision without Hearing by Reason of Default, filed April 16, 2008, is before me. Respondent Gentry's copy was marked by the U.S. Postal Service, "Returned to Sender - UNCLAIMED," and thereafter remailed by ordinary mail on June 3, 2008. Respondent Gentry failed to respond.

The Rules of Practice provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. § 1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. Accordingly, the material allegations in the Complaint, which are admitted by Respondent's default, 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

1. Billy Mike Gentry is an individual who does business under the name Mike Gentry, and the trade name B&M Farms or B & M Farms, and whose business address is P.O. Box 667, Houston, MS 38851-3020.

2. Respondent is and at all times material herein was:

(a) Engaged in the business of a dealer, buying and selling livestock for his own account, and of a market agency, buying livestock on a commission basis; and

(b) Registered with the Secretary of Agriculture as a dealer, buying and selling livestock for his own account, and as a market agency buying livestock on commission under the name Mike Gentry.

(c) Not authorized to conduct business under any trade name under his current registration.

3. In a consent decision signed by Respondent Gentry and issued on July 5, 1991 (*In re: Billy Mike Gentry*, P. & S. Docket No. D-91-24), Respondent Gentry agreed to cease and desist from, among other things, engaging in business in any capacity for which bonding is required under the Act and regulations without filing and maintaining a reasonable bond or its equivalent, as required by the Act and the

regulations. Respondent was assessed a \$4,000.00 civil penalty.

4. In a Decision Without Hearing by Reason of Default issued on July 25, 2002 (*In re: Billy Mike Gentry*, 61 Agric. Dec. 789), a finding was made that “Respondent was served with a letter of notice on March 13, 2000, informing him that the \$10,000.00 surety bond he maintained was inadequate, and that a \$75,000.00 surety bond was required to secure the performance of his livestock obligations. Notwithstanding this notice, Respondent continued to engage in the business of a market agency and a dealer without maintaining an adequate bond or its equivalent.” Respondent Gentry was again ordered, by the Decision which became final and effective on November 2, 2002, to cease and desist from engaging in business in any capacity for which bonding is required under the Act, without filing and maintaining an adequate bond or its equivalent. Respondent was assessed a \$5,000.00 civil penalty.

5. In a certified letter dated December 4, 2003, which was served on Respondent Gentry by regular mail on January 12, 2004, after the certified mail transmittal was returned “UNCLAIMED”, Robert L. Schmidt, Financial Unit Supervisor of the Atlanta, Georgia regional office of Complainant, informed Respondent Gentry that a recent investigation of his records disclosed that Respondent’s current \$10,000.00 bond coverage needed to be increased to \$65,000.00. Respondent was also notified that he must not use the trade name B&M Farms in his business, unless he submitted an amended application to include the trade name in his registration and a trust fund agreement rider to cover the trade name on his bond equivalent.

6. In a certified letter dated June 22, 2006, served upon Respondent Gentry on June 30, 2006, Creig F. Stephens, Resident Agent Supervisor of the Atlanta, Georgia regional office of Complainant, informed Respondent Gentry that a recent investigation of his records disclosed that Respondent’s \$10,000.00 bond coverage needed to be increased to \$70,000.00.

7. Despite the above orders and written notices, Respondent has neither increased the amount of his bond coverage above \$10,000.00, nor sought to amend his registration to include the trade name and modify the trust fund agreement that he maintains as a bond equivalent to cover operations conducted under the trade name B&M Farms or B

& M Farms.

8. During the third quarter of 2006, Respondent made livestock purchases totaling \$4,749,337.43 as a market agency buying on commission at four posted stockyards. Respondent was paid buying commissions as Mike Gentry, and as B & M Farms, in these transactions. A continuation of livestock purchases at this volume will require Respondent to file a \$85,000 bond or bond equivalent to comply with the regulations.

9. On June 4, 2007, Respondent Gentry filed his Annual Report of Dealer or Market Agency Buying on Commission (Annual Report) covering the 2006 calendar year. On page 1 of the Annual Report, Respondent reported that the total cost of livestock that he had purchased as a dealer and as a market agency buying on a commission during 2006 was \$3,544,463.00. More specifically, Respondent reported that during the third quarter of 2006, he purchased 1028 head of livestock with a total purchase cost of \$223,571.00 as a dealer for his own account; and that he purchased an additional 2120 head of livestock with a total purchase cost of \$850,120.00 for the account of others. Respondent's figures were incorrect, as an investigation conducted in the spring of 2007 has documented that during the third quarter of 2006, in addition to an undetermined amount of livestock that Respondent purchased for his own account as a dealer, Respondent purchased 9,639 head of cattle having a total livestock cost of \$4,749,337.43 on a commission basis at four posted stockyards.

Conclusions

Respondent Billy Mike Gentry has wilfully violated section 312(a) of the Act (7 U.S.C. §§ 213(a)), and section 201.30(b) of the regulations (9 C.F.R. § 201.30(b)). Findings of Fact Nos. 3 - 8.

Respondent Billy Mike Gentry has wilfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) by filing an Annual Report that did not accurately reflect the total cost of livestock that Respondent purchased during calendar year 2006, and in the third quarter of that year. Findings of Fact No. 9.

Order

Respondent Billy Mike Gentry, directly or through any corporate or other device, in connection with his operations as a dealer and a market agency buying livestock on commission, including operations under the name "Mike Gentry", and the trade name "B&M Farms" or "B & M Farms", shall cease and desist from:

1. Purchasing livestock without filing and maintaining a bond or its equivalent in the full amount determined to be adequate by the Packers and Stockyards Programs, GIPSA, in accordance with the Act and the regulations; and

2. Operating under any trade name that he is not authorized to use under his registration, and on his bond or approved bond equivalent.

Respondent Billy Mike Gentry is suspended as a registrant for the period of thirty days, and thereafter until he has demonstrated that he has obtained and filed a bond or approved bond equivalent in the full amount required under the regulations, and filed an application for amended registration. Jurisdiction is retained for the issuance of a Supplemental Order terminating Respondent's suspension following such demonstration to Packers and Stockyards Program.

Finality

This Decision and Order shall be final and effective without further proceedings 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 attached Appendix A).

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

Done at Washington, D.C.

**VALLEY STOCKYARDS, INC., ROBERT C. ELLIOT, AND
MELISSA J. ELLIOT.**

P&S Docket No. D-08-0117.

Default Decision.

Filed October 8, 2008.

PS – Default.

Jonathan D. Gordy for GIPSA.
Respondent, Pro se.

Default Decision by Administrative Law Judge Jill S. Clifton.

**Decision and Order
by Reason of Default**

The Complaint, filed on May 9, 2008, alleged that the Respondents willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (the “Act” or the “Packers and Stockyards Act”).

Parties and Counsel

The Complainant is the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration (“GIPSA”), United States Department of Agriculture (frequently herein “Complainant” or “Packers and Stockyards”). Packers and Stockyards is represented by Jonathan D. Gordy, Esq., with the Office of the General Counsel, Trade Practices Division, United States Department of Agriculture, South Building Room 2309, 1400 Independence Avenue SW, Washington, D.C. 20250-1413.

The Corporate Respondent, Valley Stockyards, Inc. (“Respondent Valley” or “Corporate Respondent”); and the Individual Respondents, Robert C. Elliot and Melissa J. Elliot (“Individual Respondents”), have all been served and all failed to appear.

Valley Stockyards, Inc.
Robert C. & Melissa J. Elliot
67 Agric. Dec. 1368

1369

Respondents' Failures to Answer

No answers to the Complaint have been received. The time for filing answers expired in late June 2008. The Complainant's Motion for Decision Without Hearing by Reason of Default, filed July 2, 2008, is before me.

Copies of the Complaint and 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") were mailed to the Respondents via certified mail on May 12, 2008. Respondent Robert C. Elliot signed the certified mail return receipt card for his copy of the Complaint on June 3, 2008. The Hearing Clerk's initial mailing to Respondent Melissa J. Elliot was returned as "not deliverable as addressed." Accordingly, Complainant's counsel provided a substitute mailing address for Respondent Melissa J. Elliot, and the Hearing Clerk sent a copy of the Complaint to that address via certified mail. Melissa J. Elliot signed the certified mail return receipt card for her copy of the Complaint on June 2, 2008. Because both Individual Respondents are officers of Respondent Valley, proof of delivery on Individual Respondents is delivery on Respondent Valley under 7 C.F.R. § 1.147(c)(3)(ii).

The Rules of Practice provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. § 1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. Accordingly, the material allegations in the Complaint, which are admitted by Respondents' default, are adopted and set forth herein as Findings of Fact. This Decision, therefore, is issued pursuant to section 1.139 of the Rules of Practice. 7 C.F.R. § 1.139.

Findings of Fact

Valley Stockyards, Inc. ("Respondent Valley") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Its last known mailing address was P.O. Box 231,

Athens, Pennsylvania 18810.

Respondent Valley, at all times material to this Decision, was:
Engaged in the business of conducting and operating the Valley Stockyards Inc. stockyard, a posted stockyard subject to the provisions of the Act;

Engaged in the business of a market agency buying and selling livestock in commerce on a commission basis;

Engaged in the business of a dealer buying and selling livestock in commerce for its own account; and

Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for its own account and as a market agency to buy and sell livestock on a commission basis.

Respondent Valley no longer operates a posted stockyard.

Individual Respondents, at all times material to this Decision, each owned 50% of the issued stock of Respondent Valley, and were responsible for the management, direction, and control of Respondent Valley.

Respondent Valley, under the direction, management and control of the Individual Respondents, misused custodial funds by writing a check to cash for \$6,500.00 from its Custodial Account for Shipper's Proceeds ("custodial account") with Citizens & Northern Bank, for which there was no consigned livestock. This amount was deposited in a livestock purchaser's account at Citizens & Northern Bank. After Respondents' deposit, Citizens & Northern Bank honored a check drawn on the purchaser's account in the amount of \$37,891.25. Using the funds from this check, Respondent Valley then obtained a cashier's check from Citizens & Northern Bank for the \$37,891.25 and deposited the cashier's check in its custodial account. When Citizens & Northern Bank discovered that a stop payment order had been issued for the purchaser's check, the bank rescinded the cashier's check and closed Respondent Valley's custodial account. Shortly thereafter, Respondents opened a new custodial account in Peoples State Bank.

In part due to Respondent Valley's misuse of custodial account funds in its Citizens & Northern Bank custodial account, as described in finding of fact 5 above, Respondent Valley, under the direction,

management and control of the Individual Respondents, during the period February 15, 2006, through April 20, 2006, and thereafter failed to maintain and use properly Respondent Valley's custodial account with Peoples State Bank, thereby endangering the faithful and prompt accounting of the custodial account and the payment of portions of the custodial account due the owners and consignors of livestock, in that:

As of February 15, 2006, Respondent Valley had outstanding proceeds due shippers in the amount of \$168,798.28 that had been due from custodial account with Citizens & Northern Bank and expense items remaining in the account in the amount of \$10,423.71 and had to offset those proceeds due shippers and expense items against a balance in its custodial account with Peoples State Bank of \$60,388.54, which resulted in a deficiency of \$118,833.45.

As of April 20, 2006, Respondent Valley had outstanding checks drawn on its custodial account with People's State Bank in the amount of \$21,333.55, outstanding proceeds due shippers in the amount of \$126,940.86 that had been due from its closed custodial account with Citizens & Northern Bank and expense items remaining in the account in the amount of \$8,145.71 and had to offset those amounts against a balance in the custodial account with People's State Bank of \$32,285.47, which resulted in a deficiency of \$124,134.65.

Such shortages were also due, in part, to the failure of the Respondents to deposit in the custodial account, within the time prescribed by the regulations, an amount equal to the proceeds receivable from the sale of consigned livestock.

Respondent Valley, under the direction, management, and control of the Individual Respondents, on or about the dates and in the transactions set forth below, issued checks in payment for livestock purchases which checks were returned unpaid by the bank upon which they were drawn because Respondents did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn

to pay the checks when presented.

Sale Date	Payee	Amount
01/02/06	Vicke Kibbe	\$562.40
01/02/06	R. Hidden Valley Farm	\$4,691.38
01/02/06	Lantland Farms	\$615.09
01/09/06	Norman Allen	\$6,327.66
01/09/06	R. Hidden Valley Farm	\$548.38
01/09/06	Iva-Jen Farms	\$1,295.31
01/09/06	Donald Brooks	\$446.39
01/09/06	Mundy Brook Farm	\$1,009.63
01/11/06	Donald Brooks	\$597.50
01/11/06	Paul Winch	\$166.50
01/16/06	Terry Grant	\$1,242.20
01/16/06	Jeffery Klossner	\$822.50
01/16/06	Merle Lawton	\$418.91
Total		\$18,743.85

Respondent Valley, under the direction management and control of the Individual Respondents, on or about the dates and in the transactions set forth below, issued checks in payment for livestock purchases which checks were returned unpaid by the bank upon which they were drawn because Respondents' custodial account had been closed by Citizens & Northern Bank due to Respondents' misuse of custodial account funds as more fully described above.

Sale Date	Payee	Amount
11/02/05	Ed Traver	\$9,174.81
01/02/06	Glenn Warren	\$885.28
01/09/06	Robert Rubenstein	\$47.90
01/09/06	Cold Creek Farm	\$345.20
01/16/06	Duane Wilcox	\$239.40
01/16/06	Vaughn Jennings, Jr.	\$373.62
01/16/06	Corey Miles	\$513.20

Total	\$11,579.41
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On or about the dates and in the transactions set forth in findings of fact 8-9 and in the transactions set forth in Appendix A to the Complaint, Respondent Valley, under the direction, management, and control of the Individual Respondents, failed to remit, when due, the net proceeds of the sales of livestock to the consignors of the livestock, by failing to timely deliver the net proceeds from the sale to those consignors.

Respondent Valley, under the direction, management, and control of the Individual Respondents, failed to maintain adequate records which fully and correctly disclosed all the transactions involved in their business in that: Respondents failed to keep records which correctly disclosed the date checks were written and correctly disclosed dates that sales were held, and Respondents failed to maintain copies of invoices and copies of checks.

Conclusions

The Individual Respondents maintained complete ownership of Respondent Valley, and Respondent Valley was under their direction, management, and control.

By writing a check from their custodial account for \$6,500.00 without a lawful purpose and by permitting a shortage in their custodial account, Respondents willfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213(a)) and sections 201.42(c) and 201.42(d) of the regulations (9 C.F.R. § 201.42(c)-(d)).

Respondents have wilfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213), by writing checks which were returned by the bank for insufficient funds.

Because Respondents did not timely remit the net proceeds to livestock consigned to their market, Respondents have wilfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213) and section 201.43(a) of the regulations (9 C.F.R. § 201.43(a)).

Because Respondents failed to maintain records which correctly

disclosed the date checks were written and correctly disclosed dates that sales were held and also failed to keep documents that supported Respondents' transactions, Respondents failed to maintain records as required by section 401 of the Act (7 U.S.C. § 221) and willfully violated section 312(a) of the Act as a result (7 U.S.C. § 213(a)).

Order

Respondents, their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Act, shall cease and desist from failing to remit the full amount of the purchase price for livestock within the time period required by the Act and the regulations promulgated under it.

Respondents, their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Act, shall cease and desist from misuse of their custodial account for reasons other than for payment of (1) the net proceeds to the consignor or shipper, or to any person that Respondents know is entitled to payment, (2) to pay lawful charges against the consignment of livestock which the Respondents shall, in their capacity as agent, are required to pay, and (3) to obtain any sums due Respondents as compensation for their services.

Respondents, their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Act, shall cease and desist from failing to properly maintain their custodial accounts for shippers' proceeds.

Respondents, their agents and employees shall keep such accounts, records and memoranda which fully and correctly disclose all transactions conducted subject to the Act, including, but not limited to, records which correctly disclosed the date checks were written and correctly disclosed dates that sales were held, and maintain copies of invoices and copies of checks.

Respondents are suspended as registrants under the Act for 5 years, *provided*, however, that the 5-year period of suspension may be terminated by the issuance of a supplemental order at any time after the first 300 days of the suspension have been served upon Respondents'

Valley Stockyards, Inc.
Robert C. & Melissa J. Elliot
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demonstration to the Packers and Stockyards Administration of facts and circumstances warranting the termination of the suspension.

Finality

This Decision will become final and effective without further proceedings 35 days after it is served unless a party to the proceeding files with the Hearing Clerk an appeal to the Judicial Officer within 30 days after service, as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145). See attached Appendix A, containing 7 C.F.R. § 1.145).

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

* * *

APPENDIX A

7 C.F.R.:

TITLE 7—-AGRICULTURE

SUBTITLE A—-OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—-ADMINISTRATIVE REGULATIONS

....

SUBPART H—-RULES OF PRACTICE GOVERNING FORMAL ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) Filing of petition. Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days

after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) Response to appeal petition. Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) Transmittal of record. Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) Oral argument. A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing

a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) Scope of argument. Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) Notice of argument; postponement. The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) Order of argument. The appellant is entitled to open and conclude the argument.

(h) Submission on briefs. By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) Decision of the [J]udicial [O]fficer on appeal. As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a

petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145

In re: STEVE ROSE.
P. & S. Docket No. D-08-0158.
Default Decision.
Filed October 27, 2008.

PS – Default.

Charles L. Kendall for GIPSA.
Respondent, Pro se.
Default decision by Administrative Law Judge Peter M. Davenport.

Decision Without Hearing by Reason of Default

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*)(hereinafter referred to as the “Act”), instituted by a Complaint filed on July 31, 2008, by the Deputy Administrator, Packers and Stockyards Program, GIPSA, United States Department of Agriculture. The Complaint alleged that on or about March 14, 2007, Respondent Steve Rose (hereinafter “Respondent”) purchased 88 head of cattle from Joplin Regional Stockyards, Inc. and failed to pay the amount due for the livestock, and also alleged that as of the date of the filing of the complaint, Respondent owed payment in the amount of \$49,175.75.

The Complaint additionally alleged that during the period March 3, 2007, through March 7, 2007, Respondent issued five (5) checks to four

(4) sellers in purported payment for livestock purchases valued at \$228,095.29, which were returned unpaid by the bank upon which they were drawn because Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay them when presented; thus, Respondent failed to pay, when due, the full purchase price of such livestock.

In addition, the Complaint alleged that, during the period February 2, 2006 through May 17, 2006, Respondent purchased livestock and failed to pay, when due, the full purchase price of such livestock, in a total amount of \$825,479.64, to five (5) sellers for 43 transactions; Respondent's payments for these transactions ranged from one (1) to 62 days late.

The Complaint further alleged that Respondent continued to engage in the business of a dealer buying and selling livestock on his own account without maintaining an adequate bond or its equivalent notwithstanding having received notice that it was necessary to increase his surety bond to secure his livestock operations under the Act before continuing in such operations.

The Complaint also alleged that Respondent has failed to keep and maintain records that fully and correctly disclose all transactions involved in Respondent's business subject to the Act, as required by section 401 of the Act, in that Respondent has failed to maintain a complete check register, maintain a complete livestock purchase journal, create sales invoices or record ledger, or maintain a livestock sales journal.

A copy of the Complaint, mailed by certified mail, was received by Respondent on August 15, 2008. Respondent has not answered the Complaint. The time for filing an answer having expired, and upon motion of the Complainant for the issuance of a Default Order, the following Decision and Order shall be issued without further procedure pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Steve Rose (hereinafter "Respondent") is an individual whose mailing address is 16519 County Road 130, Carthage, Missouri 64836.

2. Respondent at all times material to this Complaint was engaged in the business of buying and selling livestock in commerce as a dealer for his own account and was registered with the Secretary of Agriculture as a dealer buying and selling livestock in commerce and as a market agency buying livestock in commerce on a commission basis.

3. The Secretary has jurisdiction over Respondent and the subject matter involved herein.

4. As set forth in paragraph II of the Complaint, Respondent purchased 88 head of cattle from Joplin Regional Stockyards, Inc., and failed to pay the amount due for the livestock; as of the date of the filing of the complaint, Respondent owed payment in the amount of \$49,175.75.

5. As set forth in paragraph III of the Complaint, during the period March 3, 2007, through March 7, 2007, Respondent issued five (5) checks to four (4) sellers in purported payment for livestock purchases valued at \$228,095.29, which were returned unpaid by the bank upon which they were drawn; thus, Respondent failed to pay, when due, the full purchase price of such livestock. As further set forth in paragraph III of the Complaint, during the period February 2, 2006 through May 17, 2006, Respondent purchased livestock and failed to pay, when due, the full purchase price of such livestock, in a total amount of \$825,479.64, to five (5) sellers for 43 transactions; Respondent's payments for these transactions ranged from one (1) to 62 days late.

6. Respondent continued to engage in the business of a dealer buying and selling livestock on his own account without maintaining an adequate bond or its equivalent notwithstanding having received notice that it was necessary to increase his surety bond to secure his livestock operations under the Act before continuing in such operations.

7. Respondent failed to keep and maintain records that fully and correctly disclose all transactions involved in Respondent's business subject to the Act, as required by section 401 of the Act, in that Respondent failed to maintain a complete check register, maintain a complete livestock purchase journal, create sales invoices or record ledger, or maintain a livestock sales journal.

Conclusions

Respondent's failures to make full payment promptly with respect to the transactions set forth in Findings of Fact Nos. 4 and 5 above constitute willful violations of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

Respondent engaged in the business of a dealer buying and selling livestock on his own account without maintaining an adequate bond or its equivalent as set forth in Finding of Fact No. 6 above, a willful violation of section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.29 of the regulations (9 C.F.R. § 201.29).

Respondent's failure to keep and maintain records that fully and correctly disclose all transactions involved in Respondent's business subject to the Act, as required by section 401 of the Act, constitutes a willful violation of section 312(a) of the Act (7 U.S.C. § 213(a)).

Order

Respondent Steve Rose, his agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to pay the full purchase price of livestock;
2. Failing to pay, when due, the full purchase price of livestock; and
3. 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.

Respondent Steve Rose, in connection with his operations as a dealer buying and selling livestock in commerce for its own account, shall keep and maintain such accounts, records, and memoranda as fully and correctly disclose its transactions subject to the Act and the regulations, including a complete check register, a complete livestock purchase journal, sales invoices or record ledger, and a livestock sales journal.

In accordance with 7 U.S.C. § 204, the registration of Respondent Steve Rose is suspended for a period of five (5) years.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in Sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. 1.139 and 1.145).

Copies hereof shall be served upon the parties.

Done at Washington, D.C.

In re: RICK BALDWIN.
P. & S. Docket No. D-08-0159.
Default Decision.
Filed October 28, 2008.

PS – Default.

Charles Kendall for GIPSA.

Respondent, Pro se.

Default Decision by Chief Administrative Law Judge Marc R. Hillson.

**Decision Without Hearing
by Reason of Default**

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*)(hereinafter referred to as the “Act”), instituted by a Complaint filed on July 31, 2008, by the Deputy Administrator, Packers and Stockyards Program, GIPSA, United States Department of Agriculture. The Complaint alleged that Rick Baldwin (hereinafter “Respondent”) continued to engage in the business of a market agency buying livestock in commerce on a commission basis without being properly registered and without maintaining an adequate bond or its equivalent, notwithstanding having received notice that it was necessary to be properly registered and to file a surety bond to secure his livestock operations under the Act before continuing in such operations.

A copy of the Complaint, mailed by certified mail, was received by Respondent on August 21, 2008. Respondent has not answered the Complaint. The time for filing an answer having expired, and upon motion of the Complainant for the issuance of a Default Order, the following Decision and Order shall be issued without further procedure pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Rick Baldwin (hereinafter "Respondent") is an individual whose mailing address is 37087 Kgal Drive, Lebanon, Oregon 97355-9642.
2. Respondent at all times material to this Complaint was engaged in the business of a market agency buying livestock in commerce on a commission basis and registered with the Secretary of Agriculture as a dealer and as a market agency buying on commission. Respondent requested that his registration be made inactive on May 30, 2001.
3. The Secretary has jurisdiction over Respondent and the subject matter involved herein.
4. As set forth in paragraph II of the Complaint, Respondent was duly notified that a livestock dealer and/ or market agency who resumes operations with an inactive registration must provide updated information for his or her registration and file an appropriate bond or bond equivalent for that level of operation.
5. As set forth in paragraph III of the Complaint, during the period March 31, 2007, through May 16, 2007, Respondent engaged in the business of buying livestock (cattle) in commerce on a commission basis without being properly registered or maintaining an adequate bond or bond equivalent.

Conclusions

Respondent's engaging in the business of a market agency dealer buying livestock on a commission basis without being properly registered and maintaining an adequate bond or its equivalent, as set forth in Findings of Fact Nos. 4 and 5 above constitutes a willful violation of section 312(a) of the Act (7 U.S.C. § 213(a)) and sections

201.10, 201.29, and 201.30 of the Regulations (9 C.F.R. §§ 201.10, 201.29, 201.30).

Order

Respondent Rick Baldwin, his agents and employees, directly or through any corporate or other device, in connection with 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 being properly registered and filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations.

In accordance with 7 U.S.C. § 204, the registration of Respondent Rick Baldwin is suspended for a period of 40 days.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in Sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. 1.139 and 1.145).

Copies hereof shall be served upon the parties.
Done at Washington, D.C.

Consent Decisions

Date Format [YY/MM/DD]

Packers and Stockyards Act

Mahan Packing Co., Inc., PS-D-08-0138, 08/07/08.

D.A. Upton, PS-D-08-0034, 08/07/17.

Triple K Cattle Dealers, Inc. and George N. Kittle, PS-D-08-0041, 08/07/17.

Christopher J. Bartels d/b/a Bartels Packing, PS-D-07-0179, 08/08/04.

Kelly Cattle Co. Inc. d/b/a Wright County Livestock Auction, PS-D-08-0087, 08/08/04.

Honey Creek Cattle Co. d/b/a Peace Livestock, James L. Thurn, and Deryl D.Hines, PS-D-08-0144, 08/08/29.

Pasqual A. Leone d/b/a P.A. Leone Livestock, PS-D-08-0033, 08/09/11.

Doyle Harms d/b/a Harms Livestock, PS-D-08-0100, 08/09/17.

Kyzer Plants and Produce, Inc., PQ 08-0015, 08/09/17.

Marie Stagno d/b/a Stockton Livestock Auction Yard, PS-D-03-0004, 08/10/02.

Evans & Evans Farms, Inc. a/k/a Evans and Evans, Inc and Peterson Farms, Inc., PS-D-08-0082, 08/10/09.

Hanson and Morgan Livestock, Inc. d/b/a Greenbrier Valley Livestock Market, and W. Dean Hanson, PS-D-08-0067, 08/10/20.

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Alan Titsworth, PS-D-08-0166, 08/10/31.

Meadowbrook Farms Cooperation, PS-D-0123, 08/11/06.

John (Jack) W. McGuinness, PS-D-08-0024, 08/11/21.

Hatfield Quality Meats, Inc., PS-D-08-0091, 08/11/25.

John Connery and Mississippi Valley Livestock, Inc., PS-D-08-0023,
08/12/16.

John Rife, PS-D-08-0020, 08/12/18.

Swift and Company d/b/a Swift Beef Company, PS-D-08-0141,
08/12/18.