

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-08-0143
)
Joseph Frank Haun,)
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)
) Decision Without Hearing
Respondent) By Reason of Default

Preliminary Statement

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 June 18, 2008 by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondent Joseph Frank Haun (hereinafter “Respondent”) violated the Act.

The Complaint alleged that Respondent 1) issued checks in payment for 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; 2) failed to pay, and failed to pay, when due, for livestock purchases; and 3) failed to keep accounts, records, and memoranda which fully and correctly disclosed all transactions in his business as a dealer and market agency as required by Section 401 of the Act.

A copy of the Complaint was mailed by the Hearing Clerk to Respondent by certified mail in June 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 via regular mail on July 14, 2008,

and therefore served the Complaint upon Respondent 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. Respondent did not file an answer to the Complaint within the 20 day time period prescribed by Section 1.136 of the Rules of Practice. Complainant 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, and upon the motion of the Complainant for the issuance of a Default Order, the following Decision and Order is 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 doing business in the State of Tennessee. Respondent's business mailing address is also a personal address, and will therefore be omitted from this decision to protect Respondent's privacy. However, the address will be given 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 dealer buying and selling livestock in commerce for his own account;

(b) Engaged in the business of a market agency buying livestock on a commission basis;

(c) Registered with the Secretary of Agriculture as a dealer buying and selling livestock for his own account in commerce, and as a market agency buying livestock on a

commission basis.

3. On August 14, 1998, Judge Thomas G. Hull of the United States District Court, Eastern District of Tennessee, ordered that Respondent be permanently enjoined from operating in any capacity for which registration and bonding were required under the Packers and Stockyards Act, without registering with the Secretary of Agriculture and furnishing a bond as required by the Act. Respondent was also permanently enjoined from failing to file, within the time fixed by the Secretary, such annual or special reports as the Secretary of Agriculture may require, pursuant to the Act and regulations issued thereunder.

4. On January 3, 2005, Respondent was indicted in the State of North Carolina, Buncombe County, by two separate indictments, each containing one count of worthless checks, a criminal felony. The first indictment stated that Respondent issued a check, dated March 13, 2004 and made payable to United Producers, Inc., drawn upon the National Bank of Commerce, for payment of \$96,663.47. The indictment also stated that Respondent knew at the time he issued the check that there were not sufficient funds on deposit with the bank to pay the check upon its presentation. The second indictment stated that Respondent issued a check, dated March 13, 2004 and made payable to United Producers, Inc., drawn upon the National Bank of Commerce, for payment of \$127,888.82. The indictment also stated that Respondent knew at the time he issued the check that there were not sufficient funds on deposit with the bank to pay the check upon its presentation.

5. On June 27, 2008, Respondent pled guilty to two counts of misdemeanor criminal charges for obtaining property by worthless check. The misdemeanor criminal plea was made on the basis of the same checks identified in the two January 3, 2005 criminal indictments. The first count to which Respondent pled guilty involved the March 13, 2004 check made payable to

United Producers, Inc., drawn upon the National Bank of Commerce, for payment of \$96,663.47. The second count to which Respondent pled guilty involved the March 13, 2004 check made payable to United Producers, Inc., drawn upon the National Bank of Commerce, for payment of \$127,888.82. Respondent was sentenced to a 30 day suspended jail sentence and 12 months of unsupervised probation.

6. Respondent, on March 13, 2004, issued checks in payment for 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. The details of the checks and the transactions for which they were written are more fully set forth in paragraph III of the Complaint.

7. Respondent, between March 8, 2004 and March 22, 2004, purchased livestock, and failed to pay for such livestock purchases. The details of the purchases are more fully set forth in paragraph III of the Complaint. As of the date of the filing of the Complaint, of the total of \$356,424.31 in livestock purchases for which Respondent failed to pay, outlined in paragraph III of the Complaint, there remained unpaid a total of \$156,424.31 for livestock purchases made by Respondent.

8. Respondent, between January 10, 2004 and May 5, 2004, purchased livestock, and failed to pay, when due, for such livestock purchases.

9. Respondent failed to keep accounts, records, and memoranda which fully and correctly disclosed all transactions in his business as a dealer and market agency as required by Section 401 of the Act, in that he failed to keep and maintain: cash receipts and disbursements records, credit agreements with sellers, load make-up sheets, bank statements, cancelled checks,

deposit slips, and accounts receivable records.

Conclusions

By reason of the facts alleged above, Respondent willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228(b)), and section 201.43 of the regulations (9 C.F.R. § 201.43(b)). By reason of the facts alleged above, Respondent has failed to keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, as required by section 401 of the Act (7 U.S.C. § 221)

Order

Respondent Joseph Frank Haun, 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:

- 1) Issuing checks in payment for livestock purchases that are returned unpaid by the bank upon which they are drawn because Respondent does not have and maintain sufficient funds on deposit and available in the account upon which the checks are drawn to pay the checks when presented;
- 2) Failing to pay livestock sellers for livestock purchases in accordance with the Act and regulations; and
- 3) Failing to pay livestock sellers, when due, for livestock purchases in accordance with the Act and regulations.

Respondent shall keep accounts, records and memoranda that fully and correctly disclose all transactions involved in his business. Specifically, Respondent shall keep and maintain cash receipts and disbursements records, credit agreements with sellers, load make-up sheets, bank statements, cancelled checks, deposit slips, and accounts receivable records.

Respondent is suspended as a registrant under the Act for a period of five (5) years. Provided, however, that upon application to Packers and Stockyards Program, a supplemental order may be issued terminating the suspension at any time after 310 days, upon demonstration of circumstances warranting modification of the original order. Provided, further, that this order may be modified upon application to Packers and Stockyards Program to permit the salaried employment of Respondent by another registrant or packer after the expiration of 310 days of this suspension term and upon demonstration of circumstances warranting modification of the order.

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
this 6th day of February, 2009

Marc R. Hillson
Administrative Law Judge

