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**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

P & S Docket No. D-09-0034

In re: TERRY LIVESTOCK, INC.,

Respondent

DEFAULT DECISION AND ORDER

Preliminary Statement

This disciplinary proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.; hereinafter “Act”), by a Complaint filed on November 21, 2008, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (hereinafter “Complainant”), alleging that Respondent Terry Livestock, Inc. (hereinafter “Respondent”), willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.; hereinafter “Regulations”).

A copy of the Complaint was sent to Respondent by certified mail on November 24, 2008, and it was returned to the Hearing Clerk on January 2, 2009, marked “unclaimed” by the U.S. Postal Service. Accordingly, pursuant to the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151; hereinafter “Rules of Practice”), on January 6, 2009, the Hearing Clerk re-mailed the Complaint using regular mail. Complainant’s attorney also sent a letter to Respondent dated December 2, 2008, by certified mail, informing Respondent that Complainant would seek the assessment of a civil penalty against Respondent in the amount of Thirteen Thousand and Two

Hundred Dollars (\$13,200.00). The letter was returned to Complainant's attorney on January 5, 2009, as "unclaimed" and pursuant to the Rules of Practice, on January 7, 2009, Complainant's attorney re-mailed the letter using regular mail. The mailing of the Complaint and letter by regular mail is deemed to constitute service on Respondent pursuant to section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)). Respondent has not answered the Complaint.

Respondent has failed to file an answer within the time period prescribed by the Rules of Practice (7 C.F.R. § 1.136), and the material facts alleged in the Complaint, which are admitted by Respondent's failure to file an answer, are adopted and set forth herein as findings of fact. Therefore, upon Complainant's motion, this decision and order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Terry Livestock, Inc., is a business incorporated in the State of Texas with a mailing address of P.O. Box 258, Hargill, Texas 78549.
2. At all times material to the Complaint, Respondent was:
 - (a) Engaged in the business of a dealer buying and selling livestock in commerce for its own account; and
 - (b) Registered with the Secretary of Agriculture as a dealer to buy or sell livestock in commerce.
3. Respondent was notified by certified letter delivered on July 17, 2007, that the surety bond then maintained by Respondent would terminate on August 30, 2007. Respondent was notified that operation after August 30, 2007, without acquiring a new bond or bond equivalent would be a violation of the Act and could subject Respondent to disciplinary action. Respondent did not obtain a new bond or bond equivalent.

4. Respondent, on or about the dates and in the transactions set forth below, purchased livestock as a dealer in commerce without maintaining an adequate bond or bond equivalent.

Purchase Date	Seller	No. of Head	Total Cost
Sep. 29, 2007	Edinburg Livestock Auction, Inc.	11	\$5,638.55
Oct. 5, 2007	R. Y. Livestock Sales, Inc.	10	\$4,621.43
Oct. 6, 2007	Edinburg Livestock Auction, Inc.	6	\$2,502.03
Oct. 12, 2007	R. Y. Livestock Sales, Inc.	2	\$398.50
Nov. 9, 2007	Luling Livestock Auction	3	\$1,900.00
Nov. 9, 2007	Flatonia Livestock Comm. Co.	7	\$3,404.53
Nov. 14, 2007	Seguin Cattle Company	4	\$2,460.00
Nov. 16, 2007	Luling Livestock Auction	1	\$551.00
Dec. 14, 2007	Luling Livestock Auction	12	\$8,296.80
Dec. 15, 2007	Gonzales Livestock Market, Inc.	2	\$1,400.00
TOTALS		58	\$31,172.84

Conclusions of Law

1. The Secretary has jurisdiction over this matter.
2. By reason of the facts found in Findings of Fact 3 and 4, 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 Terry Livestock, Inc., its agents and employees, directly or through any corporate or other device, in connection with its activities subject to the Act, shall cease and desist from engaging in business in any capacity for which bonding is required under the Act and the Regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the Regulations.

Pursuant to section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent is assessed a civil

penalty in the amount of Thirteen Thousand and Two Hundred Dollars (\$13,200.00).

This decision and order shall become final and effective without further proceedings thirty-five (35) days after service on Respondent, unless appealed to the Judicial Officer by a party to the proceeding within thirty (30) days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139, 1.145).

Copies of this decision and order shall be served upon the parties.

Done at Washington, D.C.

May 5, 2009



PETER M. DAVENPORT
Administrative Law Judge