

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Dwaine A. Miller,) P&S-D Docket No. 21-J-0009
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearances:

Samantha M. Dorsey, Esq., with the Office of the General Counsel, United States Department of Agriculture, for the Complainant, Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service (“AMS”)

Respondent Dwaine A. Miller, pro se

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 Dwaine A. Miller (“Respondent”) on December 16, 2020. The Complaint alleges that Respondent willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b).¹ Further, the Complaint requests:

1. That *unless Respondent fails to file an answer within the time allowed*, or files an answer admitting all material allegations of this complaint, this proceeding be set for oral hearing in accordance with the Rules of Practice; and

¹ Complaint at 5.

2. That an order be issued requiring Respondent to cease and desist from the violations of the Act and the regulations found to exist; suspending Respondent as a registrant under the Act for a specified period; prohibiting Respondent, for a specified period, from engaging in business in any capacity for which registration and bonding are required under the Act; and assessing such civil penalties against Respondent as are authorized by the Act and warranted by the facts and circumstances of this case.

Complaint at 6 (emphasis added).

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).² Respondent filed an untimely answer on January 21, 2021, which failed to deny the material allegations of the Complaint.³

On April 21, 2021, Complainant filed a motion for decision without hearing (“Motion for Default”) and proposed decision and order (“Proposed Decision”) pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Complainant now requests that Respondent be ordered to (1) cease and desist from its violations of the Act and Regulations and (2) pay a civil penalty of \$15,750.00.⁴ Respondent has not filed any objections to Complainant’s Motion for Default or

² United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on December 29, 2020. Respondent 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, Respondent’s answer was due on or before January 19, 2021. Respondent did not file an answer until January 21, 2021.

³ See Answer at 1; 7 C.F.R. § 1.136(b)-(c).

⁴ Motion for Default at 7-8.

Proposed Decision.⁵

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.⁶ Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely answer where, as in the present case, no meritorious objections have been filed.⁷

As Respondent failed to file a timely answer to 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. Respondent Dwaine A. Miller is an individual whose principal mailing address is or was in the [REDACTED].
2. Respondent is, and at all times material herein, was:

⁵ United States Postal Service records reflect that Complainant's Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on July 31, 2021. Respondent 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, Respondent's objections were due on or before August 20, 2021. Respondent has not filed any objections.

⁶ 7 C.F.R. § 1.136(c).

⁷ See *supra* note 5 and accompanying text.

- a. Engaged in the business of a dealer buying and selling livestock in commerce for his own account and for the accounts of others; and
 - b. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce.
3. In February 2015, the Packers and Stockyards Division sent Respondent a Notice of Violation (“NOV”) informing him that he failed to make prompt payment on four livestock purchases during December 2014 and January 2015. The NOV further informed Respondent that the failure to pay for livestock by close of the next business day is a violation of the Act and the Regulations and that failure to correct his business practices and bring them into statutory and regulatory compliance could subject him to disciplinary action.
4. Notwithstanding the February 2015 NOV, Respondent continued to engage as a dealer buying and selling livestock in commerce without paying, when due, the full purchase price of the livestock. Respondent has entered into the following three Stipulation Agreements with the Packers and Stockyards Division for failure to pay, when due, the full purchase price of livestock:
 - a. November 2015 for eight transactions of 569 heads of livestock in the amount of \$88,602.49 during July 2015 and August 2015;
 - b. October 2016 for livestock purchases made during February 2016 and April 2016;
and
 - c. December 2018 for livestock purchases made during January 2017 and March 2017.

5. Notwithstanding the February 2015 NOV and three Stipulation Agreements, Respondent continued to engage in the business of a dealer between June 4, 2019 and July 26, 2019 and purchased from three livestock sellers \$349,658.79 worth of livestock and failed to pay, when due, the full purchase price of such livestock within the time period required by the Act and Regulations.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. By reason of the facts above, Respondent Dwaine A. Miller has willfully violated sections 312(a) and 409(a) of the Act (7 U.S.C. §§ 213(a) and 228b) and section 201.43(b)(2)(ii) of the Regulations (9 C.F.R. § 201.43(b)(2)(ii)).

ORDER

1. Complainant's Motion for Decision Without Hearing is GRANTED.
2. Respondent Dwaine A. Miller, 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 Packers and Stockyards Act without paying timely for each and every livestock transaction and purchase from sellers of livestock.
3. Respondent is assessed a civil penalty of \$15,750.00, to be paid immediately upon the final and effective date of this Order. Respondent shall send certified check(s) or money order(s) and reference on each the designation "P&S Docket No. D-21-J-0009," made payable to the

U.S. Treasury and mailed to USDA-AMS-FTPP-PSD, P.O. Box 979064, St. Louis, Missouri 63197-9000.

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 31st day of August 2021

**CHANNING
STROTHER**

 Digitally signed by CHANNING
STROTHER
Date: 2021.08.31 14:49:47 -04'00'

Channing D. Strother
Chief Administrative Law Judge

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