

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	P. & S. Docket No. D-04-0018
)	
Bert L. Hoose, Jr.,)	
d/b/a Hoose Livestock)	
)	
Respondent)	Decision Without Hearing by Reason of Default

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.)(the “Act”), instituted by a complaint filed on September 29, 2004 by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the Respondent violated the Act.

The complaint alleged that Respondent failed to pay, when due, for livestock in the amount of \$161,050.00. The complaint further alleged that Respondent issued checks in payment for livestock purchases which checks 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 accounts upon which such checks were drawn to pay such checks when presented. Finally, the complaint alleged that Respondent failed to keep accounts, records, and memoranda which fully and correctly disclosed all transactions in its business as a market agency and dealer as required by Section 401 of the Act, in that Respondent failed to keep and maintain: purchase and sales invoices, credit agreements with sellers, load make-up sheets, bank statements, cancelled checks, deposit slips, and accounts receivable records.

A copy of the complaint was mailed by the Hearing Clerk to Respondent by certified

mail on September 29, 2004, and was returned by the U.S. Postal Service to the Hearing Clerk's office on October 12, 2004. The Hearing Clerk remailed the complaint via regular mail on October 21, 2004, and therefore served the complaint upon Respondent pursuant to Section 1.147 of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By The Secretary (7 C.F.R. § 1.147, hereinafter referred to as the "Rules of Practice"), as of that date. Respondent did not file an answer to the complaint within the 20 day time period prescribed by Section 1.136 of the Rules of Practice. Complainant moved for the issuance of a Decision Without Hearing by the Administrative Law Judge, pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

As Respondent failed to answer within the 20 day time period prescribed by the Rules of Practice, and upon the motion of the Complainant for the issuance of a Default Order, the following Decision and Order is issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Bert L. Hoose, Jr., doing business as Hoose Livestock, (hereinafter "Respondent"), is an individual whose business mailing address is 219 Hoose Road, Cherry Valley, New York 13320.

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

(a) Engaged in the business of a market agency buying livestock on a commission basis;

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

(c) Registered with the Secretary of Agriculture as a market agency to buy livestock on a commission basis, and as a dealer buying and selling livestock for his own account in commerce.

3. Respondent, 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 Respondent 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.

Invoice Date	Date of Check	Payment Due Date	Date Check Returned	Check #	Payee	Livestock Amount	Check Amount
8/23/01	8/23/01	8/24/01	9/24/01	1283	Scott & Andrew Willson	\$48,000.00	\$48,020.00 ¹
9/19/01	9/19/01	9/20/01	10/30/01	1303	William Phinney	\$64,600.00	\$64,600.00
10/10/01	10/10/01	10/11/01	10/19/01	1343	Ben Gottfried	\$10,800.00	\$10,800.00
						Total	\$123,420.00

4. Respondent, in the transactions set forth in Finding of Fact 3, above, and on or

¹ The \$20.00 difference between the check amount and the livestock amount is due to a repayment, included in the check for payment of the livestock, of a \$20.00 loan made by Scott and Andrew Willson to Bert Hoose.

about the dates and in the transactions set forth below, purchased livestock and failed to pay, when due, for such livestock purchases.

Purchase Date	Payment Due Date	Payee	Amount
09/19/01	9/20/01	William Griessler	\$9,900.00
10/05/01	10/08/01	Tom & Carol Sackett	\$27,750.00
		Total	\$37,650.00

As of the date of the issuance of the complaint, there remained unpaid a total of \$161,050.00 for livestock purchases by Respondent.

5. Respondent failed to keep accounts, records, and memoranda which fully and correctly disclosed all transactions in its business as a market agency and dealer as required by Section 401 of the Act, in that Respondent failed to keep and maintain: purchase and sales invoices, credit agreements with sellers, load make-up sheets, bank statements, cancelled checks, deposit slips, and accounts receivable records.

Conclusions

By reason of the facts in Findings of Fact above, Respondent willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b).

Order

Respondent Bert L. Hoose, Jr. d/b/a Hoose Livestock, its 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. Issuing checks in payment for livestock purchases without sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented.

Further, Respondent shall keep accounts, records, and memoranda which fully and correctly disclose all transactions in its business as a market agency and dealer as required by Section 401 of the Act. Specifically, Respondent shall keep and maintain: purchase and sales invoices, credit agreements with sellers, load make-up sheets, bank statements, cancelled checks, deposit slips, and accounts receivable records, and other records associated with individual livestock purchases.

In accordance with 7 U.S.C. § 204, Respondent is 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 Respondent at any time after 150 days upon demonstration of circumstances warranting modification of the order. Further, this order may be modified upon application to Packers and Stockyards Programs to permit Respondent's salaried employment by another registrant or a packer after the expiration of the 150 day period of suspension, upon demonstration of circumstances warranting modification of the order.

This decision shall become final and effective without further proceedings 35 days after the date of service upon Respondent, unless it is appealed to the Judicial Officer by a party to the proceeding within 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, DC

this _____ day of _____

Administrative Law Judge