

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Bill Barton d/b/a Barton Cattle Company,) P&S Docket No. 20-J-0138
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Grace Anne Wilhelm, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, Fair Trade Practices Program, Agricultural Marketing Service (“AMS”).

Preliminary Statement

This is a disciplinary proceeding under the under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181 *et seq.*) (“P&S 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 Complainant, the Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture, initiated this proceeding against Respondent Bill Barton, doing business as Barton Cattle Company, by filing a complaint on July 7, 2020. The Complaint alleged that Respondent failed to pay the full purchase price of livestock when due in twelve (12) transactions and, as of the filing of the Complaint, had still failed to pay \$46,758.81 of the \$60,716.14 owed for these livestock purchases. The Complaint alleged the payments toward the purchase price were made beginning several months after the purchase date. Finally, the Complaint alleged that Respondent issued two checks for the payment of

livestock which were returned unpaid. Specifically, the Complaint alleged that on December 7, 2018, Respondent issued check number 1665 for \$13,012.90 in payment for livestock and on December 8, 2018, Respondent issued check number 4926 for \$10,148.15 in payment for livestock. Both checks were returned unpaid by the bank upon which they were drawn because Respondent did not have and maintain sufficient funds on deposit and available in the accounts upon which such checks were drawn to pay such checks when presented. The Complaint further alleged that these actions were a willful violation of sections 312 and 409 of the P&S Act (7 U.S.C. §§ 213(a) and 228(b)) and section 201.43 of the regulations (9 C.F.R. §§ 201.43).

Complainant requested that an Administrative Law Judge issue such order or orders, including an order requiring that Respondent cease and desist from the violations of the P&S Act found to exist; assessing civil penalties against Respondent in accordance with P&S Act; and prohibiting Respondent from engaging in business in any capacity for which registration and bonding are required under the P&S Act, for an appropriate period of time.

Respondent was duly served with a copy of the Complaint and did not file an answer within the twenty-day period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).¹

On September 11, 2020, Complainant filed a Motion for Decision Without Hearing by Reason of Default (“Motion for Default”) and proposed Decision without Hearing by Reason of

¹ United States Postal Service records reflect that the Complaint was sent Respondent via certified mail and delivered on July 17, 2020. Respondent had twenty (20) 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, Respondent’s answer was due on or before August 6, 2020. Respondent has not filed an answer in this matter.

Default (“Proposed Decision”). Respondent has not filed any objections to Complainant’s Motion for Default or Proposed Decision.²

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. 7 C.F.R. § 1.136(c). Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely filed answer where, as in the present case, no meritorious objections have been filed.³

As Respondent failed to answer the Complaint, and upon Complainant’s motion for the issuance of a decision without hearing by reason of default, 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. Respondent is an individual doing business as Barton Cattle Company, whose current address is in the State of Texas.
2. Respondent is, and at all times material herein was:
 - a. Engaged in the business of a dealer buying and selling livestock in commerce for his own account and for the accounts of others;

² United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on September 15, 2020. Respondent had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal holidays shall not 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, Respondent’s objections were due by October 5, 2020. Respondent has not filed any objections.

³ 7 C.F.R. § 1.139; *see supra* note 2.

- b. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account and for the accounts of others.
3. On September 23, 2016, the Grain Inspection, Packers & Stockyards Administration⁴ sent Respondent a Notice of Violation (“NOV”) informing him that he had failed to make prompt payment for certain livestock purchases. The NOV further informed Respondent that failure to pay for livestock by close of the next business day is a violation of the P&S Act and Regulations and that failure to correct his business practices and bring them into statutory and regulatory compliance could subject him to disciplinary action. Notwithstanding the NOV, Respondent continued to engage in the business of a dealer, buying and selling livestock in commerce without paying, when due, the full purchase price of the livestock as required by the P&S Act.
4. During the period from March 2018 through December 2018, in twelve (12) transactions involving three (3) different livestock sellers, Respondent purchased a total of 111 head of livestock for a total purchase price of \$60,716.14 but failed to pay the full purchase price of the livestock. Respondent still has failed to pay \$46,758.81 of the \$60,716.14 owed for these livestock purchases.
5. While Barton has remitted \$13,957.33 to the livestock sellers towards the above described purchases as of the filing of this complaint, these payments were made several months after the purchase dates. Barton thus failed to pay the amounts due within the time period required by the P&S Act.

⁴ The Secretary of Agriculture (Secretary’s Memorandum 1076-018, Nov. 14, 2017) subsequently eliminated the Grain Inspection, Packers and Stockyards Administration as a stand-alone agency [83 Fed. Reg. 61310] transferring enforcement of the Act to the Packers & Stockyards Division, Fair Trade Practices Program, Agricultural Marketing Service.

6. Respondent issued two checks for payment of livestock which were returned unpaid. On December 7, 2018, Respondent issued check number 1665 for \$13,012.90 in payment for livestock and on December 8, 2018, Respondent issued check number 4926 for \$10,148.15 in payment for livestock. Both checks were returned unpaid by the bank upon which they were drawn because Respondent did not have and maintain sufficient funds on deposit and available in the accounts upon which such checks were drawn to pay such checks when presented.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent has willfully violated sections 312(a) and 409 of the P&S Act (7 U.S.C. §§ 213(a) and 228b), and section 201.43 of the regulations (9 C.F.R. § 201.43).

ORDER

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. Respondent, his agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in operations subject to the P&S Act without paying for such purchases within the time allotted by the P&S Act.
3. Respondent is further assessed a civil penalty of \$95,183, to be paid immediately upon the final and effective date of this order. The payment shall be made by check or money order payable to the United States Treasury and include the docket number of this proceeding in the memo line. The payment shall be sent to the following address:

USDA, Fair Trade Practices Program, Packers and Stockyards Division,
P.O. Box 979064, St. Louis, MO 63197-9000

4. Respondent is further suspended as a registrant from all livestock operations for 120 days.

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 by the Hearing Clerk upon each of the parties, with courtesy copies provided via email where available.

Done at Washington, D.C.,
this 7th day of October 2020



Channing D. Strother
Chief Administrative Law Judge

Hearing Clerk's Office
United States Department of Agriculture
Stop 9203, South Building, Room 1031
1400 Independence Avenue, SW
Washington, DC 20250-9203
Tel: 1-202-720-4443
Fax: 1-844-325-6940
SM.OHA.HearingClerks@USDA.GOV