

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [P&S-D]
) Docket No. 13-0201
Paul Day)
)
Respondent) **Decision and Order by**
) **Reason of Admissions**

Appearances:

Darlene M. Bolinger, Esq. with the Office of the General Counsel, United States Department of Agriculture, Washington, D.C., for the Complainant (Packers and Stockyards); and

Paul Day, an individual, representing himself (appearing *pro se*), the Respondent.

Decision Summary

1. For Respondent Paul Day's failures to comply with the Packers and Stockyards Act, I impose: (a) **cease and desist orders**; *see* paragraph 16; (b) a prohibition from engaging in operations subject to the Packers and Stockyards Act of **at least one-year**; *see* paragraph 17; and (c) civil penalties totaling **\$4,000.00** (four thousand dollars); *see* paragraph 18.

Parties and Allegations

2. The Complainant is the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (frequently herein "Packers and Stockyards" or "Complainant").

3. The Respondent is Paul Day, an individual (herein frequently “Paul Day” or “Respondent Day” or “Respondent Paul Day” or “Respondent”).

4. The Complaint, filed on April 2, 2013, alleged there is reason to believe that the Respondent Paul Day willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181, *et seq.*) (frequently herein the “Packers and Stockyards Act” or the “Act”), and the regulations promulgated thereunder, 9 C.F.R. § 201.1 *et seq.*

5. The Respondent Paul Day filed his Answer timely on April 23, 2013, stating among other things: “I have stopped doing any cattle business for almost a year. If I ever get back into the cattle business I will contact your office at once. But at this time I’m unemployed and filing for disability.”

Procedural History

6. Packers and Stockyards filed its “Amended Motion for Decision Without Hearing by Reason of Default”, on June 6, 2013. Respondent Day has failed to respond to that Amended Motion. Respondent Day did not receive his copy when it was sent by certified mail, which went “UNCLAIMED” and was returned to the Hearing Clerk [“Return to Sender”]. However, Respondent Day is deemed served with that Amended Motion on June 18, 2013, the date that the Amended Motion was re-mailed to him by ordinary mail. *See* section 1.147(c)(1) of the Rules of Practice, 7 C.F.R. § 1.147(c)(1).

7. The parties participated in a telephone conference with me on August 20, 2013. During that telephone conference Respondent Day admitted his failures to comply with the Packers and Stockyards Act and said he would love to see the \$12,750.00 lowered (the civil

penalties amount requested by Packers and Stockyards). His failure to pay for purchased livestock, he said was in part because he never received two payments that his wife, from whom he was separated, used; the two payments had been mailed to him at his old address. Respondent Day described his horrible injuries from 2010, when he fell through the double-decker truck trailer floor. He was for a time paralyzed from the waist down. Respondent Day said he was on disability, receiving Supplemental Security Income (SSI) and Medicaid (since May 2013).

8. During the August 20 telephone conference, counsel for Packers and Stockyards Ms. Bolinger expressed willingness to review documentation of Respondent Day's financial condition if he would provide it, so that Packers and Stockyards could determine whether to persist in its request for a \$12,750.00 civil penalty. Ms. Bolinger asked Respondent Day to provide also copies of his recent income tax returns; he responded that he had not filed recent income tax returns: not for 2012, not for 2011, not for 2010. I encouraged Respondent Day to seek help in getting his income tax returns filed. During the August 20 telephone conference, Respondent Day and Ms. Bolinger agreed to talk by phone the next day, with the idea of working out a Consent Decision; and we scheduled another telephone conference to include me for September 30, 2013, at 2:00 pm Central time, 3:00 pm Eastern. The September 30 telephone conference was held as scheduled, and Respondent Day failed to participate; there was no answer when his phone number was called. Beginning the following day, the lapse of funding prevented Ms. Bolinger from working and prevented the entire Office of Administrative Law Judges, including Ms. Kennedy and me, from working,

until October 17, 2013. There is no indication that Respondent Day has tried to reach either Ms. Bolinger or Ms. Kennedy and me during the prohibition against us working or during the more than one month since, despite repeated attempts by both Ms. Bolinger and Ms. Kennedy to reach him. Respondent Day has failed, to this day, to provide any financial disclosure or documentation to Ms. Bolinger. Respondent Paul Day's Answer did not deny the factual allegations of the Complaint. The factual allegations of the Complaint are admitted by the Respondent's failure to deny them and are adopted and set forth herein as Findings of Fact. This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

9. The Respondent Paul Day is an individual with a mailing address in Springfield, Missouri.

10. The Respondent Paul Day, at all times material herein, was engaged in the business of a dealer buying and/or selling livestock in commerce and a market agency buying and/or selling livestock in commerce on a commission basis, without being registered with the Secretary of Agriculture and without maintaining an adequate bond or bond equivalent, including from about October 3, 2011 through November 1, 2011, and again from February 1, 2012 through March 7, 2012, in approximately 15 transactions involving the purchase of a total of 746 head of livestock. *See* paragraph III of the Complaint.

11. Further, the Respondent Paul Day was engaged in the business of a dealer buying and/or selling livestock in commerce, either on his own account or as an agent of the vendor

or purchaser, without maintaining an adequate bond or bond equivalent, particularly on November 16, 2011 in a transaction involving the purchase of 9 head of livestock; and on November 18, 2011 in a transaction involving the sale of 8 head of livestock. *See* paragraph IV of the Complaint.

12. In addition, when the Respondent Paul Day purchased livestock on or about November 16, 2011, he failed to pay the full purchase price of \$15,112.95 when due, and **\$4,744.64 remained unpaid** as of February 14, 2013. *See* paragraph V of the Complaint.

Conclusions

13. The Secretary of Agriculture has jurisdiction over the parties and the subject matter.

14. Respondent Paul Day engaged in operations subject to the Packers and Stockyards Act without maintaining an adequate bond or bond equivalent, thereby engaging in an “unfair practice” in violation of 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). *See* paragraph 10 and paragraph 11.

15. Respondent Paul Day purchased livestock for which full payment was not timely made, thereby engaging in an “unfair practice” in violation of section 312(a) of the Act (7 U.S.C. §213(a)), and a violation of section 409(a) of the Act (7 U.S.C. §228b(a)); and section 201.43 of the regulations (9 C.F.R. § 201.43). *See* paragraph 12.

Order

16. Respondent Paul Day and his agents and employees, directly or indirectly through any corporate or other device, in connection with activities subject to the Packers and Stockyards Act, **shall cease and desist** from:

(a) engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations promulgated thereunder, without **filing and maintaining an adequate bond or bond equivalent**; as required by sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29, 201.30);

AND

(b) Respondent Paul Day is prohibited from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, 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) Respondent Paul Day shall **cease and desist** from purchasing livestock and failing to **pay the full purchase price** of livestock **when due** (normally 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).

17. Respondent Paul Day is prohibited from being registered and from engaging in any activities for which registration is required under the Packers and Stockyards Act for **one year and thereafter** until such time as Respondent demonstrates to the satisfaction of Packers and Stockyards that he has an adequate bond or bond equivalent, that he has paid in full the assessed civil penalties as specified in paragraph 18, and that he is in full compliance with the Act. After expiration of the initial one year period, upon application to Packers and Stockyards, 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 Packers and Stockyards will be processed in accordance with standard Packers and Stockyards procedures.

18. Respondent Paul Day shall pay civil penalties totaling **\$4,000.00** (four thousand dollars), in accordance with section 312(b) of the Act (7 U.S.C. § 213(b)). The civil penalty payment instrument(s) shall be made payable to the order of the **United States Department of Agriculture**, marked with **PS-D-13-0201**, and sent to:

USDA-GIPSA
P.O. Box 790335
St. Louis, Missouri 63179-0335

Payment(s) shall be **completed within one year** from the date this Order is final and effective. *See* paragraph 19.

Finality

19. This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk

within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145; *see* Appendix A).

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 25th day of November 2013

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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