

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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Docket No. 15-0112 P&S

RECEIVED

In re:

MATT GOOSEN, doing business as DENNIS GOOSEN,  
doing business as CANE CATTLE COMPANY,  
doing business as CANE CATTLE,  
doing business as CAIN CATTLE,  
doing business as GOOSEN LAND AND CATTLE,  
doing business as GOOSEN CATTLE,

Respondent.

Appearances:

**DECISION WITHOUT HEARING BY REASON OF DEFAULT**

I. Preliminary Statement

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 Matt Goosen, d/b/a Dennis Goosen, d/b/a Cane Cattle Company, d/b/a Cane Cattle, d/b/a Cain Cattle, d/b/a Goosen Land and Cattle, d/b/a Goosen Cattle (“Respondent”) violated provisions of the Packers & Stockyards Act, 1921, as amended and supplemented, 7 U.S.C. §181 et seq. (“the Act”).

II. Issues

1. Whether a hearing is necessary in this matter;
2. Whether Respondent willfully violated the Act;
3. Whether the sanctions recommended by Complainant should be imposed.

III. Procedural and Factual History

On May 11, 2015, Complainant filed a complaint with the Hearing Clerk, Office of Administrative Law Judges (“OALJ”; “Hearing Clerk”). On May 12, 2015, the Hearing Clerk

for OALJ sent the complaint to Respondent by certified and regular 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”). On June 18, 2015, the certified mail return receipt was returned to the Hearing Clerk as unclaimed, and the complaint was remailed to Respondent by regular mail. Neither mailing sent by regular first-class mail was returned as undeliverable. Respondent did not file an answer.

On July 16, 2015, Complainant filed a motion for a decision on the record by reason of default, which the Hearing Clerk mailed to Respondent by certified mail on that date. On August 13, 2015, the certified mailing was returned as unclaimed, and the Hearing Clerk sent the motion to Respondent by regular mail. The Respondent did not file a response.

#### IV. 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.

#### V. 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. Complainant’s motion for entry of decision by default was sent by certified mail, which was unclaimed, and by regular mail, which was not returned as undeliverable. 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. A hearing in this matter is not needed, and the material allegations of the Complaint are thus adopted as findings of fact. I 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

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 failing to answer the complaint, 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.

### VI. Findings of Fact

1. Matt Goosen, d/b/a Dennis Goose, d/b/a Cane Cattle Company, d/b/a Cane Cattle, d/b/a Cain Cattle, d/b/a Goosen Land and Cattle, d/b/a Goosen Cattle, is an individual with a mailing address in the State of Texas.
2. At all times material to the allegations raised here, Respondent was engaged in the business of a dealer buying and selling livestock in commerce on his own account.
3. At all times material herein, Respondent was registered with the Secretary of Agriculture as a dealer buying and selling livestock in commerce for his own account and as a market agency buying livestock in commerce on a commission basis.

4. In a sworn affidavit signed by Respondent on August 12, 2013, Respondent admitted to buying and selling livestock under the names Dennis Goosen, Cane Cattle Company, Goosen Land and Cattle, and Goosen Cattle. See, Attachment A to complaint.
5. By letter dated January 28, 2013, served on Respondent on February 14, 2013, GIPSA advised Respondent that an investigation had disclosed that Respondent had failed to pay the full amount of the purchase price for livestock within the time required under the Act, and he was advised to correct his payment practices or be subject to formal action for violations of the Act pursuant to 7 U.S.C. §§ 213(a) and 228b.
6. Respondent failed to maintain sufficient funds on deposit in the bank upon which checks were drawn for the payment of six (6) livestock purchases during May and June, 2013, as reflected in Exhibit B, attached to the complaint.
7. In his sworn affidavit, Respondent admitted that the checks he had issued for the livestock purchases identified in Exhibit B, attached to the complaint, had been returned to him for “NSF” (non-sufficient funds). See, Exhibit A, attached to the complaint.
8. In the six (6) transactions identified in Exhibit B, attached to the complaint, and in two (2) additional transactions documented in Exhibit C, attached to the complaint, Respondent failed to pay the full amount of the purchase price for livestock within the time required by the Act.
9. In his sworn affidavit, Respondent admitted that he had failed to make timely payment for the livestock purchases identified in Exhibits B and C, attached to the complaint. See, Exhibit A, attached to the complaint.
10. Respondent admitted that as of the date he signed his sworn affidavit, outstanding balances remained unpaid for the livestock purchases identified in Exhibits B and C, attached to the complaint. See, Exhibit A, attached to the complaint.

## VII. Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent willfully violated the Act and regulations by failing to pay for transactions when due.
3. Respondent's violations of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b) and of the regulations set forth at 9 C.F.R. §§ 201.43 and 201.30 support the imposition of sanctions.

### ORDER

Respondent Matt Goosen, d/b/a Dennis Goose, d/b/a Cane Cattle Company, d/b/a Cane Cattle, d/b/a Cain Cattle, d/b/a Goosen Land and Cattle, d/b/a Goosen Cattle, 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:

1. Issuing checks in purported payment for livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which checks are drawn to pay such checks when presented;
2. from failing to pay for livestock before the close of the next business day following each purchase of livestock, as required by the Act and Regulations; and
3. from failing to pay the full amount of the purchase price for livestock, as required by the Act and Regulations.

Respondent is hereby suspended as a registrant under the Act for a period of five (5) years; provided, however, that upon application to the Packers and Stockyards Program, a supplemental order may be issued terminating the suspension of Respondent at any time after the expiration of 365 days of the suspension period upon Respondent's demonstration, to the satisfaction of the Packers and Stockyards Program, that all unpaid livestock sellers identified in

the complaint underlying this Order have been paid in full, or a reasonable schedule of restitution has been arranged with the unpaid livestock sellers.

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 14<sup>th</sup> day of October, 2015 at Washington, D.C.

  
Janice K. Bullard  
Administrative Law Judge