

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) **P & S Docket No. D-07-0157**
)
Alexander Carr Smith,)
) **Decision and Order**
Respondent) **by Reason of Default**

The Complaint, filed on July 12, 2007, alleged that the Respondent Alexander Carr Smith was engaged in 2004 in the business of buying and selling livestock in commerce on a commission basis without maintaining an adequate bond or bond equivalent, and thereby willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181, *et seq.*) (frequently herein the “Packers and Stockyards Act” or the “Act”).

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 “Packers and Stockyards” or “Complainant”). Packers and Stockyards is represented by Gary F. Ball, Esq. with the Office of the General Counsel (Trade Practices Division), United States Department of Agriculture, 1400 Independence Ave. SW, Washington, D.C. 20250-1413.

The Respondent is Alexander Carr Smith, an individual (frequently herein “Respondent Smith” or “Respondent”).

Procedural History

Packers and Stockyards's Motion for Decision Without Hearing by Reason of Default, filed November 28, 2007, is before me. Respondent Smith was served on December 11, 2007 with a copy of that Motion and a copy of the proposed Decision and has failed to respond.

The Hearing Clerk mailed a copy of the Complaint to Respondent Smith by certified mail on July 12, 2007, together with a copy of the Hearing Clerk's notice letter and a copy of the Rules of Practice. The certified mailing was returned to the Hearing Clerk with the Post Office label indicating "RETURN TO SENDER" "Unclaimed." On August 17, 2007, the Hearing Clerk remailed the Complaint and accompanying documents to Respondent Smith by ordinary mail. The Respondent's answer was due within 20 days after service, according to section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). The time for filing an answer to the Complaint expired on September 6, 2007. The Respondent has failed to file an answer, so the Respondent is in default, pursuant to section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)).

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)). Failure to file an answer constitutes a waiver of hearing (7 C.F.R. § 1.139). Accordingly, the material facts alleged in the Complaint, which are admitted by the 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). *See* 7 C.F.R. §1.130 *et seq.*

Findings of Fact

1. Respondent Alexander Carr Smith is an individual whose mailing address is 349 Montgomery Avenue, P.O. Box 555, Church Hill, Tennessee, 37642.

2. At all times material herein, Respondent Smith was:

(a) Engaged in the business of buying livestock on a commission basis in commerce within the meaning of and subject to the provisions of the Act; and

(b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce and as a market agency to buy livestock on a commission basis.

3. Respondent Smith, during October 28, 2004 through December 15, 2004, was engaged in the business of buying and selling livestock in commerce on a commission basis without maintaining an adequate bond or bond equivalent.

Conclusions

1. The Secretary of Agriculture has jurisdiction.

2. By reason of the facts alleged in paragraphs II and III of the Complaint, Respondent Alexander Carr Smith has willfully violated sections 312(a) of the Act (7 U.S.C. § 213(a)), and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30).

Order

1. Respondent Alexander Carr Smith, 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 the business of buying and selling livestock in commerce on a commission basis without maintaining an adequate bond or bond equivalent.

2. In accordance with section 312(b) of the Act (7 U.S.C. § 213), Respondent Alexander Carr Smith is assessed a **civil penalty** of Six Thousand dollars (**\$6,000**). 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 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 11th day of January 2008

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