

AGRICULTURE DECISIONS

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THIS IS A COMPILATION OF DECISIONS ISSUED BY THE
SECRETARY OF AGRICULTURE AND THE COURTS
PERTAINING TO STATUTES ADMINISTERED BY THE
UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURE DECISIONS

AGRICULTURE DECISIONS is an official publication by the Secretary of Agriculture consisting of decisions and orders issued in formal adjudicatory administrative proceedings conducted for the Department under various statutes and regulations pursuant to the Administrative Procedure Act. Selected court decisions concerning the Department's regulatory programs are also included. The Department is required to publish its rules and regulations in the *Federal Register* and, therefore, they are not included in AGRICULTURE DECISIONS.

Beginning in 1989, AGRICULTURE DECISIONS is comprised of three Parts, each of which is published every six months. Part One is organized alphabetically by statute and contains all decisions and orders other than those pertaining to the Packers and Stockyards Act and the Perishable Agricultural Commodities Act, which are contained in Parts Two and Three, respectively.

The published decisions and orders may be cited by giving the volume number, page number and year, e.g., 1 Agric. Dec. 472 (1942). It is unnecessary to cite a decision's docket or decision numbers, e.g., D-578; S. 1150, and the use of such references generally indicates that the decision has not been published in AGRICULTURE DECISIONS.

Consent Decisions entered subsequent to December 31, 1986, are no longer published. However, a list of the decisions is included. The decisions are on file and may be inspected upon request made to the Hearing Clerk, Office of Administrative Law Judges.

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PACKERS AND STOCKYARDS ACT

DEPARTMENTAL DECISIONS

**In re: SPRING VALLEY MEATS, INC., and CHARLES CONTRIS.
P&S Docket No. D-96-0059.**

Decision and Order as to Spring Valley Meats, Inc. filed August 1, 1997.

Failure to obtain trust waiver — Failing to pay — Failing to pay when due — Financial condition — Failure to file an answer — Default decision — Civil penalty — Cease and desist order.

The Judicial Officer affirmed the Default Decision as to Spring Valley Meats, Inc., issued by Administrative Law Judge Dorothea A. Baker (ALJ) assessing a civil penalty of \$28,000 against Respondent Spring Valley Meats, Inc., and directing Respondent Spring Valley Meats, Inc., to cease and desist from violating the Packers and Stockyards Act, the regulations issued under the Act, and the Secretary's Order issued in P. & S. Docket No. D-91-75. Respondents' December 13, 1996, filing, which Respondents assert is their Answer, addresses matters extraneous to the Complaint and does not meet the description of an Answer in 7 C.F.R. § 1.136(b). Respondents' failure to respond to allegations of the Complaint is deemed, for the purposes of the proceeding, an admission of the allegations of the Complaint (7 C.F.R. § 1.136(c)). Even if Respondents' December 13, 1996, filing were found to be an Answer denying the material allegations of the Complaint, it would not constitute a basis for setting aside the Default Decision as to Spring Valley Meats, Inc., because the December 13, 1996, filing was not filed within 20 days after service of the Complaint on Respondents and is deemed an admission of the allegations of the Complaint (7 C.F.R. § 1.136(c)) and constitutes a waiver of hearing (7 C.F.R. § 1.139). Accordingly, the Default Decision as to Spring Valley Meats, Inc., was properly issued. The record establishes that Respondents were provided with a meaningful opportunity for a hearing in accordance with the Rules of Practice. Application of the default provisions of the Rules of Practice does not deny Respondents due process.

JoAnn Waterfield, for Complainant.

Respondent, Pro se.

Initial decision issued by Dorothea A. Baker, Administrative Law Judge.

Decision and Order issued by William G. Jenson, Judicial Officer.

The Acting Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration [hereinafter Complainant], instituted this disciplinary administrative proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229) [hereinafter Packers and Stockyards Act]; the regulations promulgated under the Packers and Stockyards Act (9 C.F.R. §§ 201.1-.200) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary (7 C.F.R. §§ 1.130-.151) [hereinafter Rules of Practice], by filing a Complaint and Notice of Hearing [hereinafter Complaint] on September 27, 1996.

The Complaint alleges that: (1) Respondent Charles Contris is the *alter ego* of Respondent Spring Valley Meats, Inc. (Complaint ¶ V); (2) the financial condition of Respondent Spring Valley Meats, Inc., does not meet the requirements of the Packers and Stockyards Act (7 U.S.C. § 204) (Complaint ¶¶ II, V); (3) Respondent Charles Contris and Respondent Spring Valley Meats, Inc. [hereinafter Respondents], obtained written credit agreements with livestock sellers without also obtaining written trust waiver acknowledgements from the livestock sellers in violation of section 202(a) of the Packers and Stockyards Act (7 U.S.C. § 192(a)) and section 201.200 of the Regulations (9 C.F.R. § 201.200) (Complaint ¶¶ III, V); and (4) Respondents purchased livestock and failed to pay, when due, the full purchase price of the livestock in willful violation of sections 202(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 192(a), 228b) and the Secretary's Order issued in P. & S. Docket No. D-91-75¹ (Complaint ¶¶ IV, V).

Respondents were served with the Complaint on October 28, 1996, but failed to file an Answer to the Complaint within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). On May 12, 1997, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Administrative Law Judge Dorothea A. Baker [hereinafter ALJ] issued a Decision Without Hearing By Reason of Default With Respect to Respondent Spring Valley Meats, Inc. [hereinafter Default Decision as to Spring Valley Meats, Inc.], in which the ALJ: (1) found that the financial condition of Respondent Spring Valley Meats, Inc., did not meet the requirements of the Packers and Stockyards Act (7 U.S.C. § 204); (2) found that Respondent Spring Valley Meats, Inc., violated sections 202(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 192(a), 228b), section 201.200 of the Regulations (9 C.F.R. § 201.200), and the Secretary's Order issued in P. & S. Docket No. D-91-75; (3) ordered Respondent Spring Valley Meats, Inc., to cease and desist violations of the Packers and Stockyards Act, the Regulations, and the Secretary's Order issued in P. & S. Docket No. D-91-75; and (4) assessed Respondent Spring Valley Meats, Inc., a civil penalty of \$28,000 (Default Decision as to Spring Valley Meats, Inc., at 3-5).²

¹The Consent Decision containing the Secretary's Order issued in P. & S. Docket No. D-91-75 is referenced at 51 Agric. Dec. 1404 (1992).

²Also, on May 12, 1997, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the ALJ issued a Decision Without Hearing By Reason of Default With Respect to Respondent Charles Contris [hereinafter Default Decision as to Charles Contris], which is more fully addressed in a companion decision and order, *In re Spring Valley Meats, Inc.* (Decision as to Charles Contris), 56 Agric. Dec. ___ (Aug. 1, 1997).

On June 6, 1997, Respondents appealed to the Judicial Officer to whom the Secretary of Agriculture has delegated authority to act as final deciding officer in the Department's adjudicatory proceedings subject to 5 U.S.C. §§ 556 and 557 (7 C.F.R. § 2.35).³ On July 10, 1997, Complainant filed Complainant's Response to Respondents' Petition for Appeal, and on July 14, 1997, the case was referred to the Judicial Officer for decision.

Based upon a careful consideration of the record in this proceeding, the Default Decision as to Spring Valley Meats, Inc., is adopted as the final Decision and Order as to Spring Valley Meats, Inc., with additions or changes shown by brackets, deletions shown by dots, and minor editorial changes not specified. Additional conclusions by the Judicial Officer follow the ALJ's conclusions.

APPLICABLE STATUTORY PROVISIONS AND REGULATIONS

7 U.S.C.:

CHAPTER 9—PACKERS AND STOCKYARDS

....

SUBCHAPTER II-PACKERS GENERALLY

§ 191. "Packer" defined

When used in this chapter the term "packer" means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce.

§ 192. Unlawful practices enumerated

³The position of Judicial Officer was established pursuant to the Act of April 4, 1940 (7 U.S.C. §§ 450c-450g); section 4(a) of Reorganization Plan No. 2 of 1953, 18 Fed. Reg. 3219, 3221 (1953), reprinted in 5 U.S.C. app. § 4(a) at 1491 (1994); and section 212(a)(1) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6912(a)(1)).

It shall be unlawful for any packer with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to:

(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device[.]

§ 193. Procedure before Secretary for violations

(a) Complaint; hearing; intervention

Whenever the Secretary has reason to believe that any packer has violated or is violating any provision of this subchapter, he shall cause a complaint in writing to be served upon the packer, stating his charges in that respect, and requiring the packer to attend and testify at a hearing at a time and place designated therein, at least thirty days after service of such complaint; and at such time and place there shall be afforded the packer a reasonable opportunity to be informed as to the evidence introduced against him (including the right of cross-examination), and to be heard in person or by counsel and through witnesses, under such regulations as the Secretary may prescribe

(b) Report and order; penalty

If, after such hearing, the Secretary finds that the packer has violated or is violating any provisions of this subchapter covered by the charges, he shall make a report in writing in which he shall state his findings as to the facts, and shall issue and cause to be served on the packer an order requiring such packer to cease and desist from continuing such violation. . . . The Secretary may also assess a civil penalty of not more than \$10,000 for each such violation.

SUBCHAPTER III—STOCKYARDS AND STOCKYARD DEALERS

. . . .

§ 204. Bond and suspension of registrants

On and after July 12, 1943, the Secretary may require reasonable bonds from every market agency (as defined in this subchapter), every packer (as defined in subchapter II of this chapter) in connection with its livestock

purchasing operations (except that those packers whose average annual purchases do not exceed \$500,000 will be exempt from the provisions of this paragraph), and every other person operating as a dealer (as defined in this subchapter) under such rules and regulations as he may prescribe, to secure the performance of their obligations, and whenever, after due notice and hearing, the Secretary finds any registrant is insolvent or has violated any provisions of this chapter he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect within not less than five days, unless suspended or modified or set aside by the Secretary or a court of competent jurisdiction. If the Secretary finds any packer is insolvent, he may after notice and hearing issue an order under the provisions of section 193 of this title requiring such packer to cease and desist from purchasing livestock while insolvent, or while insolvent purchasing livestock except under such conditions as the Secretary may prescribe to effectuate the purposes of this chapter.

SUBCHAPTER V—GENERAL PROVISIONS

....

§ 228b. Prompt payment for purchase of livestock

(a) Full amount of purchase price required; methods of payment

Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full amount of the purchase price: *Provided*, That each packer, market agency, or dealer purchasing livestock for slaughter shall, before the close of the next business day following purchase of livestock and transfer of possession thereof, actually deliver at the point of transfer of possession to the seller or his duly authorized representative a check or shall wire transfer funds to the seller's account for the full amount of the purchase price; or, in the case of a purchase on a carcass or "grade and yield" basis, the purchaser shall make payment by check at the point of transfer of possession or shall wire transfer funds to the seller's account for the full amount of the purchase price not later than the close of the first business day following determination of the purchase price: *Provided further*, That if the seller or his duly authorized representative is not present to receive payment at the point of

transfer of possession, as herein provided, the packer, market agency or dealer shall wire transfer funds or place a check in the United States mail for the full amount of the purchase price, properly addressed to the seller, within the time limits specified in this subsection, such action being deemed compliance with the requirement for prompt payment.

(b) Waiver of prompt payment by written agreement; disclosure requirements

Notwithstanding the provisions of subsection (a) of this section and subject to such terms and conditions as the Secretary may prescribe, the parties to the purchase and sale of livestock may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required in subsection (a) of this section. Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction.

(c) Delay in payment or attempt to delay deemed unfair practice

Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an "unfair practice" in violation of this chapter. Nothing in this section shall be deemed to limit the meaning of the term "unfair practice" as used in this chapter.

7 U.S.C. §§ 191, 192(a), 193(a), (b), 204, 228b.

9 C.F.R.:

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

....

§ 201.200 Sale of livestock to a packer on credit.

(a) No packer whose average annual purchases of livestock exceed

\$500,000 shall purchase livestock on credit, and no dealer or market agency acting as an agent for such a packer shall purchase livestock on credit, unless:

(1) Before purchasing such livestock the packer obtains from the seller a written acknowledgement as follows:

On this date I am entering into a written agreement for the sale of livestock on credit to _____, a packer, and I understand that in doing so I will have no rights under the trust provisions of section 206 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 196, Pub. L. 94-410), with respect to any such credit sale. The written agreement for such selling on credit

Covers a single sale.

Provides that it will remain in effect until (date).

Provides that it will remain in effect until canceled in writing by either party.

(Omit the provisions not applicable.)

Date _____

Signature _____

(2) Such packer retains such acknowledgement, together with all other documents, if any, setting forth the terms of such credit sales on which the purchaser and seller have agreed, and such dealer or market agency retains a copy thereof, in his records for such time as is required by any law, or by written notice served on such person by the Administrator, but not less than two calendar years from the date of expiration of the written agreement referred to in such acknowledgement; and

(3) Such seller receives a copy of such acknowledgement.

(b) Purchasing livestock for which payment is to be made by a draft which is not a check, shall constitute purchasing such livestock on credit within the meaning of paragraph (a) of this section. (See also § 201.43(b)(1).)

(c) The provisions of this section shall not be construed to permit any transaction prohibited by § 201.61(a) relating to financing by market agencies selling on a commission basis.

**ADMINISTRATIVE LAW JUDGE'S INITIAL DEFAULT DECISION
(AS MODIFIED)**

....

Findings of Fact

1. a) Spring Valley Meats, Inc., . . . is a corporation organized and existing under the laws of North Carolina. The . . . mailing address [for Spring Valley Meats, Inc.] is [REDACTED] North Carolina [REDACTED]

b) [Spring Valley Meats, Inc.] at all times material herein, was:

(1) Engaged in the business of buying livestock in commerce for purposes of slaughter, or of manufacturing or preparing meats or meat products for sale or shipment in commerce; and

(2) A packer within the meaning of and subject to the provisions of the [Packers and Stockyards] Act.

2. a) Charles Contris . . . is an individual whose mailing address is [REDACTED] (b) (6)

b) [Charles Contris] is, and at all times material herein, was:

(1) President of [Spring Valley Meats, Inc.];

(2) Responsible for direction, management, and control of [Spring Valley Meats, Inc.]; and

(3) A packer within the meaning of and subject to the provisions of the [Packers and Stockyards] Act.

3. [Respondents] entered into a Consent Decision in P. & S. Docket No. D-91-75 which was issued August 10, 1992. The decision ordered Respondents to cease and desist from issuing checks without having and maintaining sufficient funds on deposit and available in the bank account upon which they are drawn to pay such checks when presented; and failing to pay, when due, the full purchase price of livestock. Respondents were jointly and severally assessed a civil penalty . . . of . . . \$2,000.

4. [Charles Contris] is the *alter ego* of [Spring Valley Meats, Inc.]

5. a) As set forth more fully in paragraph II of the Complaint, the financial condition of [Spring Valley Meats, Inc.] does not meet the requirements of the [Packers and Stockyards] Act.

b) As set forth more fully in paragraph III of the Complaint, [Charles Contris], on behalf of [Spring Valley Meats, Inc.], obtained written credit agreements without also obtaining the required written trust waiver acknowledgments from the livestock sellers.

c) [Spring Valley Meats, Inc.], under the direction, management, and

control of [Charles Contris], on or about the dates and in the transactions set forth in paragraph IV(a) of the Complaint, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

d) As of July 12, 1996, [Spring Valley Meats, Inc.,] under the direction, management, and control of [Charles Contris], failed to pay four sellers of livestock identified in paragraph IV(b) of the Complaint a total of \$231,677.

Conclusions [of Law]

By reason of the facts found in [the] Finding[s] of Fact . . . [in this Decision and Order], Respondent Spring Valley Meats, Inc., violated sections 202(a) and 409 of the [Packers and Stockyards] Act (7 U.S.C. §§ 192(a), 228b), section 201.200 of the Regulations (9 C.F.R. § 201.200), and the Secretary's Order issued in P. & S. Docket No. D-91-75.

ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER

Respondents contend that no default decision should be issued in this proceeding because Respondents' December 13, 1996, filing is their Answer to the Complaint, or in the alternative, Respondents should be allowed to file a "formal" Answer (Response of Respondents to Motion for Decision Without Hearing at 3). I find no basis in this record for setting aside the Default Decision as to Spring Valley Meats, Inc.⁴ Instead, the record reveals, as discussed in this Decision and Order, *infra*, pp. 11-31, that the Default Decision as to Spring Valley Meats, Inc., was issued in accordance with the Rules of Practice.

On September 30, 1996, the Office of the Hearing Clerk sent two identical, dually-addressed letters dated September 30, 1996, and one copy each of the Complaint and the Rules of Practice to Respondent Charles Contris, at his last known address, [REDACTED] (b) (6) [REDACTED] and to Respondent Spring Valley Meats, Inc., at its last known address, [REDACTED] North Carolina [REDACTED] by certified mail. The envelope containing the September 30, 1996, mailing to Respondent Charles Contris, from the Office of the Hearing Clerk, was returned to the Office of the Hearing Clerk marked by the postal service "Unclaimed." The envelope containing the September 30, 1996,

⁴I also find no basis for setting aside the Default Decision as to Charles Contris, which is the subject of a companion decision and order, *In re Spring Valley Meats, Inc.* (Decision as to Charles Contris), 56 Agric. Dec. ___ (Aug. 1, 1997).

mailing to Respondent Spring Valley Meats, Inc., from the Office of the Hearing Clerk, was returned to the Office of the Hearing Clerk marked by the postal service "Moved Left No Address."

Section 1.147(c)(1) of the Rules of Practice provides:

§ 1.147 Filing; service; extensions of time; and computation of time.

....

(c) *Service on party other than the Secretary.* (1) Any complaint or other document initially served on a person to make that person a party respondent in a proceeding, proposed decision and motion for adoption thereof upon failure to file an answer or other admission of all material allegations of fact contained in a complaint, initial decision, final decision, appeal petition filed by the Department, or other document specifically ordered by the Judge to be served by certified or registered mail, shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the date of delivery by certified or registered mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, *Provided that*, if any such document or paper is sent by certified or registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address.

7 C.F.R. § 1.147(c)(1).

On October 28, 1996, the Office of the Hearing Clerk served a copy of the Complaint on Respondents at Route 1, 79M, Warsaw, North Carolina 28398, by ordinary mail, in accordance with 7 C.F.R. § 1.147(c)(1) (October 28, 1996, Memorandum to the File from Tribble F. Greaves, Legal Technician).⁵ The

⁵ Respondents admit that they received a copy of the October 28, 1996, Memorandum to the File from Tribble Greaves (Response of Respondents to Motion for Decision Without Hearing ¶ 5), and I infer from this admission that Respondents also received a copy of the Complaint which accompanied the October 28, 1996, Memorandum to the File. Even if I found that Respondents did not actually receive the Complaint in the October 28, 1996, mailing, that finding would not change the outcome of this proceeding because, in accordance with section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)), Respondents are deemed to have received the Complaint on the date that it was remailed by ordinary mail, viz., October 28, 1996.

Memorandum to the File certifying the October 28, 1996, mailing states:

This is to certify that on October 28, 1996, I posted by regular mail an envelope containing a copy of a Complaint, giving respondent 20 days from receipt to file an answer. Respondent will have 20 days from the date of this memorandum to file an answer.

Sections 1.136, 1.139, and 1.141 of the Rules of Practice provide:

§ 1.136 Answer.

(a) *Filing and service.* Within 20 days after the service of the complaint . . . , the respondent shall file with the Hearing Clerk an answer signed by the respondent or the attorney of record in the proceeding. . . .

(c) *Default.* Failure to file an answer within the time provided under § 1.136(a) shall be deemed, for purposes of the proceeding, an admission of the allegations in the Complaint, and failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation, unless the parties have agreed to a consent decision pursuant to § 1.138 [(7 C.F.R. § 1.138)].

§ 1.139 Procedure upon failure to file an answer or admission of facts.

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.

§ 1.141 Procedure for hearing.

(a) *Request for hearing.* Any party may request a hearing on the facts by including such request in the complaint or answer, or by a separate

request, in writing, filed with the Hearing Clerk within the time in which an answer may be filed. . . . Failure to request a hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing.

7 C.F.R. §§ 1.136(a), (c), .139, .141(a).

The Complaint served on Respondents on October 28, 1996, clearly informs Respondents of the consequences of failing to file a timely Answer, as follows:

The respondents shall file an answer with the Hearing Clerk, United States Department of Agriculture, Room 1079 South Building, Washington, D.C. 20250, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 *et seq.*). Failure to file an answer shall constitute an admission of all the material allegations of this Complaint and Notice of Hearing. Respondents are hereby notified that unless hearing is waived, either expressly or by failure to file an answer and request a hearing as provided in sections 1.136 and 1.141 of the Rules of Practice (7 C.F.R. §§ 1.136, 1.141), a hearing will be held at a place and date to be specified later, before an administrative law judge designated to conduct such hearing.

Complaint at 8-9.

Respondents' Answer was due November 18, 1996. On the day Respondents' Answer was due, Complainant's counsel received a telephone call from Ms. Stacy Fisher, Respondent Charles Contris' daughter (Complainant's Response to Respondents' Petition for Appeal at 3). Complainant describes the telephone conversation as follows:

Ms. Fisher advised that [R]espondents were not ignoring the [C]omplaint, that the [C]omplaint had been misplaced, and that Contris was incarcerated. Ms. Fisher also provided Contris' address at the prison at Seymour Johnson Air Force Base. Complainant's counsel advised Ms. Fisher that [C]omplainant could not grant an extension and that [C]omplainant would not object to an extension if [R]espondents filed such a request with the Administrative Law Judge.

Complainant's Response to Respondents' Petition for Appeal at 3-4.

The record does not reveal that Respondents made any request, on or before November 18, 1996, to the ALJ for an extension of time to file their Answer. On November 19, 1996, the Office of the Hearing Clerk sent a letter to Respondent Charles Contris at (b) (6) informing

Respondent Charles Contris that an Answer to the Complaint had not been filed within the allotted time (Letter from Joyce A. Dawson to Mr. Charles Contris dated November 19, 1996).

Complainant's counsel informed the Office of the Hearing Clerk of the address given by Ms. Fisher for Respondent Charles Contris (Complainant's Response to Respondents' Petition for Appeal at 4), and on November 20, 1996, the Office of the Hearing Clerk sent Respondent Charles Contris a copy of the Complaint by certified mail (November 20, 1996, Memorandum to the File from Tribble F. Greaves, Legal Technician). The return receipt card was signed on November 25, 1996 (Return Receipt for Article Number Z 068 838 409).

Prior to receipt of the copy of the Complaint mailed on November 20, 1996, Respondents mailed their first filing in this proceeding, an undated letter filed on November 25, 1996,⁶ which states, as follows:

Att. hearing clerk,

I Charles Contris need served or mailed the Complaint that was mailed mistakenly to the wrong address, and opened by Danny Rogers and remailed to the proper address, so he said.

This letter has never been received by me to read, so I can properly reply to it.

We have reported this to Joanne [sic] Waterfield P & S Bedford, Va. [S]he said she has no objections to an extension of time for answering complaint. I ask you to please grant extension and mail my letter to this address.

Sincerely Charles Contris

Spring Valley Meats Co.

Charles Contris

(b) (6)

⁶Respondents' undated letter was filed 28 days after Respondents were served with the Complaint and was mailed in an envelope postmarked November 21, 1996, 24 days after Respondents were served with the Complaint.

Respondents' undated letter filed November 25, 1996.

On December 13, 1996, Respondents filed a second document to which they attached a copy of the November 20, 1996, Memorandum to the File from Tribble F. Greaves. Respondents' second filing states:

Att to Joann Waterfield Att. for Complainant and Joyce Dawson hearing clerk
U.S - Dept Agr.

Your mail sent to me has been going to the wrong address evidently, and I have not been able to respond to it in a timely manner.

To answer a few questions for you and inform you of the latest on Spring Valley Meats and myself, I shall proceed. Spring Valley Meats closed its doors in February of 1995 permanently and has never reopened. It has been harrassed [sic] out of business by U.S.D.A. meat inspectors who had unmercifully beat on us [sic] for a year. I have not been the Pres [sic] of Co [sic] since March of that year nor have I received any pay checks from the Co., as it was completely broke. I am also financially broke and am in prison for false charges they have put upon me. I have been sentenced to 2½ years in Fed prison for misprision of a felony, I didn't commit. I do not have any money to hire a lawyer or an advisor to help me understand the legal paper work you sent me. I would like to cooperate and resolve these problems, if you can send someone or a lawyer to explain what it means that I am to sign. I also had to rely on government lawyer to represent me on the charges that put me in here. I will leave my correct address in letter also you will have to contact prison to call for me.

P.S. I am unable financially to hire a lawyer to explain or advise me. Please send some one to represent or explain papers so I can help you and myself resolve this matter.

Sincerely
Charles Contris

[redacted]
[illegible] [redacted]

Respondents' December 13, 1996, filing.

On December 16, 1996, the Office of the Hearing Clerk sent Respondents a letter stating:

December 16, 1996

Mr. Charles Contris

(b) (6)

Dear Mr. Contris:

Subject: In re: Spring Valley Meats, Inc. and Charles
Contris, Respondents
P&S Docket No. D-96-0059

Your Answer to the complaint has been received and filed in the above-captioned proceeding.

You will be informed of any future action taken in this matter.

Sincerely,

/s/

Joyce A. Dawson
Hearing Clerk

On April 11, 1997, in accordance with 7 C.F.R. § 1.139, Complainant filed a Motion for Decision Without Hearing As To Respondent Charles Contris and a proposed Decision Without Hearing By Reason of Default With Respect To Respondent Charles Contris, which were served on Respondent Charles Contris by certified mail on April 16, 1997. Complainant's April 11, 1997, filings, with respect to Respondent Charles Contris, were accompanied by a letter from the Office of the Hearing Clerk, which states:

CERTIFIED RECEIPT REQUESTED

April 11, 1997

Mr. Charles Contris

(b) (6)

Dear Mr. Contris:

Subject: In re: Spring Valley Meats, Inc. and Charles
Contris, Respondents
P&S Docket No. D-96-0059

Enclosed is a copy of Complainant's Motion for Decision Without Hearing as to Respondent Charles Contris and the Proposed Decision, which have been filed with this office in the above-captioned proceeding.

In accordance with the applicable Rules of Practice, you will have 20 days from the date of receipt of this letter in which to file with this office an original and three copies of objections to the Motion.

Sincerely,

/s/

Fe C. Angeles
Acting Hearing Clerk

On April 11, 1997, Complainant also filed a Motion for Decision Without Hearing As To Respondent Spring Valley Meats, Inc., and a proposed Decision Without Hearing By Reason of Default With Respect To Respondent Spring Valley Meats, Inc., which were served on Respondent Spring Valley Meats, Inc., on April 17, 1997. Complainant's April 11, 1997, filings, with respect to Respondent Spring Valley Meats, Inc., were accompanied by a letter from the Office of the Hearing Clerk, which states:

CERTIFIED RECEIPT REQUESTED

April 11, 1997

Mr. Charles Contris
Spring Valley Meats, Inc.

(b) (6)

Dear Mr. Contris:

Subject: In re: Spring Valley Meats, Inc. and Charles
Contris, Respondents
P&S Docket No. D-96-0059

Enclosed is a copy of Complainant's Motion for Decision Without Hearing as to Respondent Spring Valley Meats, Inc. and the Proposed Decision, which have been filed with this office in the above-captioned proceeding.

In accordance with the applicable Rules of Practice, you will have 20 days from the date of receipt of this letter in which to file with this office an original and three copies of objections to the Motion.

Sincerely,

/s/

Fe C. Angeles

Acting Hearing Clerk

Neither Respondent Charles Contris nor Respondent Spring Valley Meats, Inc., filed objections to Complainant's Motion for Decision Without Hearing As To Respondent Charles Contris or Complainant's Motion for Decision Without Hearing As To Respondent Spring Valley Meats, Inc., within 20 days after service of Complainant's motions on Respondents, as provided in section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

On May 8, 1997, the Office of the Hearing Clerk sent a letter to Respondents stating:

May 8, 1997

Spring Valley Meats, Inc.
Mr. Charles Contris

(b) (6)

Gentlemen:

Subject: In re: Spring Valley Meats, Inc. and Charles
Contris, Respondents
P&S Docket No. D-96-0059

No objection to the Complainant's Motions for Decision Without Hearing As To Spring Valley Meats, Inc. and Charles Contris, in the above-captioned proceeding, have been filed within the allotted time.

In accordance with the applicable Rules of Practice, the file is being referred to the Administrative Law Judge for further action.

Sincerely,

/s/

Fe C. Angeles
Acting Hearing Clerk

On May 12, 1997, the ALJ filed a Default Decision as to Respondent Charles Contris and a Default Decision as to Respondent Spring Valley Meats, Inc. On May 12, 1997, the Office of the Hearing Clerk sent a copy of the Default Decision as to Respondent Charles Contris and a copy of the Default Decision as to Respondent Spring Valley Meats, Inc., by certified mail to:

Spring Valley Meats, Inc.
Mr. Charles Contris



Each default decision was returned to the Office of the Hearing Clerk marked by the postal service "Refused." On May 21, 1997, the Office of the Hearing Clerk sent a copy of the Default Decision as to Respondent Charles Contris by ordinary mail to:

Mr. Charles Contris



On May 21, 1997, the Office of the Hearing Clerk also sent a copy of the Default Decision as to Respondent Spring Valley Meats, Inc., by ordinary mail to:

Spring Valley Meats, Inc.
c/o Mr. Charles Contris

(b) (6)

On June 6, 1997, Respondents filed Response of Respondents to Motion for Decision Without Hearing requesting that the ALJ deny Complainant's Motion for Decision Without Hearing As To Respondent Charles Contris and Complainant's Motion for Decision Without Hearing As To Respondent Spring Valley Meats, Inc., and either "accept the prior December 1996 Response as the Answer of Mr. Contris to the DOA Complaint" or allow "Mr. Contris . . . the opportunity to submit a formal Answer to the Complaint" (Response of Respondents to Motion for Decision Without Hearing at 3). On June 18, 1997, the ALJ ruled as follows:

On May 12, 1997, a Default Decision was issued herein. On June 6, 1997, Respondents filed an untimely Response to Complainant's Motion for Decision Without Hearing, the latter of which was dated April 11, 1997, and which was received at a North Carolina facility for incarceration on April 16, 1997. Respondent Contris maintains that he did not receive said Motion and related data in a timely fashion because he was transferred to a facility in West Virginia.

Respondent Contris, in his response of Respondents to Motion for Decision Without Hearing filed June 6, 1997, requests, among other things, " * * * the opportunity to submit a formal Answer to the Compliant, and requests that this matter be set for hearing after his release from incarceration." The Complainant has filed no response to the June 6, 1997, filing of Respondents.

A consideration of the record as a whole indicates the Default Decision was properly issued and that Respondent Contris' requests should be, and are, denied.

However, a Default Decision is appealable to the Judicial Officer of the Department of Agriculture and he has discretion to set aside or vacate a Default Decision. Accordingly, and exercising an abundance of fairness, it is recommended that Respondent Contris' filing of June 6, 1997, be treated as an Appeal from the Default Decision.

ALJ's June 18, 1997, ruling (entitled Default Decision Issued May 12, 1997).

I agree with the ALJ's denial of Response of Respondents to Motion for Decision Without Hearing. Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) requires that a respondent may file objections to a motion for a default decision within 20 days after service of the motion on the respondent. In the instant proceeding, Respondent Charles Contris was served with Complainant's Motion for Decision Without Hearing As To Respondent Charles Contris and a proposed Decision Without Hearing By Reason of Default With Respect To Respondent Charles Contris on April 16, 1997, and Respondent Spring Valley Meats, Inc., was served with Complainant's Motion for Decision Without Hearing As To Respondent Spring Valley Meats, Inc., and a proposed Decision Without Hearing By Reason of Default With Respect To Respondent Spring Valley Meats, Inc., on April 17, 1997. Respondents' objections to Complainant's motions were filed June 6, 1997, 50 days after Respondent Spring Valley Meats, Inc., was served with Complainant's Motion for Decision Without Hearing As To Respondent Spring Valley Meats, Inc.; 25 days after the ALJ filed the Default Decision as to Spring Valley Meats, Inc.; and 16 days after Respondent Spring Valley Meats, Inc., was served with the Default Decision as to Spring Valley Meats, Inc.

However, Response of Respondents to Motion for Decision Without Hearing was filed after the ALJ issued the Default Decision as to Spring Valley Meats, Inc., and before the expiration of the time for filing an appeal petition (7 C.F.R. § 1.145(a)). The ALJ recommends in her June 18, 1997, ruling (entitled Default Decision Issued May 12, 1997), that I treat Response of Respondents to Motion for Decision Without Hearing as Respondents' appeal of the Default Decision as to Spring Valley Meats, Inc. Under the circumstances in this proceeding, I agree with the ALJ's recommendation.⁷

First, Respondents request that their December 13, 1996, filing be treated as an Answer (Response of Respondents to Motion for Decision Without Hearing at 3). Section 1.136(b) of the Rules of Practice provides:

§ 1.136 Answer.

....

⁷For the same reasons, I am also treating Response of Respondents to Motion for Decision Without Hearing as Respondents' appeal of the Default Decision as to Charles Contris, which is the subject of a companion decision and order, *In re Spring Valley Meats, Inc.* (Decision as to Charles Contris), 56 Agric. Dec. ___ (Aug. 1, 1997).

(b) *Contents.* The answer shall:

(1) Clearly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent;
or

(2) State that the respondent admits all facts alleged in the complaint;
or

(3) State that the respondent admits the jurisdictional allegations of the complaint and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.

7 C.F.R. § 1.136(b).

It is well settled that the formalities of court pleadings are not applicable in administrative proceedings,⁸ and this principle of administrative law applies to all pleadings, including answers. However, Respondents' December 13, 1996, filing addresses matters extraneous to the Complaint. Specifically, the filing addresses Respondent Charles Contris' financial and employment status, inability to understand "legal paper work," and incarceration for misprision of felony, and the operational status of Respondent Spring Valley Meats, Inc. The December 13, 1996, filing does not: (1) admit, deny, or explain each of the allegations of the Complaint and set forth any defense relevant to the instant proceeding; (2) admit all the facts alleged in the Complaint; or (3) state that Respondents admit the jurisdictional allegations of the Complaint and neither admit nor deny the remaining allegations and consent to the issuance of an order without further procedure. Therefore, I do not find that Respondents' December 13, 1996, filing is an Answer as described in the Rules of Practice; thus, Respondents' December 13, 1996, filing provides no basis for setting aside the Default Decision as to Respondent Spring Valley Meats, Inc. Moreover, in accordance with section 1.136(c) of the Rules of Practice, Respondents' failure to respond to the allegations of the Complaint is deemed, for the purposes of this proceeding, an admission of

⁸*Wallace Corp. v. NLRB*, 323 U.S. 248, 253 (1944); *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 142-44 (1940); *NLRB v. Int'l Bros. of Elec. Workers, Local Union 112*, 827 F.2d 530, 534 (9th Cir. 1987); *Citizens State Bank of Marshfield v. FDIC*, 751 F.2d 209, 213 (8th Cir. 1984); *Consolidated Gas Supply Corp. v. FERC*, 611 F.2d 951, 959 n.7 (4th Cir. 1979); *Aloha Airlines, Inc. v. CAB*, 598 F.2d 250, 262 (D.C. Cir. 1979); *A.E. Staley Mfg. Co. v. FTC*, 135 F.2d 453, 454 (7th Cir. 1943).

the allegations of the Complaint.⁹

Even if I were to find that Respondents' December 13, 1996, filing suffices as an Answer denying the material allegations of the Complaint, I would not set aside the Default Decision as to Spring Valley Meats, Inc., because it was not timely filed.

The Office of the Hearing Clerk attempted to serve the Complaint on Respondent Spring Valley Meats, Inc., at its last known address by certified mail on September 30, 1996. The envelope containing the September 30, 1996, mailing to Respondent Spring Valley Meats, Inc., from the Office of the Hearing Clerk, was returned to the Office of the Hearing Clerk marked by the postal service as "Moved Left No Address."

On October 28, 1996, the Office of the Hearing Clerk served Respondents with a copy of the Complaint by ordinary mail, in accordance with section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)). Respondents' Answer was due 20 days after the date on which the Complaint was served by ordinary mail on Respondents, viz., November 18, 1996. The filing that Respondents contend is their Answer was filed December 13, 1996, 46 days after the Complaint was served on Respondents. Therefore, even if I found, as Respondents urge, that their December 13, 1996, filing is Respondents' Answer to the Complaint, I would find that it was not timely filed, that Respondents' failure to file a timely Answer constitutes an admission of the material allegations in the Complaint (7 C.F.R. § 1.136(a), (c)) and a waiver of hearing (7 C.F.R. §§ 1.139, .141(a)), and that the Default Decision as to Spring Valley Meats, Inc., was properly issued.

⁹See *In re Rex Kneeland*, 50 Agric. Dec. 1571, 1572 (1991) (holding that the allegations of the complaint are deemed admitted where respondent's answer, *inter alia*, does not deny the material allegations of the complaint); *In re Joe L. Henson*, 45 Agric. Dec. 2246, 2250 (1986) (holding that the default decision was properly issued where respondent's answer failed to deny the allegations of the complaint); *In re J.W. Guffy*, 45 Agric. Dec. 1742, 1747 (1986) (holding that, where, *inter alia*, respondent's answer does not deny the allegations of the complaint, a default decision is properly issued); *In re Wayne J. Blaser*, 45 Agric. Dec. 1727, 1728 (1986) (holding that respondent's answer which admits one allegation of the complaint and fails to respond to the other allegations of the complaint is an admission of all the allegations in the complaint); *In re Gutman Bros., Ltd.*, 45 Agric. Dec. 956, 960 (1986) (holding that respondent is deemed to have admitted the allegations of the complaint warranting the entry of a default decision where respondent's answer merely requests a hearing); *In re Jonathan Stolzhus*, 44 Agric. Dec. 1161, 1162 (1985) (holding that respondent's answer, which states that "no violation was intended," does not deny or otherwise respond to the complaint and pursuant to 7 C.F.R. § 1.136(c) is deemed an admission of the allegations of the complaint); *In re Michael A. Lucas*, 43 Agric. Dec. 1721, 1722, 1725 (1984) (holding that respondent's answer, which raises some concerns that respondent had with policies of the State of Minnesota Livestock Sanitary Board extraneous to the complaint, fails to admit, deny, or otherwise respond to the allegations of the complaint and is deemed an admission of the allegations of the complaint).

Second, Respondents request that, if the December 13, 1996, filing is not accepted as Respondents' Answer to the Complaint, Respondents be given "the opportunity to submit a formal Answer to the Complaint[] and . . . that this matter be set for [h]earing after [Respondent Charles Contris'] release from incarceration." (Response of Respondents to Motion for Decision Without Hearing at 3.)

Although on rare occasions default decisions have been set aside for good cause shown or where Complainant did not object,¹⁰ Respondents have shown no basis for setting aside the Default Decision as to Spring Valley Meats, Inc., and allowing Respondents to file an Answer.¹¹ The Rules of Practice clearly provide

¹⁰See generally *In re Arizona Livestock Auction, Inc.*, 55 Agric Dec. 1121 (1996) (setting aside a default decision because facts alleged in the Complaint and deemed admitted by failure to answer were not sufficient to find a violation of the Packers and Stockyards Act or jurisdiction over the matter by the Secretary of Agriculture); *In re Veg-Pro Distributors*, 42 Agric. Dec. 273 (1983) (remand order), *final decision*, 42 Agric. Dec. 1173 (1983) (setting aside a default decision because service of the Complaint by registered and regular mail was returned as undeliverable, and Respondent's license under the Perishable Agricultural Commodities Act had lapsed before service was attempted); *In re J. Fleishman & Co.*, 38 Agric. Dec. 789 (1978) (remand order), *final decision*, 37 Agric. Dec. 1175 (1978); *In re Henry Christ*, L.A.W.A. Docket No. 24 (Nov. 12, 1974) (remand order), *final decision*, 35 Agric. Dec. 195 (1976); *In re Vaughn Gallop*, 40 Agric. Dec. 217 (vacating a default decision and remanding the case to determine whether just cause exists for permitting late Answer), *final decision*, 40 Agric. Dec. 1254 (1981).

¹¹See generally *In re John Walker*, 56 Agric. Dec. ____ (Mar. 21, 1997) (holding the default decision proper where respondent's first filing was 126 days after the complaint was served on respondent); *In re Mary Meyers*, 56 Agric. Dec. ____ (Mar. 13, 1997) (holding the default decision proper where respondent's first filing was filed 117 days after respondent's answer was due); *In re Dora Hampton*, 56 Agric. Dec. ____ (Jan. 15, 1997) (holding the default decision proper where respondent's first and only filing in the proceeding was filed 135 days after respondent's answer was due); *In re Gerald Funches*, 56 Agric. Dec. ____ (Jan. 15, 1997) (holding the default decision proper where respondent's first and only filing in the proceeding was filed 94 days after the complaint was served on respondent); *In re City of Orange*, 55 Agric. Dec. 1081 (1996) (holding that the default decision proper where respondent's first and only filing in the proceeding was filed 70 days after respondent's answer was due); *In re Bibi Uddin*, 55 Agric. Dec. 1010 (1996) (holding the default decision proper where response to complaint was filed more than 9 months after service of complaint on respondent); *In re Billy Jacobs, Sr.*, 56 Agric. Dec. ____ (Aug. 15, 1996) (holding the default decision proper where response to complaint was filed more than 9 months after service of complaint on respondent), *appeal docketed*, No. 96-7124 (11th Cir. Nov. 8, 1996); *In re Sandra L. Reid*, 55 Agric. Dec. 996 (1996) (holding the default decision proper where response to complaint was filed 43 days after service of complaint on respondent); *In re Jeremy Byrd*, 55 Agric. Dec. 443 (1996) (holding the default order proper where a timely answer was not filed); *In re Moreno Bros.*, 54 Agric. Dec. 1425 (1995) (holding the default order proper where a timely answer was not filed); *In re Ronald DeBruin*, 54 Agric. Dec. 876 (1995) (holding the default order proper where an answer was not filed); *In re James Joseph Hickey, Jr.*, 53 Agric. Dec. 1087 (1994) (holding the default order proper where an answer was not filed); *In re Bruce Thomas*, 53 Agric. Dec. 1569 (1994) (holding the default order proper where an answer was not filed);

In re Ron Morrow, 53 Agric. Dec. 144 (1994), *aff'd per curiam*, 65 F.3d 168 (Table), 1995 WL 523336 (6th Cir. 1995) (holding the default order proper where respondent was given an extension of time until March 22, 1994, to file an answer, but it was not received until March 25, 1994); *In re Donald D. Richards*, 52 Agric. Dec. 1207 (1993) (holding the default order proper where timely answer was not filed); *In re A.P. Holt* (Decision as to A.P. Holt), 50 Agric. Dec. 1612 (1991) (holding the default order proper where respondent was given an extension of time to file an answer, but the answer was not filed until 69 days after the extended date for filing the answer); *In re Mike Robertson*, 47 Agric. Dec. 879 (1988) (holding the default order proper where answer was not filed); *In re Morgantown Produce, Inc.*, 47 Agric. Dec. 453 (1988) (holding the default order proper where an answer was not filed); *In re Johnson-Hallifax, Inc.*, 47 Agric. Dec. 430 (1988) (holding the default order proper where an answer was not filed); *In re Charley Charton*, 46 Agric. Dec. 1082 (1987) (holding the default order proper where an answer was not filed); *In re Les Zedric*, 46 Agric. Dec. 948 (1987) (holding the default order proper where a timely answer not filed); *In re Arturo Bejarano, Jr.*, 46 Agric. Dec. 925 (1987) (holding the default order proper where a timely answer not filed; respondent properly served even though his sister, who signed for the complaint, forgot to give it to him until after the 20-day period had expired); *In re Schmidt & Son, Inc.*, 46 Agric. Dec. 586 (1987) (holding the default order proper where a timely answer was not filed); *In re Roy Carter*, 46 Agric. Dec. 207 (1987) (holding the default order proper where a timely answer was not filed; respondent properly served where complaint sent to his last known address was signed for by someone); *In re Luz G. Pieszko*, 45 Agric. Dec. 2565 (1986) (holding the default order proper where an answer was not filed); *In re Elmo Mayes*, 45 Agric. Dec. 2320 (1986) (holding the default order proper where an answer was not filed). *rev'd on other grounds*, 836 F.2d 550, 1987 WL 27139 (6th Cir. 1987); *In re Leonard McDaniel*, 45 Agric. Dec. 2255 (1986) (holding the default order proper where a timely answer was not filed); *In re Joe L. Henson*, 45 Agric. Dec. 2246 (1986) (holding the default order proper where the answer admits or does not deny material allegations); *In re Northwest Orient Airlines*, 45 Agric. Dec. 2190 (1986) (holding the default order proper where a timely answer was not filed); *In re J.W. Guffy*, 45 Agric. Dec. 1742 (1986) (holding the default order proper where an answer, filed late, does not deny material allegations); *In re Wayne J. Blaser*, 45 Agric. Dec. 1727 (1986) (holding the default order proper where the answer does not deny material allegations); *In re Jerome B. Schwartz*, 45 Agric. Dec. 1473 (1986) (holding the default order proper where a timely answer not filed); *In re Midas Navigation, Ltd.*, 45 Agric. Dec. 1676 (1986) (holding the default order proper where an answer, filed late, does not deny material allegations); *In re Gutman Bros., Ltd.*, 45 Agric. Dec. 956 (1986) (holding the default order proper where the answer does not deny material allegations); *In re Dean Daul*, 45 Agric. Dec. 556 (1986) (holding the default order proper where the answer, filed late, does not deny material allegations); *In re Eastern Air Lines, Inc.*, 44 Agric. Dec. 2192 (1985) (holding the default order proper where a timely answer was not filed; irrelevant that respondent's main office did not promptly forward complaint to its attorneys); *In re Carl D. Cuttone*, 44 Agric. Dec. 1573 (1985) (holding the default order proper where a timely answer was not filed; Respondent Carl D. Cuttone properly served where complaint sent by certified mail to his last business address was signed for by Joseph A. Cuttone). *aff'd per curiam*, 804 F.2d 153 (D.C. Cir. 1986) (unpublished); *In re Corbett Farms, Inc.*, 43 Agric. Dec. 1775 (1984) (holding the default order proper where a timely answer was not filed); *In re Ronald Jacobson*, 43 Agric. Dec. 780 (1984) (holding the default order proper where a timely answer was not filed); *In re Joseph Buzun*, 43 Agric. Dec. 751 (1984) (holding the default order proper where a timely answer was not filed; Respondent Joseph Buzun properly served where complaint sent by certified mail to his residence was signed for by someone named Buzun); *In re Ray H. Mayer* (Decision as to Jim Doss), 43 Agric. Dec. 439 (1984) (holding the default order proper where a timely answer was not

that an Answer must be filed within 20 days after service of the Complaint (7 C.F.R. § 1.136(a)). Respondents' December 13, 1996, filing, which they assert is their Answer to the Complaint, was filed 46 days after Respondents were served with the Complaint and 25 days after Respondents' Answer was due. Moreover, even if Respondents' December 13, 1996, filing was timely, it does not respond to the allegations of the Complaint as required in section 1.136(b) of the Rules of Practice (7 C.F.R. § 1.136(b)), and in accordance with section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)), Respondents' failure to respond to the allegations of the Complaint is deemed, for the purposes of this proceeding, an admission of the allegations of the Complaint.

The requirement in the Rules of Practice that a respondent deny or explain any allegation of the Complaint and set forth any defense in a timely Answer is necessary to enable this Department to handle its large workload in an expeditious and economical manner. The Department's four ALJ's frequently dispose of hundreds of cases in a year. In recent years, the Department's Judicial Officer has disposed of 40 to 60 cases per year.

The courts have recognized that administrative agencies "should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties."¹² If Respondents were

filed; irrelevant whether respondent was unable to afford an attorney), *appeal dismissed*, No. 84-4316 (5th Cir. July 25, 1984); *In re William Lambert*, 43 Agric. Dec. 46 (1984) (holding the default order proper where a timely answer was not filed); *In re Randy & Mary Berhow*, 42 Agric. Dec. 764 (1983) (holding the default order proper where a timely answer was not filed); *In re Danny Rubel*, 42 Agric. Dec. 800 (1983) (holding the default order proper where respondent acted without an attorney and did not understand the consequences and scope of a suspension order); *In re Pastures, Inc.*, 39 Agric. Dec. 395, 396-97 (1980) (holding the default order proper where respondents misunderstood the nature of the order that would be issued); *In re Jerry Seal* 39 Agric. Dec. 370, 371 (1980) (holding the default order proper where a timely answer was not filed); *In re Thomaston Beef & Veal, Inc.*, 39 Agric. Dec. 171, 172 (1980) (refusing to set aside the default order because of respondents' contentions that they misunderstood the Department's procedural requirements, when there is no basis for the misunderstanding).

¹²See *Cella v. United States*, 208 F.2d 783, 789 (7th Cir. 1953), *cert. denied*, 347 U.S. 1016 (1954), quoting from *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 143 (1940). *Accord Silverman v. CFTA*, 549 F.2d 28, 33 (7th Cir. 1977). See also *Seacoast Anti-Pollution League v. Costle* 597 F.2d 306, 308 (1st Cir. 1979) (stating that absent law to the contrary, agencies enjoy wide latitude in fashioning procedural rules); *Nader v. FCC*, 520 F.2d 182, 195 (D.C. Cir. 1975) (stating that the Supreme Court has stressed that regulatory agencies should be free to fashion their own rules of procedure and to pursue methods for inquiry capable of permitting them to discharge their multitudinous duties; similarly this court has upheld in the strongest terms the discretion of regulatory agencies to control disposition of their caseload); *Swift & Co. v. United States* 308 F.2d 849, 851-52

permitted to contest some of the allegations of fact after failing to file a timely Answer, or raise new issues, all other Respondents in all other cases would have to be afforded the same privilege. Permitting such practice would greatly delay the administrative process and would require additional personnel.

The record clearly establishes that Respondents were provided with a meaningful opportunity for a hearing in accordance with the Rules of Practice. Respondents waived their right to a hearing by failing to file a timely Answer (7 C.F.R. §§ 1.139, .141(a)). Moreover, Respondents' failure to file a timely Answer is deemed, for the purposes of this proceeding, to be an admission of the allegations in the Complaint (7 C.F.R. § 1.136(c)).

Accordingly, the Default Decision as to Spring Valley Meats, Inc., was properly issued in this proceeding. Application of the default provisions of the Rules of Practice does not deprive Respondents of their rights under the due process clause of the Fifth Amendment to the United States Constitution.¹³ There is no basis for allowing Respondents to present matters by way of defense at this time.

For the foregoing reasons, the following Order should be issued.

Order

Paragraph I

Respondent Spring Valley Meats, Inc., its agents and employees, directly or indirectly through any corporate or other device, shall cease and desist from:

1. Failing to pay, when due, the full purchase price of livestock;
2. Failing to pay the full purchase price of livestock;
3. Purchasing livestock while insolvent, that is, while current liabilities exceed current assets, unless Respondent Spring Valley Meats, Inc., pays the full purchase price of the livestock at the time of the purchase of the livestock in United States currency, by certified check, or by wire transfer, as provided in 7 U.S.C. § 204;
4. Initiating or participating in any activity, course of conduct, scheme, arrangement, or agreement to purchase or attempt to purchase livestock, either directly or indirectly through its agents, intermediaries, persons or entities, which

(7th Cir. 1962) (stating that administrative convenience or even necessity cannot override constitutional requirements, however, in administrative hearings, the hearing examiner has wide latitude as to all phases of the conduct of the hearing, including the manner in which the hearing will proceed).

¹³See *United States v. Hulings*, 484 F. Supp. 562, 568-69 (D. Kan. 1980).

would endanger or attempt to endanger, the trust interest accorded to each seller of livestock by virtue of 7 U.S.C. § 196: *Provided, however,* That Respondent Spring Valley Meats, Inc., its agents or intermediaries who purchase for Respondent Spring Valley Meats, Inc., may purchase or attempt to purchase livestock on credit if Respondent Spring Valley Meats, Inc., its agents or intermediaries who purchase for Respondent Spring Valley Meats, Inc., fully inform such livestock sellers, in writing, before such purchase that the method and manner of payment for the purchase would constitute a credit sale as recognized by 7 U.S.C. § 228b and 9 C.F.R. § 201.43; and

5. Violating the Secretary's Order in P. & S. Docket No. D-91-75.

The cease and desist provisions of this Order shall become effective on the day after service of this Order on Respondent Spring Valley Meats, Inc.

Paragraph II

Respondent Spring Valley Meats, Inc., is assessed a civil penalty of \$28,000 (for which Respondent Spring Valley Meats, Inc., is jointly and severally liable with Respondent Charles Contris) which shall be paid by certified check or money order, made payable to the Treasurer of the United States, and forwarded within 120 days after service of this Order on Respondent Spring Valley Meats, Inc., to:

Assistant General Counsel
United States Department of Agriculture
Office of the General Counsel
Trade Practices Division
Room 2446 South Building
1400 Independence Avenue, SW
Washington, DC 20250-1413

The certified check or money order should indicate that payment is in reference to P. & S. Docket No. 96-0059.

**In re: SPRING VALLEY MEATS, INC., and CHARLES CONTRIS.
P&S Docket No. D-96-0059.
Decision and Order as to Charles Contris filed August 1, 1997.**

Failure to obtain trust waiver — Failing to pay — Failing to pay when due — Financial condition — Failure to file an answer — Default decision — Civil penalty — Cease and desist order.

The Judicial Officer affirmed the Default Decision as to Charles Contris issued by Administrative Law Judge Dorothea A. Baker (ALJ) assessing a civil penalty of \$28,000 against Respondent Contris and directing Respondent Contris to cease and desist from violating the Packers and Stockyards Act, the regulations issued under the Act, and the Secretary's Order issued in P. & S. Docket No. D-91-75. Respondents' December 13, 1996, filing, which Respondents assert is their Answer, addresses matters extraneous to the Complaint and does not meet the description of an Answer in 7 C.F.R. § 1.136(b). Respondents' failure to respond to allegations of the Complaint is deemed, for the purposes of the proceeding, an admission of the allegations of the Complaint (7 C.F.R. § 1.136(c)). Even if Respondents' December 13, 1996, filing were found to be an Answer denying the material allegations of the Complaint, it would not constitute a basis for setting aside the Default Decision as to Charles Contris because the December 13, 1996, filing was not filed within 20 days after service of the Complaint on Respondents and is deemed an admission of the allegations of the Complaint (7 C.F.R. § 1.136(c)) and constitutes a waiver of hearing (7 C.F.R. § 1.139). Accordingly, the Default Decision as to Charles Contris was properly issued. The record establishes that Respondents were provided with a meaningful opportunity for a hearing in accordance with the Rules of Practice. Application of the default provisions of the Rules of Practice does not deny Respondents due process.

JoAnn Waterfield, for Complainant.

Respondent, Pro se.

Initial decision issued by Dorothea A. Baker, Administrative Law Judge.

Decision and Order issued by William G. Jenson, Judicial Officer.

The Acting Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration [hereinafter Complainant], instituted this disciplinary administrative proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229) [hereinafter Packers and Stockyards Act]; the regulations promulgated under the Packers and Stockyards Act (9 C.F.R. §§ 201.1-.200) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary (7 C.F.R. §§ 1.130-.151) [hereinafter Rules of Practice], by filing a Complaint and Notice of Hearing [hereinafter Complaint] on September 27, 1996.

The Complaint alleges that: (1) Respondent Charles Contris is the *alter ego* of Respondent Spring Valley Meats, Inc. (Complaint ¶¶ V); (2) the financial condition of Respondent Spring Valley Meats, Inc., does not meet the requirements of the Packers and Stockyards Act (7 U.S.C. § 204) (Complaint ¶¶ II, V); (3) Respondent Charles Contris and Respondent Spring Valley Meats, Inc. [hereinafter

Respondents], obtained written credit agreements with livestock sellers without also obtaining written trust waiver acknowledgements from the livestock sellers in violation of section 202(a) of the Packers and Stockyards Act (7 U.S.C. § 192(a)) and section 201.200 of the Regulations (9 C.F.R. § 201.200) (Complaint ¶¶ III, V); and (4) Respondents purchased livestock and failed to pay, when due, the full purchase price of the livestock in willful violation of sections 202(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 192(a), 228b) and the Secretary's Order issued in P. & S. Docket No. D-91-75¹ (Complaint ¶¶ IV, V).

Respondents were served with the Complaint on October 28, 1996, but failed to file an Answer to the Complaint within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). On May 12, 1997, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Administrative Law Judge Dorothea A. Baker [hereinafter ALJ] issued a Decision Without Hearing By Reason of Default With Respect to Respondent Charles Contris [hereinafter Default Decision as to Charles Contris] in which the ALJ: (1) found that Respondent Charles Contris willfully violated sections 202(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 192(a), 228b), section 201.200 of the Regulations (9 C.F.R. § 201.200), and the Secretary's Order issued in P. & S. Docket No. D-91-75; (2) ordered Respondent Charles Contris to cease and desist violations of the Packers and Stockyards Act, the Regulations, and the Secretary's Order issued in P. & S. Docket No. D-91-75; and (3) assessed Respondent Charles Contris a civil penalty of \$28,000 (Default Decision as to Charles Contris at 3-5).²

On June 6, 1997, Respondents appealed to the Judicial Officer to whom the Secretary of Agriculture has delegated authority to act as final deciding officer in the Department's adjudicatory proceedings subject to 5 U.S.C. §§ 556 and 557 (7 C.F.R. § 2.35).³ On July 10, 1997, Complainant filed Complainant's Response

¹The Consent Decision containing the Secretary's Order issued in P. & S. Docket No. D-91-75 is referenced at 51 Agric. Dec. 1404 (1992).

²Also, on May 12, 1997, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the ALJ issued a Decision Without Hearing By Reason of Default With Respect to Respondent Spring Valley Meats, Inc. [hereinafter Default Decision as to Spring Valley Meats, Inc.], which is more fully addressed in a companion decision and order, *In re Spring Valley Meats, Inc.* (Decision as to Spring Valley Meats, Inc.), 56 Agric. Dec. ___ (Aug. 1, 1997).

³The position of Judicial Officer was established pursuant to the Act of April 4, 1940 (7 U.S.C. §§ 450c-450g); section 4(a) of Reorganization Plan No. 2 of 1953, 18 Fed. Reg. 3219, 3221 (1953), reprinted in 5 U.S.C. app. § 4(a) at 1491 (1994); and section 212(a)(1) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6912(a)(1)).

to Respondents' Petition for Appeal, and on July 14, 1997, the case was referred to the Judicial Officer for decision.

Based upon a careful consideration of the record in this proceeding, the Default Decision as to Charles Contris is adopted as the final Decision and Order as to Charles Contris, with additions or changes shown by brackets, deletions shown by dots, and minor editorial changes not specified. Additional conclusions by the Judicial Officer follow the ALJ's conclusions.

APPLICABLE STATUTORY PROVISIONS AND REGULATIONS

7 U.S.C.:

CHAPTER 9—PACKERS AND STOCKYARDS

....

SUBCHAPTER II—PACKERS GENERALLY

§ 191. "Packer" defined

When used in this chapter the term "packer" means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce.

§ 192. Unlawful practices enumerated

It shall be unlawful for any packer with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to:

(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device[.]

§ 193. Procedure before Secretary for violations

(a) **Complaint; hearing; intervention**

Whenever the Secretary has reason to believe that any packer has violated or is violating any provision of this subchapter, he shall cause a complaint in writing to be served upon the packer, stating his charges in that respect, and requiring the packer to attend and testify at a hearing at a time and place designated therein, at least thirty days after service of such complaint; and at such time and place there shall be afforded the packer a reasonable opportunity to be informed as to the evidence introduced against him (including the right of cross-examination), and to be heard in person or by counsel and through witnesses, under such regulations as the Secretary may prescribe

(b) Report and order; penalty

If, after such hearing, the Secretary finds that the packer has violated or is violating any provisions of this subchapter covered by the charges, he shall make a report in writing in which he shall state his findings as to the facts, and shall issue and cause to be served on the packer an order requiring such packer to cease and desist from continuing such violation. . . . The Secretary may also assess a civil penalty of not more than \$10,000 for each such violation.

SUBCHAPTER III—STOCKYARDS AND STOCKYARD DEALERS

. . . .

§ 204. Bond and suspension of registrants

On and after July 12, 1943, the Secretary may require reasonable bonds from every market agency (as defined in this subchapter), every packer (as defined in subchapter II of this chapter) in connection with its livestock purchasing operations (except that those packers whose average annual purchases do not exceed \$500,000 will be exempt from the provisions of this paragraph), and every other person operating as a dealer (as defined in this subchapter) under such rules and regulations as he may prescribe, to secure the performance of their obligations, and whenever, after due notice and hearing, the Secretary finds any registrant is insolvent or has violated any provisions of this chapter he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect within not less than five days, unless suspended or modified or set aside by the Secretary or a court of competent jurisdiction. If the Secretary finds any packer is

insolvent, he may after notice and hearing issue an order under the provisions of section 193 of this title requiring such packer to cease and desist from purchasing livestock while insolvent, or while insolvent purchasing livestock except under such conditions as the Secretary may prescribe to effectuate the purposes of this chapter.

SUBCHAPTER V—GENERAL PROVISIONS

.....

§ 228b. Prompt payment for purchase of livestock

(a) Full amount of purchase price required; methods of payment

Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full amount of the purchase price: *Provided*, That each packer, market agency, or dealer purchasing livestock for slaughter shall, before the close of the next business day following purchase of livestock and transfer of possession thereof, actually deliver at the point of transfer of possession to the seller or his duly authorized representative a check or shall wire transfer funds to the seller's account for the full amount of the purchase price; or, in the case of a purchase on a carcass or "grade and yield" basis, the purchaser shall make payment by check at the point of transfer of possession or shall wire transfer funds to the seller's account for the full amount of the purchase price not later than the close of the first business day following determination of the purchase price: *Provided further*, That if the seller or his duly authorized representative is not present to receive payment at the point of transfer of possession, as herein provided, the packer, market agency or dealer shall wire transfer funds or place a check in the United States mail for the full amount of the purchase price, properly addressed to the seller, within the time limits specified in this subsection, such action being deemed compliance with the requirement for prompt payment.

(b) Waiver of prompt payment by written agreement; disclosure requirements

Notwithstanding the provisions of subsection (a) of this section and

subject to such terms and conditions as the Secretary may prescribe, the parties to the purchase and sale of livestock may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required in subsection (a) of this section. Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction.

(c) Delay in payment or attempt to delay deemed unfair practice

Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an "unfair practice" in violation of this chapter. Nothing in this section shall be deemed to limit the meaning of the term "unfair practice" as used in this chapter.

7 U.S.C. §§ 191, 192(a), 193(a), (b), 204, 228b.

9 C.F.R.:

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

....

§ 201.200 Sale of livestock to a packer on credit.

(a) No packer whose average annual purchases of livestock exceed \$500,000 shall purchase livestock on credit, and no dealer or market agency acting as an agent for such a packer shall purchase livestock on credit, unless:

(1) Before purchasing such livestock the packer obtains from the seller a written acknowledgement as follows:

On this date I am entering into a written agreement for the sale of livestock on credit to _____, a packer, and I understand that in doing so I will have no rights under the trust provisions of section 206 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 196, Pub. L. 94-410), with respect to any such credit sale. The written agreement for such selling on

credit

Covers a single sale.

Provides that it will remain in effect until (date).

Provides that it will remain in effect until canceled in writing by either party.
(Omit the provisions not applicable.)

Date _____

Signature _____

(2) Such packer retains such acknowledgement, together with all other documents, if any, setting forth the terms of such credit sales on which the purchaser and seller have agreed, and such dealer or market agency retains a copy thereof, in his records for such time as is required by any law, or by written notice served on such person by the Administrator, but not less than two calendar years from the date of expiration of the written agreement referred to in such acknowledgement; and

(3) Such seller receives a copy of such acknowledgement.

(b) Purchasing livestock for which payment is to be made by a draft which is not a check, shall constitute purchasing such livestock on credit within the meaning of paragraph (a) of this section. (See also § 201.43(b)(1).)

(c) The provisions of this section shall not be construed to permit any transaction prohibited by § 201.61(a) relating to financing by market agencies selling on a commission basis.

9 C.F.R. § 201.200.

**ADMINISTRATIVE LAW JUDGE'S INITIAL DEFAULT DECISION
(AS MODIFIED)**

.....

Findings of Fact

1. a) Spring Valley Meats, Inc., . . . is a corporation organized and existing under the laws of North Carolina. The . . . mailing address [for Spring Valley Meats, Inc.] is [REDACTED] North Carolina [REDACTED]

b) [Spring Valley Meats, Inc.] at all times material herein, was:

(1) Engaged in the business of buying livestock in commerce for purposes of slaughter, or of manufacturing or preparing meats or meat products for sale or shipment in commerce; and

[(2)]A packer within the meaning of and subject to the provisions of the [Packers and Stockyards] Act.

2. a) Charles Contris . . . is an individual whose mailing address is [REDACTED] (b) (6) [REDACTED]
- b) [Charles Contris] is, and at all times material herein, was:
- (1) President of [Spring Valley Meats, Inc.];
 - (2) Responsible for direction, management, and control of [Spring Valley Meats, Inc.]; and
 - (3) A packer within the meaning of and subject to the provisions of the [Packers and Stockyards] Act.

3. [Respondents] entered into a Consent Decision in P. & S. Docket No. D-91-75 which was issued August 10, 1992. The decision ordered Respondents to cease and desist from issuing checks without having and maintaining sufficient funds on deposit and available in the bank account upon which they are drawn to pay such checks when presented; and failing to pay, when due, the full purchase price of livestock. Respondents were jointly and severally assessed a civil penalty . . . of . . . \$2,000.

4. [Charles Contris] is the *alter ego* of [Spring Valley Meats, Inc.]

5. a) As set forth more fully in paragraph II of the Complaint, the financial condition of [Spring Valley Meats, Inc.,] does not meet the requirements of the [Packers and Stockyards] Act.

b) As set forth more fully in paragraph III of the Complaint, [Charles Contris], on behalf of [Spring Valley Meats, Inc.], obtained written credit agreements without also obtaining the required written trust waiver acknowledgments from the livestock sellers.

c) [Spring Valley Meats, Inc.], under the direction, management, and control of [Charles Contris], on or about the dates and in the transactions set forth in paragraph IV(a) of the Complaint, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

d) As of July 12, 1996, [Spring Valley Meats, Inc.,] under the direction, management, and control of [Charles Contris], failed to pay four sellers of livestock identified in paragraph IV(b) of the Complaint a total of \$231,677.

Conclusions [of Law]

By reason of the facts found in [the] Finding[s] of Fact . . . [in this Decision and Order], Respondent Charles Contris willfully violated sections 202(a) and 409 of the [Packers and Stockyards] Act (7 U.S.C. §§ 192(a), 228b), section 201.200 of the Regulations (9 C.F.R. § 201.200), and the Secretary's Order issued in P. & S.

Docket No. D-91-75.

ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER

Respondents contend that no default decision should be issued in this proceeding because Respondents' December 13, 1996, filing is their Answer to the Complaint, or in the alternative, Respondents should be allowed to file a "formal" Answer (Response of Respondents to Motion for Decision Without Hearing at 3). I find no basis in this record for setting aside the Default Decision as to Charles Contris.⁴ Instead, the record reveals, as discussed in this Decision and Order, *infra*, pp. 11-31, that the Default Decision as to Charles Contris was issued in accordance with the Rules of Practice.

On September 30, 1996, the Office of the Hearing Clerk sent two identical, dually-addressed letters dated September 30, 1996, and one copy each of the Complaint and the Rules of Practice to Respondent Charles Contris, at his last known address, Route 1, 79M, Warsaw, North Carolina 28398, and to Respondent Spring Valley Meats, Inc., at its last known address, Route 6, Box 216-A, Goldsboro, North Carolina 27530, by certified mail. The envelope containing the September 30, 1996, mailing to Respondent Charles Contris, from the Office of the Hearing Clerk, was returned to the Office of the Hearing Clerk marked by the postal service "Unclaimed." The envelope containing the September 30, 1996, mailing to Respondent Spring Valley Meats, Inc., from the Office of the Hearing Clerk, was returned to the Office of the Hearing Clerk marked by the postal service "Moved Left No Address."

Section 1.147(c)(1) of the Rules of Practice provides:

§ 1.147 Filing; service; extensions of time; and computation of time.

.....

(c) *Service on party other than the Secretary.* (1) Any complaint or other document initially served on a person to make that person a party respondent in a proceeding, proposed decision and motion for adoption thereof upon failure to file an answer or other admission of all material allegations of

⁴I also find no basis for setting aside the Default Decision as to Spring Valley Meats, Inc., which is the subject of a companion decision and order. *In re Spring Valley Meats, Inc.* (Decision as to Spring Valley Meats, Inc.). 56 Agric. Dec. ___ (Aug. 1, 1997).

fact contained in a complaint, initial decision, final decision, appeal petition filed by the Department, or other document specifically ordered by the Judge to be served by certified or registered mail, shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the date of delivery by certified or registered mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, *Provided that*, if any such document or paper is sent by certified or registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address.

7 C.F.R. § 1.147(c)(1).

On October 28, 1996, the Office of the Hearing Clerk served a copy of the Complaint on Respondents at Route 1, 79M, Warsaw, North Carolina 28398, by ordinary mail, in accordance with 7 C.F.R. § 1.147(c)(1) (October 28, 1996, Memorandum to the File from Tribble F. Greaves, Legal Technician).⁵ The Memorandum to the File certifying the October 28, 1996, mailing states:

This is to certify that on October 28, 1996, I posted by regular mail an envelope containing a copy of a Complaint, giving respondent 20 days from receipt to file an answer. Respondent will have 20 days from the date of this memorandum to file an answer.

Sections 1.136, 1.139, and 1.141 of the Rules of Practice provide:

§ 1.136 Answer.

(a) *Filing and service.* Within 20 days after the service of the complaint . . . , the respondent shall file with the Hearing Clerk an answer

⁵Respondents admit that they received a copy of the October 28, 1996, Memorandum to the File from Tribble Greaves (Response of Respondents to Motion for Decision Without Hearing ¶ 5), and I infer from this admission that Respondents also received a copy of the Complaint which accompanied the October 28, 1996, Memorandum to the File. Even if I found that Respondents did not actually receive the Complaint in the October 28, 1996, mailing, that finding would not change the outcome of this proceeding because, in accordance with section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)), Respondents are deemed to have received the Complaint on the date that it was remailed by ordinary mail, viz., October 28, 1996.

signed by the respondent or the attorney of record in the proceeding. . . .

....
(c) *Default.* Failure to file an answer within the time provided under § 1.136(a) shall be deemed, for purposes of the proceeding, an admission of the allegations in the Complaint, and failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation, unless the parties have agreed to a consent decision pursuant to § 1.138 [(7 C.F.R. § 1.138)].

§ 1.139 Procedure upon failure to file an answer or admission of facts.

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.

§ 1.141 Procedure for hearing.

(a) *Request for hearing.* Any party may request a hearing on the facts by including such request in the complaint or answer, or by a separate request, in writing, filed with the Hearing Clerk within the time in which an answer may be filed. . . . Failure to request a hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing.

7 C.F.R. §§ 1.136(a), (c), .139, .141(a).

The Complaint served on Respondents on October 28, 1996, clearly informs Respondents of the consequences of failing to file a timely Answer, as follows:

The respondents shall file an answer with the Hearing Clerk, United States Department of Agriculture, Room 1079 South Building, Washington, D.C. 20250, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 *et seq.*). Failure to file an answer shall constitute an admission of all the material allegations of this Complaint and Notice of

Hearing. Respondents are hereby notified that unless hearing is waived, either expressly or by failure to file an answer and request a hearing as provided in sections 1.136 and 1.141 of the Rules of Practice (7 C.F.R. §§ 1.136, 1.141), a hearing will be held at a place and date to be specified later, before an administrative law judge designated to conduct such hearing.

Complaint at 8-9.

Respondents' Answer was due November 18, 1996. On the day Respondents' Answer was due, Complainant's counsel received a telephone call from Ms. Stacy Fisher, Respondent Charles Contris' daughter (Complainant's Response to Respondents' Petition for Appeal at 3). Complainant describes the telephone conversation as follows:

Ms. Fisher advised that [R]espondents were not ignoring the [C]omplaint, that the [C]omplaint had been misplaced, and that Contris was incarcerated. Ms. Fisher also provided Contris' address at the prison at Seymour Johnson Air Force Base. Complainant's counsel advised Ms. Fisher that [C]omplainant could not grant an extension and that [C]omplainant would not object to an extension if [R]espondents filed such a request with the Administrative Law Judge.

Complainant's Response to Respondents' Petition for Appeal at 3-4.

The record does not reveal that Respondents made any request, on or before November 18, 1996, to the ALJ for an extension of time to file their Answer. On November 19, 1996, the Office of the Hearing Clerk sent a letter to Respondent Charles Contris at [REDACTED] (b) (6) [REDACTED] informing Respondent Charles Contris that an Answer to the Complaint had not been filed within the allotted time (Letter from Joyce A. Dawson to Mr. Charles Contris dated November 19, 1996).

Complainant's counsel informed the Office of the Hearing Clerk of the address given by Ms. Fisher for Respondent Charles Contris (Complainant's Response to Respondents' Petition for Appeal at 4), and on November 20, 1996, the Office of the Hearing Clerk sent Respondent Charles Contris a copy of the Complaint by certified mail (November 20, 1996, Memorandum to the File from Tribble F. Greaves, Legal Technician). The return receipt card was signed on November 25, 1996 (Return Receipt for Article Number [REDACTED]).

Prior to receipt of the copy of the Complaint mailed on November 20, 1996, Respondents mailed their first filing in this proceeding, an undated letter filed on

November 25, 1996,⁶ which states, as follows:

Att. hearing clerk,

I Charles Contris need served or mailed the Complaint that was mailed mistakenly to the wrong address, and opened by Danny Rogers and remailed to the proper address, so he said.

This letter has never been received by me to read, so I can properly reply to it.

We have reported this to Joanne [sic] Waterfield P & S Bedford, Va. [S]he said she has no objections to an extension of time for answering complaint. I ask you to please grant extension and mail my letter to this address.

Sincerely Charles Contris

Spring Valley Meats Co.

Charles Contris

(b) (6)

Respondents' undated letter filed November 25, 1996.

On December 13, 1996, Respondents filed a second document to which they attached a copy of the November 20, 1996, Memorandum to the File from Tribble F. Greaves. Respondents' second filing states:

Att to Joann Waterfield Att. for Complainant and Joyce Dawson hearing clerk
U.S - Dept Agr.

Your mail sent to me has been going to the wrong address evidently, and I have not been able to respond to it in a timely manner.

⁶Respondents' undated letter was filed 28 days after Respondents were served with the Complaint and was mailed in an envelope postmarked November 21, 1996, 24 days after Respondents were served with the Complaint.

To answer a few questions for you and inform you of the latest on Spring Valley Meats and myself, I shall proceed. Spring Valley Meats closed its doors in February of 1995 permanently and has never reopened. It has been harrassed [sic] out of business by U.S.D.A. meat inspectors who had unmercifully beat on us [sic] for a year. I have not been the Pres [sic] of Co [sic] since March of that year nor have I received any pay checks from the Co., as it was completely broke. I am also financially broke and am in prison for false charges they have put upon me. I have been sentenced to 2½ years in Fed prison for misprision of a felony, I didn't commit. I do not have any money to hire a lawyer or an advisor to help me understand the legal paper work you sent me. I would like to cooperate and resolve these problems, if you can send someone or a lawyer to explain what it means that I am to sign. I also had to rely on government lawyer to represent me on the charges that put me in here. I will leave my correct address in letter also you will have to contact prison to call for me.

P.S. I am unable financially to hire a lawyer to explain or advise me. Please send some one to represent or explain papers so I can help you and myself resolve this matter.

Sincerely
Charles Contris

[illegible]

Respondents' December 13, 1996, filing.

On December 16, 1996, the Office of the Hearing Clerk sent Respondents a letter stating:

December 16, 1996

Mr. Charles Contris

(b) (6)

Dear Mr. Contris:

Subject: In re: Spring Valley Meats, Inc. and Charles

Contris, Respondents
P&S Docket No. D-96-0059

Your Answer to the complaint has been received and filed in the above-captioned proceeding.

You will be informed of any future action taken in this matter.

Sincerely,

/s/

Joyce A. Dawson
Hearing Clerk

On April 11, 1997, in accordance with 7 C.F.R. § 1.139, Complainant filed a Motion for Decision Without Hearing As To Respondent Charles Contris and a proposed Decision Without Hearing By Reason of Default With Respect To Respondent Charles Contris, which were served on Respondent Charles Contris by certified mail on April 16, 1997. Complainant's April 11, 1997, filings, with respect to Respondent Charles Contris, were accompanied by a letter from the Office of the Hearing Clerk, which states:

CERTIFIED RECEIPT REQUESTED

April 11, 1997

Mr. Charles Contris

(b) (6)

Dear Mr. Contris:

Subject: In re: Spring Valley Meats, Inc. and Charles
Contris, Respondents
P&S Docket No. D-96-0059

Enclosed is a copy of Complainant's Motion for Decision Without Hearing as to Respondent Charles Contris and the Proposed Decision, which have been filed with this office in the above-captioned proceeding.

In accordance with the applicable Rules of Practice, you will have 20 days from the date of receipt of this letter in which to file with this office an original and three copies of objections to the Motion.

Sincerely,

/s/

Fe C. Angeles

Acting Hearing Clerk

On April 11, 1997, Complainant also filed a Motion for Decision Without Hearing As To Respondent Spring Valley Meats, Inc., and a proposed Decision Without Hearing By Reason of Default With Respect To Respondent Spring Valley Meats, Inc., which were served on Respondent Spring Valley Meats, Inc., on April 17, 1997. Complainant's April 11, 1997, filings, with respect to Respondent Spring Valley Meats, Inc., were accompanied by a letter from the Office of the Hearing Clerk, which states:

CERTIFIED RECEIPT REQUESTED

April 11, 1997

Mr. Charles Contris
Spring Valley Meats, Inc.

(b) (6)

Dear Mr. Contris:

Subject: In re: Spring Valley Meats, Inc. and Charles
Contris, Respondents
P&S Docket No. D-96-0059

Enclosed is a copy of Complainant's Motion for Decision Without Hearing as to Respondent Spring Valley Meats, Inc. and the Proposed Decision, which have been filed with this office in the above-captioned proceeding.

In accordance with the applicable Rules of Practice, you will have 20 days from the date of receipt of this letter in which to file with this office an original

and three copies of objections to the Motion.

Sincerely,

/s/

Fe C. Angeles

Acting Hearing Clerk

Neither Respondent Charles Contris nor Respondent Spring Valley Meats, Inc., filed objections to Complainant's Motion for Decision Without Hearing As To Respondent Charles Contris or Complainant's Motion for Decision Without Hearing As To Respondent Spring Valley Meats, Inc., within 20 days of service, as provided in section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

On May 8, 1997, the Office of the Hearing Clerk sent a letter to Respondents stating:

May 8, 1997

Spring Valley Meats, Inc.

Mr. Charles Contris

(b) (6)

Gentlemen:

Subject: In re: Spring Valley Meats, Inc. and Charles
Contris, Respondents
P&S Docket No. D-96-0059

No objection to the Complainant's Motions for Decision Without Hearing As To Spring Valley Meats, Inc. and Charles Contris, in the above-captioned proceeding, have been filed within the allotted time.

In accordance with the applicable Rules of Practice, the file is being referred to the Administrative Law Judge for further action.

Sincerely,

/s/

Fe C. Angeles

Acting Hearing Clerk

On May 12, 1997, the ALJ filed a Default Decision as to Respondent Charles Contris and a Default Decision as to Respondent Spring Valley Meats, Inc. On May 12, 1997, the Office of the Hearing Clerk sent a copy of the Default Decision as to Respondent Charles Contris and a copy of the Default Decision as to Respondent Spring Valley Meats, Inc., by certified mail to:

Spring Valley Meats, Inc.
Mr. Charles Contris

(b) (6)

Each default decision was returned to the Office of the Hearing Clerk marked by the postal service "Refused." On May 21, 1997, the Office of the Hearing Clerk sent a copy of the Default Decision as to Respondent Charles Contris by ordinary mail to:

Mr. Charles Contris

(b) (6)

On May 21, 1997, the Office of the Hearing Clerk also sent a copy of the Default Decision as to Respondent Spring Valley Meats, Inc., by ordinary mail to:

Spring Valley Meats, Inc.
c/o Mr. Charles Contris

(b) (6)

On June 6, 1997, Respondents filed Response of Respondents to Motion for Decision Without Hearing requesting that the ALJ deny Complainant's Motion for Decision Without Hearing As To Respondent Charles Contris and Complainant's Motion for Decision Without Hearing As To Respondent Spring Valley Meats, Inc., and either "accept the prior December 1996 Response as the Answer of Mr. Contris to the DOA Complaint" or allow "Mr. Contris . . . the opportunity to submit

a formal Answer to the Complaint" (Response of Respondents to Motion for Decision Without Hearing at 3). On June 18, 1997, the ALJ ruled as follows:

On May 12, 1997, a Default Decision was issued herein. On June 6, 1997, Respondents filed an untimely Response to Complainant's Motion for Decision Without Hearing, the latter of which was dated April 11, 1997, and which was received at a North Carolina facility for incarceration on April 16, 1997. Respondent Contris maintains that he did not receive said Motion and related data in a timely fashion because he was transferred to a facility in West Virginia.

Respondent Contris, in his response of Respondents to Motion for Decision Without Hearing filed June 6, 1997, requests, among other things, " * * * the opportunity to submit a formal Answer to the Compliant, and requests that this matter be set for hearing after his release from incarceration." The Complainant has filed no response to the June 6, 1997, filing of Respondents.

A consideration of the record as a whole indicates the Default Decision was properly issued and that Respondent Contris' requests should be, and are, denied.

However, a Default Decision is appealable to the Judicial Officer of the Department of Agriculture and he has discretion to set aside or vacate a Default Decision. Accordingly, and exercising an abundance of fairness, it is recommended that Respondent Contris' filing of June 6, 1997, be treated as an Appeal from the Default Decision.

ALJ's June 18, 1997, ruling (entitled Default Decision Issued May 12, 1997).

I agree with the ALJ's denial of Response of Respondents to Motion for Decision Without Hearing. Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) requires that a respondent may file objections to a motion for a default decision within 20 days after service of the motion on the respondent. In the instant proceeding, Respondent Charles Contris was served with Complainant's Motion for Decision Without Hearing As To Respondent Charles Contris and a proposed Decision Without Hearing By Reason of Default With Respect To Respondent Charles Contris on April 16, 1997, and Respondent Spring Valley Meats, Inc., was served with Complainant's Motion for Decision Without Hearing As To Respondent Spring Valley Meats, Inc., and a proposed Decision Without Hearing

By Reason of Default With Respect To Respondent Spring Valley Meats, Inc., on April 17, 1997. Respondents' objections to Complainant's motions were filed June 6, 1997, 51 days after Respondent Charles Contris was served with Complainant's Motion for Decision Without Hearing As To Respondent Charles Contris; 25 days after the ALJ filed the Default Decision as to Charles Contris; and 16 days after Respondent Charles Contris was served with the Default Decision as to Charles Contris.

However, Response of Respondents to Motion for Decision Without Hearing was filed after the ALJ issued the Default Decision as to Charles Contris and before the expiration of the time for filing an appeal petition (7 C.F.R. § 1.145(a)). The ALJ recommends in her June 18, 1997, ruling (entitled Default Decision Issued May 12, 1997), that I treat Response of Respondents to Motion for Decision Without Hearing as Respondents' appeal of the Default Decision as to Charles Contris. Under the circumstances in this proceeding, I agree with the ALJ's recommendation.⁷

First, Respondents request that their December 13, 1996, filing be treated as an Answer (Response of Respondents to Motion for Decision Without Hearing at 3). Section 1.136(b) of the Rules of Practice provides:

§ 1.136 Answer.

....

(b) *Contents.* The answer shall:

(1) Clearly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent;
or

(2) State that the respondent admits all facts alleged in the complaint;
or

(3) State that the respondent admits the jurisdictional allegations of the complaint and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.

7 C.F.R. § 1.136(b).

⁷For the same reasons, I am also treating Response of Respondents to Motion for Decision Without Hearing as Respondents' appeal of the Default Decision as to Spring Valley Meats, Inc., which is the subject of a companion decision and order, *In re Spring Valley Meats, Inc.* (Decision as to Spring Valley Meats, Inc.), 56 Agric. Dec. ____ (Aug. 1, 1997).

It is well settled that the formalities of court pleadings are not applicable in administrative proceedings,⁸ and this principle of administrative law applies to all pleadings, including answers. However, Respondents' December 13, 1996, filing addresses matters extraneous to the Complaint. Specifically, the filing addresses Respondent Charles Contris' financial and employment status, inability to understand "legal paper work," and incarceration for misprision of felony, and the operational status of Respondent Spring Valley Meats, Inc. The December 13, 1996, filing does not: (1) admit, deny, or explain each of the allegations of the Complaint and set forth any defense relevant to the instant proceeding; (2) admit all the facts alleged in the Complaint; or (3) state that Respondents admit the jurisdictional allegations of the Complaint and neither admit nor deny the remaining allegations and consent to the issuance of an order without further procedure. Therefore, I do not find that Respondents' December 13, 1996, filing is an Answer as described in the Rules of Practice; thus, Respondents' December 13, 1996, filing provides no basis for setting aside the Default Decision as to Respondent Charles Contris. Moreover, in accordance with section 1.136(c) of the Rules of Practice, Respondents' failure to respond to the allegations of the Complaint is deemed, for the purposes of this proceeding, an admission of the allegations of the Complaint.⁹

⁸*Wallace Corp. v. NLRB*, 323 U.S. 248, 253 (1944); *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 142-44 (1940); *NLRB v. Int'l Bros. of Elec. Workers, Local Union 112*, 827 F.2d 530, 534 (9th Cir. 1987); *Citizens State Bank of Marshfield v. FDIC*, 751 F.2d 209, 213 (8th Cir. 1984); *Consolidated Gas Supply Corp. v. FERC*, 611 F.2d 951, 959 n.7 (4th Cir. 1979); *Aloha Airlines, Inc. v. CAB*, 598 F.2d 250, 262 (D.C. Cir. 1979); *A.E. Staley Mfg. Co. v. FTC*, 135 F.2d 453, 454 (7th Cir. 1943).

⁹*See In re Rex Kneeland*, 50 Agric. Dec. 1571, 1572 (1991) (holding that the allegations of the complaint are deemed admitted where respondent's answer, *inter alia*, does not deny the material allegations of the complaint); *In re Joe L. Henson*, 45 Agric. Dec. 2246, 2250 (1986) (holding that the default decision was properly issued where respondent's answer failed to deny the allegations of the complaint); *In re J.W. Guffy*, 45 Agric. Dec. 1742, 1747 (1986) (holding that, where, *inter alia*, respondent's answer does not deny the allegations of the complaint, a default decision is properly issued); *In re Wayne J. Blaser*, 45 Agric. Dec. 1727, 1728 (1986) (holding that respondent's answer which admits one allegation of the complaint and fails to respond to the other allegations of the complaint is an admission of all the allegations in the complaint); *In re Gutman Bros., Ltd.*, 45 Agric. Dec. 956, 960 (1986) (holding that respondent is deemed to have admitted the allegations of the complaint warranting the entry of a default decision where respondent's answer merely requests a hearing); *In re Jonathan Stolzfus*, 44 Agric. Dec. 1161, 1162 (1985) (holding that respondent's answer, which states that "no violation was intended," does not deny or otherwise respond to the complaint and pursuant to 7 C.F.R. § 1.136(c) is deemed an admission of the allegations of the complaint); *In re Michael A. Lucas*, 43 Agric. Dec. 1721, 1722, 1725 (1984) (holding that respondent's answer, which

Even if I were to find that Respondents' December 13, 1996, filing suffices as an Answer denying the material allegations of the Complaint, I would not set aside the Default Decision as to Charles Contris because it was not timely filed.

The Office of the Hearing Clerk attempted to serve the Complaint on Respondent Charles Contris at his last known address by certified mail on September 30, 1996. The envelope containing the September 30, 1996, mailing to Respondent Charles Contris, from the Office of the Hearing Clerk, was returned to the Office of the Hearing Clerk marked by the postal service as "Unclaimed."

On October 28, 1996, the Office of the Hearing Clerk served Respondents with a copy of the Complaint by ordinary mail, in accordance with section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)). Respondents' Answer was due 20 days after the date on which the Complaint was served by ordinary mail on Respondents, viz., November 18, 1996. The filing that Respondents contend is their Answer was filed December 13, 1996, 46 days after the Complaint was served on Respondents. Therefore, even if I found, as Respondents urge, that their December 13, 1996, filing is Respondents' Answer to the Complaint, I would find that it was not timely filed, that Respondents' failure to file a timely Answer constitutes an admission of the material allegations in the Complaint (7 C.F.R. § 1.136(a), (c)) and a waiver of hearing (7 C.F.R. §§ 1.139, .141(a)), and that the Default Decision as to Charles Contris was properly issued.

Second, Respondents request that, if the December 13, 1996, filing is not accepted as Respondents' Answer to the Complaint, Respondents be given "the opportunity to submit a formal Answer to the Complaint[] and . . . that this matter be set for [h]earing after [Respondent Charles Contris'] release from incarceration." (Response of Respondents to Motion for Decision Without Hearing at 3.)

Although on rare occasions default decisions have been set aside for good cause shown or where Complainant did not object,¹⁰ Respondents have shown no basis

raises some concerns that respondent had with policies of the State of Minnesota Livestock Sanitary Board extraneous to the complaint, fails to admit, deny, or otherwise respond to the allegations of the complaint and is deemed an admission of the allegations of the complaint).

¹⁰See generally *In re Arizona Livestock Auction, Inc.*, 55 Agric. Dec. 1121 (1996) (setting aside a default decision because facts alleged in the Complaint and deemed admitted by failure to answer were not sufficient to find a violation of the Packers and Stockyards Act or jurisdiction over the matter by the Secretary of Agriculture); *In re Veg-Pro Distributors*, 42 Agric. Dec. 273 (1983) (remand order), *final decision*, 42 Agric. Dec. 1173 (1983) (setting aside a default decision because service of the Complaint by registered and regular mail was returned as undeliverable, and Respondent's license under the Perishable Agricultural Commodities Act had lapsed before service was attempted); *In re J. Fleishman & Co.*, 38 Agric. Dec. 789 (1978) (remand order), *final decision*, 37 Agric. Dec. 1175

for setting aside the Default Decision as to Charles Contris and allowing Respondents to file an Answer.¹¹ The Rules of Practice clearly provide that an

(1978); *In re Henry Christ*, L.A.W.A. Docket No. 24 (Nov. 12, 1974) (remand order), *final decision*, 35 Agric. Dec. 195 (1976); *In re Vaughn Gallop*, 40 Agric. Dec. 217 (vacating a default decision and remanding the case to determine whether just cause exists for permitting late Answer), *final decision*, 40 Agric. Dec. 1254 (1981).

¹¹See generally *In re John Walker*, 56 Agric. Dec. ____ (Mar. 21, 1997) (holding the default decision proper where respondent's first filing was 126 days after the complaint was served on respondent); *In re Mary Meyers*, 56 Agric. Dec. ____ (Mar. 13, 1997) (holding the default decision proper where respondent's first filing was filed 117 days after respondent's answer was due); *In re Dora Hampton*, 56 Agric. Dec. ____ (Jan. 15, 1997) (holding the default decision proper where respondent's first and only filing in the proceeding was filed 135 days after respondent's answer was due); *In re Gerald Funches*, 56 Agric. Dec. ____ (Jan. 15, 1997) (holding the default decision proper where respondent's first and only filing in the proceeding was filed 94 days after the complaint was served on respondent); *In re City of Orange*, 55 Agric. Dec. 1081 (1996) (holding that the default decision proper where respondent's first and only filing in the proceeding was filed 70 days after respondent's answer was due); *In re Bibi Uddin*, 55 Agric. Dec. 1010 (1996) (holding the default decision proper where response to complaint was filed more than 9 months after service of complaint on respondent); *In re Billy Jacobs, Sr.*, 56 Agric. Dec. ____ (Aug. 15, 1996) (holding the default decision proper where response to complaint was filed more than 9 months after service of complaint on respondent), *appeal docketed*, No. 96-7124 (11th Cir. Nov. 8, 1996); *In re Sandra L. Reid*, 55 Agric. Dec. 996 (1996) (holding the default decision proper where response to complaint was filed 43 days after service of complaint on respondent); *In re Jeremy Byrd*, 55 Agric. Dec. 443 (1996) (holding the default order proper where a timely answer not filed); *In re Moreno Bros.*, 54 Agric. Dec. 1425 (1995) (holding the default order proper where a timely answer was not filed); *In re Ronald DeBruin*, 54 Agric. Dec. 876 (1995) (holding the default order proper where an answer was not filed); *In re James Joseph Hickey, Jr.*, 53 Agric. Dec. 1087 (1994) (holding the default order proper where an answer was not filed); *In re Bruce Thomas*, 53 Agric. Dec. 1569 (1994) (holding the default order proper where an answer was not filed); *In re Ron Morrow*, 53 Agric. Dec. 144 (1994), *aff'd per curiam*, 65 F.3d 168 (Table), 1995 WL 523336 (6th Cir. 1995) (holding the default order proper where respondent was given an extension of time until March 22, 1994, to file an answer, but it was not received until March 25, 1994); *In re Donald D. Richards*, 52 Agric. Dec. 1207 (1993) (holding the default order proper where timely answer was not filed); *In re A.P. Holt* (Decision as to A.P. Holt), 50 Agric. Dec. 1612 (1991) (holding the default order proper where respondent was given an extension of time to file an answer, but the answer was not filed until 69 days after the extended date for filing the answer); *In re Mike Robertson*, 47 Agric. Dec. 879 (1988) (holding the default order proper where answer was not filed); *In re Morgantown Produce, Inc.*, 47 Agric. Dec. 453 (1988) (holding the default order proper where an answer was not filed); *In re Johnson-Hallifax, Inc.*, 47 Agric. Dec. 430 (1988) (holding the default order proper where an answer was not filed); *In re Charley Charton*, 46 Agric. Dec. 1082 (1987) (holding the default order proper where an answer was not filed); *In re Les Zedric*, 46 Agric. Dec. 948 (1987) (holding the default order proper where a timely answer not filed); *In re Arturo Bejarano, Jr.*, 46 Agric. Dec. 925 (1987) (holding the default order proper where a timely answer not filed; respondent properly served even though his sister, who signed for the complaint, forgot to give it to him until after the 20-day period had expired); *In re Schmidt & Son, Inc.*, 46 Agric. Dec. 586 (1987) (holding the default order proper where a timely

Answer must be filed within 20 days after service of the Complaint (7 C.F.R. § 1.136(a)). Respondents' December 13, 1996, filing, which they assert is their Answer to the Complaint, was filed 46 days after Respondents were served with the Complaint and 25 days after Respondents' Answer was due. Moreover, even if

answer was not filed); *In re Roy Carter*, 46 Agric. Dec. 207 (1987) (holding the default order proper where a timely answer was not filed; respondent properly served where complaint sent to his last known address was signed for by someone); *In re Luz G. Pieszko*, 45 Agric. Dec. 2565 (1986) (holding the default order proper where an answer was not filed); *In re Elmo Mayes*, 45 Agric. Dec. 2320 (1986) (holding the default order proper where an answer was not filed), *rev'd on other grounds*, 836 F.2d 550, 1987 WL 27139 (6th Cir. 1987); *In re Leonard McDaniel*, 45 Agric. Dec. 2255 (1986) (holding the default order proper where a timely answer was not filed); *In re Joe L. Henson*, 45 Agric. Dec. 2246 (1986) (holding the default order proper where the answer admits or does not deny material allegations); *In re Northwest Orient Airlines*, 45 Agric. Dec. 2190 (1986) (holding the default order proper where a timely answer was not filed); *In re J.W. Guffy*, 45 Agric. Dec. 1742 (1986) (holding the default order proper where an answer, filed late, does not deny material allegations); *In re Wayne J. Blaser*, 45 Agric. Dec. 1727 (1986) (holding the default order proper where the answer does not deny material allegations); *In re Jerome B. Schwartz*, 45 Agric. Dec. 1473 (1986) (holding the default order proper where a timely answer not filed); *In re Midas Navigation, Ltd.*, 45 Agric. Dec. 1676 (1986) (holding the default order proper where an answer, filed late, does not deny material allegations); *In re Gutman Bros., Ltd.*, 45 Agric. Dec. 956 (1986) (holding the default order proper where the answer does not deny material allegations); *In re Dean Daul*, 45 Agric. Dec. 556 (1986) (holding the default order proper where the answer, filed late, does not deny material allegations); *In re Eastern Air Lines, Inc.*, 44 Agric. Dec. 2192 (1985) (holding the default order proper where a timely answer was not filed; irrelevant that respondent's main office did not promptly forward complaint to its attorneys); *In re Carl D. Cuttone*, 44 Agric. Dec. 1573 (1985) (holding the default order proper where a timely answer was not filed; Respondent Carl D. Cuttone properly served where complaint sent by certified mail to his last business address was signed for by Joseph A. Cuttone), *aff'd per curiam*, 804 F.2d 153 (D.C. Cir. 1986) (unpublished); *In re Corbett Farms, Inc.*, 43 Agric. Dec. 1775 (1984) (holding the default order proper where a timely answer was not filed); *In re Ronald Jacobson*, 43 Agric. Dec. 780 (1984) (holding the default order proper where a timely answer was not filed); *In re Joseph Buzun*, 43 Agric. Dec. 751 (1984) (holding the default order proper where a timely answer was not filed; Respondent Joseph Buzun properly served where complaint sent by certified mail to his residence was signed for by someone named Buzun); *In re Ray H. Mayer* (Decision as to Jim Doss), 43 Agric. Dec. 439 (1984) (holding the default order proper where a timely answer was not filed; irrelevant whether respondent was unable to afford an attorney), *appeal dismissed*, No. 84-4316 (5th Cir. July 25, 1984); *In re William Lambert*, 43 Agric. Dec. 46 (1984) (holding the default order proper where a timely answer was not filed); *In re Randy & Mary Berhow*, 42 Agric. Dec. 764 (1983) (holding the default order proper where a timely answer was not filed); *In re Danny Rubel*, 42 Agric. Dec. 800 (1983) (holding the default order proper where respondent acted without an attorney and did not understand the consequences and scope of a suspension order); *In re Pastures, Inc.*, 39 Agric. Dec. 395, 396-97 (1980) (holding the default order proper where respondents misunderstood the nature of the order that would be issued); *In re Jerry Seal*, 39 Agric. Dec. 370, 371 (1980) (holding the default order proper where a timely answer was not filed); *In re Thomaston Beef & Veal, Inc.*, 39 Agric. Dec. 171, 172 (1980) (refusing to set aside the default order because of respondents' contentions that they misunderstood the Department's procedural requirements, when there is no basis for the misunderstanding).

Respondents' December 13, 1996, filing was timely, it does not respond to the allegations of the Complaint as required in section 1.136(b) of the Rules of Practice (7 C.F.R. § 1.136(b)), and in accordance with section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)), Respondents' failure to respond to the allegations of the Complaint is deemed, for the purposes of this proceeding, an admission of the allegations of the Complaint.

The requirement in the Rules of Practice that a respondent deny or explain any allegation of the Complaint and set forth any defense in a timely Answer is necessary to enable this Department to handle its large workload in an expeditious and economical manner. The Department's four ALJ's frequently dispose of hundreds of cases in a year. In recent years, the Department's Judicial Officer has disposed of 40 to 60 cases per year.

The courts have recognized that administrative agencies "should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties."¹² If Respondents were permitted to contest some of the allegations of fact after failing to file a timely Answer, or raise new issues, all other Respondents in all other cases would have to be afforded the same privilege. Permitting such practice would greatly delay the administrative process and would require additional personnel.

The record clearly establishes that Respondents were provided with a meaningful opportunity for a hearing in accordance with the Rules of Practice. Respondents waived their right to a hearing by failing to file a timely Answer (7 C.F.R. §§ 1.139, .141(a)). Moreover, Respondents' failure to file a timely Answer is deemed, for the purposes of this proceeding, to be an admission of the allegations in the Complaint (7 C.F.R. § 1.136(c)).

Accordingly, the Default Decision as to Charles Contris was properly issued in

¹²See *Cella v. United States*, 208 F.2d 783, 789 (7th Cir. 1953), cert. denied, 347 U.S. 1016 (1954), quoting from *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 143 (1940). Accord *Silverman v. CFTA*, 549 F.2d 28, 33 (7th Cir. 1977). See also *Seacoast Anti-Pollution League v. Costle*, 597 F.2d 306, 308 (1st Cir. 1979) (stating that absent law to the contrary, agencies enjoy wide latitude in fashioning procedural rules); *Nader v. FCC*, 520 F.2d 182, 195 (D.C. Cir. 1975) (stating that the Supreme Court has stressed that regulatory agencies should be free to fashion their own rules of procedure and to pursue methods for inquiry capable of permitting them to discharge their multitudinous duties; similarly this court has upheld in the strongest terms the discretion of regulatory agencies to control disposition of their caseload); *Swift & Co. v. United States*, 308 F.2d 849, 851-52 (7th Cir. 1962) (stating that administrative convenience or even necessity cannot override constitutional requirements, however, in administrative hearings, the hearing examiner has wide latitude as to all phases of the conduct of the hearing, including the manner in which the hearing will proceed).

this proceeding. Application of the default provisions of the Rules of Practice does not deprive Respondents of their rights under the due process clause of the Fifth Amendment to the United States Constitution.¹³ There is no basis for allowing Respondents to present matters by way of defense at this time.

For the foregoing reasons, the following Order should be issued.

Order

Paragraph I

Respondent Charles Contris, his agents and employees, directly or indirectly through any corporate or other device, shall cease and desist from:

1. Failing to pay, when due, the full purchase price of livestock;
2. Failing to pay the full purchase price of livestock;
3. Purchasing livestock while insolvent, that is, while current liabilities exceed current assets, unless Respondent Charles Contris pays the full purchase price of the livestock at the time of the purchase of the livestock in United States currency, by certified check, or by wire transfer, as provided in 7 U.S.C. § 204;
4. Initiating or participating in any activity, course of conduct, scheme, arrangement, or agreement to purchase or attempt to purchase livestock, either directly or indirectly through his agents, intermediaries, persons or entities, which would endanger or attempt to endanger, the trust interest accorded to each seller of livestock by virtue of 7 U.S.C. § 196: *Provided, however,* That Respondent Charles Contris, his agents or intermediaries who purchase for Respondent Charles Contris, may purchase or attempt to purchase livestock on credit if Respondent Charles Contris, his agents or intermediaries who purchase for Respondent Charles Contris, fully inform such livestock sellers, in writing, before such purchase that the method and manner of payment for the purchase would constitute a credit sale as recognized by 7 U.S.C. § 228b and 9 C.F.R. § 201.43; and
5. Violating the Secretary's Order in P. & S. Docket No. D-91-75.

The cease and desist provisions of this Order shall become effective on the day after service of this Order on Respondent Charles Contris.

Paragraph II

Respondent Charles Contris is assessed a civil penalty of \$28,000 (for which

¹³See *United States v. Hulings*, 484 F. Supp. 562, 568-69 (D. Kan. 1980).

Respondent Charles Contris is jointly and severally liable with Respondent Spring Valley Meats, Inc.) which shall be paid by certified check or money order, made payable to the Treasurer of the United States, and forwarded within 120 days after service of this Order on Respondent Charles Contris to:

Assistant General Counsel
United States Department of Agriculture
Office of the General Counsel
Trade Practices Division
Room 2446 South Building
1400 Independence Avenue, SW
Washington, DC 20250-1413

The certified check or money order should indicate that payment is in reference to P. & S. Docket No. 96-0059.

**In re: FLA PACKING & PROVISION, INC., and C. ELLIOTT KANE.
P&S Docket No. D-95-0062.**

Decision and Order as to Fla Packing & Provision, Inc., filed September 24, 1997.

Failure to appear at hearing - Admission of material allegations - Failure to maintain sufficient funds on deposit to pay checks issued in payment for livestock and meat - Failure to pay the full purchase price of livestock and meat - Purchasing livestock for purposes of slaughter without maintaining an adequate bond or its equivalent - Cease and desist order.

Respondent, Fla Packing & Provision, Inc., failed to appear at the scheduled hearing after being duly notified of the time and place it was to commence. The hearing was held in Respondent's absence. Failure to appear constituted an admission of the allegations in the Complaint, as well as the evidence presented at the hearing. Accordingly, Administrative Law Judge Bernstein found that Respondent issued checks in payment of livestock and meat for which there were not sufficient funds on deposit to pay; failed to pay the full purchase price for livestock and meat; and purchased livestock without maintaining an adequate bond or its equivalent. Judge Bernstein also concluded that the violations were aggravated by the fact that they occurred after Respondent had been placed on written notice to cease failing to pay when due, and issuing checks for which there were not sufficient funds on deposit. Upon consideration of the gravity of the offense, the size of the business involved, and the effect of the penalty on the Respondent's ability to continue in business, Judge Bernstein imposed a civil penalty in the amount of \$8,000 and issued a cease and desist order.

Eric Paul for Complainant.

Respondent, pro se.

Decision and Order issued by Administrative Law Judge Edwin S. Bernstein.

This is a disciplinary proceeding brought under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), (the "Act"), and the regulations promulgated pursuant to the Act (9 C.F.R. § 201.1 *et seq.*). A Complaint and Notice of Hearing was filed on September 22, 1995, by the Acting Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, charging that the corporate Respondent, under the direction, management and control of the individual Respondent wilfully violated the Act and the regulations by failing to pay full price for livestock. Respondents filed Answers in which they denied violating the Act and regulations. On August 6, 1997, I issued a Decision pursuant to a consent agreement between Complainant and Respondent, C. Elliott Kane.

On February 12, 1997, I issued an Order scheduling the hearing for August 20, 1997, in Jacksonville, Florida. On June 4, 1997, I issued a Notice of Hearing setting forth the specific location for the August 20 hearing. This Order and Notice were served on the corporate Respondent.

Respondent, Fla Packing & Provision, Inc., and its subpoenaed president, Warren B. Moore, failed to appear at the scheduled hearing on August 20, 1997. By failing to appear at the hearing, pursuant to section 1.141(e) of the Rules of Practice, Respondent, Fla Packing & Provision, Inc., has admitted all of the material allegations of fact contained in the Complaint and any facts which may be presented at the hearing. Complainant presented the testimony of three witnesses and Complainant's Exhibits Nos. 1 through 38 (CX 1-38). Complainant was represented by Eric Paul of the Office of the General Counsel. The Complaint is referred to as "Comp."; Complainant's exhibits by "CX"; and the hearing transcript by "Tr."

Findings of Fact

1. Respondent, Fla Packing & Provision, Inc., ("the corporate Respondent"), is a Florida corporation also known as Florida Packing & Provision, Inc., whose mailing address is [REDACTED] Florida [REDACTED] (Comp. I).
2. The corporate Respondent at all times material was:
 - (a) Engaged in the business of buying livestock in commerce for purposes of slaughter, and of marketing meats, meat food products, or livestock products in an unmanufactured form acting as wholesale meat broker, dealer, or distributor in commerce; and
 - (b) A packer within the meaning of this term under the Act and subject to

the Act (Comp. I).

3. Respondent, C. Elliott Kane, ("the individual Respondent"), is an individual whose mailing address is (b) (6) (Comp. I).

4. C. Elliott Kane was:

(a) The president of the corporate Respondent between July 31, 1992, and October 5, 1994;

(b) Owner of 49 percent of the corporate Respondent's stock between July 31, 1992, and October 21, 1993; and 100 percent of the corporate Respondent's stock between October 21, 1993, and September 22, 1994;

(c) Responsible for the direction, management and control of the corporate Respondent at all times material herein;

(d) The *alter ego* of the corporate Respondent; and

(e) A packer within the meaning of this term under the Act and subject to the Act (Comp. I).

5. The corporate Respondent, under the direction, management and control of the individual Respondent, on or about the dates in the transactions which are set forth as follows, purchased livestock in credit sales on a grade and yield basis and failed to pay the full purchase price of such livestock.

LIVESTOCK SELLER	KILL DATE	NO HEAD	LIVESTOCK PURCHASE AMOUNT	PACKER BOND & [BANKRUPTCY] DISTRIBUTIONS	UNPAID LIVESTOCK AMOUNT
Thomas Smith-Smith Farm	5/17/94	6	(b) (4)		
" " "	5/18/94	4			
" " "	5/19/94	9			
" " "	5/20/94	3			
" " "	5/24/94	5			
" " "	5/25/94	4			
" " "	5/26/94	4			
" " "	5/27/94	7			
" " "	5/31/94	4			
" " "	6/01/94	5			
" " "	6/02/94	7			

PACKERS AND STOCKYARDS ACT

LIVESTOCK SELLER	KILL DATE	NO HEAD	LIVESTOCK PURCHASE AMOUNT	PACKER BOND & [BANKRUPTCY] DISTRIBUTIONS	UNPAID LIVESTOCK AMOUNT
" " "	6/03/94	1	(b) (4)		
" " "	6/06/94	1			
" " "	6/08/94	7			
" " "	6/09/94	8			
" " "	6/13/94	7			
" " "	6/16/94	6			
" " "	6/17/94	1			
" " "	6/21/94	7			
" " "	6/22/94	1			
" " "	6/23/94	7			
" " "	6/27/94	8			
" " "	6/29/94	4			
" " "	7/01/94	6			
Thomas Smith-Smith Farm	7/05/94	5			
" " "	7/06/94	15			
" " "	7/08/94	5			
" " "	7/12/94	15			
" " "	7/13/94	11			
" " "	7/15/94	8			
" " "	7/18/94	11			
" " "	7/19/94	2			
" " "	7/20/94	3			
" " "	7/21/94	14			
" " "	7/22/94	9			
" " "	7/25/94	7			
" " "	7/27/94	10			
" " "	7/28/94	12			
" " "	7/29/94	13			

LIVESTOCK SELLER	KILL DATE	NO HEAD	LIVESTOCK PURCHASE AMOUNT	PACKER BOND & [BANKRUPTCY] DISTRIBUTIONS	UNPAID LIVESTOCK AMOUNT
" " "	8/01/94	3	(b) (4)	(b) (4)	
" " "	8/02/94	8			
" " "	8/03/94	5			
" " "	8/04/94	8			
" " "	8/08/94	5			
" " "	8/09/94	7			
" " "	8/10/94	5			
" " "	8/12/94	2			
" " "	8/23/94	5			
" " "	8/24/94	20			
" " "	8/25/94	8			
" " "	9/01/94	8			
" " "	9/02/94	10			
" " "	9/06/94	6			
" " "	9/07/94	$\frac{10}{378}$			\$105,185.45
Smith & Herrington	7/20/94	5			
" " "	7/21/94	$\frac{2}{7}$			1,560.16
Victor Cowart	8/24/94	1			
" " "	9/01/94	1			
" " "	9/07/94	$\frac{1}{3}$			1,532.82
Walton Cowart	7/18/94	1			238.76
Landon Lungren	7/25/94	1			\$ 203.75
Claude Lungren	7/25/94	1			242.86
Ace Ranch	7/26/94	7			947.29
Mr. B's Ranch	8/25/94	5			833.72
Gustafson's Dairy	5/23/94	22			

LIVESTOCK SELLER	KILL DATE	NO. HEAD	LIVESTOCK PURCHASE AMOUNT	PACKER BOND & [BANKRUPTCY] DISTRIBUTIONS	UNPAID LIVESTOCK AMOUNT
" " "	5/25/94	11	(b) (4)	(b) (4)	
" " "	6/15/94	10			
" " "	6/22/94	8			
" " "	6/29/94	10			
" " "	9/02/94	11			
" " "	9/06/94	13			
" " "	9/07/94	<u>10</u> 95			38,449 00
TOTALS		498			\$149,193 81

[Comp. II and CX 5, Tr. 9 (showing the reduction in the amount alleged unpaid by reason of *pro rata* bankruptcy distributions)]

6. The corporate Respondent, under the direction, management and control of the individual Respondent, failed to file and maintain a reasonable bond. Respondents purchased 70 head of livestock having a total purchase price of \$28,372.71 between September 1, 1994, and September 7, 1994, as more fully set forth in paragraph II of the Complaint, despite having received written notice on July 22, 1994, that the \$40,000 bond filed with the Secretary of Agriculture to secure the corporate Respondent's livestock purchase obligations as a packer would terminate at the close of business on August 29, 1994 (Comp. III; CX 15-16; Tr. 15).

7. The corporate Respondent, under the direction, management and control of the individual Respondent, on or about the dates and in the transactions set forth below, issued checks in purported payment for livestock, which checks were returned unpaid by the bank upon which they were drawn because Respondents did not have sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

LIVESTOCK SELLER	KILL DATE	NO. HEAD	CHECK NO.	CHECK DATE	CHECK AMOUNT	DATE RETURNED NSF
Gustafson's Dairy	5/23/94- 5/25/94	33	(b) (4)			

LIVESTOCK SELLER	KILL DATE	NO. HEAD	CHECK NO.	CHECK DATE	CHECK AMOUNT	DATE RETURNED NSF
. . .	6/15/94	$\frac{10}{43}$	(b) (4)			
. . .	6/22/94	8				
. . .	6/29/94	10				

* Replacement checks

(Comp. IV; CX 17-22; Tr. 11-12)

8. The corporate Respondent, under the direction, management and control of the individual Respondent, on or about the dates and in the transactions set forth below, purchased boneless beef from Trans-Continental Meats, Inc., Atlanta, Georgia, and failed to pay the full purchase price of such meat.

PURCHASE DATE	MEAT DESCRIPTION	WEIGHT IN POUNDS	UNIT PRICE	MEAT PURCHASE AMOUNT
7/08/94	Frozen Beef Trimmings 50% IBP Production 200 Boxes	14,000	(b) (4)	
8/18/94	Frozen Beef Trimmings 50% Frozen Beef Trimmings 60% Swan Production 575 Boxes 50% Trim 125 Boxes 60% Trim	34,500 7,500		

(Comp. V; CX 23-25; Tr. 10)

9. Respondents currently owe a total of \$24,375.00 for meat purchased in the above transactions (Comp. V; CX 23-25; Tr. 10).

10. The corporate Respondent, under the direction, management and control of the individual Respondent, on or about the dates and in the transactions set forth below, issued checks in purported payment for meat purchased from Trans-Continental Meats, Inc., which checks were returned unpaid by the bank upon which they were drawn because Respondents did not have sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

INVOICE DATE	INVOICE NO.	INVOICE AMOUNT	CHECK NO.	CHECK DATE	CHECK AMOUNT	DATE RETURNED NSF	DATE PAID
2/11/94	(b) (4)						3/24/94
							Not Paid
							Not Paid

* Respondents took a credit of \$357.00 on this transaction

(Comp. VI; CX 26-28)

11. Mr. Charles Elliott Kane explained that the financial condition of the corporate respondent, which was “severe trouble” in June 1994, “had deteriorated further” by September 1994, when the corporate Respondent did not have funds to replace its terminated bond (Tr. 13-15). Mr. Kane turned over his 100 percent stock ownership to Warren B. Moore and resigned as president in exchange for oral promises: (1) that he would be paid \$50,000.00 as a consultant over the next year, and (2) that Mr. Moore would put in \$100,000.00 new capital, obtain an extended line of credit and a new bond, and work out arrangements with the unpaid livestock sellers (Tr. 16-18). The promises that Mr. Moore made to Mr. Kane were not kept, instead, the corporate Respondent filed a Chapter 11 petition on October 20, 1994, and successfully reorganized by November 2, 1995, pursuant to a plan of reorganization under which the unsecured general creditors, including the livestock sellers and meat seller named in the Complaint, shared in a distribution of \$50,000.00 put up by Mr. Moore (CX 29-33).

12. Following reorganization, the corporate Respondent continued to operate at a reduced volume of slaughter operations believed sufficient to maintain a state grant of meat inspection while attempting to exercise an option in its lease for the purchase of the leased packing plant. This was explained by Warren B. Moore in a conversation he had in April 1996, with Complainant’s investigator, Supervisory Packer and Poultry Specialist Steve Bright; and in a March 31, 1997, meeting with Florida officials responsible for supervising the state grant of meat inspection held by the corporate Respondent [Tr. 10-11; CX 39, pgs 11, 29 (minutes of March 31, 1997 meeting)].

13. Mr. Moore has expressed the intention of making plant modifications and commencing slaughter operations for natural (or milk fed) veal calves after the corporate Respondent succeeds in obtaining ownership of the packing plant [Tr. 10-11, 30; CX 38 (November 13, 1996, application for a grant of meat inspection)].

Conclusions

The corporate Respondent has repeatedly purchased and failed to pay for livestock and meat, and has issued non-sufficient funds ("NSF") checks in purported payment for livestock and meat purchases. These are unfair practices that violate section 202(a) of the Act, 7 U.S.C. 192(a), and with respect to the livestock purchases also violate section 409 of the Act, 7 U.S.C. 228b.¹ These violations were aggravated because they occurred after the corporate Respondent had been placed on written notice to cease failing to pay, when due, and issuing NSF checks (Tr. 23; CX 4).

The corporate Respondent has also purchased livestock for slaughter without a bond following the termination of its packer bond. Purchasing livestock without the required bond or approved bond equivalent is a violation of sections 202(a) of the Act (7 U.S.C. § 192(a)), 7 U.S.C. § 204 and sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29, 201.30).²

Sanction testimony was presented by William L. Buchanan, Chief of the Financial Branch, Packers and Poultry Division, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyard Administration. Mr. Buchanan explained that a total civil penalty in the amount of \$24,000.00 was requested, but that \$8,000.00 of this amount had been assessed against the individual Respondent, C. Elliott Kane, in a consent decision (Tr. 22-24).

Section 203(b) of the Act (7 U.S.C. § 193(b)) requires the Secretary to consider the gravity of the offense, the size of the business involved, and the effect of the

¹Even before § 409 of the Act (7 U.S.C. § 228b) was enacted in 1976, it was well established that a packer's failure to pay when due for livestock violated § 202(a) of the Act (7 U.S.C. § 192(a)) as an "unfair" practice within the meaning of that term in the Act. See, *In re DeJong Packing Company*, 36 Agric. Dec. 1181, 1205-06 (1977); *In re Sebastopol Meat Co.*, 28 Agric. Dec. 435, 441 (1969), *aff'd sub nom. Sebastopol Meat Company v. Secretary of Agriculture*, 440 F.2d 983 (9th Cir. 1971). A \$65,000.00 civil penalty has been assessed solely for a packer's failures to pay for livestock. See, *Great American Veal, Inc., et al.*, 48 Agric. Dec. 183, 199-208 (1989), *aff'd*, November 27, 1989, No. 89-3108 (3rd Cir.). The issuance of NSF checks for livestock by a packer is a violation of section 202(a) of the Act. *In re Thomaston Beef and Veal, Inc.*, 39 Agric. Dec. 171 (1980). Failure to pay for meat and the issuance of NSF checks in payment for meat by a packer have also been held to be unfair practices in violation of section 202(a) of the Act (7 U.S.C. § 192(a)). See *Central Packing Co., Inc., et al.*, 48 Agric. Dec. 290, 305-08 (1989) (and cases cited therein).

²Engaging in business as a packer without filing and maintaining a reasonable bond has been held to be an unfair practice in violation of section 202(a) of the Act (7 U.S.C. § 192(a)) and sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29 and 201.30). *In re Thomaston Beef and Veal, Inc., supra*, at 175-176.

penalty on the person's ability to continue in business. Mr. Buchanan's testimony establishes that these factors were given due consideration by Complainant.

Mr. Buchanan acknowledged that Respondent's president, Warren B. Moore, had submitted an affidavit denying the existence of current financial information and tax records instead of appearing in response to a subpoena duces tecum with these records and other records sought with respect to the securing or retaining of Florida meat inspection (Tr. 25-26; CX 35). However, Mr. Buchanan was able to testify that he had examined records obtained from Florida meat inspection officials in which the corporate Respondent demonstrates an intention of resuming halted livestock purchase and slaughter operations after it is able to obtain ownership of the packing plant it is leasing and to make plant improvements (Tr. 26-34; CX 36-39). Mr. Buchanan explained:

Warren Moore has been involved in two other cases before the department, individually and as a corporate entity, or he as owner and CEO of the corporate entity, which we have issued cease and desist orders against and one in which we actually assessed a civil penalty of \$2500. Although he is not being charged with the violations in this case, he is currently the owner and CEO, and we have no assurances that without a substantial civil penalty in this case, that he wouldn't continue to violate the act with this present company.

Now, from the hearing that we just read from, I think there's all indications that he plans to continue operating this firm. And should he, as you've indicated to be successful in it, it would indicate to me at least that he has capital or resources of some sort to provide the necessary capital that's needed to bring this plant into operations again.

If he has that type of capital, there is no reason why he could not pay a reasonable civil penalty, which I believe that we're asking for. I think it's fully appropriate.

(Tr. 35-36)

The fact that C. Elliott Kane is no longer with the corporate Respondent is not a mitigating circumstance. It has been held that the fact that the corporate officer primarily responsible for the corporation's violation was deceased when the order was issued was not a mitigating circumstance as to the corporation. *In re Blackfoot Livestock Commission Co.*, 45 Agric. Dec. 590, 631-32 (1986), *aff'd*, 810 F.2d 916 (9th Cir. 1987).

I conclude that Complainant has established that the sanction recommended is

appropriate and should be imposed.

Order

Respondent, Fla Packing & Provision, Inc., its officers directors, agents, employees, successors, and assigns, directly or through any corporate or other device, in connection with its operations as a packer, shall cease and desist from:

1. Failing to pay the full purchase price of livestock;
2. Purchasing livestock for purposes of slaughter without filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations;
3. Issuing checks in payment for livestock without having sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;
4. Failing to pay the full purchase price of the meat; and
5. Issuing checks in payment for meat without having sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented.

In accordance with section 203(b) of the Act (7 U.S.C. § 193(b)), Respondent, Fla Packing & Provision, Inc., is assessed a civil penalty of \$16,000.00.

This Decision and Order will become final and effective without further proceedings 35 days after service upon Respondent, Fla Packing & Provision, Inc., unless appealed to the Judicial Officer by a party to the proceeding within 30 days after service pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

[This Decision and Order became final and effective November 5, 1997.-Editor]

MISCELLANEOUS ORDERS

In re: CHARLES EDWARD WOMAC.
P&S Docket No. D-95-0004.
Order to Show Cause filed July 10, 1997.

Eric Paul, for Complainant.
Respondent, Pro se.

Order issued by Edwin S. Bernstein, Administrative Law Judge.

On April 14, 1997, Complainant filed a Motion for a Decision Without Hearing by Reason of Admissions in the above-captioned proceeding. The case was referred to the undersigned on June 12, 1997. Attempts to contact Respondent Womac by telephone were unsuccessful and, on June 19, a letter was mailed to Respondent requesting that he contact this office to schedule a telephone conference. A response to this letter has not been received from Mr. Womac.

Within 10 days from Respondent's receipt of this Order, Respondent Womac is ordered to show cause why Complainant's April 14, 1997, motion should not be granted. The Hearing Clerk is directed to serve this Order by certified mail.

Mr. Womac's response should be sent to:

Office of Administrative Law Judges
Hearing Clerk's Office
Room 1081 South Building
U.S. Department of Agriculture
Washington, DC 20250-9203

DEFAULT DECISIONS

In re: MAX MITCHELL d/b/a M&K LIVESTOCK.

P&S Docket No. D-96-0049.

Decision and Order filed June 3, 1997.

Failure to file an answer - Failure to pay the full purchase price of livestock - Failure to maintain sufficient funds on deposit to cover checks issued in payment of livestock - Failure to remit funds to the National Pork Board - Cease and desist order - Suspension.

Eric Paul, for Complainant.

Respondent, Pro se.

Decision and Order issued by Victor W. Palmer, Chief Administrative Law Judge.

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (U.S.C. § 181 *et seq.*), herein referred to as the Act, instituted by a complainant filed by the Acting Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, charging that the respondent wilfully violated the Act.

Copies of the complaint and the Rules of Practice (7 C.F.R. § 1.130 *et seq.*) governing proceedings under the Act were served upon respondent by regular mail after a certified mail transmittal was returned unclaimed.¹ Respondent was informed in a 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 has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted by respondent's failures to file an answer, are adopted and set forth herein as finding 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).

¹Respondent acknowledged receipt of the complaint in a telephone conversation with complainant's counsel on October 4, 1996.

Findings of Fact

1. Respondent Max Mitchell, doing business as M&K Livestock, (hereinafter "respondent") is an individual whose business mailing address is [REDACTED]

(b) (6)

2. Respondent is, and at all times material herein was:

(a) Engaged in the business of buying and selling livestock in commerce for his own account or the accounts of others, buying livestock in commerce on a commission basis, furnishing clearing services; and

(b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account or the account of others and as a market agency to sell livestock in commerce on a commission basis and to furnish clearing services for other registrants.

3. As of June 30, 1995, respondent's current liabilities exceeded his current assets. As of that date, respondent had current liabilities totaling (b) (4) and current assets totaling (b) (4), resulting in an excess of current liabilities over current assets of (b) (4).

4. As of August 31, 1995, respondent's current liabilities exceeded his current assets. As of that date, respondent had current liabilities totaling (b) (4) and current assets totaling (b) (4) resulting in an excess of current liabilities over current assets of (b) (4).

5. Respondent, on or about the dates and in the transactions set forth in paragraph III of the complaint, purchased livestock and failed to pay the full purchase price of such livestock.

6. Respondent, in the transactions set forth in paragraph III of the complaint, purchased livestock and issued checks which were returned for nonsufficient funds because respondent did not have sufficient funds on deposit and available in the bank accounts upon which such checks were drawn to permit their payment when presented.

7. The total amount set forth as unpaid for livestock in paragraph III of the complaint, \$137,348.83, was reduced by \$58,987.90 on or about January 10, 1996, when 16 of the sellers received net proceeds from the trust fund agreements respondent maintained under the Act. A transfer of equipment with an agreed upon value of \$18,200.00 further reduced the amount owed to Tri-States Livestock, Inc. The total amount that remains unpaid for livestock in such transactions after these payments is \$60,160.93.

8. Respondent purchased hogs at his buying station between January 3, 1995 and September 25, 1995, and deducted funds totaling \$3,830.82 from the sellers proceeds for the pork promotion checkoff program as set forth on scale tickets and

other transaction records. Respondent failed to remit such funds to the National Pork Board on behalf of the sellers as required by the Pork Promotion Research and Consumer Information Act of 1985.

Conclusions

By reason of the facts found in Findings of Fact 3 and 4 above, the respondent's financial condition does not meet the requirements of the Act (7 U.S.C. § 204).

By reason of the facts found in Findings of Fact 5 through 7 above, respondent wilfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

By reason of the facts found in Finding of Fact 8 above, respondent wilfully violated section 312(a) of the Act (7 U.S.C. § 213(a)).

Order

Respondent Max Mitchell, his agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall cease and desist from:

1. Failing to pay the full purchase price of Livestock;
2. Issuing checks in payment for livestock without having and maintaining sufficient funds on deposit and available in the bank accounts upon which they are drawn to pay such checks when presented; and
3. Failing to remit to the National Pork Board on behalf of sellers pork checkoff funds deducted from seller proceeds.

Respondent Max Mitchell is suspended as a registrant under the Act for a period of 5 years and thereafter until demonstration that his current liabilities no longer exceed his current assets. Provided, however, that upon application to the Packers and Stockyards Programs, GIPSA, a supplemental order may be issued terminating the suspension at any time after 90 days of the suspension are served upon demonstration by respondent that:

1. Respondent's current liabilities no longer exceed his current assets;
 2. All unpaid livestock sellers have been paid in full;
- and

3. All unpaid pork checkoff funds have been remitted in full.

Provided further that this suspension may be modified upon application to the Packers and Stockyards Programs, GIPSA, to permit respondent's salaried employment by another registrant or packer after serving 90 days of the suspension upon demonstration of circumstances warranting modification of the order.

This decision shall become final and effective without further proceedings 35 days after the date of service upon the 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 shall be served upon the parties.
[This Decision and Order became final July 14, 1997.-Editor]

**In re: TOM B. RUTHERFORD and BURREL RUTHERFORD d/b/a
WARSAW AUCTION CO.
P&S Docket No. D-96-0043.
Decision and Order filed June 12, 1997.**

Failure to file an answer - Issuing checks in payment for livestock without having sufficient funds or deposit - Failure to pay the full purchase price of livestock - Failure to pay when due the full purchase price of livestock - Cease and Desist order - Suspension.

Timothy A. Morris, for Complainant.
Respondents, Pro se.

Decision and Order issued by Victor W. Palmer, Chief Administrative Law Judge.

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), herein referred to as the Act, instituted by a complaint filed by the Acting Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, charging that the respondents willfully violated the Act.

Copies of the complaint and the Rules of Practice (7 C.F.R. § 1.130 *et seq.*) governing proceedings under the Act were served upon respondent by regular mail after an attempt to serve respondent by certified mail was unsuccessful. Respondents were informed in a 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.

Respondents have failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted by

respondents' failure to file an answer, 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

1. Tom B. Rutherford and Burrel Rutherford, d/b/a Warsaw Auction Co., hereinafter referred to as respondents, are individuals whose mailing address is

(b) (6)

2. Respondents were at all times material herein:

(a) Engaged in the business of a market agency selling livestock on a commission basis and engaged in the business of a dealer buying and selling livestock in commerce for their own accounts or the accounts of others; and

(b) Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis.

3. Respondents, in connection with their operations subject to the Act, on or about the date and in the transaction set forth in paragraph II(a) of the complaint, purchased livestock and in purported payment issued a check which was returned unpaid by the bank upon which it was drawn because respondents did not have sufficient funds on deposit and available in the account upon which such check was drawn to pay such check when presented.

4. Respondents, in connection with their operations subject to the Act, purchased livestock and failed to pay the full purchase price of such livestock on or about the date and in the transaction set forth in paragraph II(b) of the complaint.

5. As of June 5, 1996, there remained unpaid a total of \$25,631.41 for respondents' livestock purchases.

Conclusions

By reason of the facts found in Findings of Fact 3, 4, and 5 herein, respondent has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) & 228b).

Order

Respondents Tom B. Rutherford and Burrel Rutherford, their agents and

employees, directly or through any corporate or other device, in connection with their activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Issuing checks in purported payment for livestock purchases without having sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;
2. Failing to pay the full purchase price of livestock; and
3. Failing to pay, when due, the full purchase price of livestock.

Respondents Tom B. Rutherford and Burrel Rutherford are suspended as registrants under the Act for a period of five (5) years. Provided, however, that upon application to the Packers and Stockyards Programs, GIPSA, a supplemental order may be issued terminating the suspension of Tom B. Rutherford and Burrel Rutherford at any time after the expiration of the initial 120 days of this suspension term upon demonstration by the respondents that all livestock sellers identified in this proceeding have been paid in full. Provided further, that this order may be modified upon application to the Packers and Stockyards Programs, GIPSA, to permit the salaried employment of respondents Tom B. Rutherford and Burrel Rutherford by another registrant or packer after the expiration of the initial 120 days of this suspension term and upon demonstration of circumstances warranting modification of the order.

The provisions of this order shall become effective on the sixth day after service of this order on the respondents.

Copies of this decision shall be served upon the parties.

[This Decision and Order as to Tom B. Rutherford became final August 4, 1997.
This Decision and Order as to Burrel Rutherford became final August 20, 1997.-
Editor.]

In re: CHARLES EDWARD WOMAC.
P&S Docket No. D-95-0004.
Decision and Order filed August 22, 1997.

Admission of material allegations - Failure to maintain adequate bond or its equivalent - Civil penalty - Suspension of registration - Cease and desist order.

Eric Paul, for Complainant.
Respondent, Pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (U.S.C. § 181 *et seq.*), ("the Act"), instituted by a Complaint filed by the Acting Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, charging that the Respondent wilfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*).

Copies of the Complaint and the Rules of Practice (7 C.F.R. § 1.130 *et seq.*) governing proceedings under the Packers and Stockyards Act were served upon Respondent. Respondent filed an Answer in which he failed to deny or dispute any of the material allegations of the Complaint. A failure to deny or otherwise respond to an allegation of the Complaint constitutes an admission of said allegation (7 C.F.R. § 1.136(c)). Complainant has requested the issuance of a decision without hearing because of admissions made by Respondent in his Answer, and in a sworn affidavit dated June 28, 1994, which was expressly provided "For use in any proceeding or action under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181 *et seq.*)." For good cause shown, this Decision and Order is issued without hearing.

Findings of Fact

1. Respondent, Charles Edward Womac, is an individual whose mailing address is [REDACTED] (b) (6)
2. Respondent is, and at all times material herein was:
 - (a) Engaged in the business of buying and selling livestock in commerce for his own account; and
 - (b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account. This registration has been inactive since June 10, 1979.
3. A certified letter was sent to Respondent on December 16, 1992, notifying Respondent that he was required to obtain adequate bond coverage or its equivalent before continuing his livestock operations subject to the Act. Respondent refused service of this certified letter. A duplicate letter was hand-delivered to Respondent on July 20, 1993. Despite such notices, Respondent has continued to engage in the business of a dealer without maintaining an adequate bond or its equivalent.
4. Respondent farms and deals in livestock. He has a Tennessee livestock dealer license. He has admitted buying and selling livestock at the auction market located at Sweetwater, Tennessee, on a regular basis, and at auction markets located at Athens, Tennessee, and Greenville, Tennessee, on an irregular basis.

5. Respondent has acknowledged in a sworn statement that he buys on the lot (penhooks) and sells through the ring. He has admitted to both acting independently, and to using money furnished by E.M. Armstrong or others in transactions where Respondent resells livestock that he has obtained from producers arriving at the market in the auction sale and then splits the profit or loss realized.

6. The Athens Livestock Auction Company, Inc., Athens, Tennessee (TN-173), the East Tennessee Livestock Center, Inc., Sweetwater, Tennessee (TN-164), and the Farmers Livestock Market, Inc., Greenville, Tennessee (TN-121) are posted stockyards under the Act (37 Federal Register 59, January 4, 1972; 40 Federal Register 26723, June 25, 1975).

Conclusions

Respondent has admitted, by his failure to deny material factual allegations of the Complaint, and by his statements in the Answer and in the sworn statement given to Complainant's investigator, to engaging in the buying and selling of livestock in speculative dealer transactions conducted at auction markets located in the state of Tennessee. Official notice is taken that the livestock markets located in the towns where Respondent has acknowledged doing business are posted stockyards under the Act. Livestock transactions conducted at such stockyards are transactions occurring in the course of interstate commerce. *Kelly v. United States*, 202 F. 838 (10th Cir. 1953). Respondent has operated as a dealer subject to the Act without obtaining and filing with the Secretary of Agriculture the bond or approved bond equivalent that is required under the substantive bonding regulations that have been promulgated under the Act (9 C.F.R. § 201.27 *et seq.*). Moreover, Respondent has continued to operate in a manner that requires a reasonable bond or bond equivalent after having been put on notice of this requirement.

Respondent has asserted that there are other holders of state livestock dealer licenses that have not been required to be registered and bonded under the Act. Respondent is required to comply with the bonding requirement applicable to his operations regardless of whether there may be other holders of Tennessee livestock dealer licenses whose operations are not subject to the Act, or who have not yet complied with the Act. Respondent's failure to comply is wilful and requires the suspension of Respondent as a registrant until such time as Respondent fully satisfies his bonding requirement. The \$1,000.00 civil penalty that has been proposed by Complainant for operating without a bond, which is the minimum amount currently being sought by Complainant as a sanction in disciplinary proceedings for operating without a bond, is an appropriate and necessary

deterrent.

By reason of the facts found in Findings of Fact 3 through 6, Respondent has wilfully 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

Respondent, Charles Edward Womac, his agents and employees, directly, or through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations.

Respondent is suspended as a registrant under the Act until such time as he complies fully with the bonding requirements under the Act and the regulations. When Respondent demonstrates that he is in full compliance with such bonding requirements, a supplemental order will be issued in this proceeding terminating the suspension.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent is hereby assessed a civil penalty in the amount of \$1,000.00.

This decision shall become final and effective without further proceedings 35 days after the date of service upon the 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).

[This Decision and Order became final and effective November 3, 1997.-Editor]

In re: CHARLES EDWARD WOMAC.
P&S Docket No. D-95-0004.
Decision on Reconsideration filed August 29, 1997.

Eric Paul, for Complainant.
Respondent, Pro se.

Decision issued by Edwin S. Bernstein, Administrative Law Judge.

On April 14, 1997, Complainant filed a motion for a decision based upon admissions by Respondent. This office attempted to contact Respondent about the

motion without success. That included writing a letter to Respondent on June 19, 1997, requesting him to contact this office.

When Respondent failed to respond to efforts to contact him, on July 10, 1997, I issued an Order to Show Cause which stated, "Within 10 days from Respondent's receipt of this Order, Respondent is ordered to show cause why Complainant's April 14, 1997, motion should not be granted." The Order to Show Cause was sent to Respondent by certified mail which was returned "unclaimed." On August 4, 1997, and on August 13, 1997, copies of this Order were sent to Respondent by ordinary mail.

When Respondent failed to respond to the Order, on August 22, 1997, I issued a Decision Without Hearing by Reason of Admissions in favor of Complainant. On August 27, 1997, Respondent finally filed a response which reads:

My response to the letter Docket No. D-95-004. I buy the most my cattle, haul them home. They are milked and fed before I sell them. I pay cash or a good check when I purchased them. My understanding, that's good anywhere in the world. Therefore I do not feel this is a reason for me to have a bond. I do own a livestock dealer's license which requires me to keep information on my cattle. In the 1970's when I was very active in shipping cattle, I did have a bond. But now I am making my living with my dairy farm. If it is a law then it should be a law for everyone.

Although Respondent did not so designate his August 27 response, I consider this to be a motion for reconsideration of the August 22, 1997, Decision and Order.

Respondent's motion for reconsideration is denied. Although afforded many opportunities, Respondent failed to file a timely response to the motion for decision and to the Order to Show Cause. However, even if I considered Respondent's August 27, 1997, submission to be timely, I find nothing in that submission which would provide me with any reason to change my August 22, 1997, Decision and Order.

**In re: PENN QUALITY MEATS COOPERATIVE INC.
P&S Docket No. D-97-0022.
Decision and Order filed October 20, 1997.**

Failure to file an answer - Issuance of checks in payment for livestock purchases without having sufficient funds on deposit - Failure to pay, when due, for livestock - Failure to pay for livestock - Failure to hold and maintain trust assets in order to pay statutory trust claims - Violations of cease and desist order - Cease and desist order.

Jane McCavitt, for Complainant.

David L. Zube, Binghamton, NY, for Respondent.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), herein referred to as the Act, instituted by a Complaint and Notice of Hearing filed by the Acting Deputy Administrator, Packers and Stockyards Programs, GIPSA, United States Department of Agriculture, charging that the respondent wilfully violated the Act.

Copies of the complaint and the Rules of Practice (7 C.F.R. § 1.130 *et seq.*) governing proceedings under the Act was served upon respondent by certified mail. Respondent was informed in a 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 has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted by respondent's failure to file an answer, 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

1. Penn Quality Meats Cooperative, Inc., hereinafter referred to as respondent Penn Quality, is a corporation organized and existing under the laws of the State of Pennsylvania. Its business address is [REDACTED] New York [REDACTED]

2. Respondent Penn Quality is, and at all times material herein was:

- (a) Engaged in the business of buying livestock in commerce for purposes

of slaughter and manufacturing or preparing meats and meat food products for sale or shipment in commerce; and

(b) A packer within the meaning and subject to the provisions of the Act.

3. On November 30, 1992, Administrative Law Judge Edwin Bernstein of the United States Department of Agriculture issued an order in P. & S. Docket No. D-93-7 which, in pertinent part, ordered the respondent to cease and desist from any failure to pay, when due, for livestock purchases.

4. Respondent Penn Quality, in connection with its operations subject to the Act, on or about the dates and in the transactions set forth in paragraph II of the complaint, issued checks in payment for livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented; failed to pay, when due, for livestock purchased; failed to pay for livestock purchased; failed to hold and maintain trust assets in order to pay statutory trust claims; and violated the Secretary's Order in P & S Docket No. D-93-7.

Conclusions

By reason of the facts found in Finding of Fact 2 herein, respondent Penn Quality has wilfully violated sections 202(a), 206(b) and 409 of the Act. (7 U.S.C. §§ 192(a), 196(b), 228b).

Order

Respondent Penn Quality, its officers, directors, agents and employees, directly or through any corporate or other device, in connection with its operations as a packer subject to the Act, shall cease and desist from:

1. Issuing checks in payment for livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;

2. Failing to pay, when due, for livestock purchased;

3. Failing to pay for livestock purchased;

4. Failing to hold and maintain trust assets in order to pay statutory trust claims; and

5. Violating the Secretary's Order in P & S Docket No. D-93-7.

This decision shall become final and effective without further proceedings 35 days after the date of service upon the 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 hereof shall be served upon the parties.

[This Decision and Order became final December 1, 1997.-Editor]

**In re: PRYOR LIVESTOCK MARKET, INC., JIM W. DEBERRY and
DOUGLAS A. LANDERS.**

P&S Docket No. D-96-0045.

**Decision and Order as to Pryor Livestock Market, Inc. and Douglas A.
Landers filed October 10, 1997.**

**Failure to file an answer - Failure to maintain and use properly the custodial account for
Shipper's Proceeds - Failure to remit when due the net proceeds due from the sale price of
consigned livestock sold on a commission basis - Failing to remit the net proceeds due from the
sale price of consigned livestock sold on a commission basis - Suspension of registration - Cease
and desist order.**

Andre Allen Vitale, for Complainant.
Respondents, Pro se.

Decision and Order issued by James W. Hunt, Administrative Law Judge.

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), herein referred to as the Act, instituted by a complaint filed on August 16, 1996, by the Acting Deputy Administrator, Packers and Stockyards Programs, GIPSA, United States Department of Agriculture, charging that respondents Pryor Livestock Market, Inc., Jim W. Deberry, and Douglas A. Landers, wilfully violated the Act.

Copies of the complaint and the Rules of Practice (7 C.F.R. § 1.130 *et seq.*) governing proceedings under the Act were served on corporate respondent Pryor Livestock Market, Inc. on August 23, 1996. Copies of the complaint were served on respondent Landers at his last known mailing address of record on September 27, 1996, by regular mail after an attempt to serve him by certified mail to that same address was unsuccessful.

Respondents Pryor Livestock, Inc. and Douglas A. Landers were informed in letters of service that an answer should be filed pursuant to the Rules of Practice and that the failure to answer would constitute an admission of all material allegations contained in the Complaint. Neither corporate respondent nor

respondent Landers filed an answer within the time period prescribed in the Rules of Practice. The material facts that are alleged in the complaint are admitted by the corporate respondent and respondent Landers as a result of each party's failure to file an answer.

This decision and order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Pryor Livestock Market, Inc., referred to as the corporate respondent, is a corporation whose business mailing address is [REDACTED] Oklahoma [REDACTED]

2. The corporate respondent is and at all times material herein, was:

- Engaged in the business of conducting and operating Pryor Livestock Market, Inc., stockyard, a posted stockyard subject to the provisions of the Act;
- Engaged in the business of a market agency selling livestock on a commission basis; and
- Registered with the Secretary of Agriculture as a market agency to sell livestock on a commission basis.

3. Douglas A. Landers, referred to as respondent Landers, is an individual whose mailing address is [REDACTED] (b) (6) [REDACTED]

4. Respondent Landers is and at all times material herein was:

- Secretary of the corporate respondent;
- Owner of 50% of the stock of the corporate respondent; and
- Responsible for the direction, management and control of the corporate respondent in concert with Jim W. Deberry.

5. The corporate respondent under the direction, management and control of respondent Landers, failed to maintain and use properly its Custodial Account for Shippers' Proceeds (hereinafter "custodial account"), thereby endangering the faithful and prompt accounting therefor and the payment of portions thereof due the owners and consignors of livestock, in that:

- As of August 1, 1995, the corporate respondent had outstanding checks drawn on its custodial account in the amount of (b) (4) [REDACTED] and had to offset such checks a balance in the custodial account of (b) [REDACTED] and proceeds receivable of (b) (4) [REDACTED] resulting in a shortage of \$87,351.00 in funds available to pay shippers their net proceeds.

- Such deficiencies were due, in part, to the failure of the respondents

Pryor Livestock, Inc. and Douglas A. Landers to deposit in the custodial account, within the time prescribed in the regulations, an amount equal to the proceeds receivable from the sale of consigned livestock to the respondent and others. Such deficiencies were also due to the failure of respondents Pryor Livestock and Landers to fully reimburse the custodial account by the close of the seventh day after each sale.

6. As set forth in paragraph III(a) of the complaint, the corporate respondent under the direction, management, and control of respondent Landers, on or about the dates set forth below, sold livestock on a commission basis and in purported payment of the net proceeds thereof issued checks to consignors or shippers of such livestock which were returned unpaid by the bank upon which they were drawn because respondent did not have sufficient funds available in the account upon which such checks were drawn to pay such checks when presented.

7. In the transactions set forth in (a) and (b) of paragraph III of the complaint, the corporate respondent, under the direction, management, and control of respondent Landers, failed to remit, when due, the net proceeds due from the sale price of livestock on a commission basis.

8. As of June 18, 1996, \$92,183.11 in proceeds remained due to consignors for the sale of their livestock.

Conclusions

By reason of the facts in Finding of Fact 3 herein, respondent Douglas A. Landers is the alter ego of the corporate respondent, Pryor Livestock Market, Inc.

By reason of the facts in Finding of Fact 5, respondents Pryor Livestock Market, Inc. and Douglas A. Landers wilfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213(a)) and section 201.42 of the regulations (9 C.F.R. § 201.42).

By reason of the facts in Findings of Fact 6, 7, and 8, respondents Pryor Livestock Market, Inc. and Douglas A. Landers wilfully violated section 312(a) of the Act (7 U.S.C. §213(a)) and section 201.43 of the regulations (9 C.F.R. §201.43).

Order

Respondent Pryor Livestock Market, Inc., its officers, directors, agents and employees, successors and assigns, directly or through any corporate device and respondent Douglas A. Landers, his agents and employees, directly or through any

corporate device, in connection with his activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to deposit in the Custodial Account for Shippers' Proceeds, within the times prescribed in Section 201.42 of the regulations (9 C.F.R. §201.42), amounts equal to the outstanding proceeds receivable due from the sale of consigned livestock;
2. Failing to otherwise maintain the Custodial Account for Shippers' Proceeds in strict conformity with the provisions of Section 201.42 of the regulations (9 C.F.R. §201.42);
3. Using funds received from the sale of consigned livestock for purposes of their own or for any purpose other than payment to consignors of the amount due from the sale of their livestock and the payment of lawful marketing charges;
4. Issuing checks in payment for the net proceeds due consignors from the sale of livestock on a commission basis without maintaining sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented;
5. Failing to remit, when due, the net proceeds due from the sale price of consigned livestock sold on a commission basis; and
6. Failing to remit the net proceeds due from the sale price of consigned livestock sold on a commission basis.

Respondents Pryor Livestock Market, Inc. and Douglas A. Landers are suspended as registrants under the Act for a period of five (5) years and thereafter until it is demonstrated that the shortage the Custodial Account for Shippers' Proceeds has been eliminated. Provided that, upon application to Packers and Stockyards Programs, GIPSA, a supplemental order may be issued terminating the suspension of respondents Pryor Livestock, Inc. and Douglas A. Landers at any time after the expiration of the initial 150 days of this suspension term upon demonstration that all livestock consignors identified in the complaint have been paid in full. Provided further, that this order may be modified upon application to the Packers and Stockyards Programs, GIPSA, to permit the salaried employment of respondent Douglas A. Landers by another registrant or packer after the expiration of the initial 150 days of this suspension term upon demonstration of circumstances warranting modification of the order.

This decision shall become final and effective without further proceedings 35 days after the date of service upon the 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 hereof shall be served upon the parties.

[This Decision and Order became final December 21, 1997.-Editor]

In re: TERRY RHOADES.
P&S Docket No. D-97-0029.
Decision and Order filed November 14, 1997.

Failure to file an answer - Failure to maintain sufficient funds on deposit - Failure to pay when due the full purchase price of livestock - Failing to pay the full purchase price of livestock - Suspension of registration - Cease and desist order.

Jane McCavitt, for Complainant.
Respondent, Pro se.

Decision and Order issued by James W. Hunt, Administrative Law Judge.

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), herein referred to as the Act, instituted by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, GIPSA, United States Department of Agriculture, charging that the respondent wilfully violated the Act.

Copies of the complaint and the Rules of Practice (7 C.F.R. § 1.130 *et seq.*) governing proceedings under the Act were served upon respondent by certified mail. Respondent was informed in a 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 has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted by respondent's failure to file an answer, 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

1. (a) Terry Rhoades, hereinafter referred to as respondent Rhoades, is an individual whose business mailing address is [REDACTED] (b) (6)

(b) Respondent Rhoades is and at all times material herein was:

(1) Engaged in the business of buying and selling livestock for his own account;

(2) Engaged in the business of buying livestock on commission, and

(3) Registered as an individual with the Secretary of Agriculture as a market agency buying on commission.

2. (a) Respondent Rhoades, in connection with his operations subject to the Act, on or about the dates and in the transactions set forth in paragraph II(a) of the complaint, purchased livestock and in purported payment therefor, issued checks which were returned unpaid by the bank upon which they were drawn because respondent Rhoades did not have and maintain sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

(b) Respondent Rhoades, on or about the dates and in the transactions set forth in paragraphs II(a) and (b) of the complaint, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

(c) As of July 9, 1997, \$195,939.05 remained unpaid for livestock purchases set forth in paragraphs II(a) and (b) of the complaint.

Conclusions

By reason of the facts found in Finding of Fact 2 herein, respondent Rhoades has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

Order

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

1. Issuing checks in payment for livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;

2. Failing to pay, when due, the full purchase price of livestock; and

3. Failing to pay the full purchase price of livestock.

Respondent Rhoades is suspended as a registrant under the Act for a period of five (5) years, provided, however, that upon application to the Grain Inspection, Packers and Stockyards Administration, a supplemental order may be issued terminating this suspension at any time after the expiration of 120 days upon demonstration by respondent that all unpaid livestock sellers have been paid in full, and provided further that this order may be modified upon application to the Grain

Inspection, Packers and Stockyards Administration to permit respondent Rhoades's salaried employment by another registrant or packer after the expiration of the 120 day period of suspension upon demonstration of circumstances warranting modification of the order.

This decision shall become final and effective without further proceedings 35 days after the date of service upon the 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 hereof shall be served upon the parties.

[This Decision and Order became final December 23, 1997.- Editor]

PACKERS AND STOCKYARDS ACT

CONSENT DECISIONS

(Not published herein.-Editor)

GRAIN STANDARDS ACT

Frontier Cooperative Co., Inc. G. S. A. Docket No. 97-0001. 7/7/97.

PACKERS AND STOCKYARDS ACT

James Whiten Livestock, Inc. and James P. Whiten. P&S Docket No. D-96-0021. 7/1/97.

Rickey Thompson, d/b/a Thompson Cattle Co. P&S Docket No. D-94-0016. 7/9/97.

Walter M. Brindley, d/b/a Sturgis Livestock Exchange. P&S Docket No. D-97-0024. 7/10/97.

Jimmy Russell Lindley. P&S Docket No. D-97-0019. 7/21/97.

Jim Sheridan. P&S Docket No. D-95-0040. 7/23/97.

Greater Omaha Packing Co., Inc. and Henry A. Davis. P&S Docket No. D-96-0053. 7/31/97.

C. Elliott Kane. P&S Docket No. D-95-0062. 8/6/97.

Brad Haase. P&S Docket No. D-96-0056. 8/6/97.

Thang Cong Tran, d/b/a Brookshire Packing Company. P&S Docket No. D-97-0027. 9/19/97.

Allied Food Group, Inc. and Moez Ghermezian. P&S Docket No. D-97-0028. 9/26/97.

Joe Varner, Bagley Livestock Exchange, Inc. and Rich Prairie Livestock Exchange, Inc. P&S Docket No. D-97-0016. 11/20/97.

Middendorf, Inc., Richard Middendorf and Gary Middendorf. P&S Docket No. D-96-0022. 12/3/97.

Smith Cattle Co., Inc., Cris Henry Smith and Samuel D. Smith. P&S Docket No. D-96-0013. 12/9/97.

Lamar Delmas. P&S Docket No. D-96-0036. 12/18/97.