

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: )  
)  
Dakin Dairy Farms, Inc., ) DPSA Docket No. 19-J-0147  
)  
Respondent. )

**DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT**

Appearances:

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

*Jerry Dakin, representative of the Respondent, Dakin Dairy Farms, Inc.*

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. §§ 1150.01–1150.278) (“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”).<sup>1</sup>

The Administrator of the Agricultural Marketing Service, United States Department of Agriculture (“Complainant”), initiated this proceeding by filing a complaint against Dakin Dairy Farms, Inc. (“Respondent”) on September 4, 2019. The Complaint alleged that Respondent willfully violated the Dairy Stabilization Act and Dairy Promotion Order and requested:

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

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<sup>1</sup> 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 proceedings 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* August 6, 2019 Memorandum attached to Complaint.

of Practice governing proceedings under the Dairy Stabilization Act; and

2. That the Secretary issue such order or orders as are authorized by the Dairy Stabilization Act and warranted under the circumstances, including an order assessing civil penalties against the respondent in accordance with 7 U.S.C. § 4510 and 7 C.F.R. § 1150.156.

Complaint at 4-5 (emphasis added). Respondent filed an answer to the Complaint on December 16, 2019.<sup>2</sup>

On February 13, 2020, Complainant filed an amended complaint<sup>3</sup> alleging additional violations by Respondent.<sup>4</sup> The Amended Complaint requested:

1. That *unless the respondent fails to file an answer within the time allowed therefor*, or files an answer admitting all the material allegations of the complaint, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the Dairy Stabilization Act; and
2. That the Secretary issue such order or orders as are authorized by the Dairy Stabilization Act and warranted under the circumstances, including an order assessing civil penalties against the respondent in accordance with 7 U.S.C. § 4510 and 7 C.F.R. § 1150.156.

Amended Complaint at 4 (emphasis added). Furthermore, the Amended Complaint specified:

“The failure to file an answer to this amended complaint will constitute an admission of all

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<sup>2</sup> On November 20, 2019, I issued an “Order Granting Respondent’s Unopposed Request for Extension of Time to File an Answer to the Complaint,” which gave Respondent until December 6, 2019 to answer the Complaint. While Respondent did not file its Answer until December 16, 2019, Complainant raised no objections to the late filing.

<sup>3</sup> See 7 C.F.R. § 1.137 (“Any time prior to the filing of a motion for hearing, the complaint . . . may be amended.”). No motion for hearing has been filed in this case. Complainant’s request that “this proceeding be set for formal hearing in conformity with the Rules of Practice,” which was set forth in the Complaint, “is not the same as a motion for hearing, referred to in §§ 1.137 and 1.141(b)” of the Rules of Practice. *Meacham*, 47 Agric. Dec. 1708, 1709 (U.S.D.A. 1988) (Ruling on Certified Question).

<sup>4</sup> Compare Complaint at 2-3 with Amended Complaint at 2-3.

material allegations contained herein.”<sup>5</sup>

Respondent was duly served with a copy of the Amended Complaint<sup>6</sup> 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).<sup>7</sup>

On May 11, 2020, Complainant filed a Motion for Adoption of Decision and Order by Reason of Default (“Motion for Default”) and Proposed Decision and Order by Reason of Default (“Proposed Decision”). Respondent has not filed objections to the Motion for Default or Proposed Decision.<sup>8</sup>

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<sup>5</sup> Amended Complaint at 4.

<sup>6</sup> *See Green*, HPA Docket No. 17-0205, slip op. at \*11, 79 Agric. Dec. \_\_ (U.S.D.A. Feb. 25, 2020) (Decision and Order Setting Aside Default and Remanding for Further Proceedings), available at [https://oalj.oha.usda.gov/sites/default/files/JODO%20-%2017-0205\\_Redacted.pdf](https://oalj.oha.usda.gov/sites/default/files/JODO%20-%2017-0205_Redacted.pdf) (last visited Aug. 6, 2020) (“[I]t is the determination of the Judicial Officer that service of an amended complaint must be made by certified [mail] in the same manner as required for service of an original complaint.”); 7 C.F.R. § 1.147(c)(1).

<sup>7</sup> United States Postal Service records reflect that the Amended Complaint was sent to Respondent via certified mail and delivered on April 14, 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 to the Amended Complaint was due on or before May 4, 2020. Respondent has not filed an answer to the Amended Complaint.

<sup>8</sup> The Hearing Clerk’s records reflect that the Motion for Default and Proposed Decision were sent to Respondent by certified mail on May 11, 2020. However, United States Postal Service records indicate that, for reasons unknown, the mailing was not delivered to its final destination. The Hearing Clerk subsequently re-sent the Motion for Default and Proposed Decision to Respondent via certified mail; United States Postal Service records reflect that the Motion for Default and Proposed Decision were delivered on July 20, 2020. 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 10, 2020. Respondent has not filed any objections.

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Amended Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Amended Complaint, unless the parties have agreed to a consent decision.<sup>9</sup> Other than a consent decision, the Rules of Practice do not provide for exceptions for the regulatory consequences of an unfiled answer where, as in the present case, no meritorious objections have been filed.<sup>10</sup>

As Respondent failed to answer the Amended Complaint,<sup>11</sup> 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 Dakin Dairy Farms, Inc. is a corporation whose principal place of business is 30771 Betts Road, Myakka City, Florida 34251.
2. At all times material herein, Respondent was a person as defined in the Dairy Stabilization Act, 7 U.S.C. § 4502(g), and the Dairy Promotion Order, 7 C.F.R. § 1150.105.

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<sup>9</sup> 7 C.F.R. § 1.136(c).

<sup>10</sup> 7 C.F.R. § 1.139; *see supra* note 8 and accompanying text.

<sup>11</sup> That the instant Motion for Default is based on Respondent's failure to answer the Amended Complaint—rather than the original Complaint, which Respondent answered—is of no consequence. The operative pleading in this case is the Amended Complaint. *See Walker*, 65 Agric. Dec. 932, 966 (U.S.D.A. 2006) (“Thus, the record clearly establishes that the operative pleading in this proceeding is the Amended Complaint, not the Complaint, and Respondent's response to the Complaint does not operate as a response to the Amended Complaint.”); *Foley*, 59 Agric. Dec. 581, 599 (U.S.D.A. 2000) (“Respondent's failure to file a timely answer is deemed, for the purposes of this proceeding, an admission of the allegations in the Amended Complaint and constitutes a waiver of hearing (7 C.F.R. 1.136(c), .139, .141(a)). Therefore, there are no issues of fact on which a meaningful hearing could be held in this proceeding.”).

3. At all times material herein, Respondent was a producer as defined in the Dairy Stabilization Act, 7 U.S.C. § 4502(h), and the Dairy Promotion Order, 7 C.F.R. § 1150.110.
4. The Dairy Promotion Order is administered by the National Dairy Promotion and Research Board (“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.
5. As a person making payment 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.
6. Pursuant to § 1150.152 and § 1150.156 of the Dairy Promotion Order, the Dairy Promotion Board assessed Respondent \$219,893.42, which includes late-payment charges for unpaid assessments due to the Dairy Board and two Qualified Programs for milk produced in the United States and marketed for commercial use from February 2015 through December 2019.
7. On fifty-five occasions from February 2015 through December 2019, Respondent violated § 4504(g) of the Dairy Stabilization Act and § 1150.152 of the Dairy Promotion Order by failing to timely remit to the Dairy Board or its designated agent monthly assessments and late fees for assessments from Respondent’s own milk production or from dairy producers’ milk checks that Respondent collected for ilk produced in the United States and marketed for

commercial use. As of December 31, 2019, Respondent owed the Dairy Board and its designated agents (“Qualified Programs”) \$219,893.42 in assessments and late fees for assessments.

8. On twelve occasions from April 2017 through March 2018, Respondent established it made contributions to two qualified programs as if it were a participant in an active, ongoing qualified State or regional dairy product promotion, research, and nutrition education program, authorized by Federal or State law, pursuant to § 4505(g)(4) of the Dairy Stabilization Act and §§ 1150.152–1150.153 of the Dairy Promotion Order, and the Dairy Board gave Respondent credit for such contributions. However, verification conducted by the Dairy Board revealed that Respondent failed to make contributions to the qualified programs.
9. On fifty-five occasions from February 2015 through December 2019, Respondent violated § 4504(k) of the Dairy Stabilization Act and § 1150.171 of the Dairy Promotion Order by failing to report, or failing to report by the specified date for remitting assessments, to the Board, information as required by the Dairy Board and the Secretary of Agriculture.
10. The Dairy Board notified Respondent on numerous occasions, by both electronic correspondence and formal letters, of its continuing violations of the Dairy Promotion Order and the penalties that might be incurred pursuant to the Dairy Promotion Order. Additionally, the Agricultural Marketing Service notified Respondent in writing of past-due assessments on April 2, 2018 and October 3, 2018. Respondent has been unresponsive to each attempt to resolve the outstanding reporting violations and non-payment of assessments.
11. Pursuant to § 4510(b) of the Dairy Stabilization Act and § 1150.156 of the Dairy Promotion

Order, the Secretary may assess a civil penalty for each violation<sup>12</sup> and a penalty equal to the amount of the assessment on the quantity of milk as to which the failure applies.

### **Conclusions**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Dakin Dairy Farms, Inc. has willfully violated the Dairy Stabilization Act and Dairy Promotion Order by failing to pay assessments and late fees in full and by failing to report or failing to report timely 110 times.

### **ORDER**

1. Complainant's Motion for Adoption of Decision and Order by Reason of Default is GRANTED.
2. Respondent Dakin Dairy Farms, Inc. is assessed \$219,893.42 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. Respondent Dakin Dairy Farms, Inc. is assessed a civil penalty of \$5,000. The civil penalty shall be paid by check, made payable to the Treasurer of the United States.
4. The payments described in paragraphs 2 and 3 of this Order should indicate that the payment is in reference to Docket No. 19-J-0147 and be sent to:

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<sup>12</sup> The Dairy Stabilization Act states that the Secretary shall assess a civil penalty of not more than \$1,000 for each violation. 7 U.S.C. § 4510(b). The penalty was amended by 7 C.F.R. § 3.91(b)(1)(xix) (effective December 5, 2017) to \$2,393 per violation, pursuant to the Federal Civil Penalties Adjustment Act Improvements Act of 2015. The penalty was again amended by 7 C.F.R. § 3.91(b)(1)(xix) (effective March 14, 2019) by making inflation adjustments to \$2,442 per violation, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

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 upon the parties and counsel by the Hearing Clerk.

Done at Washington, DC,  
this 11th day of August 2020



Channing D. Strother  
Chief Administrative Law Judge

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