

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/HCO
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In re:)
)
Joe John Garcia,) P&S Docket No. 21-J-0050
d/b/a Isleta Feed & Livestock,)
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Mary Zoldak, Esq., with the Office of the General Counsel, United States Department of Agriculture, Albuquerque, NM, 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 Joe John Garcia, doing business as Isleta Feed & Livestock, on July 23, 2021. The Complaint alleged that Respondent willfully violated sections 312(a), 401, and 409 of the Act (7 U.S.C. §§ 213(a), 221, 228b) and sections 201.43 and 201.94 of the Regulations (9 C.F.R. §§ 201.43, 201.94).¹ The Complaint requested:

1. That *unless Respondent fails to file an answer within the time allowed therefore, or files an Answer admitting all the material allegations of this Complaint, this*

¹ Complaint at 4-5.

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 Respondent to cease and desist from the violations found to exist and prohibiting Respondent from engaging in business in any capacity for which registration and bonding are required under the Act, requiring that Respondent be adequately bonded pursuant to 7 U.S.C. § 204 of the Act and registered pursuant to the Act, and assessing such civil penalty, as authorized by the Act and warranted by the facts and circumstances of this case.

Complaint at 5 (emphasis added).

Respondent was duly served with a copy of the Complaint and did not file an answer within the twenty-day period as prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).²

On November 16, 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 Respondent.³

On December 6, 2021, Complainant filed a motion for decision without hearing by

² United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and returned as “refused” on August 18, 2021. In accordance with the Rules of Practice, the Hearing Clerk re-mailed the Complaint to the same address via ordinary mail on August 20, 2021. *See* 7 C.F.R. §§ 1.142, 1.147(c). 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 September 9, 2021. Respondent has not filed an answer.

³ 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.

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 Respondent be assessed a \$253,000 civil penalty⁴ and “that Respondent be ordered to keep the following records, as required by section 401 of the Act: all such accounts, records, and memoranda as fully and correctly disclose all transactions involved in the business.”⁵ Respondent has not filed any objections to Complainant’s Motion for Default or Proposed Decision.⁶

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 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.⁸

As Respondent 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

⁴ Motion for Default at 2.

⁵ *Id.* at 3.

⁶ 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 December 11, 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 December 31, 2021. Respondent has not filed any objections.

⁷ 7 C.F.R. § 1.136(c).

⁸ *See supra* note 6 and accompanying text.

procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Joe John Garcia, doing business as Isleta Feed & Livestock, is an individual whose principal place of business and mailing address is (b) (6), (b) (6).
2. In December 2010, Respondent applied for registration under the Act as a dealer. The application was approved.
3. On January 14, 2016, Administrative Law Judge Janice Bullard entered a decision without hearing by reason of admissions (“2016 Order”),⁹ finding Respondent in default and:
 - (a) ordering Respondent to “cease and desist from failing to pay the full amount of the purchase price for livestock before the close of the next business day following each purchase of livestock, as required by 7 U.S.C. §§ 213(a) and 228b, and 9 C.F.R. § 201.43”¹⁰;
 - (b) ordering Respondent to “cease and desist from issuing checks in purported payment of 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, as required by 7 U.S.C. § 213(a)”¹¹; and

⁹ Official notice is taken of the 2016 Order. *See* 7 C.F.R. § 1.141(h)(6).

¹⁰ *Garcia*, Docket No. 16-0012, 2016 WL 369398, at *3 (U.S.D.A. Jan. 14, 2016), *available at* https://oalj.oaha.usda.gov/sites/default/files/2016%20DO%20-%2016-0012%20-%20Joe%20John%20Garcia_Redacted.pdf (last visited Jan. 4, 2022).

¹¹ *Id.*

(c) suspending Respondent

as a registrant under the Act for a period of one (1) year; provided, however, that upon application to the Packers and Stockyards Program, a supplemental order may be issued terminating the suspension of [Respondent] at any time after the expiration of 30 days of the suspension period upon [Respondent's] demonstration, to the satisfaction of the Packers and Stockyards Program, that all unpaid livestock sellers identified in the complaint have been paid in full, or a reasonable schedule of restitution has been arranged with the unpaid livestock sellers identified in the complaint.

Garcia, Docket No. 16-0012, 2016 WL 369398, at *3 (U.S.D.A. Jan. 14, 2016).

4. Notwithstanding the 2016 Order, Respondent, between March 2016 and January 2017: (a) knew that he was suspended as a registrant under the Act; (b) despite his suspension, engaged in the business of a livestock dealer buying and selling livestock in commerce for his own account; and (c) failed to keep and maintain records that fully and correctly disclosed all the transactions involved in its business as a market agency, in violation of the Act.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. By reason of the facts alleged in paragraphs 1 through 4 above, Respondent has willfully violated sections 312(a), 401, and 409 the Act (7 U.S.C. §§ 213(a), 221, 228b) and sections 201.43 and 201.94 of the Regulations (9 C.F.R. §§ 201.43, 201.94).
3. By reason of the facts alleged in paragraphs 1 through 4 above, Respondent has also willfully violated section 201.29 of the Regulations (9 C.F.R. § 201.29) by operating without an adequate bond as required by 7 U.S.C. § 204.

ORDER

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. Respondent Joe John Garcia, d/b/a Isleta Feed & Livestock, 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 (a) engaging in operations subject to the Act without paying timely for each and every livestock transactions and purchase from sellers of livestock; (b) issuing checks without sufficient funds to pay those checks; and (c) any further violations of the Act.
3. Respondent shall be adequately bonded pursuant to section 204 of the Act.
4. Respondent shall keep all records required by section 201 of the Act, including: all such accounts, records, and memoranda as fully and correctly disclose all transactions involved in the business.
5. Respondent is assessed a civil penalty of \$253,000.00, to be paid immediately upon the final and effective date of this Order. The payment shall be sent to the following address:

USDA, AMS, FTPP, PSA
P.O. Box 790312
St. Louis, MO 63179-0312.

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**

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Channing D. Strother
Chief Administrative Law Judge

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