

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	P&S Docket No. D-07-0152
Billy Mike Gentry,)	
)	Decision and Order
Respondent)	By Reason of Default

The Complaint, filed on June 25, 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 Program, Grain Inspection, Packers and Stockyards Administration (“GIPSA”), United States Department of Agriculture (frequently herein “Complainant” or “Packers and Stockyards”). Eric Paul, 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 Billy Mike Gentry, an individual who does business under the name Mike Gentry, and the trade name B&M Farms or B & M Farms, and whose business address is P.O. Box 667, Houston, MS 38851-3020 (frequently herein “Respondent Gentry” or “Respondent”. The Respondent has not appeared.

Procedural History

No answer to the Complaint has been received. The time for filing an answer expired in mid-August 2007. 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 on Respondent Gentry by the Hearing Clerk by mailing them to Respondent at his last known business address by ordinary mail on July 25, 2007, in accordance with section 1.147(c)(1) of the Rules of Practice after the return of a June 26, 2007 certified mailing marked by the U.S. Postal Service, “Return to Sender - UNCLAIMED”. By letter dated August 21, 2007, Respondent was notified that he had failed to file an answer with the Hearing Clerk within the allotted time.

The Complainant’s Motion for Decision without Hearing by Reason of Default, filed April 16, 2008, is before me. Respondent Gentry’s copy was marked by the U.S. Postal Service, “Returned to Sender - UNCLAIMED,” and thereafter remailed by ordinary mail on June 3, 2008. Respondent Gentry failed to respond.

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’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.

Findings of Fact

1. Billy Mike Gentry is an individual who does business under the name Mike Gentry, and the trade name B&M Farms or B & M Farms, and whose business address is P.O. Box 667, Houston, MS 38851-3020.

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

(a) Engaged in the business of a dealer, buying and selling livestock for his own account, and of a market agency, buying livestock on a commission basis; and

(b) Registered with the Secretary of Agriculture as a dealer, buying and selling livestock for his own account, and as a market agency buying livestock on commission under the name Mike Gentry.

(c) Not authorized to conduct business under any trade name under his current registration.

3. In a consent decision signed by Respondent Gentry and issued on July 5, 1991 (*In re: Billy Mike Gentry, P. & S. Docket No. D-91-24*), Respondent Gentry agreed to cease and desist from, among other things, engaging in business in any capacity for which bonding is required under the Act and regulations without filing and maintaining a reasonable bond or its equivalent, as required by the Act and the regulations. Respondent was assessed a \$4,000.00 civil penalty.

4. In a Decision Without Hearing by Reason of Default issued on July 25, 2002 (*In re: Billy Mike Gentry, 61 Agric. Dec. 789*), a finding was made that “Respondent was served with a letter of notice on March 13, 2000, informing him that the \$10,000.00 surety bond he maintained was inadequate, and that a \$75,000.00 surety bond was required to secure

the performance of his livestock obligations. Notwithstanding this notice, Respondent continued to engage in the business of a market agency and a dealer without maintaining an adequate bond or its equivalent.” Respondent Gentry was again ordered, by the Decision which became final and effective on November 2, 2002, to cease and desist from engaging in business in any capacity for which bonding is required under the Act, without filing and maintaining an adequate bond or its equivalent. Respondent was assessed a \$5,000.00 civil penalty.

5. In a certified letter dated December 4, 2003, which was served on Respondent Gentry by regular mail on January 12, 2004, after the certified mail transmittal was returned “UNCLAIMED”, Robert L. Schmidt, Financial Unit Supervisor of the Atlanta, Georgia regional office of Complainant, informed Respondent Gentry that a recent investigation of his records disclosed that Respondent’s current \$10,000.00 bond coverage needed to be increased to \$65,000.00. Respondent was also notified that he must not use the trade name B&M Farms in his business, unless he submitted an amended application to include the trade name in his registration and a trust fund agreement rider to cover the trade name on his bond equivalent.

6. In a certified letter dated June 22, 2006, served upon Respondent Gentry on June 30, 2006, Creig F. Stephens, Resident Agent Supervisor of the Atlanta, Georgia regional office of Complainant, informed Respondent Gentry that a recent investigation of his records disclosed that Respondent’s \$10,000.00 bond coverage needed to be increased to \$70,000.00.

7. Despite the above orders and written notices, Respondent has neither increased the amount of his bond coverage above \$10,000.00, nor sought to amend his registration to

include the trade name and modify the trust fund agreement that he maintains as a bond equivalent to cover operations conducted under the trade name B&M Farms or B & M Farms.

8. During the third quarter of 2006, Respondent made livestock purchases totaling \$4,749,337.43 as a market agency buying on commission at four posted stockyards. Respondent was paid buying commissions as Mike Gentry, and as B & M Farms, in these transactions. A continuation of livestock purchases at this volume will require Respondent to file a \$85,000 bond or bond equivalent to comply with the regulations.

9. On June 4, 2007, Respondent Gentry filed his Annual Report of Dealer or Market Agency Buying on Commission (Annual Report) covering the 2006 calendar year. On page 1 of the Annual Report, Respondent reported that the total cost of livestock that he had purchased as a dealer and as a market agency buying on a commission during 2006 was \$3,544,463.00. More specifically, Respondent reported that during the third quarter of 2006, he purchased 1028 head of livestock with a total purchase cost of \$223,571.00 as a dealer for his own account; and that he purchased an additional 2120 head of livestock with a total purchase cost of \$850,120.00 for the account of others. Respondent's figures were incorrect, as an investigation conducted in the spring of 2007 has documented that during the third quarter of 2006, in addition to an undetermined amount of livestock that Respondent purchased for his own account as a dealer, Respondent purchased 9,639 head of cattle having a total livestock cost of \$4,749,337.43 on a commission basis at four posted stockyards.

Conclusions

Respondent Billy Mike Gentry has wilfully violated section 312(a) of the Act (7 U.S.C. §§ 213(a)), and section 201.30(b) of the regulations (9 C.F.R. § 201.30(b)). Findings

of Fact Nos. 3 - 8.

Respondent Billy Mike Gentry has wilfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) by filing an Annual Report that did not accurately reflect the total cost of livestock that Respondent purchased during calendar year 2006, and in the third quarter of that year. Findings of Fact No. 9.

Order

Respondent Billy Mike Gentry, directly or through any corporate or other device, in connection with his operations as a dealer and a market agency buying livestock on commission, including operations under the name “Mike Gentry”, and the trade name “B&M Farms” or “B & M Farms”, shall cease and desist from:

1. Purchasing livestock without filing and maintaining a bond or its equivalent in the full amount determined to be adequate by the Packers and Stockyards Programs, GIPSA, in accordance with the Act and the regulations; and
2. Operating under any trade name that he is not authorized to use under his registration, and on his bond or approved bond equivalent.

Respondent Billy Mike Gentry is suspended as a registrant for the period of thirty days, and thereafter until he has demonstrated that he has obtained and filed a bond or approved bond equivalent in the full amount required under the regulations, and filed an application for amended registration. Jurisdiction is retained for the issuance of a Supplemental Order terminating Respondent’s suspension following such demonstration to Packers and Stockyards Program.

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 7th day of October 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