

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0204

In re: Orange Livestock Market, Inc.

and

Docket No. 13-0205

In re: Joseph K. Howell,

Respondents

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 and notice of hearing filed on April 10, 2013, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that respondents Orange Livestock Market, Inc. and Joseph K. Howell 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 Respondents by certified mail on April 12, 2013. Respondents were 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. Respondents were further informed that their answer should admit or deny each

allegation as set forth in the complaint and that filing an answer that did not deny the material allegations of the complaint would constitute both an admission of those allegations and a waiver of hearing.

Respondents failed to file an Answer that denies or otherwise explains or responds to any of the allegations set forth in the complaint and are deemed to have admitted the material facts alleged in the complaint and waived their right to a hearing. Accordingly, 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 Orange Livestock Market, Inc. is a corporation organized under the laws of the Commonwealth of Virginia, with a mailing address in Orange, Virginia.
2. Respondent Joseph K. Howell is, and at all times material herein was:
 - (1) President of respondent Orange Livestock Market, Inc.;
 - (2) Owner of 100% of the stock issued by respondent Orange Livestock Market, Inc.;
 - (3) Responsible for the direction, management and control of respondent Orange Livestock Market, Inc.
3. Respondent Orange Livestock Market, Inc., under the direction, management, and control of respondent Joseph K. Howell, is, and at all times material herein was:
 - (1) Engaged in the business of a market agency buying and selling livestock on a commission basis in commerce;
 - (2) Engaged in the business of a dealer buying and selling livestock in commerce;

(3) Registered with the Secretary of Agriculture as a market agency to buy and sell livestock on a commission basis in commerce, and registered as a dealer to buy and sell livestock in commerce.

4. During the period from May, 2009 through May, 2010, in seven transactions involving the purchase of a total of 130 head of livestock at Carolina Stockyard Company, Inc. of Siler City, North Carolina, for an approximate purchase price of \$59,358.50, the respondents failed to pay the full amount of the livestock purchase prices the full amount of livestock purchases within the time period required by the Act.

5. During the period of January, 2012 through July, 2012, in eight transactions involving the purchase of 104 head of livestock at Harward Brothers Livestock Market of Oakboro, North Carolina for a total purchase price of \$74,795, the respondents failed to pay, when due, the full amount of the livestock purchase prices within the time period required by the Act. Respondents remitted payment between six and thirteen days late for these transactions.

6. On April 9, 2012 and June 16, 2012, the respondents issued two insufficient funds checks, one in the amount of \$11,256.55 and the other in the amount of \$12,035.50, to Harward Brothers Livestock Market in payment for livestock purchases. On July 26, 2012, the respondents issued one insufficient funds check, in the amount of \$16,770.21, to Fauquier Livestock Exchange in payment for livestock purchases. The respondents thus failed to have and maintain sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Respondents Orange Livestock Market, Inc. and Joseph K. Howell willfully violated sections 202(a) and 409 of the Act (7 U.S.C. §§ 192(a), 228b).

Order

1. Respondents Orange Livestock Market, Inc. and Joseph K. Howell are hereby suspended as registrants under the Act for a period of thirty (30) days.

2. Respondents, their agents and employees, directly or through any corporate or other device, 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 202(a) and 409 of the Act (7 U.S.C. §§ 192(a) and 228b).

3. Respondents are hereby assessed a civil penalty in the amount of seventy two thousand dollars (\$72,000.00). Respondents shall send a certified check or money order for seventy two thousand dollars (\$72,000.00), payable to the U.S. Department of Agriculture, to USDA GIPSA, P. O. Box 790335, St. Louis, Missouri 63179-0335 within sixty (60) days from the effective date of this order. Respondents shall indicate on the certified check or money order that payment is in reference to P&S Docket No. 13-0204.

4. 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.

July 3, 2013

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge