

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
 Marshel Riley,) P&S-D Docket No. 21-J-0021
)
 Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearances:

Mary E. Sajna, Esq., with the Office of the General Counsel, United States Department of Agriculture, Missoula Field Office, for the Complainant, the Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service (“AMS”)

Marshel Riley, pro se Respondent

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 Marshel Riley (“Respondent”) on March 8, 2021. The Complaint alleges that Respondent willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 202.29 and 201.30).¹ Further, the

¹ Complaint at 3. Specifically, the Complaint alleges that: (1) notwithstanding an April 15, 2019 Notice of Default, Respondent continued to engage in the business of a dealer or market agency buying livestock in commerce without registration and without maintaining an adequate bond or bond equivalent as required by the Act and Regulations and (2) during the period June 5, 2019

Complaint requests:

1. That *unless Respondent fails to file an answer within the time allowed* or files 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, and prohibiting the Respondent from engaging in business in any capacity for which registration and bonding are required under the Act, and assessing such civil penalties against the Respondent as are authorized by the Act and warranted by the facts and circumstances of this case.

Complaint at 3-4 (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).²

On April 21, 2021, 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”). Complainant now requests that Respondent: (1) be ordered to cease and desist from engaging in activities subject to the Act until a bond or adequate financial instrument is obtained; (2) be assessed a civil penalty of \$6,000.00; and (3) be prohibited from registering for thirty days and thereafter until he is properly bonded.³

through December 17, 2019, Respondent purchased seventy-five head of livestock on commission, through twenty-two separate transactions, from posted stockyard Atascosa Livestock Exchange, Inc. in Pleasanton, Texas, for a total price of \$28,047.05. *Id.* at 2-3.

² United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on March 17, 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 April 6, 2021. Respondent has not filed an answer.

³ Motion for Default at 2.

Respondent filed an untimely response on June 15, 2021,⁴ stating in relevant part:

I have been attending the weekly livestock sale at Atascosa Livestock Exchange in Pleasanton, Texas, for over forty years. It is the only sale I attend. I used to buy some cattle for my friend Troy Woodward. I charged him a little commission for me buying them at the sale. Someone from Packers & Stockyards told me I would have to get a bond in order to keep doing that, and I told him I was not going to get a bond. I never said I wouldn't comply with the regulations, I said I wasn't going to get a bond, so I stopped buying cattle for anyone but myself after he told me that in 2019.....A \$6,000 civil penalty would hurt me really bad, and I would appreciate consideration in not giving me a fine since I am stopped [sic] buying cattle for commission in 2019 after I talked to that other P&S person.

Response at 1. I find that Respondent's objections have no merit; they neither address Respondent's failure to answer the Complaint nor assert why default should not be entered. Moreover, Respondent's statement that he "charged [Mr. Woodward] a little commission" for purchasing cattle without a bond is a blatant admission to the Complaint.⁵

While I sympathize with Respondent's financial circumstances, he has offered no evidence that a "\$6,000 civil penalty would hurt [him] really bad."⁶ The Department's sanction policy is set forth in *S.S. Farms Linn County, Inc.*:⁷

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved,

⁴ 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 May 20, 2021. Additionally, Respondent was personally served with the Motion for Default and Proposed Decision on May 25, 2021. *See* Certificate of Service (filed June 7, 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 June 9, 2021 (if going by the date of service by certified mailing) or June 14, 2021 (if going by the date of personal service).

⁵ Response at 1. *See* Complaint at 2.

⁶ Response at 1.

⁷ 50 Agric. Dec. 476 (U.S.D.A. 1991) (Decision and Order as to James Joseph Hickey & Shannon Hansen), *aff'd sub. nom Hickey v. U.S. Dep't of Agric.*, 991 F.2d 803 (9th Cir. 1993) (not to be cited as precedent under 9th Cir. R. 36-3).

along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

S.S. Farms Linn County, Inc., 50 Agric. Dec. 476, 497 (U.S.D.A. 1991) (Decision and Order as to James Joseph Hickey and Shannon Hansen), *aff'd sub. nom Hickey v. U.S. Dep't of Agric.*, 991 F.2d 803 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3). I find that by failing to answer the Complaint and failing to file timely, meritorious objections to Complainant's Motion for Default, Respondent has admitted the material allegations of the Complaint.⁸ Accordingly, I find that Complainant's proposed sanctions in this case are warranted.⁹

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.¹⁰ 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.

As Respondent failed to file an answer to 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).

⁸ See 7 C.F.R. §§ 1.136(c), 1.139.

⁹ See Motion for Default at 2-3 (describing the factors Complainant considered when determining its civil-penalty recommendation).

¹⁰ 7 C.F.R. § 1.136(c).

Findings of Fact

1. Respondent Marshel Riley is an individual whose principal place of business and mailing address is in (b) (6) .
2. At all times material herein, Respondent engaged in the business of a dealer or market agency under the Act.
3. On April 15, 2019, Respondent was sent a Notice of Default notifying Respondent of his obligation to file an application for registration and to secure a bond if he wished to engage in the business of buying and selling livestock in interstate commerce.
4. On July 17, 2019, a Packers and Stockyards Division employee personally reiterated to Respondent the requirements of the Notice of Default.
5. Notwithstanding the Notice of Default and the personal notification, Respondent has continued to engage in the business of a dealer or market agency buying and selling livestock in interstate commerce without maintaining a bond or bond equivalent as required by the Act.
6. From June 5, 2019 through December 17, 2019, Respondent purchased seventy-five head of livestock in twenty-two transactions totaling \$428,047.05 and received commissions from these transactions of \$87.86.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. By reason of the facts set forth above, Respondent Marshel Riley has willfully violated section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the regulations promulgated thereunder (9 C.F.R. §§ 2021.29 and 201.30).

ORDER

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.

2. Respondent Marshel Riley shall cease and desist from engaging in the business of a dealer and a market agency buying on a commission basis without maintaining an adequate bond or bond equivalent.
3. Respondent is further prohibited from registering for thirty (30) days and thereafter until he obtains and files an adequate bond to secure his operations subject to the Act.
4. Respondent is further assessed a civil penalty of \$6,000.00, to be paid immediately upon the final and effective date of this Decision and Order. The payment shall be sent to the following address: USDA, AMS, Fair Trade Practices Program, Packers and Stockyards Division, P.O. Box 979064, St. Louis, MO 63197-9000.

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 1st day of July 2021

CHANNING STROTHER  Digitally signed by CHANNING STROTHER
Date: 2021.07.01 15:15:09 -04'00'

Channing D. Strother
Chief Administrative Law Judge

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