

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Bruce D. Camenzind,)
d/b/a Clarence E. Camenzind Funnel Trust,) P&S-D Docket No. 22-J-0024
BK Farms, and Dixon Ranch,)
)
Respondent.)

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DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearances:

David W. Schaaf, Esq., with the Office of the General Counsel, United States Department of Agriculture, Kansas City, MO, for the Complainant, the Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service (“AMS”)

Sam King, Esq., of Patino King, LLC, Omaha, NE, for the Respondent, Bruce D. Camenzind, d/b/a Clarence E. Camenzind Funnel Trust, BK Farms, and Dixon Ranch

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 Bruce D. Camenzind, doing business as Clarence E. Camenzind Funnel Trust, BK Farms, and Dixon Ranch (“Respondent”), on January 25, 2022. The Complaint alleged that Respondent willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b) and sections 201.29, 201.30, and 201.43 of the Regulations (9 C.F.R. §§ 201.29,

201.30, and 201.43).¹ The Complaint requested:

1. That *unless Respondent fails to file an answer within the time allowed*, or admits all the material allegations of this Complaint, this proceeding be set for an oral hearing in accordance with the Rules of Practice; and
2. That an orders be issued requiring Respondent to cease and desist from the violations of the Act and the regulations found to exist; suspending Respondent's registration under the Act for a specified period and prohibiting Respondent, for a specified period, from engaging in business in any capacity for which registration and bonding are required under the Act as stated in 7 U.S.C. § 204; 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 5-6 (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 April 5, 2022, 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

¹ Complaint at 5.

² United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on February 14, 2022. 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 March 7, 2022. 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.

On April 21, 2022, Complainant responded to the Show Cause Order by filing a Motion for a Decision Without Hearing by Reason of Default (“Motion for Default”) and motion and proposed Decision Without Hearing by Reason of Default (“Proposed Decision”). In addition to requesting a cease-and-desist order, Complainant now asks that Respondent be assessed a \$24,450 civil penalty and be “further suspended as a registrant from all livestock operations as a dealer for a period of ninety (90) days.”⁴

Respondent did not reply to my Show Cause Order. However, on May 12, 2022, Respondent filed an “objection” to Complainant’s Motion for Default “disput[ing] the allegations and claims . . . asserted against him in the Motion.”⁵ The Objection provides, in relevant part:

[T]he civil penalty proposed by the OGC is excessive, unjust, unreasonable and not supported by the factors which must be considered for civil penalties under the Act. *See 7 U.S.C. § 213*. . . [A] penalty of \$24,450 will [a]ffect the Respondent’s ‘ability to stay in business’ as Respondent is an individual and his operations are small and a fine of this amount may be significant enough to render the Respondent unable to stay in business.⁶

. . . OGC’s request to suspend the Respondent for a period of ninety (90) days from engaging in operations subject to the Act is unjust and unreasonable.

. . . OGC’s requests for civil penalties and suspension of the Respondent from

⁴ Proposed Decision at 3.

⁵ Objection at 1. I note that Respondent does not state he “disputes the allegations and claims” asserted against him in the Complaint. *Id.*

⁶ While I sympathize with Respondent’s circumstances, Complainant states that “[t]he Packers and Stockyards Division has considered whether the penalty is so large that it could [a]ffect Respondent’s ‘ability to stay in business’” and “has determined, in light of the size and volume of Respondent’s business, that a penalty of \$24,450 should not prevent Respondent from maintaining its operations as a dealer.” Motion for Default at 4.

engaging in operations under the Act should [not] be decided without a hearing and opportunity for the Respondent to defend himself against these requests.

Objection at 1-2. I find that Respondent's objections have no merit; they neither address Respondent's failure to answer the Complaint nor assert why default should not be entered.

The Department's sanction policy is set forth in *S.S. Farms Linn County, Inc.*:⁷

[T]he sanction policy in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

S.S. Farms Linn County, Inc., 50 Agric. Dec. 476 (U.S.D.A. 1991) (Decision and Order as to James Joseph Hickey & Shannon Hansen), *aff'd sub. nom Hickey v. U.S. Dep't of Agric.*, 991 F.2d 803 (9th Cir. 1993) (not to be cited as precedent under 9th Cir. R. 36-3). I find that by failing to answer the Complaint and failing to file meritorious objections to Complainant's Motion for Default, Respondent has admitted the material allegations of the Complaint. Accordingly, I find that Complainant's proposed sanctions in this case are warranted⁸ and reasonable under the circumstances.⁹

⁷ 50 Agric. Dec. 476 (U.S.D.A. 1991) (Decision and Order as to James Joseph Hickey & Shannon Hansen), *aff'd sub. nom Hickey v. U.S. Dep't of Agric.*, 991 F.2d 803 (9th Cir. 1993) (not to be cited as precedent under 9th Cir. R. 36-3).

⁸ See Motion for Default at 3-5 (describing the factors Complainant considered when determining its civil-penalty recommendation).

⁹ See *id.* at 4-5 (“[A] monetary penalty and suspension of registration is required to effectuate the Secretary's policy of deterrence. Respondent could be liable for up to \$252,549 in civil penalties for its current violations. Considering that the requested penalty is roughly 9.7 percent of the maximum amount, this is a reasonable penalty under these circumstances, where Respondent has

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.¹⁰ 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.

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

Findings of Fact

1. Respondent Bruce D. Camenzind, doing business as Clarence E. Camenzind Funnel Trust, BK Farms, and Dixon Ranch, is an individual whose current address is in the [REDACTED].
2. At all times material herein, Respondent engaged in the business of a dealer under the Act and registered with the Secretary of Agriculture as a Dealer.
3. On June 24, 2012, and again on October 5, 2018, Respondent agreed to cease and desist from failing to pay, when due, the full purchase price of livestock within the time period required by the Act and Regulations, and from issuing checks without sufficient funds to cover said check, as required by the Act and Regulations.

committed serious violations of the Act and has been given several prior notices of its violation.”).

¹⁰ 7 C.F.R. § 1.136(c).

4. Notwithstanding the Consent Decision and Orders, between August 24, 2019 and October 12, 2019, Respondent purchased forty-five head of livestock in four transactions from Omaha Red Oak Livestock Market, Inc., in Red Oak, Iowa, for \$36,751.37 and failed to pay, when due, the full purchase price of such livestock within the time period required by the Act and the Regulations, and Respondent further issued checks without sufficient funds in his bank account to cover said checks.
5. Additionally, Respondent, despite being informed that, as of April 13, 2019, his bond, necessary to engage in the business of buying and selling livestock in interstate commerce, would expire, Respondent continued to act as a dealer buying and selling livestock without an adequate bond or bond equivalent 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 has willfully violated sections 312 of the Act (7 U.S.C. § 213(a)), section 409 of the Act (7 U.S.C. § 228b), and sections 201.29, 201.30, and 201.43 of the Regulations promulgated thereunder (9 C.F.R. §§ 201.29, 201.30, 201.43).

ORDER

1. Complainant's Motion for Default is GRANTED.
2. Respondent Bruce D. Camenzind, doing business as Clarence E. Camenzind Funnel Trust, BK Farms, and Dixon Ranch, 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 Act without possessing the bond

necessary to engage in the business of buying and selling livestock in interstate commerce, without paying timely for each and every livestock transaction and purchase from sellers of livestock, and from issuing checks without sufficient funds to cover those checks.

3. Respondent is assessed a civil penalty of \$24,450, to be paid immediately upon the final and effective date of this Order. The payment shall be sent to the following address:

USDA, Fair Trade Practices Program
Packers and Stockyards Division
P.O. Box 790335
St. Louis, MO 63179-0335.

4. Respondent is further suspended as a registrant from all livestock operations as a dealer for a period of ninety (90) 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 upon the parties and counsel by the Hearing Clerk.

Done at Washington, D.C.,
this 2nd day of June 2022

**CHANNING
STROTHER**

 Digitally signed by CHANNING
STROTHER
Date: 2022.06.02 16:18:34 -04'00'

Channing D. Strother
Chief Administrative Law Judge

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