

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/HCO  
2022 JAN 4 4:04 PM

In re: )  
)  
Nichols Cattle Co. LLC; ) P&S Docket No. 19-J-0111  
Nichols Management Co. LLC; ) P&S Docket No. 19-J-0112  
Donald H. Nichols; and ) P&S Docket No. 19-J-0113  
Jane A. Nichols, ) P&S Docket No. 19-J-0114  
)  
Respondents. )

**DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT**

Appearance:

*Charles L. Kendall, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service (“AMS”)*

**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.*) (“Act”); the regulations promulgated thereunder (9 C.F.R. §§ 201.1 *et seq.*) (“Regulations”); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) (“Rules of Practice”).

The Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture (“Complainant”), initiated this proceeding by filing a complaint against Nichols Cattle Co. LLC, Nichols Management Co. LLC, Donald H. Nichols, and Jane A. Nichols (“Respondents”) on June 26, 2019. The Complaint alleged that Respondents willfully violated sections 312(a), 401, and 409 of the Act (7 U.S.C. §§ 213(a), 221, 228b) and section 201.43 of the Regulations (9 C.F.R. § 201.43).<sup>1</sup> The Complaint requested:

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<sup>1</sup> Complaint at 3-4.

1. That *unless Respondents fail to file an answer within the time allowed therefor, or file[s] answers admitting all the material allegations of this complaint, this proceeding be set for oral hearing in accordance with the Rules of Practice governing proceedings under the Act; and*
2. That such order or orders be issued, including an order requiring Respondents to cease and desist from the violations found to exist, and assessing such penalties as are authorized by the Act and warranted in the premises.

Complaint at 4-5 (emphasis added).

On July 30, 2019, an order of the United States District Court for the District of Arizona (“District Court Order”) was filed in the above-captioned dockets. The District Court Order provided, in pertinent part, that “[t]he Packers and Stockyards Act proceeding initiated by the government, U.S. Department of Agriculture Office of General Counsel, against Donald Hugh Nichols, Jane Nichols, and Nichols entities on June 25, 2019 is STAYED.”<sup>2</sup> On August 9, 2019, Administrative Law Judge Jill S. Clifton issued an order confirming that “until further order, Respondents Nichols Cattle Co. LLC, Nichols Management Co. LLC, Donald H. Nichols, and Jane A. Nichols need not file answers in the instant matter.”<sup>3</sup> On June 21, 2021, following the close of Respondents’ District Court case, I issued an order lifting Judge Clifton’s stay and directing Respondents to file an answer to the Complaint no later than July 20, 2021.<sup>4</sup>

Respondents were duly served with a copy of the Complaint and did not file an answer as

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<sup>2</sup> District Court Order at 2 ¶ 3.

<sup>3</sup> Order: No Answers Due Until Further Order at 2.

<sup>4</sup> Order Granting Complainant’s Motion to Lift Stay and Setting Deadline for Respondents to File Answer at 3.

prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).<sup>5</sup>

On September 14, 2021, I issued an order directing the parties to show cause (“Show Cause Order”), not later than twenty days after that date, why default should not be entered against Respondents.<sup>6</sup>

On September 27, 2021, Complainant filed a motion for decision without hearing by reason of default (“Motion for Default”) and proposed decision without hearing by reason of default (“Proposed Decision”) pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Complainant now requests

that Respondents be required to cease and desist from violating the Act, suspended as a registrant under the Act for a period of five (5) years, and enjoined from engaging in any capacity for which registration and bonding are required under the Act, and required to keep all accounts, records and memoranda as will fully and correctly disclose all transactions involved in [their] business.

Motion for Default at 5. Respondents have not filed any objections to Complainant’s Motion for

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<sup>5</sup> United States Postal Service records reflect that the Complaint was sent to Respondents via certified mail and delivered on July 17, 2019. Respondents had twenty days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondents’ answer would have been due on or before August 6, 2019; however, on June 21, 2021, I issued an order modifying Respondents’ answering deadline to July 20, 2021. *See supra* note 4 and accompanying text. Respondents have not filed an answer.

<sup>6</sup> The Show Cause Order also directed: “Unless the parties have agreed to a consent decision, Complainant’s response shall be accompanied by: (1) a proposed decision and order and (2) a motion for adoption of that proposed decision and order in accordance with the provisions of 7 C.F.R. § 1.139.” Show Cause Order at 2.

Default or Proposed Decision.<sup>7</sup>

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision.<sup>8</sup> Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an unfiled answer where, as in the present case, no meritorious objections have been filed.<sup>9</sup>

As Respondents failed to answer the Complaint, and upon Complainant's motion for the issuance of a decision without hearing, this Decision and Order is issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

#### **Findings of Fact**

1. Nichols Cattle Company LLC ("Respondent NCC") is a limited liability company organized under the laws of the State of Arizona, with its registered office located at 9381 E Vah Ki Inn Rd., Coolidge, AZ 85128.

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<sup>7</sup> United States Postal Service records reflect that Complainant's Motion for Default and Proposed Decision were sent to Respondents via certified mail and returned unclaimed on November 26, 2021. In accordance with the Rules of Practice, the Hearing Clerk re-mailed the Motion for Default and Proposed Decision to the same address via ordinary mail on December 8, 2021. *See* 7 C.F.R. §§ 1.142, 1.147(c). Respondents had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondents' objections were due on or before December 28, 2021. Respondents have not filed any objections.

<sup>8</sup> 7 C.F.R. § 1.136(c).

<sup>9</sup> *See supra* note 7 and accompanying text.

2. Respondent NCC, at all times material herein, was engaged in the business of a dealer buying and selling livestock in commerce and registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce.
3. Nichols Management Company LLC (“Respondent NMC”) is a limited liability company organized under the laws of the State of Arizona, with the address of its agent for service of process c/o KEYTlaw L.L.C., 3001 East Camelback Suite 130, Phoenix, AZ 85106.
4. Respondent NMC, at all times material herein, was engaged in the business of a dealer buying and selling livestock in commerce.
5. Respondent Donald H. Nichols (“Respondent Donald Nichols”) is an individual with a mailing address of (b) (6).
6. Respondent Donald Nichols is and at all times material herein was: (a) member of Respondents NCC and NMC; (b) owner of fifty percent (50%) of Respondents NCC and NMC; (c) responsible for the direction, management, and control of Respondents NCC and NMC; and (d) engaged in the business of a dealer buying and selling livestock in commerce.
7. Respondent Jane A. Nichols (“Respondent Jane Nichols”) is an individual with a mailing address of (b) (6).
8. Respondent Jane Nichols is and at all times material herein was: (a) member of Respondents NCC and NMC; (b) owner of fifty percent (50%) of Respondents NCC and NMC; (c) responsible for the direction, management, and control of Respondents NCC and NMC; and (d) engaged in the business of a dealer buying and selling livestock in commerce.

9. Respondents engaged in the business of a dealer, and in connection with their operations subject to the Act, during the period on or about January 31, 2015 through June 14, 2017, purchased on a dealer basis a total of approximately 2,159 head of livestock in seventy-six transactions, and failed to pay the full purchase price of approximately \$1,413,106.39 for said livestock.
10. Respondents, in connection with their operations subject to the Act, failed to keep and maintain records that fully and correctly disclosed all the transactions involved in their business as a dealer as required by section 401 of the Act (7 U.S.C. § 221).

### **Conclusions**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. By reason of the facts above, Respondents have willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), section 409(a) of the Act (7 U.S.C. § 228b), section 401 of the Act (7 U.S.C. § 221), and section 201.43(b)(2)(ii) of the regulations (9 C.F.R. § 201.43(b)(2)(ii)) promulgated thereunder.

### **ORDER**

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. Respondents, their agents and employees, directly or indirectly through corporate or any other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in operations subject to the Act without paying timely for each and every livestock transaction and purchase from the sellers of livestock.

3. Respondents are suspended from all livestock operations as a dealer for a period of five (5) years, *provided* that upon demonstration to the Fair Trade Practices Program of having come into full compliance with the Act, Respondents may request that the Fair Trade Practices Program move for an amendment of the period and/or terms of suspension. Upon the end of their suspension and resumption of activities subject to the Act, Respondents shall keep and maintain records that fully and correctly disclose all the transactions involved in their

This Decision and Order shall be final and effective without further proceedings thirty-five (35) days after service, unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (30) days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk.

Done at Washington, D.C.,  
this 4th day of January 2022

**CHANNING  
STROTHER**

 Digitally signed by CHANNING  
STROTHER  
Date: 2022.01.04 15:45:54 -05'00'

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Channing D. Strother  
Chief Administrative Law Judge

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