

2017 FEB 17 AM 2:49 PM PHC

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

RECEIVED

In re:)	
)	
ZAHIBA HALAL MEATS, INC.,)	P&S Docket No. 16-0120
DANIEL W. AULT,)	P&S Docket No. 16-0121
CARRIE AULT, and)	P&S Docket No. 16-0122
COREY HAMILTON,)	P&S Docket No. 16-0123
)	
Respondents.)	

DEFAULT DECISION AND ORDER

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], and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*) [Regulations]. This proceeding was instituted by a Complaint filed on June 29, 2016 by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration [GIPSA], of the United States Department of Agriculture [USDA], alleging that Respondents willfully violated the Act and Regulations.

The Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes [Rules of Practice], set forth at 7 C.F.R. § 1.130 *et seq.*, apply to adjudication of the instant matter. Pursuant to the Rules of Practice, Respondents were required to file an answer within twenty (20) days after service of the Complaint. 7 C.F.R. § 1.136(a). The Hearing Clerk's records reflect that Respondents have failed to file a timely answer to the Complaint.¹

¹ United States Postal Service records reflect that Respondent Carrie Ault signed for receipt of the Complaint on September 6, 2016. The Respondents had twenty (20) days from the date of service to file a response. 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.

On December 19, 2016, Complainant filed a Proposed Default Decision and Order and a Motion to Adopt the Proposed Default Decision and Order. As of this date, Respondents have not filed any objections thereto.²

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 C.F.R. § 1.136(c). As each Respondent failed to file an answer clearly denying the allegations of the Complaint as required by 7 C.F.R. § 1.136(b), the following Findings of Fact, Conclusions of Law, and Order are entered pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Zahiba Halal Meats, Inc., respondent business, is located at 10811 S.E. 00 West, Fairmount, Indiana 46928-9299.
2. Daniel Ault, respondent, is an owner of respondent business whose mailing address is 10811 S.E. 00 West, Fairmount, Indiana 46928-9299.

§§ 1.147(g), (h). In this case, the Respondents' Answer was due by September 26, 2016. Respondents have not filed any pleadings as of this date.

² The Hearing Clerk's records reflect that the Proposed Default Decision and Order and the Motion to Adopt the Proposed Decision and Order were sent to Respondents via certified mail on December 20, 2016. United States Postal Service records reflect that Respondent Carrie Ault signed for receipt of the Proposed Default Decision and Order and the Motion to Adopt the Proposed Decision and Order on December 24, 2016; however, those documents sent to Respondent Corey Hamilton were returned for "insufficient address." The Rules of Practice provide that any document, other than the six documents identified in 7 C.F.R. § 1.147(c)(1), is deemed to be received by any party to the proceeding on the date of mailing by ordinary mail to the party's last known principal place of business. 7 C.F.R. § 1.147(c)(2). A motion for default is not one of the documents identified in 7 C.F.R. § 1.147(c)(1) and will therefore be deemed received on the date of mailing by ordinary mail. Because the address for Respondent Corey Hamilton was adequate for certified-mail receipt of the Complaint, it is the "last known address" for purposes of this proceeding. The Respondents had twenty (20) days from the date of service to file objections to Complainant's Motion for Default. 7 C.F.R. § 1.139. As of this date, Respondents have not filed any objections thereto.

3. Carrie Ault, respondent, is an owner of respondent business whose mailing address is 10811 S.E. 00 West, Fairmount, Indiana 46928-9299.
4. Corey Hamilton, respondent, is an owner of respondent business whose mailing address is 10811 S.E. 00 West, Fairmount, Indiana 46928-9299.
5. Respondents operate as a packer, as defined under the Act, and require a financial instrument sufficient to cover livestock transactions conducted as a packer.
6. On or about March 2015 to August 2015, Respondents operated as a packer without a bond or financial instrument, in violation of section 202(a) of the Act (7 U.S.C. § 192(a)) and section 201.29(a) of the Regulations (9 C.F.R. § 201.29(a)).
7. On or about March 27, 2015 to May 8, 2015, Respondents failed to pay when due for the purchase of livestock, in violation of section 202 of the Act (7 U.S.C. § 192(a)), section 409 of the Act (7 U.S.C. § 228b(a)), and section 201.43 of the Regulations (9 C.F.R. § 201.43). (See Ex. 1).
8. On or about May 8, 2015, Respondents issued non-sufficient funds checks for the purchase of livestock, in violation of section 202(a) (7 U.S.C. § 192(a)) and section 409(c) (7 U.S.C. § 228b(c)) of the Act. (See Ex. 1).
9. On or about April 2015 to present, Respondents failed to maintain adequate records to document livestock sales transactions, in violation of section 401 of the Act (7 U.S.C. § 221).

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondents willfully violated section 202(a) (7 U.S.C. § 192(a)), section 401 (7 U.S.C. § 221), and section 409 (7 U.S.C. § 228b) of the Act and section 201.29(a) (9 C.F.R. § 201.29(a)) and section 201.43(9 C.F.R. § 201.43) of the Regulations.

ORDER

1. Respondents, their agency, and employees, directly or indirectly through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from:
 - (a) Operating as a packer without a bond or financial instrument;
 - (b) Issuing checks in purported payment for livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which checks are drawn to pay such checks when presented;
 - (c) Failing to pay for livestock before the close of the next business day following each purchase of livestock, as required by the Act and Regulations; and
 - (d) Failing to keep and maintain accounts, records, and memoranda which fully and correctly disclose all transactions in their business as packers subject to the Act, including failing to note the date the checks were issued and failing to maintain cash disbursement records showing the date and amount of cash payments, the identity of the person to whom cash payments were made, and the purchase to which the cash payment should be applied.
2. Respondents shall maintain adequate records to document livestock purchase transactions in accordance with section 401 of the Act (7 U.S.C. § 221).
3. In accordance with section 203(b) of the Act (7 U.S.C. § 193(b)), respondents Zahiba Halal Meats, Inc., Daniel Ault, Carrie Ault, and Corey Hamilton are assessed, jointly and severally, a civil penalty of three-thousand seven-hundred, and fifty dollars (\$3,750.00). Within thirty (30) days from the effective date of this Order, the respondents shall send a certified check or money order for three-thousand, seven-hundred, and fifty dollars (\$3,750.00), made out to "Treasurer of the United States," to the USDA-GIPSA Lockbox, PO Box 790335, St. Louis,

Missouri 63179-0335. Respondents shall indicate on the certified check or money order that the payment is in reference to P&S Docket Nos. 16-0120, 16-0121, 16-0122, and 16-0123.

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, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties with courtesy copies provided via email where available.

Done at Washington, D.C.,
this 17th day of February, 2017



Bobbie J. McCartney
Chief Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building, Room 1031
1400 Independence Avenue, SW
Washington, D.C. 20250-9203
Tel: 202-720-4443
Fax: 202-720-9776

US Department of Agriculture

Grain Inspection, Packers and Stockyards Administration
Packers and Stockyards Program (PSP)

Schedule of Failure to Pay within time period required by the Act for Livestock and Issuing NSF Checks
Entity Information

Investigation Date	Entity								DBA					Mailing Address				Control Number									
02/20/2015	Zabba Habi Meats, Inc.													10411 S.E. 00 West, Fairmount, Indiana 48828-0290				263717									
Exhibit Number	Purchase/Harvest Date	Seller's Name	Purchase Type	Number of Head	Livestock Amount	Net Invoice Adjustments	Net Invoices	Credit Agreement	Credit Days	Due Date	Payment Date	Payment Instrument	Payment Instrument Number	Payment Amount	Date Instrument Returned	Days Late Per Instrument Date	Date Cleared Bank	Instrument Date to Date Cleared	Remarks								
A-1	3/27/2015	Salem Stockyards, LLC	Live	147	\$18,012.81	\$1,598.81	\$20,612.72	No	0	3/30/2015	3/30/2015	Wire		\$6,000.00		Timely	3/30/2015	0									
											4/6/2015	Wire		\$14,612.47		7	4/6/2015	0									
A-2	4/9/2015	Salem Stockyards, LLC	Live	167	\$21,064.32	\$1,645.45	\$22,729.77	No	0	4/10/2015	4/15/2015	Check	5206	\$11,364.88		5	4/15/2015	0	Zabba shorted Salem \$0.01 on the invoice.								
											4/15/2015	Check	5206	\$11,364.88		5	4/20/2015	5									
A-3	4/16/2015	Salem Stockyards, LLC	Live	171	\$23,586.45	\$3,142.48	\$26,786.83	No	0	4/17/2015	4/20/2015	Check	5213	\$8,926.97		3	4/21/2015	1	Zabba shorted Salem \$0.02 on the invoice.								
											4/23/2015	Check	5214	\$8,926.97		5	4/23/2015	1									
											4/24/2015	Check	5215	\$8,926.97		7	4/27/2015	3									
A-4	4/23/2015	Salem Stockyards, LLC	Live	134	\$16,503.18	\$3,073.48	\$21,576.64	No	0	4/24/2015	4/27/2015	Check	5218	\$7,192.21		3	4/28/2015	1	Zabba shorted Salem \$0.01 on the invoice.								
											4/28/2015	Check	5219	\$7,192.21		5	4/30/2015	1									
											5/1/2015	Check	5220	\$7,192.21		7	5/4/2015	3									
A-5	4/28/2015	Mt. Hope Auction	Live	134	\$18,458.83	(\$64.12)	\$18,394.51	No	0	4/30/2015	5/8/2015	Check	5234	\$18,394.51		6	5/8/2015	2									
A-6	4/30/2015	Salem Stockyards, LLC	Live	178	\$24,465.87	\$3,101.22	\$27,566.89	No	0	5/1/2015	5/4/2015	Check	5228	\$8,188.86		3	5/14/2015	10	Zabba shorted Salem \$0.08 on the invoice.								
											5/8/2015	Check	5229	\$8,188.86		5	5/18/2015	13									
											5/8/2015	Check	5230	\$8,188.89		7	5/20/2015	12									
A-7	5/2/2015	Salem Stockyards, LLC	Live	215	\$28,063.47	\$2,091.32	\$30,194.78	No	0	5/4/2015	5/6/2015	check	5228	\$10,061.00		2	5/7/2015	1									
											5/4/2015	check	5231	\$10,061.00		Timely	5/5/2015	1									
											5/4/2015	Check	5232	\$10,061.00		Timely	5/11/2015	7	Since there is no check date using actual date due on date paid.								
A-8	5/6/2015	Salem Stockyards, LLC	Live	302	\$35,642.85	\$1,425.58	\$37,068.24	No	0	5/11/2015	5/7/2015	Check	7527	\$3,288.53		Timely											
											5/11/2015	Check	5236	\$11,288.57		Timely	5/12/2015	1									
											5/11/2015	Check	5238	\$11,288.57	5/14/2015	17	5/28/2015	17	Since there is no check date using actual date due on date paid.								
																			5/11/2015	Check	5244	\$11,288.57	5/18/2015	17	5/28/2015	17	