

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

P. & S. Docket No. D-08-0039

In re: ZACH A. LANDRY, SR.,
d/b/a COWTOWN HORSE
and MULE AUCTION,

Respondent

DEFAULT DECISION AND ORDER

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*)(hereinafter referred to as the “Act”), instituted by a Complaint filed on December 28, 2007, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection Packers and Stockyards Administration (GIPSA), United States Department of Agriculture. The Complaint alleged that Zach Landry, Sr., d/b/a Cowtown Horse and Mule Auction, registered under the Act as a market agency (hereinafter “Respondent”), engaged in the business of selling livestock in commerce on a commission basis without having a sufficient bond or bond equivalent. The Complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 et seq.) (“Rules of Practice”) were served on Respondent by certified mail on January 4, 2008. Respondent was informed in a letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all of the material allegations contained in the Complaint.

Respondent has failed to file an answer within the time period required under 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 in this decision and order as findings of fact. Based on these admissions, Complainant's motion for the issuance of a Default Order, made pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), is granted and order shall be issued without further procedure.

Findings of Fact

1. Zach A. Landry, Sr., d/b/a Cowtown Horse and Mule Auction (hereinafter "Respondent") is an individual whose mailing address is 2925 South Goldenstate Blvd. Turlock, California 95380.

2. Respondent at all times material to the Complaint was engaged in the business of selling livestock in commerce on a commission basis.

3. Respondent was registered as a market agency with the Secretary of Agriculture to sell livestock in commerce on commission basis.

4. Respondent failed to secure a sufficient bond or bond equivalent, despite notification by certified mail and multiple phone communications from GIPSA personnel that GIPSA had information indicating Respondent's bond would be expiring, and that the regulations (9 C.F.R. §§ 201.29- 201.30) require that he file a bond or bond equivalent in the required coverage amount. Respondent was notified that he must refrain from engaging in activities subject to the Act until the bonding requirements had been met. Despite these notices, Respondent continued to engage in the business of a market agency selling livestock in commerce on commission without first obtaining a bond or bond equivalent.

5. Respondent's response to the Complainant's Motion for Default includes Respondent's admission that he opened a interest bearing "Time Deposit" with the F&M Bank of Central California in the original amount of \$10,000 whereas Respondent was required to post a bond of

\$20,000 at that time.

Conclusions of Law

1. The Secretary has jurisdiction over Respondent and the subject matter involved herein.
2. By failing to secure a bond or bond equivalent in the required amount of \$20,000 before engaging in business subject to the Act, Respondent willfully violated Sections 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. §§ 201.27, 201.29, 201.30).
3. Respondent did not file an answer within the time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), which constitutes an admission of all of the material allegations in the Complaint. Complainant has moved for the issuance of a Decision without Hearing by Reason of Default, pursuant to section 1.139 of the rules of Practice (7 C.F.R. § 1.139). Accordingly, this decision and order is entered without hearing or further procedure.

Order

Respondent Zach A. Landry, Sr., d/b/a Cowtown Horse and Mule Auction, his successors and assigns, in whatever business form or trade name, shall cease and desist from engaging in operations subject to the Act without first obtaining the requisite bond or bond equivalent. Pursuant to section 312(b) of the Packers & Stockyards Act, Respondent's registration is suspended for 30 days, and thereafter until Respondent is properly and adequately bonded. Respondent is assessed a civil penalty of \$3,000.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in Sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§1.139 and 1.145).

Copies hereof shall be served upon the parties.

Done at Washington, D.C.
June 16, 2009

PETER M. DAVENPORT
Administrative Law Judge