

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0533

In re: Abe Cueta, a/k/a Abram Cuesta
d/b/a Quality Cattle,

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 17, 2012, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that Respondent willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*).

Service of 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) was attempted to be served upon Respondent by certified mail; however, the mail was returned as “unclaimed” and Respondent was then served by regular mail as provided by the Rules of Practice on December 27, 2012. Respondent was informed in the complaint and the accompanying 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 and a waiver of hearing. Respondent was also contacted

by telephone by Complainant's counsel at which time Counsel indicates that he acknowledged receiving the Complaint (and the Hearing Clerk's letter).

On January 23, 2013, the Hearing Clerk sent Respondent a letter indicating that no Answer had been received and that he would be notified of further proceedings in the matter. On January 30, 2013, I entered an Order directing the parties to show cause why a default decision should not be entered. Both parties responded. The Complainant has moved for a default decision to be entered. The letter sent in response to the show cause order alleges possible ethnic discrimination, but admits late payment in violation of the Act.

As Respondent failed to file an answer within the time period prescribed by the Rules of Practice and failed to fully deny the allegations in the Complaint, the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Abe Cuesta, a/k/a Abram Cuesta, d/b/a Quality Cattle is an individual with a mailing address in Tampa, Florida.
2. Respondent was at all times material herein:
 - (a) Engaged in the business of a dealer buying and selling livestock in commerce;
and
 - (b) Not registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce.
3. On October 5, 2010, Respondent issued a check to Hilliard-McKettick Investments, Inc., d/b/a Arcadia Livestock, of Arcadia, Florida in the amount of \$4,348.25 that was returned unpaid by the bank upon which it was drawn by reason of insufficient funds in Respondent's account.

4. Between September 27, 2010 and November 17, 2010, in 15 transactions totaling \$32,441/85 set forth more fully in the Complaint, Respondent failed to pay when due, the full amount of the livestock purchase price.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent Abe Cuesta willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b).

Order

1. Respondent Abe Cuesta shall cease and desist from 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 sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b).
2. Respondent is hereby assessed a civil penalty in the amount of eleven thousand nine hundred dollars (\$11,900.00). Respondents shall send a certified check or money order for the civil penalty payable to the U.S. Department of Agriculture, to USDA GIPSA, P. O. Box 790335, St. Louis, Missouri 63179-0335 within thirty (30) days from the effective date of this order. Respondents shall indicate on the certified check or money order that payment is in reference to Docket No. 12-0533.
3. This decision shall become final and effective without further proceedings 35 days after the date of service upon respondents, 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 shall be served upon the parties.

May 8, 2013

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge