

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-07-0162
Gary Thompson,)
Respondent)

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 served upon Respondent, who applied for and was granted an extension of time until October 19, 2007, in which to file an answer. By letter dated October 22, 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, as extended by the Chief Administrative Law Judge's order, 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. Respondent Gary Thompson, hereinafter "Respondent", is an individual whose business address is P. O. Box 113, Pitkin, Louisiana 70656.
2. Respondent is and at all times material herein was:

(a) Engaged in the business of a dealer, buying and selling livestock in commerce for his own account, and of a clearing agency¹.

(b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account and as a clearing agency.

3. Respondent on or about the dates and in the transactions set forth below:

(a) Purchased livestock for his dealer operation and failed to pay, within the time period required by the Act, the full purchase price of such livestock.

Purchase Date	Livestock Seller	No. of Head	Livestock Amount	Date Payment Due per ¶409a	Date Checks Delivered & Deposited	Payment Amounts	No. of Days Late
1/10/05	Kinder Livestock Auction, Inc	203	\$91,460.60	1/11/05	1/18/05	\$114,389.70*	7
1/17/05	Kinder Livestock Auction, Inc	110	\$44,259.89	1/18/05	1/24/05	\$58,028.03*	6
1/24/05	Kinder Livestock Auction, Inc	96	\$46,759.17	1/25/05	2/04/05	\$59,389.46**	10
1/31/05	Kinder Livestock Auction, Inc	88	\$43,039.58	2/01/05	2/09/05 2/09/05 2/11/05	\$3,696.46 \$6,597.56 \$45,603.99*	8 8 10
2/21/05	Kinder Livestock Auction, Inc	124	\$56,756.09	2/22/05	2/28/05 3/04/05	\$55,883.98 \$24,596.90*	6 10
1/15/05	Miller Livestock Markets, Inc.	2	\$847.85	1/18/05	1/31/05	\$7,528.92*	13
2/19/05	Miller Livestock Markets, Inc.	16	\$7,573.38	2/22/05	3/07/05 3/07/05	\$5,484.76 \$2,088.62	13 13
1/11/05	Dominique's Livestock Market, Inc.	75	\$35,058.50	1/12/05	1/21/05	\$47,409.26*	9
1/12/05	Dominique's Livestock Market, Inc.	79	\$39,917.46	1/13/05	1/21/05	\$45,628.34*	8

¹ Respondent clears the livestock purchases of his sons, Benson Wayne Thompson and Jacob Thompson, individually registered dealers who purchase livestock for Respondent.

Purchase Date	Livestock Seller	No. of Head	Livestock Amount	Date Payment Due per §409a	Date Checks Delivered & Deposited	Payment Amounts	No. of Days Late
1/18/05	Dominique's Livestock Market, Inc.	58	\$26,615.68	1/19/05	1/28/05	\$35,498.77**	9
1/25/05	Dominique's Livestock Market, Inc.	46	\$20,798.92	1/26/05	2/07/05	\$29,895.71**	12
1/26/05	Dominique's Livestock Market, Inc.	40	\$18,976.33	1/27/05	2/07/05	\$18,976.33	11
2/01/05	Dominique's Livestock Market, Inc.	21	\$10,825.08	2/02/05	2/16/05	\$10,825.08	14
2/02/05	Dominique's Livestock Market, Inc.	8	\$3,903.65	2/03/05	2/16/05	\$3,965.75	13
3/01/05	Dominique's Livestock Market, Inc.	53	\$26,822.88	3/02/05	3/15/05	\$27,214.33 ***	13
3/02/05	Dominique's Livestock Market, Inc.	21	\$15,996.25	3/03/05	3/15/05	\$16,135.45 ***	12
DEALER	TOTALS:	1,040	\$ 489,611.31				

* This payment included an amount that Respondent owed on additional livestock that Respondent purchased as a farmer under the name Thompson Farms.

** This payment included a buyer's commission and an amount that Respondent owed on additional livestock that Respondent purchased as a farmer under the name Thompson Farms.

*** These total transaction amounts were taken from a third party check in the amount of \$91,881.77 on 3/15/05, after a third party check in the amount of \$58,829.40 that Respondent initially provided was returned unpaid on 3/14/05.

(b) Regularly delivered livestock payment checks drawn on his checking account, or endorsed third party checks that Respondent had received in payment for livestock, to the three livestock markets identified above, a week or more after the purchase of the livestock for which he was making payment despite having been put on notice by certified mail received December 23, 2003, that he was violating section 409(a) of the Act (7 U.S.C. § 228b(a)) by failing to make payment for livestock purchases made at another Louisiana livestock market by the close of the next business day following purchase and transfer of possession of such livestock. Although

Respondent subsequently obtained a written credit agreement from that market, and from a number of other markets, Respondent failed to obtain written credit agreements from the three markets where he purchased livestock in the above transactions.

4. Respondent failed to keep accounts, records, and memoranda that fully and correctly disclosed all transactions involved in his business, as required under section 401 of the Act, including all livestock invoices and recap statements obtained in connection with the purchase of livestock, copies of all third party checks that were given to livestock sellers in payment for Respondent's livestock purchases, and a complete record showing the dates and amounts of all payments made for livestock purchases, including payments made using third party checks.

Conclusions

By reason of the facts found in Findings of Fact 3 above, Respondent Gary Thompson 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 4 above, Respondent Gary Thompson has failed to meet the requirements of section 401 of the Act (7 U.S.C. § 221), and therefore has willfully engaged in a violation of section 312(a) of the Act (7 U.S.C. § 213(a)).

Order

Respondent Gary Thompson, directly or through any corporate or other device, in connection with his operations as a dealer, buying and selling livestock in commerce for his own account, and of a clearing agency for his sons, Benson Wayne Thompson and Jacob Thompson, shall cease and desist from failing to pay, within the time period required by the Act, the full purchase price of livestock.

Respondent shall maintain accounts, records, and memoranda that fully and correctly disclose his transactions subject to the Act, including all livestock invoices and recap statements obtained in connection with the purchase of livestock, copies of all third party checks that were given to livestock sellers in payment for Respondent's livestock purchases, and a complete record showing the dates and amounts of all payments made for livestock purchases, including payments made using third party checks.

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 \$6,500.00. Respondent's payment shall be made out to "USDA-GIPSA" and sent to USDA-GIPSA, P.O. Box 790335, St. Louis, Missouri 63179-0335. A reference notation to the docket number of this case, "P&S Dkt No. D-07-162," must be included on the face of the payment instrument.

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.
this 11th day of April, 2008

Marc R. Hillson
Administrative Law Judge