

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	P & S Docket No. D-07-0100
)	
Berry & Sons,)	
Rababeh Islamic Slaughterhouse, Inc.)	
)	Decision and Order
Respondent)	by Reason of Default

The Complaint and Notice of Hearing (“Complaint”), filed on April 27, 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 Programs, Grain Inspection, Packers and Stockyards Administration (“GIPSA”), United States Department of Agriculture (frequently herein “Complainant” or “Packers and Stockyards”). Tonya Keusseyan, 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 Berry & Sons, Rababeh Islamic Slaughterhouse, Inc., a corporation organized and existing under the laws of the State of Michigan (frequently herein “Respondent” or “Respondent Berry & Sons”).

Procedural History

Upon careful consideration of the documents in the file, I conclude that this case can be decided without further proceeding or hearing, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) (Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes, 7 C.F.R. §§ 1.130-1.151). The Complainant filed a “Motion for Decision Without Hearing,” which was accompanied by a proposed “Decision Without Hearing By Reason of Default,” on August 23, 2007. The Respondent did not respond to the Complainant’s Motion.

According to section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)), an answer was due within 20 days after service of the complaint. The Complaint was served on May 2, 2007. No answer to the Complaint has been received from the Respondent. 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 Berry & Sons’ 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. Berry & Sons, Rababeh Islamic Slaughterhouse, Inc. is a corporation organized and existing under the laws of the State of Michigan. Respondent’s mailing address is 2496 Orleans Street, Detroit, Michigan 48207.

2. Respondent was, at all times material to this Decision:

(a) Engaged in the business of buying livestock in commerce for purposes of slaughter;

and

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

3. Respondent was given due notice of the need to obtain a bond or its equivalent:

(a) Respondent was notified by letter on April 21, 2004 that the Packers and Stockyards Act required all packers whose average annual purchases exceeded \$500,000 to file and maintain a surety bond or bond equivalent, and that the Packers and Stockyards Program had information indicating Respondent has been engaging in livestock operations subject to the Act without obtaining an adequate bond or its equivalent. The letter referenced 7 U.S.C. § 204 and notified the Respondent of its obligation to file proof of suitable bond or bond equivalent with Packers and Stockyards Program before engaging in any operations subject to the Act.

(b) Respondent was notified by certified letter on July 9, 2004, that the Respondent had failed to furnish the requested bond coverage and that a continuation of livestock purchases as a packer would be in violation of the bonding requirements of the Packers and Stockyards Act and Regulations. The letter notified Respondent of its obligation to file proof of suitable bond or bond equivalent with Packers and Stockyards Program before engaging in any operations subject to the Act.

(c) On March 3, 2005, a Packers and Stockyards Program representative personally instructed Respondent to submit the required bonding information, and to refrain from engaging in activities subject to the Act until the bonding requirements had been met. Notwithstanding

such notice, and subsequent telephone inquiries, Respondent continued to engage in the business as a packer without maintaining an adequate bond or its equivalent as required by the Act and the Regulations.

4. The 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:

Date of Purchase	Name of Seller	Number of Head	Livestock Amount
1/2/2004	G & S Lambs	303	\$32,973.00
10/10/2004	G & S Lambs	309	\$28,312.90
10/17/2004	G & S Lambs	300	\$27,054.04
10/24/2004	G & S Lambs	318	\$32,273.90
11/7/2004	G & S Lambs	302	\$28,835.55
11/14/2004	G & S Lambs	292	\$28,918.20
11/21/2004	G & S Lambs	313	\$31,780.00
11/30/2004	G & S Lambs	394	\$42,742.23
12/5/2004	G & S Lambs	334	\$34,667.00
12/9/2004	United Producers, Inc.	47	\$4,330.29
12/12/2004	G & S Lambs	274	\$28,302.20
12/20/2004	United Producers, Inc.	133	\$13,069.85
12/23/2004	United Producers, Inc.	19	\$2,323.67
12/26/2004	G & S Lambs	223	\$22,825.77
12/27/2004	United Producers, Inc.	80	\$11,144.00
12/30/2004	United Producers, Inc.	121	\$15,832.60
1/3/2005	United Producers, Inc.	48	\$6,098.95
1/6/2005	United Producers, Inc.	31	\$3,769.41
1/9/2005	G & S Lambs	296	\$36,050.60
1/10/2005	United Producers, Inc.	248	\$32,046.50
1/13/2005	G & S Lambs	272	\$31,721.80
1/16/2005	G & S Lambs	274	\$33,357.75
1/17/2005	United Producers, Inc.	293	\$30,051.31
1/20/2005	G & S Lambs	306	\$37,381.95
1/20/2005	United Producers, Inc.	51	\$6,750.08
1/23/2005	G & S Lambs	225	\$27,684.85
1/24/2005	United Producers, Inc.	289	\$36,957.27
1/27/2005	United Producers, Inc.	77	\$7,952.50
2/6/2005	G & S Lambs	362	\$44,370.65
	Total	6,534	\$719,578.82

Conclusions

1. The Secretary of Agriculture has jurisdiction.

2. By reason of the facts found in Findings of Fact 3 and 4, Respondent Berry & Sons wilfully violated sections 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 engaging in business as a packer without maintaining an adequate bond or its equivalent as required.

Order

1. Respondent Berry & Sons, its officers, directors, agents, employees, successors and assigns, directly or through any corporate or other device, in connection with all its activities subject to the Act, shall cease and desist from by engaging in business as a packer without maintaining an adequate bond or its equivalent as required by the Act and the regulations promulgated under it.

2. Pursuant to section 203(b) of the Act (7 U.S.C. § 193(b)), Respondent Berry & Sons is assessed a civil penalty in the amount of One Thousand dollars, (\$1,000.00). The civil penalty payment instrument shall be made payable to the order of USDA-GIPSA and sent to:

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

Payment shall be made within 30 days from the date this Order is final and effective (see next paragraph).

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* enclosed 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 15th day of October 2007

Jill S. Clifton
Administrative Law Judge

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