

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY

Docket No. 12-0146

In re:

GEOFFREY S. MARTIN,

Respondent

DECISION AND ORDER ON THE RECORD

I. INTRODUCTION

This matter is before me pursuant to a complaint filed by Complainant United States Department of Agriculture (“USDA”; “Complainant”) against Geoffrey S. Martin (“Respondent”), alleging violations of the Packers and Stockyards Act of 1921, as amended, 7 U.S.C. § 181 et seq. (“the Act”).

II. ISSUES

1. Whether Respondent failed to obtain a bond in willful violation of the Act; and
2. If Respondent willfully violated the Act, whether the sanctions recommended by Complainant should be imposed.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Procedural History

On December 22, 2011, Complainant filed a complaint against Respondent with the Hearing Clerk for the Office of Administrative Law Judges (“OALJ”; “Hearing Clerk”). On January 17, 2012, Respondent filed an Answer with the Hearing Clerk, acting pro se. References to the Answer in this Decision and Order shall be denoted as “RX-1”. Attempts to arrange a pre-

hearing telephone conference with Complainant's counsel and Respondent were unsuccessful and by Order issued March 8, 2012, I directed Respondent to provide a valid telephone number and other valid means of contact to my staff. When Respondent had not complied with my Order, on April 2, 2012, I issued an Order setting deadlines for the parties' submissions in advance of setting a hearing date.

On April 26, 2012, Complainant timely filed pre-hearing submissions in accordance with my Order. Respondent did not file any pre-hearing submissions, and on July 5, 2012, I issued an Order to Respondent to show cause why a Decision and Order on the Record should not be entered. Respondent did not respond.

In response to my Order, on July 24, 2012, Complainant filed Proposed Findings of Fact, Conclusions of Law, Order and Brief ("Proposed Findings"), as well as evidence hereby identified as CX-1 through CX-23. On that date Complainant also filed Declarations by Susan S. McBryde and Timothy Hansen, which are hereby identified respectively as CX-24 and CX-25. All of Complainant's evidence is hereby admitted to the record. The matter is ripe for adjudication and the record is closed.

1. Statutory and Regulatory Authority

7 C.F.R. § 1.1.39 provides, in pertinent part:

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 day after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing...

7 C.F.R. § 1.1.39.

Livestock dealers, market agencies and packers operating subject to the Act are required to obtain reasonable bonds to secure their obligations to livestock sellers. 7 U.S.C. § 704. The Secretary has issued regulations requiring parties subject to the bond requirements to file bonds or bond equivalents with the Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (“GIPSA”), in an amount set forth by 9 C.F.R. § 201.30. See, 9 C.F.R. § 201.29. The Act allows for the assessment of civil money penalties in an amount of up to \$11,000 per violation for violations of the Act. 7 U.S.C. § 213(b).

B. Summary of the Facts

In his Answer filed on January 17, 2012, Respondent admitted that he has co-owned and operated a licensed and bonded livestock auction company in Louisiana since the year 2000. He asserted that he has conducted business in various states and has paid his bills and accounts in full at all times. Respondent asserted that of the nineteen (19) violations charged in Complainant’s complaint, eleven (11) represent purchases made for his family farm. He noted that he periodically purchases cattle for his uncle Stacey Martin and his close friend Tom Lindsey. Respondent denied purchasing cattle for R&W Farms, LLC at Miller Livestock Inc., located in Dequincy, Louisiana. Respondent attributed that allegation to a mistake that should have noted his work hauling for R& W, LLC. Respondent purchased cattle for San Angelo Packing Co. under two invoices. He stopped purchasing cattle for that entity when he learned that his bond did not cover such purchases. RX-1.

Respondent did not register with GIPSA regarding his business buying livestock on commission, and did not obtain a bond or bond equivalent related to that business. CX-24. By notice of default dated October 4, 2010, delivered on November 5, 2010, GIPSA advised

Respondent that he could not continue to buy or sell cattle subject to the Act without registering with GIPSA and obtaining an appropriate bond. CX-1.

Resident Agent for GIPSA Susan McBryde completed an investigation into Respondent's business practices involving the Act in May, 2011. CX-24. Her investigation included a December 10, 2010 interview with Peggy Perkins, co-owner and office manager at the Kinder Livestock Auction in Kinder, Louisiana. CX-24. According to Ms. Perkins, Respondent continued to purchase livestock on a commission basis at the Kinder Livestock Auction after November 4, 2010, the date he received GIPSA's notice of default. CX-2. Agent McBryde also interviewed Jim Miller, an owner of Miller Livestock Markets, Inc. in DeQuincy, Louisiana, who confirmed that Respondent continued to purchase livestock on a commission basis at his auction after November 5, 2010. CX-3. Records reflecting livestock purchases made by Respondent during the period from November 10, 2010 through December 18, 2010, are in evidence at CX-5 through CX-23, summarized at CX-4.

As of the date of Ms. McBryde's declaration made on July 10, 2012, Respondent had not notified GIPSA that he had obtained an appropriate bond or bond equivalent. CX-24.

Timothy Hansen is a program analyst for GIPSA who is familiar with investigations conducted by the agency into violations of the Act. CX-25. As part of his duties, Mr. Hansen makes recommendations regarding sanctions in circumstances where violations are disclosed. CX-25, ¶ 1. He explained that civil penalties are intended to further the remedial purposes of the Act by deterring Respondent and others from acting in violation of the Act, against the interests of livestock sellers. CX-25, ¶ 6.

Mr. Hansen reviewed the investigation into Respondent's alleged violations and concluded that Mr. Martin willfully violated the Act and regulations by operating as an

unregistered and unbonded market agent who bought livestock on commission in Louisiana. CX-25, ¶¶ 2, 3. Mr. Hansen recommended that Respondent be ordered to cease and desist from operating without a bond or bond equivalent and be assessed a civil penalty of \$4,000.00. CX-25, ¶ 3. Civil penalty is warranted because Respondent did not cooperate with GIPSA's investigation and did not obtain a bond or bond equivalent despite being notified of the Act's requirements. CX-25, ¶ 4.

C. Discussion

Respondent failed to respond to any attempt to ascertain his availability for a hearing. Agent McBryde also noted that Mr. Martin did not cooperate with her during her investigation, as he failed to return her many attempts to contact him. See, CX-24, ¶ 9. Respondent's answer did not specifically deny all of the allegations of the complaint, and indeed, Mr. Martin admitted to purchasing livestock without requisite bonds. See, RX-1. Respondent failed to cooperate with the investigation. Other than filing a letter in response to Complainant's complaint, Mr. Martin also failed to file any defensive evidence or argument. Accordingly, I find it appropriate to issue this Decision and Order on the record, pursuant to 7 C.F.R. §1.139.

Respondent did not specifically address all of the allegations in the Complaint, but rather asserted that he bought cattle for his uncle and a friend. Such purchases do not exempt Respondent from complying with the requirements of the Act and regulations to purchase appropriate bonds or bond equivalents. The requirement to obtain a bond or equivalent surety is to protect livestock sellers, not buyers. In re: Edward Tiemann, 47 Agric. Dec. 1573, 1585 (1988). As of the date of the notice of default issued by GIPSA in October, 2010, and received by Mr. Martin on November 5, 2010, Respondent had actual notice that he needed to register with the agency and obtain required surety to continue operating in the livestock business.

Respondent's failure to come into compliance has been corroborated by owners of auction markets where Respondent bought livestock on commission without a bond after receiving the notice of non-compliance.

Although Respondent alleged that certain accounting entries documented work he did as a hauler, he has provided no independent records to corroborate that charge, such as invoices or payments. I accord substantial weight to the findings of Agent McBryde, who regularly conducts investigations involving compliance with the Act. I conclude that the information she reviewed showed nothing to distinguish the challenged transactions from livestock purchases. Her opinion is corroborated by Analyst Hansen, who reviewed the file and similarly found nothing to suggest that the transactions involving R& W represented anything other than livestock sales.

Respondent's failure to obtain a bond or other financial instrument to act as surety while continuing to buy livestock on commission constitutes an unfair and deceptive practice that violates 7 U.S.C. § 312(a). See, In re: Robert F. John, 47 Agric. Dec. 436, 441 (1998). Further, Respondent has failed to register with the agency. GIPSA's recommended sanctions are appropriate for Respondent's willful violations of the Act. See, In re: Wilkes County Stock Yard, Inc., 48 Agric. Dec. 1015, 1025 (1989). There is little indication that Respondent has sought to achieve compliance with the Act and regulations, despite a letter from GIPSA advising him of his transgressions.

D. Findings of Fact

1. Respondent Geoffrey Martin is an individual whose business address is his home address in the State of Louisiana.

2. At all times material herein, Respondent was engaged in the business of buying livestock in commerce on a commission basis, and was not registered with GIPSA.
3. On November 4, 2010, Respondent received written notification from GIPSA advising him that the agency had concluded that he was operating under the Act without being registered and without having a bond.
4. In the notice letter received on November 4, 2010, GIPSA advised Respondent of his obligation to register with the agency and to secure a bond or bond equivalent.
5. Respondent continued to engage in the business of buying livestock in commerce on a commission basis without registering with GIPSA and without obtaining an adequate bond or equivalent, during the period from November 13, 2010 through December 8, 2012, as enumerated in Appendix 1, attached hereto.

E. Conclusions of Law

1. Respondent Geoffrey Martin willfully violated 7 U.S.C. § 213(a) and 9 C.F.R. §§ 201.29, 201.30, by engaging in operations subject to the Act without maintaining an adequate bond or bond equivalent.
2. Respondent Geoffrey Martin operated in violation of the Act and its implementing regulations by failing to register with the Secretary of Agriculture, pursuant to 9 C.F.R. § 201.10.
3. Sanctions are appropriate to deter Respondent and others from willfully failing to register.

ORDER

Respondent Geoffrey S. Martin, his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Packers and Stockyards

Act, shall cease and desist from engaging in business in any capacity for which bonding is required without filing and maintaining an adequate bond or its equivalent as required by the Act and prevailing regulations..

Further Respondent is prohibited from registering to engage in business subject to the Act for a period of thirty (30) days from the date of this Order. Pursuant to 7 U.S.C. § 203, Respondent is prohibited from engaging in business subject to the Act without being registered with GIPSA.

After expiration of this thirty (30) day period, Respondent may submit an application for registration to GIPSA along with the required bond or bond equivalent.

Pursuant to 7 U.S.C. § 213(b), Respondent is assessed a civil penalty in the amount of four thousand dollars (\$4,000.00). Respondent's payment shall be made out to the "U.S. Department of Agriculture" and sent to USDA-GIPSA, P.O. Box 790335, St. Louis, Missouri 63179-0335. Respondent shall include on the payment instrument a reference to this case, Docket No. 12-0146.

This Decision and Order shall become final and effective without further proceedings thirty-five (35) days after service on Respondent, unless appealed to the Judicial Officer for the U.S. Department of Agriculture by a party to the proceeding within thirty (30) days after service, pursuant to 7 C.F.R. §§ 1.139, 1.145.

The Hearing Clerk shall serve copies of this Decision and Order upon the parties.

So ORDERED this 7th day of August, 2012 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge