

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

P. & S. Docket No. D-08-0157

In re: BILL SHAFER,

Respondent

DEFAULT DECISION AND ORDER

This is a disciplinary proceeding under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.)(the “Act”), instituted by a Complaint filed on July 30, 2008 by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondent Bill Shafer (hereinafter “Respondent”) violated the Act.

The Complaint alleged that between August 2006 and September 2006 Respondent engaged in operations subject to the Act without maintaining adequate bond or bond equivalent. A copy of the Complaint was mailed by the Hearing Clerk to Respondent by certified mail in July of 2008, and was returned as “unclaimed” by the U.S. Postal Service to the Hearing Clerk's office. The Hearing Clerk re-mailed the Complaint and served the Respondent via regular mail on August 27, 2008 pursuant to Section 1.147 of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By The Secretary (7 C.F.R. § 1.147, hereinafter referred to as the "Rules of Practice), as of that date. As the Respondent failed to file an answer to the Complaint within the 20 day time period prescribed by Section 1.136 of the Rules of Practice, the Complainant has moved for the issuance of a Decision Without Hearing by the Administrative Law Judge, pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Since Respondent failed to answer the Complaint within the 20 day time period prescribed by the Rules of Practice thereby admitting the factual allegations contained in the Complaint, the following Default Decision and Order will be issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent is an individual proprietor whose business mailing address is in the state of Texas. Respondent's business mailing address is also a personal address, and will therefore be omitted from this decision to protect Respondent's privacy, but has been provided to the Hearing Clerk for purposes of service of this decision.

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

(a) Engaged in the business of a market agency purchasing livestock in commerce on a commission basis; and

(b) Registered with the Secretary of Agriculture as a dealer.

3. On March 17, 2004, the Packers and Stockyards Program received notice from the International Fidelity Insurance Company of Newark, New Jersey that Respondent's bond was cancelled, effective April 19, 2004. On May 5, 2004, Respondent was notified¹ that his bond had terminated on April 19, 2004, and that unless Respondent secured a new bond or bond equivalent securing the performance of his dealer obligations, Respondent must discontinue dealer operations for which bonding is required under the Packers and Stockyards Act.

¹ Respondent was notified by letter dated March 19, 2004. The return receipt card of the March 19, 2004 certified letter was returned to the Packers and Stockyards Program on April 12, 2004 as "unclaimed". The letter was then delivered to Respondent by Federal Express on May 5, 2004.

Respondent was also notified that continuing operations without proof of adequate bond was a violation of 7 U.S.C. § 204 and 213(a) and 9 C.F.R. § 201.29 and 201.30.

4. On October 4, 2004, Respondent was notified² by certified letter from the Packers and Stockyards Program that Respondent was operating subject to the Packers and Stockyards Act and regulations without being properly bonded, in violation of the bonding requirements of the Act and Regulations. Respondent was informed that he must immediately cease all livestock operations subject to the Act until Respondent was properly bonded. Respondent was also required to submit to the Packers and Stockyards Program, within 30 days of receipt of the letter, a bond equivalent to his previous bond of \$25,000.00, or a summary of his total dollar volume of all livestock traded and/or purchased in the past twelve months in order for the Packers and Stockyards Program to accurately assess Respondent's bonding requirement. Notwithstanding this notice, Respondent did not submit a bond equivalent to his previous bond of \$25,000.00, or a summary of his total dollar volume of all livestock traded and/or purchased. Respondent continued to engage in the business of purchasing livestock in commerce, on a commission basis, without maintaining an adequate bond as required by the Act and the Regulations.

5. Respondent, between August 2006 and September 2006, engaged in the business of purchasing livestock in commerce, on a commission basis, without maintaining an adequate bond or bond equivalent. The details of the purchase transactions are more fully set forth in paragraph III of the Complaint.

² Respondent was notified by certified letter dated September 7, 2004. The signed return receipt card was received by the Packers and Stockyards Program on October 4, 2004.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts above, Respondent willfully violated section 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

Respondent Bill Shafer, 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 operations subject to the act without maintaining adequate bond or bond equivalent.

This decision shall become final and effective without further proceedings 35 days after the date of service upon 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, DC
January 22, 2009

PETER M. DAVENPORT
Administrative Law Judge