

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
DON LATHAM, and)	P & S Docket No. D-06-0011
)	
POPLAR PLAINS LIVESTOCK, INC.,)	
)	
Respondents)	Decision and Order by Reason of Admissions

DECISION SUMMARY

[1] This case can be decided based on the admissions within the Answer, without a hearing. The Respondents, during 2002, did violate the Packers and Stockyards Act, 1921, 7 U.S.C. § 181 *et seq.* (frequently herein, “the Act”). The Respondents’ violations were “willful”: violations of the Act require no evil intent, no intentional wrongdoing, but merely the intent to act, such as intentionally writing checks to pay for livestock - - without sufficient funds in the account to pay such checks; or intentionally making livestock purchases - - that were paid late, or never paid at all. *In re Marysville Enterprises, Inc., d/b/a Marysville Hog Buying Co., James L. Breeding, and Byron E. Thoreson*, 59 Agric. Dec. 299 (2000).

PARTIES AND COUNSEL

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

[3] Rubén D. Rudolph Jr., Esq., with the Office of the General Counsel, Trade Practices Division, United States Department of Agriculture, Washington, D.C. 20250, represents the Complainant (GIPSA).

[4] The two Respondents are Respondent Don Latham (frequently herein “Respondent Latham” or “the individual Respondent”), and Respondent Poplar Plains Livestock, Inc., a Kentucky corporation (frequently herein “Respondent Poplar” or “the corporate Respondent”). “The Respondents” refers to both Respondents (the individual Respondent and the corporate Respondent), collectively.

[5] Glennis R. Harris, Jr., Esq., 244-A East Water Street, Flemingsburg, Kentucky 41041, represents both Respondents.

PROCEDURAL HISTORY

[6] The Complaint, filed on February 22, 2006, alleged that the Respondents wilfully violated the Packers and Stockyards Act, 1921, 7 U.S.C. § 181 *et seq.* The Complaint alleged that Respondent Poplar, under the management, direction and control of Respondent Latham, failed to pay, when due, the full purchase prices of livestock, totaling \$188,544.76. The Complaint alleged that, of the \$188,544.76 Respondents failed to pay when due, \$132,293.84 remained unpaid as of the date of the issuance of the Complaint.

[7] The Complaint alleged that Respondent Poplar, under the management, direction and control of Respondent Latham, issued two checks in payment for livestock purchases which were returned unpaid by the bank upon which they were drawn, because Respondent Poplar did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay such checks when presented.

[8] The Respondents filed an Answer and requested an oral hearing and the opportunity to review and present evidence as well as provide testimony and cross-examine witnesses.

[9] The Answer, filed on March 20, 2006 (via facsimile initially), asserted that delayed payments and non-payments to Respondent Poplar by subsequent purchasers of livestock from Respondent Poplar were factors in Respondent Poplar's failures to pay as required. The Answer denied the amount of paid or unpaid balance, the Respondents being without sufficient knowledge to express an opinion. The Answer admitted the two returned unpaid checks and asserted that the checks were thereafter paid.

[10] The Answer vigorously opposes the *alter ego* allegations. Based merely on the admissions in the Answer, I cannot determine that issue. Whether Respondent Poplar is the *alter ego* of Respondent Latham (or *vice versa*) need not be determined for purposes of this Decision.

[11] The Respondents did not file a response to GIPSA's Motion for Decision without Hearing by Reason of Admissions, with proposed Decision and Order, filed April 21, 2006.

FINDINGS OF FACT

[12] Poplar Plains Livestock, Inc., is a corporation organized and existing under the laws of the Commonwealth of Kentucky, with a mailing address of Rte 1, P.O. Box 66, Flemingsburg, Kentucky 41041.

[13] Respondent Poplar, the corporate Respondent, was, at all times material herein, engaged in the business of buying and selling livestock in commerce for its own account and as a market agency to buy livestock in commerce on a commission basis, and registered with the Secretary of Agriculture as a dealer to buy and sell livestock and as a market agency to buy livestock in commerce on a commission basis.

[14] Mr. Don Latham is an individual whose business mailing address is Rte 1, P.O. Box 66, Flemingsburg, Kentucky 41041. Respondent Latham, the individual Respondent, is and at all times material herein was president, manager, and one-hundred percent shareholder of the corporate Respondent, and responsible for the day-to-day management, direction, and control of the corporate Respondent.

[15] The corporate Respondent, under the management, direction and control of the individual Respondent, in 2002 issued two checks in payment for livestock purchases which were returned unpaid by the bank upon which they were drawn. These checks were returned because the corporate Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay such checks when presented.

[16] The corporate Respondent, under the management, direction and control of the individual Respondent, in 2002 failed to pay, when due, the full purchase price of livestock, in an amount that clearly was more than *de minimis*.

[17] By virtue of his management, direction and control of the corporate Respondent, the individual Respondent in 2002 acted as a dealer to buy and sell livestock and consequently is subject to the Order entered herein. 7 U.S.C. § 201(d).

CONCLUSIONS

[18] The Secretary of Agriculture has jurisdiction.

[19] The Respondents wilfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b(a)) in 2002 by issuing checks in payment for livestock without sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented, and by failing to pay, when due, the full purchase price of livestock.

ORDER

[20] The Respondents, their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Packers and Stockyards Act, shall cease and desist from:

A. Issuing checks in payment for livestock purchases without maintaining sufficient funds on deposit and available in the account on which the checks are drawn to pay the checks when presented;

B. Failing to pay, when due, the full purchase price of livestock; and

C. Failing to pay the full purchase price of livestock.

[21] The Respondents are hereby suspended as a registrant under the Act for a period of five (5) years; provided, however, that upon application to Packers and Stockyards Programs, a supplemental order may be issued terminating the suspension of the Respondents at any time after one (1) year upon demonstration by the Respondents that they are in full compliance with the Act; and provided further, that this Order may be modified upon application to Packers and Stockyards Programs to permit the individual Respondent's salaried employment by another registrant or a packer after the expiration of one (1) year of suspension upon demonstration of circumstances warranting modification of this Order.

[22] The provisions of this Order shall become effective on the sixth (6th) day after this Decision and Order becomes final. (*See next paragraph.*)

FINALITY

[23] This Decision and Order shall be final 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.
this 24th day of August 2006

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Bldg Room 1031
1400 Independence Ave SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776

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