

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/HCO
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In re:)
)
James B. Cristel; and) P&S-D Docket No. 21-J-0040
Dixie Harr, d/b/a Edwardsville Livestock,) P&S-D Docket No. 21-J-0041
)
Respondents.)

**DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT
AS TO RESPONDENT DIXIE HARR, D/B/A EDWARDSVILLE LIVESTOCK**

Appearances:

Peter B. Jurgeleit, Esq., with the Office of the General Counsel, United States Department of Agriculture, Milwaukee, WI, for the Complainant, 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 Dixie Harr, doing business as Edwardsville Livestock (“Respondent Harr”), on June 23, 2021.¹ The Complaint alleges that Respondent Harr willfully violated sections 312(a), 401, and 409 of the Act (7 U.S.C. §§ 213(a), 221, 228b) and section 201.43 of

¹ James B. Cristel (Docket No. 21-J-0040), was also named as a respondent in the Complaint. This Decision and Order applies only to Respondent Dixie Harr, d/b/a Edwardsville Livestock (Docket No. 21-J-0041).

the Regulations (9 C.F.R. § 201.43).² Further, the Complaint requests:

1. That *unless . . . Respondent Harr . . . fail[s] to file an answer within the time allowed*, 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; and
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; prohibiting Respondent[] from engaging in business in any capacity for which registration and bonding are required under the Act; and requiring Respondent[] to keep all accounts, records and memoranda as will fully and correctly disclose all transactions involved in [his] business.

Complaint at 6 (emphasis added).

Respondent Harr 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).³

On September 28, 2021, Complainant filed (1) a motion for decision without hearing by reason of default (“Motion for Default”) and (2) a 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 Respondent be: (a) ordered to cease and desist from (i) failing to pay, and

² Complaint at 5.

³ United States Postal Service records reflect that the Complaint was sent to Respondent Harr via certified mail and delivered on August 18, 2021. Respondent Harr 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 Harr’s answer was due on or before September 7, 2021. Respondent Harr has not filed an answer.

failing to pay when due, the full purchase price of livestock within the time period required by the Act, (ii) failing to maintain sufficient funds on deposit and available in the account upon which payment check[s] are drawn to pay such checks when presented, as required by the Act, and (iii) failing to keep accounts and maintain accurate transaction records which fully and correctly disclose all the transactions involved in her business as required by the Act; and (b) suspended as a registrant from all livestock operations for five (5) years.

Motion for Default at 2. Respondent Harr has not filed any objections to Complainant's Motion for Default or Proposed Decision.⁴

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.⁵ 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.⁶

As Respondent Harr failed to an 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).

⁴ United States Postal Service records reflect that Complainant's Motion for Default and Proposed Decision were sent to Respondent Harr via certified mail and delivered on October 9, 2021. Respondent Harr 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 Harr's objections were due on or before October 29, 2021. Respondent Harr has not filed any objections.

⁵ 7 C.F.R. § 1.136(c).

⁶ See *supra* note 4 and accompanying text.

Findings of Fact

1. Respondent Dixie Harr, doing business as Edwardsville Livestock, is an individual whose current address is in the State of Illinois. Her address will not be stated in this Decision and Order to protect her privacy but will be maintained with the Hearing Clerk, United States Department of Agriculture, for the purpose of service of this Decision and Order.
2. Respondent Harr is and at all times material herein was:
 - a. Engaged in the business of a dealer buying and selling livestock in commerce; and
 - b. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce.
3. From April 6, 2018 through November 2, 2018, in eight transactions involving 172 head of livestock, Respondent Harr (or an agent acting on Respondent Harr's behalf) failed to pay \$95,875.38 in total livestock purchases.
4. Between August 22, 2018 and October 19, 2018, in six transactions involving 188 head of livestock, Respondent Harr (or an agent acting on Respondent Harr's behalf) failed to pay, when due, the full purchase price of such livestock. Over these six transactions, Respondent Harr was late in paying her sellers (between four and 161 days late).
5. In connection with ten livestock purchases, one occurring one each of April 6, 2018; June 4, 2018; June 18, 2018; August 22, 2018; September 17, 2018; September 21, 2018; October 5, 2018; October 12, 2018; October 19, 2018; and October 26, 2018, Respondent Harr (or an agent acting on Respondent Harr's behalf) issued checks for which she did not have and maintain sufficient funds on deposit to pay such checks when presented. Accordingly,

Respondent Harr failed to pay, when due, the full purchase price of the livestock. As of the date Complainant filed the Motion for Default, Respondent Harr had still failed to pay \$95,875.38 for these livestock purchases.

6. In connection with her operations subject to the Act, Respondent Harr failed to keep and maintain records that fully and correctly disclosed all the transactions involved in her business as a market agency buying on commission and a dealer buying and selling livestock as required under section 401 of the Act (7 U.S.C. § 221). Specifically, Respondent Harr failed to keep and maintain copies of livestock dealer records, including but not limited to livestock invoices for purchases and sales, check registers, and bank statements on accounts used to purchase livestock.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Dixie Harr, doing business as Edwardsville Livestock, has willfully violated sections 312(a) and 409 of the 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 is GRANTED.
2. Respondent Dixie Harr, doing business as Edwardsville Livestock, shall cease and desist from:

- a. Failing to pay, and failing to pay when due, the full purchase price of livestock within the time period required as prescribed by sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b) and section 201.43 of the Regulations (9 C.F.R. § 201.43);
 - b. Failing to maintain sufficient funds on deposit and available in the account upon which payment checks are drawn to pay such checks when presented, as required by sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b); and
 - c. Failing to keep accounts and maintain accurate transaction records that fully and correctly disclose all the transactions involved in her business as required by section 401 of the Act (7 U.S.C. § 221).
3. Respondent Dixie Harr, doing business as Edwardsville Livestock, is suspended as a registrant from all livestock operations for five (5) years, during which time she shall be prohibited from being employed by any entity where she would engage in activities subject to the Act. After three (3) years of the suspension period, Respondent Harr may request that a supplemental order be issued terminating the suspension if she demonstrates to the satisfaction of the Packers and Stockyards Division that all unpaid livestock sellers identified in the Complaint have been paid in full.

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 2nd day of November 2021

**CHANNING
STROTHER**

 Digitally signed by CHANNING
STROTHER
Date: 2021.11.02 16:10:07
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Channing D. Strother
Chief Administrative Law Judge

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