

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Amarillo USA, Inc.,) Docket No. 20-J-0150
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Brian Hill, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, Acting Administrator, Agricultural Marketing Service (“AMS”).

Preliminary Statement

This is a proceeding under the Dairy Production Stabilization Act of 1983 (7 U.S.C. §§ 4501-4514) (“Dairy Stabilization Act”); the Dairy Promotion and Research Order (7 C.F.R. §§ 1150.101-1150.278) (“Dairy Promotion Order”); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151) (“Rules of Practice”).¹

The Complainant, Acting Administrator, Agricultural Marketing Service (“AMS”), United States Department of Agriculture, initiated this proceeding against Respondent Amarillo USA, Inc. by filing a complaint on July 27, 2020. The Complaint alleged that Respondent

¹ Although the Dairy Stabilization Act is not one of the statutes currently listed in the Rules of Practice (see 7 C.F.R. §1.131(a)), the “rules of practice shall also be applicable to ... [o]ther adjudicatory proceeding in which the complaint instituting the proceeding so provides with the concurrence of the Assistant Secretary for Administration.” 7 C.F.R. § 1.131(b)(4). Complainant received concurrence in this case. *See* Complainant’s Motion for Adoption of Proposed Decision and Order by Reason of Default at 2, fn. 1, stating that a Memorandum of July 17, 2020, was attached thereto, providing concurrence and signed by the Principal Deputy Assistant Secretary for Administration.

willfully violated section 4504(g) of the Dairy Production Stabilization Act and section 150.152(a) of the Dairy Promotion and Research Order by failing to remit to the Board the remaining balance of unpaid assessments stipulated in the June 2012 settlement agreement. Complainant requested that an Administrative Law Judge issue such order or orders as are authorized by the Dairy Stabilization Act, including an order assessing civil penalties against Respondent in accordance with the Dairy Stabilization Act, and remittance of all past due assessments and charges to the National Dairy Promotion and Research Board (“Dairy Board”).

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

On October 26, 2020, Complainant filed a Motion for Adoption of Proposed Order by Reason of Default (“Motion for Default”) and Proposed Decision Without Hearing by Reason of Default (“Proposed Decision”). Respondent has not filed any objections to Complainant’s Motion for Default or Proposed Decision.³

² United States Postal Service records reflect that the Complaint was sent to Respondent’s registered agent via certified mail and delivered on August 1, 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 workday. 7 C.F.R. § 1.147(h). In this case, Respondent’s answer was due on or before August 21, 2020. Respondent has not filed an answer in this matter.

³ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent’s registered agent via certified mail and delivered on November 2, 2020. USDA Hearing Clerk Records reflect that the Motion for Default and Proposed Decision, as well as the Attachment, Concurrence to File Administrative Complaint Under Dairy Production Stabilization Act of 1983, which was missing from the first mailing, were remailed by certified mail and delivered on December 7, 2020. Respondent had twenty (20) 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 workday. 7 C.F.R. §

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.⁴

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 Amarillo USA, Inc., is a corporation that formerly conducted business under the name of CAG USA, Inc., until it was legally changed on November 6, 2015. At all times relevant to the underlying actions giving rise to this complaint, Respondent was known as CAG USA, Inc.
2. Respondent was the parent company of CAG Cimarron Dairy, LP ("CAG Dairy") at all times material herein, exercising ownership and full control of CAG Dairy in all transactions relevant to this complaint.
3. At all times material herein, Respondent was a person as defined in the Dairy Act, 7 U.S.C. § 4502(g), and the Dairy Order, 7 C.F.R. § 1150.105.

1.147(h). In this case, Respondent's objections were due by December 28, 2020. Respondent has not filed any objections.

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

4. At all times material herein, Respondent was a producer as defined in the Dairy Act, 7 U.S.C. § 4502(h), and the Dairy Order, 7 C.F.R. § 1150.110.
5. The Dairy Promotion Order is administered by the Dairy Board. The Dairy Board's programs and expenses are funded by assessments paid to the Dairy Board by each person making payment to a producer for milk produced in the United States and marketed for commercial use, and by any producer marketing milk of that producer's own production in the form of milk or dairy products to consumers.
6. As a person making payments to a producer of milk and as a producer who markets milk of his own production to consumers for commercial use as defined in the Dairy Stabilization Act and the Dairy Promotion Order, Respondent was subject to payment of those collected assessments to the Dairy Board pursuant to § 1150.152(a) of the Dairy Promotion Order.
7. Pursuant to § 1150.152 and § 1150.156 of the Dairy Promotion Order, the Dairy Board assessed CAG Dairy \$1,096,472.48, which includes late-payment charges for unpaid assessments due to the Dairy Board for milk produced in the United States and marketed for commercial use from September 2007 through December 2011.
8. CAG Dairy entered into an agreement in June 2012 to pay a negotiated settlement of \$991,448.14, representing \$784,200.76 in unpaid assessment and \$207,247.38 in late-payment charges, in monthly installments (USDA agreed to waive the remaining \$105,024.34, on condition that CAG Dairy make full and complete payment of the settlement amount).
9. CAG Dairy made \$280,000.00 in payments to the Dairy Board, often late, before discontinuing all remittances after August 7, 2015, in breach of the negotiated settlement.

10. As a result of Respondent's failure to abide by the terms of settlement made through CAG Dairy, the \$105,024.34 that would have otherwise been waived has also become due per the terms of that agreement, for a total of \$816,472.48 owing to the Dairy Board (\$711,448.14 remaining unpaid from the settlement agreement plus the \$105,024.34 previously held in abeyance).
11. The Dairy Board notified Respondent, through CAG Dairy, on numerous occasions of its continuing violations of the Dairy Promotion Order and its obligations under the signed settlement agreement. Receipt of all communications from the USDA were acknowledged, but Respondent failed to make any further attempts at payment to the Dairy Board.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Amarillo USA, Inc. willfully violated the section 4504(g) of the Dairy Production Stabilization Act and section 150.152(a) of the Dairy Promotion and Research Order by failing to pay assessments and late fees in full.

ORDER

1. Complainant's Motion for Adoption of Proposed Order by Reason of Default is GRANTED.
2. Respondent Amarillo USA, Inc. is assessed \$816,472.48 in assessments and late payment charges for unpaid assessments. Assessments and late-payment charges shall be paid by check, made payable to the USDA Agricultural Marketing Service.

3. The payment described in paragraph 2 of this Order should indicate that it is in reference to Docket No. 20-J-0150 and be sent to:

USDA, Dairy Program
Compliance & Enforcement Division
1400 Independence Avenue, SW.
Mail Stop 0231
Washington, DC 20250

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.

Done at Washington, D.C.,
this 5th day of January 2021


Channing D. Strother
Chief Administrative Law Judge

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