

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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Docket No. 15-0110 P&S

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In re:

GARY WEDEL,

Respondent.

DECISION WITHOUT HEARING BY REASON OF DEFAULT

The instant matter involves allegations by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration (“GIPSA”) of the United States Department of Agriculture (“USDA”; “Complainant”) that Gary Wedel (“Respondent”) violated provisions of the Packers & Stockyards Act, 1921, as amended and supplemented, 7 U.S.C. §181 et seq. (“the Act”).

I. Procedural History

On May 6, 2015, Complainant filed a complaint against Respondent with the Hearing Clerk, Office of Administrative Law Judges (“OALJ”; “Hearing Clerk”). On May 7, 2015, the Hearing Clerk sent the complaint to Respondent by regular and certified mail, and informed Respondent that an Answer should be filed pursuant to the Rules of Practice Governing Formal Adjudications before the Secretary of USDA (“the Rules”). The certified mail was returned as unclaimed, and on June 17, 2015, the complaint was resent to Respondent by regular mail. The regular mail was not returned as undeliverable.

On July 17, 2015, I issued an Order directing Respondent to show cause why a decision on default should not be entered against him. The Order was served on Respondent by regular mail. On July 21, 2015, Complainant filed a motion for a decision and Order on default and a proposed Order on default. The motion was served on Respondent by certified mail on July 24,

2015. The certified mail was not returned as undeliverable or unclaimed, and was resent by regular mail, which was not returned.

Respondent has not filed an answer to the complaint, nor responded to my Order to show cause or Complainant's motion for default.

II. Regulatory Authority

Pursuant to the Rules of Practice, a respondent is required to file an Answer within twenty (20) days after service of a Complaint. 7 C.F.R. § 1.136(a). The Rules of Practice also provide that an Answer "shall . . . [c]learly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent." 7 C.F.R. § 1.136(b)(1). The failure to timely file an Answer or failure to deny or otherwise respond to an allegation proffered in the Complaint shall be deemed admission of all the material allegations in the Complaint; in such situation, default shall be appropriate. 7 C.F.R. § 1.136(c).

Additionally, the Rules of Practice prescribe that, when computing the time permitted for a party to file a document or other paper, Saturdays, Sundays, and Federal holidays are to be included except when the time expires on one of those days; should such situation occur, the time period shall be extended to include the next business day. 7 C.F.R. § 1.147(h). The Rules of Practice also state that a document sent by the Hearing Clerk "shall be deemed to be received by any party to a proceeding . . . on the date of delivery by certified or registered mail. . ." 7 C.F.R. § 1.147(c)(1).

The Rules of Practice further provide that "[t]he failure to file an answer . . . shall constitute a waiver of the hearing. Upon such . . . failure to file, complainant shall file a proposed decision along. . . Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto." 7 C.F.R. § 1.139.

III. DISCUSSION

1. Whether Entry of Decision by Reason of Default Without Hearing Is Appropriate

The record here reflects that the complaint was sent by certified mail to Respondent's known address and was not claimed. The complaint was sent by regular mail twice, and neither mailing was returned as undeliverable. No answer was filed. I issued an Order that was sent by regular mail that was not returned. Respondent failed to respond to my Order to show cause why default should not be entered. Complainant's motion was sent by certified and regular mail, neither of which mailings were returned. Respondent failed to respond to Complainant's motion for entry of a decision and Order by reason of default.

Accordingly, I find that the Complaint was served upon the Respondent, and Respondent failed to file an answer. Therefore, pursuant to 7 C.F.R. § 1.136(c), Respondent is deemed to have admitted the allegations set forth in the Complaint, and entry of default is appropriate. See 7 C.F.R. §§ 1.136(c), 1.139. I find that Respondent has admitted the gravamen of Complainant's allegations, thereby obviating the need for a hearing in this matter. The material allegations of the Complaint are thus adopted as findings of fact. I further find it appropriate to enter a decision on the record by reason of default. This Decision and Order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

2. Sanctions

I find that by failing to answer the complaint, failing to respond to my Order, and failing to object to Complainant's motion for default, Respondent has admitted to the allegations of the complaint. Accordingly, I find that Complainant's proposed sanctions in this case are warranted.

The Department's sanction policy is set forth in *S.S. Farms Linn County, Inc.*, (Decision as to James Joseph Hickey & Shannon Hansen), 50 Agric. Dec. 476 (U.S.D.A. 1991), *aff'd*,

991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3), and provides that appropriate weight should be given to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose of the Act. *S.S. Farms Linn County, Inc.*, 50 Agric. Dec. at 497. “In assessing penalties, the Secretary is required to give due consideration to the size of the business involved, the gravity of the violation, the person’s good faith, and the history of previous violations” *Roach*, 51 Agric. Dec. 252, 264 (U.S.D.A. 1992); 7 U.S.C. § 213(b). The purpose of assessing sanctions is not to punish violators but to deter future similar behavior by the violator and others. *Zimmerman*, 57 Agric. Dec. 1038, 1998 WL 799196, at *16 (U.S.D.A. 1998).

By letter dated July 6, 2009, GIPSA notified Respondent of his obligation to apply for registration under the Act and to obtain adequate bonding or bond equivalent. The letter also advised that if Respondent engaged in business regulated by the Act, then Respondent would be subject to disciplinary action. Respondent failed to register under the Act and failed to secure a bond or bond equivalent as required to engage in the business of buying and selling livestock in interstate commerce.

During the period from October 11, 2013, through October 28, 2013, Respondent was engaged in the business of a dealer buying or selling livestock in commerce and as a market agency buying or selling livestock in commerce on a commission basis without being registered with the Secretary, USDA, and without maintaining an adequate bond or bond equivalent. During the period from October 11, 2013, through November 7, 2013, in approximately seven (7) transactions involving a total of 8 head of livestock for the total purchase price of \$8,026.60, Respondent engaged in the business of a dealer buying or

selling livestock in commerce and as market agency buying or selling livestock in commerce on a commission basis without being registered with the Secretary price.

Complainant contends that Respondent's activities constitute willful violations of the Act and regulations, as they represent intentional acts, or conduct that was undertaken with careless disregard of statutory or regulatory requirements. I find substantial grounds for that conclusion.

The gravity of the offenses enumerated in the complaint warrant the issuance of a cease and desist Order, as well as an assessment of a civil money penalty pursuant to 7 U.S.C. § 312(b) of the Act. USDA had assessed the size of Respondent's business and determined that Respondent obtain the minimum bond in the amount of \$4,000.00. Respondent failed to do so, and considering the potential impact on others compared with the relatively low cost of the bond, the failure to obtain the bond or bond equivalent is grave.

The Act authorizes the assessment of not more than \$11,000.00 for each violation of the Act. 7 U.S.C. § 213(b). USDA considered the ability of the Respondent to continue in business when recommending a civil penalty of \$4,000.00. I find that the requested civil penalty is appropriate. I also find good cause to prohibit Respondent from registering to do business under the Act, and from engaging in any activities for which registration is required until the Respondent demonstrates that he has an adequate bond or bond equivalent, and that he is fully compliant with the Act, and has paid the civil penalty.

IV. FINDINGS OF FACT

1. Respondent is an individual who at all times material herein was engaged in the business of a dealer buying or selling livestock in commerce and a market agency buying or selling livestock on a commission basis in commerce.

2. On August 18, 2009, Respondent received from GIPSA a Notice of Default of Registration/Bonding dated July 6, 2009.
3. Respondent was involved in 5 transactions involving the purchase of 113 head of livestock from Elk City Livestock for a total purchase price of \$91,977.03, with a commission of \$343.68 during the period from October 11, 2013, through October 28, 2013, and was not registered with the Secretary and had not maintained an adequate bond or bond equivalent.
4. Respondent engaged in approximately 7 transactions involving the purchase of 8 head of livestock for a total purchase price of \$8,026.60 from Elk City Livestock and Apache Auction during the period from October 11, 2013, through November 7, 2013, without being registered with the Secretary and without maintaining an adequate bond or bond equivalent.

III. CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. Respondent willfully violated the Act and regulations by engaging in activity subject to the Act without a bond or bond equivalent.
3. Respondent violated the Act and regulations by failing to register with the Secretary.
4. Respondent's violations of sections 312(a) (7 U.S.C. §§ 213(a)) and sections 201.29 and 201.30 of the regulations set forth at 9 C.F.R. §§ 201.29 and 201.30) support the imposition of sanctions.

ORDER

Respondent Gary Wedel, his agents, and employees, directly or indirectly through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in business in any capacity for which a bond is required under the Act and regulations without first becoming properly registered under the Act

as required by 9 C.F.R. § 210.10(a), and without filing and maintaining an adequate bond or its equivalent pursuant to section 312(a) of the Act (7 U.S.C. § 213(a)) and 9 C.F.R. §§ 201.29 and 201.30.

Respondent Gary Wedel is prohibited from operating in any capacity that is subject to the Act and regulations, either individually or through any corporate or other device, until such time as the civil penalty is paid, and he becomes properly registered and bonded pursuant to the Act and regulations.

Respondent Gary Wedel is assessed a civil penalty in the amount of four thousand dollars (\$4,000.00), pursuant to 7 U.S.C. § 213(b). The civil penalty shall be made by certified check or money order payable to **"Treasurer of the United States" and sent to USDA GIPSA, P.O. Box 790335, St. Louis, Missouri 63179-0335.**

This Order shall have the same effect as if entered after a full hearing.

Pursuant to the Rules, this Decision and Order 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 thirty (30) days after service, pursuant to the Rules, 7 C.F.R. §§1.139 and 1.145.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk.

So ORDERED this 8th day of October, 2015 at Washington, D.C.


Janice K. Bullard
Administrative Law Judge