

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0600

In re: Mark Kasmiersky,
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.) (Act), by a Complaint filed on August 24, 2012, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (Complainant), alleging that Mark Kasmiersky (Respondent) willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. §§ 201.1 et seq.) (Regulations).

On August 28, 2012, a copy of the Complaint was sent to Respondent by certified mail, and was returned to the Hearing Clerk marked “unclaimed” by the U.S. Postal Service. On October 2, 2012, the Hearing Clerk re-mailed the Complaint to Respondent using regular mail. Complainant’s attorney also sent a letter dated August 27, 2012, and a proposed Consent Decision to Respondent by certified mail. Respondent was informed in the letter that he could file an answer to the Complaint and request a hearing or that he could dispose of the matter by signing the proposed Consent Decision. The letter and proposed Consent Decision were returned to Complainant’s attorney marked “unclaimed” by the U.S. Postal Service, and were re-mailed to Respondent by regular mail on September 26, 2012.

Respondent contacted Complainant's attorney and Complainant's attorney informed Respondent multiple times of the consequences for failing to file an answer to the Complaint and further explained to Respondent how to request an extension of time to file an answer. Respondent filed two requests for extensions of time to file an Answer. Both requests were granted, the first giving Respondent until November 12, 2012 and the second giving Respondent until November 26, 2012 in which to file an Answer.

In a letter dated November 29, 2012, Respondent was advised by the Hearing Clerk that he had not filed an answer within the time allotted by section 1.36 of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.136) (Rules of Practice) and that he would be informed of the proceedings in this matter. Respondent failed to file an Answer to the Complaint, did not request another extension of time, respond to the November 29, 2012 letter from the Hearing Clerk, or agree to the proposed Consent Decision.

As Respondent failed to file an answer within the time period prescribed by the Rules of Practice (7 C.F.R. § 1.136), 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 Mark Kasmiersky is an individual with a mailing address in Fayetteville, Texas.
2. At all times material to the Complaint, Respondent was:
 - (a) Engaged in the business of a market agency buying livestock in commerce on a commission basis; and
 - (b) Not registered with the Secretary of Agriculture as a market agency to

buy livestock in commerce on a commission basis.

3. In 2009 Respondent was registered with the Secretary of Agriculture to engage in the business of a market agency buying livestock in commerce on a commission basis and he had a \$20,000 Clause 2 bond. Respondent failed to file his annual report for 2009, and on April 16, 2010, GIPSA sent him a Notice of Default-Annual Report notifying him that his annual report was delinquent. Respondent still did not file his annual report for 2009, and on August 11, 2010, GIPSA sent him a Registration Expiration Notice notifying him that his failure to file his annual report had resulted in the expiration of his registration. The notice also informed Respondent of his obligation to file a new application for registration and to submit the delinquent annual report if he wished to engage in the business of buying and selling livestock in interstate commerce and that engaging in business in any capacity that is subject to the Act without complying with the registration provisions of the Act is a violation of the Act and the Regulations and could subject him to disciplinary action.

4. On September 22, 2010, the surety sent Respondent and the Packers and Stockyards Program a letter stating that his bond would be terminated and void as of November 3, 2010. On September 27, 2010, GIPSA sent respondent a Bond Termination Notice notifying him of his obligation to secure a bond if he wished to engage in the business of buying and selling livestock in interstate commerce. The notice also informed Respondent that engaging in business in any capacity that is subject to the Act without filing an adequate bond or bond equivalent is a violation of the Act and the Regulations and could subject him to disciplinary action.

5. During the period from May 16, 2011, through July 14, 2011, in seventeen transactions involving his purchase of a total of 180 head of livestock at Flatonia Livestock Commission Company in Flatonia, Texas, and Hauerland Livestock Company LLC d/b/a

Columbus Livestock Company in Columbus, Texas, for a total purchase price of \$97,431.81, Respondent engaged in the business of a market agency purchasing livestock in commerce on a commission basis without being registered with the Secretary and without maintaining an adequate bond or bond equivalent.

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).

Order

1. Respondent Mark Kasmiersky, his agents and employees, directly or through any corporate or other device, in connection with his operations subject to the Act, shall cease and desist from engaging in business in any capacity for which bonding is required under the Act and the Regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the Regulations, and without first becoming properly registered under the Act.
2. Respondent is prohibited from registering to engage in business subject to the Act for a period of 30 days. After the expiration of this 30 day time period, Respondent may submit an application for registration to the Packers and Stockyards Program along with the required bond or bond equivalent.
3. Respondent is further prohibited from engaging in business in any capacity for which registration is required under the Act without being registered with the Packers and Stockyards Program. Pursuant to 7 U.S.C. § 204, and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30), Respondent is prohibited from engaging in business in any capacity

for which bonding is required under the Act and the Regulations without filing and maintaining an adequate bond or bond equivalent with the Packers and Stockyards Program.

4. Respondent is assessed a civil penalty in the amount of Four Thousand Dollars (\$4,000.00).

5. 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 by a party to the proceeding within thirty (30) days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139, 1.145).

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

March 21, 2013

Peter M. Davenport
Chief Administrative Law Judge