

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0175

In re:

BERRY & SONS RABABEH ISLAMIC
SLAUGHTER HOUSE, INC.,

Respondent

DEFAULT DECISION AND ORDER

Preliminary Statement

On March 25, 2011, the Deputy Administrator, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (“USDA”; “the Administrator”), filed a Complaint against Berry & Sons Rababeh Islamic Slaughter House, Inc., (“Respondent), alleging violations of the Packers and Stockyards Act (7 U.S.C. § 181 et seq.) (“Act”). On March 31, 2011, 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. Respondent was informed in the letter of service and the Complaint that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the Complaint.

Respondent failed to file an answer within the time period required by the Rules of Practice (7 C.F.R. § 1.136), and on May 31, 2011, the Administrator filed a Motion for Decision

by Reason of Default. Accordingly the following Findings of fact, Conclusions of Law and Order shall be entered pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent is a corporation incorporated in the state of Michigan, whose business address is 2496 Orleans Street, Detroit, Michigan, 48207.

2. At all times material herein, Respondent was:

- a. engaged in the business of buying livestock in commerce for the purpose of slaughter and manufacturing or preparing meats or meat products for sale or shipment in commerce; and
- b. a packer within the meaning of and subject to the provisions of the Act.

3. On July 15, 2010, Respondent was directed by the USDA by certified mail received July 19, 2010 to discontinue all livestock operations for which bonding is required under the Act . Specifically the notice advised Respondent to acquire a new bond or bond equivalent by August 7, 2010 and further advised that without such bond or bond equivalent, Respondent would need to discontinue all livestock operations for which bonding is required under the Act.

4. Notwithstanding the notice, Respondent continued to operate as a packer buying livestock in commerce for the purposes of slaughter, as evidenced by the following transactions:

Sale Date	Seller	No. of Head	Invoice Amount
8/8/2010	Florence Livestock, Inc.	109	\$8,089.68
8/15/2010	Florence Livestock, Inc.	83	\$7,055.78
8/22/2010	Florence Livestock Inc.	101	\$9,204.35
8/29/2010	Florence Livestock Inc.	116	\$11,232.70
9/13/2010	United Producers, Inc.	6	\$793.10
9/20/2010	United Producers, Inc.	65	\$6,989.93
9/27/2010	United Producers, Inc.	60	\$8,640.08
10/4/2010	United Producers, Inc.	162	\$24,587.58
10/11/2010	United Producers, Inc.	202	\$20,342.20

10/14/2010	United Producers, Inc.	81	\$12,400.05
10/18/2010	United Producers, Inc.	41	\$5,574.33
10/25/2010	United Producers, Inc.	40	\$7,607.10

5. On twenty-five occasions between January 3, 2010 and February 28, 2010 Respondent purchased livestock and failed to pay when due the full purchase price as described on the chart found at Attachment “A” attached herewith.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts set forth at Paragraphs 4 and 5 of the Findings of Fact, supra., Respondent willfully violated sections 202(a) and 409 of the Act (7 U.S.C. §§ 192(a), 228b) by failing to pay, when due, for livestock, and by operating as a packer without a proper bond or bond equivalent.
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 the material allegations in the Complaint.

Order

1. Respondent, its agents and employees, directly or through any corporate or other device, in connection with activities subject to the Act, shall cease and desist from:
 - a. failing to pay the full amount of the purchase price for livestock within the time period required by the Act and the regulations promulgated under it; and
 - b. operating as a packer without a proper bond or bond equivalent in compliance with the Act.
2. Pursuant to section 203(b) of the Act (7 U.S.C. § 193(b)), Respondent is assessed a civil penalty in the amount of thirty thousand, eight hundred dollars (\$30,800.00).

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

Copies of this order together with Attachment “A” shall be served on the parties by the Hearing Clerk.

So ORDERED this day of June, 2011 at Washington, D.C.

Janice K. Bullard
Administrative Law Judge