

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) P. & S. Docket No. D-03-0008  
)  
Tom [Tommy] Tucker, )  
)  
Respondent )

**Decision Without Hearing by Reason of Default**

This proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. [ 181 et seq.) by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the Respondent willfully violated the Act and the regulations issued thereunder (9 C.F.R. [ 201.1 et seq.). A copy of the complaint was served on Respondent by certified mail on April 8, 2003, pursuant to Section 1.147(c) of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary **Under** Various Statutes (7 C.F.R. [1.130 *et seq.*, hereinafter [Rules of Practice]). Accompanying the complaint was a cover letter informing Respondent that an answer must be filed within twenty (20) days of service and that failure to file an answer would constitute an admission of all of the material allegations in the complaint and a waiver of the right to an oral hearing.

Respondent has failed to file an answer within the time period required 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.

This decision and order, therefore, is entered pursuant to section 1.139 of the Rules of Practice. (7 C.F.R. [ 1.139 ).

### Findings of Fact

1. Tom [Tommy] Tucker, herinafter referred to as Respondent, is an individual whose business mailing address is 2251 Jayhawk Road, Fort Scott, Kansas 66701.
2. Respondent is, and at all times material herein was:
  - (a) Engaged in the business of a market agency buying livestock on commission in commerce; and
  - (b) Registered with the Secretary of Agriculture as a market agency buying on commission, and as a dealer to buy and sell livestock in commerce for his own account.
3. Respondent was served with a letter of notice on April 14, 2000, informing him that the bond or its equivalent maintained by James A. Smith, in connection with Respondent's registration removed Respondent as a clearee. The notice further informed Respondent that in order for Respondent to continue his livestock operations subject to the Act, he must obtain an adequate bond or its equivalent. Notwithstanding such notice, Respondent has continued to engage in the business of a market agency buying on commission without maintaining an adequate bond or its equivalent.

### Conclusions

By reason of the facts alleged in Finding of Fact 3, Respondent has 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 and 201.30).

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 1.39 of the Rules of Practice (7 C.F.R. § 1.139). Accordingly, this decision is entered without hearing or further procedure.

#### Order

Respondent Tom [Tommy] Tucker, his agents and employees, directly or indirectly through any corporate or other device, in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations.

Respondent is suspended as a registrant under the Act until such time as he complies fully with the bonding requirements under the Act and the regulations. When Respondent demonstrates that he is in full compliance with such bonding requirements, a supplemental order will be issued in this proceeding terminating the suspension.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent is hereby assessed a civil penalty in the amount of one thousand dollars (\$1,000).

This decision and order shall become final and effective without further proceedings thirty-five (35) days after service on Respondent, if it is not 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 hereof shall be served upon the parties.

Issued in Washington D.C.

this 3<sup>rd</sup> day of December, 2004

Marc R. Hillson

Administrative Law Judge