

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Darryl Watson,) P&S Docket No. 21-J-0033
)
Respondent.)

REC'D - USDA/OALJ/HCO
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DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearances:

Grace Anne Wilhelm, Esq., with the Office of the General Counsel, United States Department of Agriculture, Temple, TX, for the Complainant, Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service (“AMS”)

Susan J. McDonald, Esq., of Gottlieb, Johnston, Beam & Dal Ponte, PLL, Zanesville, OH, for the Respondent, Darryl Watson

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 Darryl Watson (“Respondent”) on May 4, 2021.¹ The Complaint alleges that Respondent willfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 307

¹ The Complaint was also filed against Barnesville Livestock, LLC (Docket No. 21-J-0032). This Decision and Order applies only to Respondent Darryl Watson (Docket No. 21-J-0033). Barnesville Livestock, LLC filed a timely answer to the Complaint.

and 213(a)) and section 201.42 of the Regulations (9 C.F.R. § 201.42).² Further, the Complaint requests:

1. That *unless Respondent[] fail[s] to file an answer within the time allowed, or file[s] an answer admitting all material allegations of this complaint, this proceeding be set for an oral hearing in accordance with the rules of practice; and*
2. That an order be issued requiring Respondent[] to cease and desist from the violations of the Act and the regulations found to exist; . . . barring Respondent Watson from registering under the Act; 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 civil penalties against Respondent[] as are authorized by the Act and warranted by the facts and circumstances of this case.

Complaint at 8-9 (emphasis added).

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 July 1, 2021, Complainant filed a proposed decision without hearing by reason of default (“Proposed Decision”) and motion for adoption thereof (“Motion for Default”). In addition to the relief requested in its Complaint,⁴ Complainant now asks that Respondent be suspended as a registrant under the Act for a period of thirty days and thereafter until the

² Complaint at 8.

³ United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on May 22, 2021. 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 June 11, 2021. Respondent did not file an answer until August 5, 2021.

⁴ See Complaint at 8-9.

custodial account is brought into balance.⁵

Respondent filed an untimely answer on August 5, 2021,⁶ admitting the jurisdictional allegations of the Complaint and either denying or stating he is “without knowledge to form a belief as to the truth of” the remaining allegations.⁷ Respondent has not filed any objections to Complainant’s Motion for Default or Proposed Decision.⁸

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.⁹ Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely answer where, as in the present case, no meritorious objections have been filed.¹⁰

As Respondent failed to file a timely answer to the Complaint, and upon Complainant’s

⁵ Compare Complaint at 9 (“The Agricultural Marketing Service, Fair Trade Practices Program, Packers and Stockyards Division, requests . . . [t]hat an order be issued . . . suspending Respondent LLC as a registrant under the Act[.]”) with Proposed Decision at 11 ¶ 3 (“Respondents are suspended as registrants under the Act for a period of thirty (30) days and thereafter until the custodial account is brought into balance.”).

⁶ See *supra* note 3.

⁷ Answer at 1-2. Respondent also states that he “do[es] not need an oral hearing to spend more time and money” and “the matter should be dismissed.” *Id.* at 2.

⁸ United States Postal Service records reflect that Complainant’s Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on July 24, 2021. 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 13, 2021. Respondent has not filed any objections.

⁹ 7 C.F.R. § 1.136(c).

¹⁰ See *supra* note 8 and accompanying text.

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 Fact¹¹

1. Respondent Darryl Watson (“Respondent Watson”) is an individual whose current address is in [REDACTED].
2. Respondent Watson is and at all times material herein was:
 - a. The sole owner of Barnesville Livestock, LLC;
 - b. Barnesville Livestock, LLC’s registered agent for service of process in the State of Ohio;
 - c. Responsible for the day-to-day direction, management, and control of Barnesville Livestock, LLC; and
 - d. A market agency within the meaning of and subject to the provisions of the Act.
3. Section 201.42 of the Regulations (9 C.F.R. § 201.42) requires market agencies selling livestock on commission to maintain a custodial account for shippers’ proceeds (“custodial account”). A custodial account is a trust account that protects funds that are owed to livestock producers and owners who consign livestock for sale at an auction market. The proceeds from livestock sales at regulated markets must be deposited into custodial accounts. If the proceeds from the livestock sales cannot be collected and deposited into a market’s custodial

¹¹ By operation of law, these Findings of Fact are against Respondent Darryl Watson only. They do not apply to Barnesville Livestock, LLC.

account by the close of the seventh day after the sale, then the market must make up the shortfall and reimburse the custodial account for the unpaid receivables.

- a. The Complaint filed on May 4, 2021 was the second complaint the Agricultural Marketing Service, Fair Trade Practices Program, Packers and Stockyards Division (“PSD”) had filed against Respondent Watson for misuse of custodial account funds and operating with a custodial account shortage. On January 23, 2012, in P&S-D Docket No. 10-0058, Judicial Officer William G. Jenson, on behalf of the Secretary of Agriculture, found that Respondent Watson had custodial shortages of \$233,971.46 as of October 31, 2008; \$266,748.61 as of December 31, 2008; \$170,963.09 as of June 30, 2009; \$135,868.17 as of April 29, 2011; and \$131,193.74 as of May 31, 2011.¹² The Judicial Officer found Respondent Watson had made improper withdrawals and had failed to deposit proceeds.¹³ Respondent Watson was ordered to cease and desist from further violations of 7 U.S.C. § 213(a) and 9 C.F.R. §§ 201.42 and 201.43. Notwithstanding these orders, Respondent Watson continued to misuse custodial account funds and operate with a custodial account shortage.
- b. On June 30, 2011; December 31, 2013; December 31, 2014; December 31, 2018; and July 31, 2019, PSD notified Respondent Watson, via certified mail, that failing to maintain Barnesville Livestock, LLC’s custodial account and/or operating with a

¹² Official notice is hereby taken of the Judicial Officer’s January 23, 2012 decision in Docket No. 10-0058. 7 C.F.R. § 1.141(h)(6); *see Barnesville Livestock, Inc.*, 71 Agric. Dec. 518, 522, 528 (U.S.D.A. 2012).

¹³ *See Barnesville Livestock, Inc.*, 71 Agric. Dec. at 525-28.

custodial account shortage violated sections 307 and 312 of the Act (7 U.S.C. §§ 307 and 213(a)) and section 201.42 of the Regulations (9 C.F.R. § 201.42).

Notwithstanding this notice, Respondent Watson continued to misuse custodial account funds and operate with a custodial account shortage.

4. On multiple dates between December 31, 2018 and December 31, 2019, Barnesville Livestock, LLC, under the direction, management, and control of Respondent Watson, failed to properly use and maintain its custodial account, thereby endangering the faithful and prompt accounting of shippers' proceeds and the payments due to the owners or consignors of livestock, in that:
 - a. Barnesville Livestock, LLC self-reported a \$15,711 insolvency in its December 31, 2018 Annual Report. A Notice of Violation was issued on September 23, 2019 with a request that a supplemental balance sheet be filed. The October 31, 2019 special balance sheet reported the insolvency was corrected.
 - b. On September 3, 2019, Barnesville Livestock, LLC filed a special custodial report that disclosed a custodial shortage of \$49,059 as of July 31, 2019. A Notice of Violation was issued on October 10, 2019 for the custodial shortage with a request for an October 31, 2019 special custodial reported. This prompted PSD to investigate the custodial account on January 14, 2020.
 - c. The PSD investigator attempted to conduct a custodial analysis of October 31, 2019. However, during August and September of 2019, Barnesville Livestock LLC had been issuing counter checks instead of custodial checks, with the result that the

- checks were numbered incorrectly, were out of sequence, or duplicate check numbers were used. This prevented the investigator from conducting a reliable analysis.
- d. The PSD investigator's analysis as of November 29, 2019 disclosed a custodial account shortage of \$13,571.18. A second analysis as of December 31, 2019 disclosed a custodial shortage of \$54,519.84.
 - e. As of November 29, 2019, Barnesville Livestock, LLC had outstanding checks drawn on its custodial account in the amount of \$214,364.57 and had to offset such checks a balance in the custodial account of \$1,792.70; proceeds receivable of \$101,939.83; deposits in transit of \$0.00; and proceeds on in hand in the approximate amount of \$0.00, resulting in a custodial account shortage in the amount of \$123,571.18.
 - f. As of December 31, 2019, Barnesville Livestock, LLC had outstanding checks drawn on its custodial account in the amount of \$159,334.91 and had to offset such checks a balance in the custodial account of \$69,303.42; proceeds receivable of \$50,273.79; deposits in transit of \$0.00; and proceeds on hand in the approximate amount of \$0.00, resulting in a custodial account shortage in the amount of \$54,519.84.
 - g. The shortages in Barnesville Livestock, LLC's custodial account were due, in part, to Barnesville Livestock, LLC's failure to deposit into the account an amount equal to the proceeds receivable from the sale of consigned livestock within the time prescribed by section 201.42 of the Regulations.
5. Barnesville Livestock, LLC, under the direction, management, and control of Respondent Watson, on or about the dates and in the transactions set forth below, failed to properly

maintain its custodial account by failing to timely reimburse its custodial account for its livestock purchases:

Sale Date	Buyer	Purchase Amount	Accounts Receivable	Date Deposited	Remarks
11/23/2019	Barnesville Livestock	\$123.06	\$123.06		Per report from (b) (6), \$123.06 was still owed as of March 17, 2020.
11/30/2019	Barnesville Livestock	\$594.40	\$594.40		Per report from (b) (6), \$594.40 was still owed as of March 17, 2020.
12/14/2019	Barnesville Livestock	\$17,241.70	\$4,982.85		Per report from (b) (6) \$4,982.85 was still owed as of March 17, 2020.
12/21/2019	Barnesville Livestock	\$4,329.05	\$1,189.15		Per report from (b) (6) \$1,189.15 was still owed as of March 17, 2020.
12/28/2019	Barnesville Livestock, LLC	\$186.00	\$186.00	1/6/2020	Paid \$174.25 on 1/6/20
12/28/2019	Barnesville Livestock, LLC	\$10,228.85	\$5,560.93		Per report from (b) (6) \$5,560.93 was still owed as of March 17, 2020.

6. Barnesville Livestock, LLC, under the direction, management, and control of Respondent Watson, on or about the dates and in transactions set forth below, failed to properly maintain its custodial account by failing to timely reimburse its custodial account for livestock purchases made by buyers who had not paid by the close of the seventh business day following the sale of the livestock:

Sale Date	Buyer	Purchase Amount	Proceeds Receivable	Accounts Receivable	Date Deposited	Remarks
12/28/2019	(b) (6)	\$174.00	\$174.00			Per report subsequently obtained from (b) (6) on March 17, 2020, this amount was paid.
12/28/2019	(b) (6)	\$12,0138.83	\$12,013.83		1/8/2020	
12/28/2019	(b) (6)	\$9,383.60	\$9,383.60		1/8/2020	
12/28/2019	(b) (6)	\$522.62	\$522.62		1/8/2020	
12/28/2019	(b) (6)	\$27,724.74	\$27,724.74		1/6/2020	
11/2/2019	(b) (6)	\$3,375.32		\$675.32		Per report from (b) (6), \$675.32 was still owed as of March 17, 2020.
11/9/2019	(b) (6)	\$375.60		\$375.60		Per report from (b) (6) \$375.60 was still owed as of March 17, 2020.
11/9/2019	Hittle Farms	\$1,260.00		\$40.00		Per report from (b) (6) \$40.00 was still owed as of March 17, 2020.
11/16/2019	(b) (6)	\$275.40		\$883.10		Per report from (b) (6) \$275.40 was still owed as of March 17, 2020.
11/16/2019	(b) (6)	\$8,365.10		\$8,365.10		Per report from (b) (6) \$883.10 was still owed as of March 17,

11/16/2019	(b) (6)	\$1,619.37		\$1,619.37	2020. Per report from (b) (6) \$8,365.16 was still owed as of March 17, 2020.
11/23/2019	(b) (6)	\$8,839.70		\$8,839.70	Per report from (b) (6) \$1,619.37 was still owed as of March 17, 2020.
11/30/2019	(b) (6)	\$1,619.37		\$1,619.37	Per report from (b) (6) \$8,839.70 was still owed as of March 17, 2020.
12/7/2019	(b) (6)	\$3,346.89		\$3,346.89	Per report from (b) (6) \$3,346.89 was still owed as of March 17, 2020.
12/21/2019	(b) (6)	\$2,605.00		\$2,605.00	Per report from (b) (6) \$2,605.00 was still owed as of March 17, 2020.

Conclusions¹⁴

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Darryl Watson has willfully violated sections 307 and 312 of the Packers and Stockyards Act (7 U.S.C. §§ 307 and 213(a)) and section 201.42 of the Regulations (9 C.F.R. § 201.42).

ORDER

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED in Docket No. 21-J-0033.
2. Respondent Darryl Watson, 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 the violations of the Act and Regulations described above.
3. Respondent Darryl Watson is suspended as a registrant under the Act for a period of thirty (30) days and thereafter until the custodial account is brought into balance.
4. Respondent Darryl Watson is barred from registering under the Act for a period of thirty (30) days and thereafter until the custodial account is brought into balance.
5. Respondent Darryl Watson is assessed a civil penalty of fifteen-thousand dollars (\$15,000), to be paid immediately upon the final and effective date of this Order. The payment shall be a 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

¹⁴ By operation of law, these Conclusions regard Respondent Darryl Watson only. They do not apply to Barnesville Livestock, LLC.

address: USDA, Fair Trade Practices Program, Packers and Stockyards Division, PO Box 979065, St. Louis, MO 63197-9000.

6. Respondent Darryl Watson is further suspended from engaging in business in any capacity for which registration is required under the Act until the custodial account is brought into balance.

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 15th day of September 2021

**CHANNING
STROTHER**

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Date: 2021.09.15 12:42:19 -04'00'

Channing D. Strother
Chief Administrative Law Judge

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