

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0549

In re: Than Foote,

Respondent

Default Decision and Order

Preliminary Statement

This disciplinary 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 on July 26, 2012, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that Than Foote (Respondent) willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*).

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) (Rules of Practice), were served upon Respondent by certified mail on July 31, 2012. Respondent was informed in the letter of service 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 prescribed by the Rules of Practice (7 C.F.R. § 1.136), and the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Than Foote is an individual with a mailing address in Gatesville, Texas.
2. Respondent is, and at all times material herein was engaged in the business of a dealer buying and selling livestock in commerce and as a market agency buying livestock in commerce on a commission basis; and was not registered or bonded with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce or as a market agency to buy livestock in commerce on a commission basis.
3. On July 8, 2011, the Grain Inspection, Packers and Stockyards Administration (GIPSA) sent Respondent a Notice of Default (NOD) by United Parcel Service Next Day Air. The NOD was claimed and signed for by Respondent on July 11, 2011. The NOD notified the Respondent of his obligation to file an application for registration and to secure a bond or bond equivalent if he wished to engage in the business of buying and selling livestock in commerce. The NOD also informed the Respondent that engaging in business in any capacity that is subject to the Act without being properly registered with GIPSA and without filing a bond or bond equivalent is a violation of the Act and regulations and could subject him to disciplinary action.
4. During the period from August 14, 2011, through August 27, 2011, in six transactions involving the purchase of a total of 46 head of livestock from Coryell County Commission Company in Gatesville, Texas, for a total purchase price of \$17,866.82, Respondent engaged in the business of a market agency buying livestock in commerce on a commission basis without being registered with the Secretary and without maintaining an adequate bond or bond equivalent.
5. During the period from August 9, 2011, and September 27, 2011, in 18 transactions involving the purchase of a total of 421 head of livestock from Comanche Livestock Exchange,

Jordan Cattle Auction, Hamilton Commission Company, Milam County Livestock Auction, and Coryell County Commission, for a total purchase price of \$110,862.79, Respondent engaged in the business of a dealer buying and selling livestock in commerce without being registered with the Secretary and without maintaining an adequate bond or bond equivalent.

6. In ten of the transactions referenced in paragraphs 4 and 5, Respondent purchased 285 head of livestock in the amount of approximately \$77,237.77 and failed to pay, when due, the full amount of the purchase prices within the time period required by the Act.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent 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, 201.30) by engaging in operations subject to the Act without being properly registered with the Secretary of Agriculture and without maintaining an adequate bond or bond equivalent.
3. Respondent willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b), and section 201.43 of the regulations (9 C.F.R. § 201.43).

Order

1. Respondent, his agents and employees, directly or indirectly through any corporate or other device, shall cease and desist from:
 - a. Engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act and regulations promulgated thereunder without filing and maintaining an adequate bond or its equivalent;
 - b. Engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act and the regulations promulgated thereunder without first

becoming properly registered under the Act as required by section 201.10(a) of the regulations (9 C.F.R. § 201.10(a)); and

c. Purchasing livestock and failing to pay the full amount of the purchase price for livestock before the close of the next business day following each purchase of livestock, as required by section 409 of the Act (7 U.S.C. § 228b) and section 201.43 of the regulations (9 C.F.R. § 201.43).

2. Respondent is prohibited from being registered and from engaging in any activities for which registration is required under the Act for a period of thirty (30) days and thereafter until such time as respondent demonstrates to the satisfaction of GIPSA that he has an adequate bond or bond equivalent and that he is in full compliance with the Act. Should Respondent demonstrate to the satisfaction of GIPSA that he has an adequate bond or bond equivalent and that he is in full compliance with the Act, after expiration of the initial 30-day period, upon application to GIPSA, a supplemental order may be issued terminating the prohibition on respondent. At such time and thereafter, any application for registration that respondent may file with GIPSA will be processed in accordance with standard GIPSA procedures.

3. Respondent is assessed a civil penalty in the amount of ten thousand eight hundred dollars (\$10,800.00). Respondent shall send a certified check or money order in the amount of ten thousand eight hundred dollars (\$10,800.00), payable to the Treasurer of the United States, to:

USDA – GIPSA
U.S. Bank
P.O. Box 790335
St. Louis, MO 63179-0335

The certified check or money order shall include the docket number of this proceeding.

4. This decision 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 30 days pursuant to Section 1.145 of the Rules of Practice (7 C.F.R § 1.145).

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

December 5, 2012

Peter M. Davenport
Chief Administrative Law Judge