

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
 Scott Deters,) P&S Docket No. 19-J-0149
 d/b/a Scott Deters Livestock Company,)
)
 Respondent.)

REC'D - USDA/OALJ/OHC
2020 MAY 19 AM 8:30

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Brian T. Hill, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, 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 Scott Deters, who did business as Scott Deters Livestock Company (“Respondent”), on September 18, 2019. The Complaint alleges that Respondent willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b) and sections 201.29 and 201.43 of the Regulations (9 C.F.R. §§ 201.29 and 201.43).¹ Further, the Complaint requests:

¹ Complaint at 3.

That an order be issued requiring Respondent to cease and desist from the violations of the Act and the regulations found to exist; prohibiting Respondent, for a specified period, from engaging in business in any capacity for which registration and bonding are required under the Act; 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 4.²

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).³

On March 26, 2020, Complainant filed a Motion for Decision without Hearing by Reason of Default (“Motion for Default”) and Proposed Decision without Hearing by Reason of Default (“Proposed Decision”). Respondent has not filed objections to the Motion for Default or Proposed Decision.⁴

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the

² The Complaint also requests: “That *unless Respondent fails to file an answer within the time allotted*, or file[s] an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in accordance with the rules of practice[.]” Complaint at 4 (emphasis added).

³ The Hearing Clerk’s records reflect that Respondent was personally served with a copy of the Complaint by an employee of the United States Department of Agriculture on March 2, 2020. See Certificate of Service filed March 2, 2020; 7 C.F.R. §§ 1.147(d)(3),(e). 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 23, 2020. Respondent has not filed an answer.

⁴ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on April 23, 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 May 13, 2020. Respondent has not filed any objections.

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 unfiled answer where, as in the present case, no meritorious objections have been filed.⁶

As Respondent failed to file a timely 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 Scott Deters is an individual doing business as Scott Deters Livestock Company, whose business address at all times relevant herein was 1129 52nd Road, Coming, Kansas, 66417.
2. Respondent is, and at all times material herein, was:
 - a. Engaged in the business of a dealer buying and selling livestock in commerce for his own account and for the accounts of others;
 - b. Engaged in the business of a market agency buying livestock on a commission basis; and
 - c. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce and as a market agency to buy livestock on a commission basis.
3. From March 23, 2015 through March 29, 2018, in approximately thirty-one (31) transactions involving 1,233 head of livestock, Respondent purchased the livestock and then failed to pay

⁵ 7 C.F.R. § 1.136(c).

⁶ 7 C.F.R. § 1.139; *see supra* note 4 and accompanying text.

the full purchase price when due. Respondent paid as many as thirteen (13) days late during this time.

4. From February 20, 2019 through April 3, 2018, in twelve (12) transactions, Respondent purchased 478 head of livestock totaling approximately \$349,380.84 on his own account, without filing and maintaining an adequate bond or bond equivalent.
5. Willis B. Gregory, an individual, is and at all times material herein was:
 - a. Engaged in the business of a market agency buying and selling livestock on a commission basis; and
 - b. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce until January 2014; all other purchases after this timeframe were done under an unregistered/inactive status.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Scott Deters, doing business as Scott Deters Livestock Company, has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b) and sections 201.29 and 201.43 of the Regulations (9 C.F.R. §§ 201.29 and 201.43).

ORDER

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. Respondent Scott Deters, doing business as Scott Deters Livestock Company, his agents and employees, directly or through any corporate or other device, in connection with the operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in operations subject to the Act without paying for such purchases within the time allotted by the Act.

3. Pursuant to section 201.29 of the Regulations (9 C.F.R. § 201.29), Respondent shall execute and maintain a reasonable bond to secure the performance of his livestock obligations if he is conducting operations.
4. Respondent is further assessed a civil penalty of seven-thousand and six-hundred dollars (\$17,600), to be paid immediately upon the final and effective date of this Order. The payment shall be by check or money order payable to the United States Treasury and shall include the docket number of this proceeding in the memo line. The payment shall be sent to the following address: USDA, Fair Trade Practices Program, Packers and Stockyards Division, P.O. Box 979064, St. Louis, MO 63197-9000.
5. Respondent is further suspended as a registrant from all livestock operations for thirty (30) days and continuing thereafter until he is properly bonded.

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 19th day of May 2020


Channing D. Strother
Chief Administrative Law Judge

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