

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P & S Docket No. D-08-0160
)
Steve M. Hand, d/b/a Steve)
Hand Cattle Company,)
)
Respondent)

DECISION AND ORDER

This proceeding was instituted under the Packers & Stockyards Act, 1921, as amended and supplemented, (7 U.S.C. § 181 *et seq.*), hereinafter referred to as the “Act,” by a Complaint filed by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyard Administration, United States Department of Agriculture, on July 31, 2008. Specifically, the Complaint alleged that Respondent: 1) failed to make timely payments for livestock purchases as required by section 409 of the Act; 2) issued insufficient funds checks for livestock in violation of section 312(a) of the Act; and 3) engaged in the business of a livestock dealer without maintaining an adequate bond or its equivalent as required by the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*), hereinafter referred to as the “Regulations.”

Respondent filed an Answer on August 26, 2008. In his Answer, Respondent admitted that he failed to pay livestock sellers within the time period required by section 409 of the Act. Respondent failed to deny or otherwise respond to the Complaint allegations concerning insufficient funds checks that he issued in payment for livestock

and such allegations are deemed admitted. *See* 7 C.F.R. § 1.136(c). Respondent also admitted that he is not bonded for the protection of livestock sellers as alleged in the Complaint, although Respondent asserts that he is no longer in need of a bond because he is no longer operating subject to the Act.

Complainant filed a Motion for Decision on November 24, 2008. Respondent did not file a response to Complainant's Motion.

Based on Respondent's admissions in his Answer, Complainant's "Motion for Decision," filed on November 24, 2008, is hereby granted and the following Decision and Order is issued without hearing pursuant to section 1.139 of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes ("Rules of Practice").

Findings of Fact

1. Steve M. Hand, doing business as Steve Hand Cattle Company, referred to herein as the "Respondent," is an individual whose mailing address is in Ocilla, Georgia.¹

2. Respondent was at all times material herein:

(a.) Engaged in the business of buying and selling livestock in commerce for his own account or buying livestock on a commission basis for others; and

(b.) Registered with the Secretary of Agriculture as a dealer buying and selling livestock in commerce for his own account or for the account of others.

3. Respondent failed to make timely payment for 610 head of cattle, in the amount of \$256,783.01, during the period of January 17, 2007, through September 12, 2007. As of September 25, 2007, \$78,920.78 of that amount remained unpaid.

¹ Respondent's address has been omitted to protect his privacy. Respondent's service address is on file with the Hearing Clerk's Office.

4. Respondent issued checks for more than \$250,000 in livestock purchases that 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.

5. Respondent is not bonded for the protection of livestock sellers. Respondent asserts that he is no longer operating as a livestock dealer subject to the Act.

Conclusions

The Complaint alleges that Respondent has engaged in the business of buying and selling livestock in commerce for his own account, or buying livestock on a commission basis for others, and that he is registered with the Secretary of Agriculture as a livestock dealer. *See* Complaint at ¶ I. Respondent fails to deny or otherwise respond to these allegations in his Answer and the allegations are deemed admitted for purposes of this proceeding. *See* 7 C.F.R. § 1.136(c). Livestock dealers are subject to the jurisdiction of the Secretary for purposes of enforcing the Packers and Stockyards Act. *See* 7 U.S.C. § 201(d) (defining “dealer”).²

The Complaint also alleges that Respondent failed to make timely payment for 610 head of cattle, in the amount of \$256,783.01, during the period of January 17, 2007 through September 12, 2007, and that as of September 25, 2007, which was the closing date of the Packers and Stockyards Program’s field investigation, \$78,920.78 of that

² Pursuant to 7 U.S.C. §§ 213(b) and 204, the Secretary is authorized to assess civil penalties for unfair trade practices by dealers and to suspend dealer registrations for violations of the Act. Section 204 of the Packers and Stockyards Act is a freestanding provision that was enacted as part of the Department of Agriculture Appropriation Act, 1944, July 12, 1943.

amount remained unpaid. *Id.* As of August 17, 2008, the date of Respondent's Answer, he was still trying to repay that debt. *See* Answer at ¶ 1. Section 409(a) of the Act requires livestock dealers and other regulated entities to pay for their livestock purchases before the close of the next business day following the purchase. *See* 7 U.S.C. § 228b(a).³ Payment must be made in full. *Id.* The prompt payment requirements in the Packers and Stockyards Act are designed to protect farmers and ranchers from receiving less than fair market value for their livestock. *See In re: Fred Holmes, d/b/a Holmes Livestock*, 62 Agric. Dec. 254, 257 (2003).⁴ Any delay which results in an extension of the statutory payment requirement is expressly made an unfair practice in violation of section 312(a) of Act. *See* 7 U.S.C. § 228b(c). In his Answer, Respondent admits and takes responsibility for the \$78,920.78 that he owes to livestock sellers. *See* Answer at ¶ 1.

³ Section 409 requires payment by the next business day unless different payment terms are expressly agreed to in writing prior to the sale. *See* 7 U.S.C. § 228b(b). If payment for livestock purchases is mailed, it must be placed in the mail by the next business day. *See id.*, at § 228b(a).

⁴ *See also, e.g., Van Wyk v. Bergland*, 570 F.2d 701, 704 (8th Cir. 1978) (stating one purpose of the Packers and Stockyards Act is to assure fair trade practices in the livestock marketing industry in order to safeguard farmers and ranchers against receiving less than the true market value of their livestock); *Bruhn's Freezer Meats of Chicago, Inc. v. USDA*, 438 F.2d 1332, 1337 - 1338 (8th Cir. 1971) (stating the purpose of the Packers and Stockyards Act is to assure fair trade practices in the livestock-marketing and meat-packing industry in order to safeguard farmers and ranchers against receiving less than the true market value of their livestock and to protect consumers against unfair business practices in the marketing of meats and other products); *Pennsylvania Agric. Coop. Mktg Ass'n v. Ezra Martin Co.*, 495 F. Supp. 565, 570 (M.D. Pa. 1980) (memorandum opinion) (stating one purpose of the Packers and Stockyards Act is to give all possible protection to suppliers of livestock); *United States v. Hulings*, 484 F. Supp. 562, 567 (D. Kan. 1980) (memorandum opinion) (stating one purpose of the Packers and Stockyards Act is to protect farmers and ranchers from receiving less than fair market value for their livestock and to protect consumers from unfair practices); *In re: Ozark County Cattle Co.*, 49 Agric. Dec. 336, 360 (1990) (stating the primary objective of the Packers and Stockyards Act is to safeguard farmers and ranchers against receiving less than the true value of their livestock).

The fact that Respondent may be making monthly and weekly payments on his outstanding livestock debt, as he asserts in his Answer, does not excuse the violations of the Packers and Stockyards Act. As noted above, any delay in payment to livestock sellers, regardless of the reason for the delay, is an “unfair practice” and a violation of the Act. *See* 7 U.S.C. § 228b. After-the-fact promissory notes do not meet the express requirements of the Act. *Id.* Even if Respondent had fully repaid the livestock sellers listed in the Complaint, “it is well-settled that present compliance is irrelevant in determining the sanction for past violations.” *See Fred Holmes*, 62 Agric. Dec., at 258 (*quoting In re: A.W. Schmidt & Son, Inc.*, 46 Agric. Dec. 586, 593 (1987)).

The Complaint also alleges that Respondent issued checks for more than \$250,000 in livestock purchases that 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. *See* Complaint at ¶ III. The issuance of insufficient funds checks is an unfair practice in violation of section 312(a) of the Act. *See, e.g., In re: George O. Durflinger, Jr.*, 58 Agric. Dec. 940, 942 (1999); *In re: Richard Garver*, 45 Agric. Dec. 1090, 1095 (1986). In his Answer, Respondent fails to deny or otherwise respond to the Complaint allegations concerning the insufficient funds checks that he issued in payment for livestock and such allegations are deemed admitted. *See* 7 C.F.R. § 1.136(c).

Finally, the Complaint alleges that Respondent has been put on notice of the bonding requirements in the Packers and Stockyards Act and Regulations and that Respondent has continued to engage in the business of a livestock dealer without maintaining an adequate bond. *See* Complaint at ¶ V. Livestock dealers are required to

maintain registration and bonding for the protection of livestock sellers. *See* 7 U.S.C. §§ 203 and 204; 9 C.F.R. §§ 201.10 (registration requirements and procedures) and 201.29 (bonding requirements).⁵ “[M]embers of the industry are entitled to rely upon the fact that all livestock dealers are required to carry an appropriate bond.” *See In re: Robert F. Johnson*, 47 Agric. Dec. 436, 440 (1988).⁶ Failure to maintain a bond is an unfair and deceptive practice in violation of section 312(a) the Act. *See, e.g., In re: Highmore Livestock Exchange*, 48 Agric. Dec. 329, 339 - 340 (1989); *Robert Johnson*, 47 Agric. Dec. at 441; *In re Mark V. Porter*, 47 Agric. Dec. 656, 667 (1988); *In re: Klemme Cattle Co., Inc.*, 45 Agric. Dec. 1108, 1110 (1986).

In his Answer, Respondent admits that he is not bonded but asserts that he is no longer dealing cattle. *See* Answer at ¶2. According to Respondent, he is only “backgrounding” cattle on grass at his farm. *Id.* Complainant is seeking no sanction for the bonding allegation. Respondent is required to be bonded for the protection of livestock sellers if he reenters the livestock trade as a dealer. *See* 7 U.S.C. § 204; 9 C.F.R. § 201.29.

Sanctions are appropriate for serious and repeated violations of the Department’s regulatory programs in order to deter the named respondent and others in the regulated industry from future violations. *See, e.g., In re: Larry F. Wooten and Roswell Livestock*

⁵ The amount of the required bond, or bond equivalent, is determined in accordance with section 201.30 of the Regulations. *See* 9 C.F.R. § 201.30. Originally, the Packers and Stockyards Act did not grant the Secretary the authority to require bonding by market agencies and livestock dealers. The authority was granted in the Annual Department of Agriculture Appropriation Act of 1924 and made permanent by the Department of Agriculture Appropriation Act of 1943, which is codified at 7 U.S.C. § 204.

⁶ *See also In re: Edward Tiemann*, 47 Agric. Dec. 1573, 1585 (1988) (“sellers of livestock have a right to expect that respondent has the required [bond] coverage, and that the registrant has a secondary source of payment”).

Auction Sales, Inc., 58 Agric. Dec. 944, 980 (1999).⁷ In this case, Respondent's failure-to-pay and NSF check violations are serious and repeated. When livestock purchasers do not make prompt payment it forces the sellers to finance the transaction. *See Van Wyk v. Bergland*, 570 F.2d 701, 704 (8th Cir. 1978).

The Packers and Stockyards Program's recommendation that Respondent be ordered to cease and desist from violating the Act and suspended as a registrant under the Act for five years is consistent with the sanctions that are regularly imposed for serious and repeated violations of the Packers and Stockyards Act. *See, e.g., In re: Don Latham and Poplar Plains Livestock, Inc.*, 65 Agric. Dec. 1231, 1235 (2006) (five year suspension for failing to pay, failing to pay when due, and issuing NSF checks with a one year proviso); *Fred Holmes*, 62 Agric. Dec., at 259 - 260 (five year suspension for failing to pay, failing to pay when due, and issuing NSF checks, with a one year proviso).⁸ In this case, a five-year suspension is particularly appropriate given that Respondent is already subject to an Order of the Secretary that requires him to cease and desist from failing to pay when due and issuing NSF checks. *See In re: Steve M. Hand*, P&S Docket No. D-06-0013, slip op.

⁷ Current Departmental sanction guidelines are set forth in *In re: S.S. Farms Linn County, Inc.*, 50 Agric. Dec. 476, 497 (1991), *aff'd* 991 F.2d 803 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3).

⁸ *See also In re: Wes Myers d/b/a Wes Myers Livestock*, 61 Agric. Dec. 349, 353 (2002) (five-year suspension); *In re: Charles L. Hamborsky*, 59 Agric. Dec. 834, 838 (2000) (same); *In re: Wayne H. Crites*, 59 Agric. Dec. 333, 335 (2000) (same); *In re: Marysville Enterprises, Inc., d/b/a Marysville Hog Buying Co., James L. Breeding, and Byron E. Thoreson*, 59 Agric. Dec. 299, 332 (2000) (same); *In re: Press Harmon Andrews*, 58 Agric. Dec. 464, 465 - 466 (1999) (same); *Durflinger*, 58 Agric. Dec. at 943 (same); *In re: Hines and Thurn Feedlot, Inc., d/b/a Thurn & Hines Livestock, James L. Thurn, and Deryl D. Hines*, 57 Agric. Dec. 1408, 1431 (1998) (same); *In re: S. Levon Owens*, 55 Agric. Dec. 499, 502 - 503 (1996) (same); *Tiemann*, 47 Agric. Dec. at 1605 (same).

(October 12, 2006) (attached to the Complaint as “Exhibit A”). Respondent violated the provisions of that Order within four months of its issuance.

Order

Respondent Steve M. Hand, doing business as Steve Hand Cattle Company, his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Purchasing livestock and failing to pay for such livestock purchases within the time period required by the Act; and
2. Issuing checks in payment for livestock without having and maintaining sufficient funds on deposit and available in the accounts upon which they are drawn to pay such checks when presented.

Respondent is hereby suspended as a registrant under the Act for a period of five (5) years and thereafter until Respondent is properly bonded. Provided, however, that upon application to the Packers and Stockyards Program, a supplemental order may be issued terminating the suspension of Respondent’s registration at any time after one (1) year upon demonstration by Respondent that he is in full compliance with the Act and Regulations; And provided further, that this Order may be modified upon application to the Packers and Stockyards Program to permit the salaried employment of Respondent by another registrant or packer after the expiration of one year of the suspension term upon demonstration of circumstances warranting modification of the Order.

The provisions of this Order shall become effective on the sixth (6th) day after service on Respondent.

Copies of this Decision and Order shall be served on the parties.

Issued in Washington D.C.
this 13th day of January 2009

MARC R. HILLSON
CHIEF ADMINISTRATIVE LAW JUDGE