

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/OHC
2020 FEB 4 PM2:39

In re:)
)
Christopher Matthew Klaiber,) P&S-D Docket No. 19-J-0154
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearances:

Peter B. Jurgeleit, Esq., with the Office of the General Counsel, United States Department of Agriculture, Milwaukee, WI, for the Complainant, Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service (“AMS”); and

Christopher Matthew Klaiber, pro se Respondent.

Preliminary Statement

This is a proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181 through 229b) (“Act”); the regulations promulgated thereunder (9 C.F.R. §§ 201.1) (“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” or “AMS”), initiated this proceeding by filing a complaint against Christopher Matthew Klaiber (“Respondent”) on September 30, 2019. The Complaint alleges that Respondent violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b) and section 201.43 of the Regulations (9 C.F.R. §§ 201.43).¹ Further, the Complaint requests:

¹ See Complaint at 1-4.

That an order be issued requiring Respondent to cease and desist from the violations of the Act and the regulations found to exist; suspending Respondent as a registrant under the Act for a specified period; 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 5.

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 December 18, 2019, 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 January 7, 2020, Complainant filed a Response to Order to Show Cause and Request for Decision Without Hearing Based on Admissions (“Motion for Default”) and Proposed Decision Without Hearing Based on Admissions (“Proposed Decision”). Complainant now requests that, in addition to being ordered to cease and desist from violations of the Act, Respondent be assessed a civil penalty of \$231,535 and Respondent’s Packers and Stockyards registration be suspended for five years.⁴

² United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on October 7, 2019. 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 October 28, 2019. Respondent did not file an answer.

³ The Show Cause Order also provided: “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 in accordance with the provisions of 7 C.F.R. § 1.139.” Show Cause Order at 2.

⁴ See Motion for Default at 2-3.

On January 8, 2020, Respondent filed a request for a “continuance” in this matter.⁵ On January 13, 2020, I issued an order denying Respondent’s request; however, I specifically advised:

Respondent should note . . . that the time has not yet expired to file objections to “Complainant’s Response to Order to Show Cause and Motion for Decision Without Hearing Based on Admissions” and “Proposed Decision Without Hearing Based on Admissions, which Complainant filed on January 7, 2020. Pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139):

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. **Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto.** If the Judge finds that meritorious objections have been filed, complainant’s Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing. . . .

Order Denying Respondent’s Request for Continuance at 2 (quoting 7 C.F.R. § 1.139) (emphasis added). Nonetheless, Respondent has not filed any objections to Complainant’s Motion for Default or Proposed Decision.⁶

⁵ See Order Denying Respondent’s Request for Continuance at 2 (“Respondent does not specify what he seeks ‘continuance’ of; however, as of January 8, 2020, two filing deadlines had already expired: (1) the time for Respondent to answer the Complaint and (2) the time for Respondent to respond to my Show Cause Order.”) (footnote omitted).

⁶ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent’s representative, Mr. Arnulfo Diaz, Owner, via certified mail and returned “unclaimed.” In accordance with the Rules of Practice, the Hearing Clerk re-mailed (*see* 7 C.F.R. § 1.142) the Motion for Default and Proposed Decision to the same address via ordinary mail on December 17, 2019. 7 C.F.R. § 1.147(c). 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 by January 6, 2020. Respondent has not filed any objections.

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

Findings of Fact

1. Respondent Christopher Matthew Klaiber is an individual whose current address is in the [REDACTED]. His address will not be stated in this Decision and Order to protect his privacy but will be maintained with the Hearing Clerk, United States Department of Agriculture, for purpose of service of this Decision and Order.
2. Respondent Christopher Matthew Klaiber 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; and
 - b. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce.
3. From April 11, 2018 through May 12, 2018, in nine transactions involving 449 head of livestock, Respondent Christopher Matthew Klaiber failed to pay \$263,735.49 in total livestock purchases.

⁷ 7 C.F.R. § 1.136(c).

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

4. Between April 3, 2018 and May 1, 2018, in seven transactions involving 153 head of livestock, Respondent Christopher Matthew Klaiber failed to pay, when due, the full purchase price of such livestock. Of these seven transactions, Respondent was late in paying his sellers a total of 107 days.
5. In connection with the three livestock purchases – one occurring on each of April 11, 2018, April 19, 2018, and April 28, 2018 – Respondent Christopher Matthew Klaiber issued checks for which he did not have and maintain sufficient funds on deposit to pay such checks when presented. Accordingly, Respondent failed to pay, when due, the full purchase price of the livestock. As of the date Complainant's Motion for Default was filed, Respondent had still failed to pay \$147,697.57 of the \$214,242.93 owed for these livestock purchases.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Christopher Matthew Klaiber has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b) and section 201.43 of the Regulations (9 C.F.R. § 201.43).

ORDER

1. Complainant's Motion for Decision Without Hearing is GRANTED.
2. Respondent Christopher Matthew Klaiber shall cease and desist from: (a) failing to pay for livestock purchases; (b) failing to pay within the time period required by the Act for livestock purchases; and (c) issuing checks for which Respondent does not have and maintain sufficient funds on deposit to pay such checks when presented.
3. Respondent Christopher Matthew Klaiber is further assessed a civil penalty of \$231,535, with \$218,735 offset for restitution. The payment shall be made 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 790335
St. Louis, MO 64179-0335.

4. Respondent Christopher Matthew Klaiber is further suspended as a registrant from all livestock operations for five (5) years.

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 the parties and counsel.

Done at Washington, D.C.,
this 4th day of February 2020



Channing D. Strother
Chief Administrative Law Judge

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