

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Rodney Dennis,)
d/b/a RD Cattle,) P&S-D Docket No. 19-J-0119
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF ADMISSIONS

Appearances:

Christopher Young, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Deputy Administrator for the Fair Trade Practices Program, Agricultural Marketing Service (“AMS”); and

Respondent Rodney Dennis, appearing pro se.

Preliminary Statement

This proceeding was instituted under the Packers and Stockyards Act (“P&S Act”), 7 U.S.C. §§ 181 *et seq.*, by a Complaint filed on July 8, 2019 by Complainant, the Deputy Administrator, Fair Trade Practices Program, Packers and Stockyards Division, Agricultural Marketing Service, United States Department of Agriculture, alleging that Respondent Rodney Dennis, doing business as RD Cattle, willfully violated the P&S Act and the regulations promulgated thereunder (“Regulations”) (9 C.F.R. §§ 201.1 *et seq.*). This proceeding is under 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 Complaint alleged that Respondent, between May 2015 and August 2015: operated as a dealer and market agency without the proper registration and bond; purchased from one seller \$361,991.71 worth of livestock and failed to pay, when due, for that livestock; failed to pay \$105,885.67 for livestock; issued seven (7) checks for livestock in the amount of

\$280,647.45 and had insufficient funds to pay for that livestock; and failed to maintain proper records, all as required by the P&S Act.

Respondent was duly served with a copy of the Complaint and on August 1, 2019, Respondent filed an Answer, via email,¹ wherein it failed to deny the material allegations of the Complaint, and admitted the substantive allegations contained in paragraphs I through V of the Complaint.

In his Answer, at 1, Respondent stated that he “purchased some livestock . . . and resold them . . .,” and that he “was unaware of the rules about having to have a bond . . . and have since learned the rules.” Respondent further states in his Answer, *id.*, that he has since taken his “life in other directions away from dealer activities to provide [sic]” for his family. By way of defense Respondent explains that “the owner [of Red River Livestock] asked [Respondent] to help keep the market better or as good as the neighboring barns” by buying cattle and bringing “them back later on when they gained some weight and that would help keep the numbers and prices of the sale up.” *Id.* Respondent alludes to having made “wires and transfers” to the livestock auction in purported payment for the livestock listed as owed in the Complaint, but that those payments were not credited by the auction.² Finally, Respondent admits that he failed to “keep good records” because he was “unaware” of what he was supposed to do and he assumed the livestock auction owner would keep the records for Respondent. *Id.* at 2. Respondent states that he quit doing anything related to buying or selling livestock, and that he is working “to provide for [his]

¹ As the Respondent’s Answer in email form is not paginated, I here refer to the pages as numbered in the filed PDF of the Answer/email.

² Respondent’s explanation in this respect is a bit cloudy, i.e. the auction’s secretary stated “I dont [sic] know who made deposits or wires there were so many coming and going i [sic] cant [sic] keep up” (internal quotations omitted) and that Danny (with whom Respondent supposedly made the arrangement) stated “that he had no control that it was up to his secretary.” Answer at 1.

family and pay [his] debt back to red river livestock [sic],” the seller listed in the Complaint. *Id.*

On March 16, 2019, Complainant filed a Motion Decision Without Hearing and proposed Decision and Order (“Proposed Decision”), in which Complainant moved for a decision without hearing or further procedure in this case; arguing that Respondent has admitted in the Answer all of the material allegations of fact contained in the Complaint. Respondent has not filed any objections to Complainant’s Motion for Decision Without Hearing or Proposed Decision.³

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). Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely filed answer where, as in the present case, no meritorious objections have been filed.⁴

Respondent has failed to deny the allegations pursuant to section 1.136 of the Rules of Practice and has admitted the allegations per that same section of the Rules. After considering the full record before me, this Decision and Order is entered against Respondent pursuant to section 1.139 of the Rules of Practice.⁵

³ A Certificate of Service, filed May 17, 2021 with the Hearing Clerk’s Office, reflects that the Motion for Decision Without Hearing and Proposed Decision were personally served on Respondent on May 12, 2021. Respondent had twenty (20) days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal holidays shall not 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 workday. 7 C.F.R. § 1.147(h). In this case, Respondent’s objections were due by June 1, 2021. Respondent has not filed any objections.

⁴ 7 C.F.R. § 1.139; *see supra* note 3.

⁵ *See* 7 C.F.R. § 1.130 *et seq.* *See also Pryor Livestock Market, Inc.*, 56 Agric. Dec. 843, 845 (U.S.D.A. 1997).

Discussion

I. Respondent violated Sections 312(a) and 409 of the P&S Act by purchasing livestock and failing to make full payment for that livestock within the time period required by the P&S Act, and for writing checks with insufficient funds as purported payment for that livestock.

(a) Respondent has admitted to the facts of late payment that are a violation of sections 312(a) and 409 of the P&S Act.

As noted above, Respondent admitted in his Answer that he failed to pay full amount of the purchase price of livestock within the time period required by the P&S Act, and that he issued checks in purported payment of that livestock that, for whatever reason, bounced.

The Secretary has consistently held that the failure to pay promptly and fully for the purchase price of livestock and issuing insufficient funds checks in purported payment of livestock constitutes an unfair and deceptive practice in willful violation of sections 312(a) and 409 of the P&S Act.⁶

(b) Respondent's violations are willful.

Respondent's violations in this case are willful according to USDA precedent.⁷ "It is the Secretary's position that any prohibited conduct in which a person intentionally engages is willful, even though the person may not have known that the conduct was prohibited or even if he did not intend to do anything wrong."⁸ Here, Respondent operated as a dealer and market agency without the proper registration and bond, failed to pay for livestock, wrote checks with insufficient funds, and kept inadequate records between May 2015 and August 2015. Respondent

⁶ See *Purflinger, Jr.*, 58 Agric. Dec. 940 (U.S.D.A. 1999); *Ozark Cly. Cattle Co., Inc.*, 49 Agric. Dec. 336 (U.S.D.A. 1990); *Van Wyk v. Bergland*, 570 F.2d 701 (1978); *Bowman v. United States Dep't Of Agriculture*, 363 F.2d. 81 (1966); 7 U.S.C. § 213; 7 U.S.C. § 228b.

⁷ *D. W. Produce*, 53 Agric. Dec. 1672, 1678 (U.S.D.A. 1994) (a violation is willful if, irrespective of evil motive or erroneous advice, a person intentionally does an act prohibited by a statute or if a person carelessly disregards the requirements of a statute).

⁸ *Hardin County Stockyards, Inc.*, 53 Agric. Dec. 654 (1994).

does not deny any of these allegations of violations in its Answer, but rather, both tacitly and expressly, admits them. Respondent's actions in this case constitute violations that were willful.⁹

II. Respondent's violations justify a Cease and Desist Order and monetary sanction.

Complainant requests the penalty of an order requiring Respondent to cease and desist from operating without proper license and bond; failing to pay and failing to pay, when due, the purchase price of livestock; issuing insufficient funds checks; and failing to keep accounts and maintain records. Complainant further requests an order prohibiting Respondent from operating in any manner requiring registration or bond under the P&S Act, provided that such prohibition shall end if: 1) Respondent tenders proof to the Packers and Stockyards Division establishing that the sellers listed in the Complaint in this case have been paid in full; and 2) following that submission of proof, Respondent pays a civil penalty of \$2,000.00; and 3) following that submission of proof and payment of civil penalty, Respondent obtains a proper registration and bond under the P&S Act.

The policy of the Secretary is to base sanctions on the circumstances of each case to deter the violator and the current members of the industry from future violations of the P&S Act.¹⁰ As the Judicial Officer explained in *S.S. Farms Linn County*:¹¹

[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, 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.

The Act provides for a civil penalty of up to \$11,000.00 for each violation of the P&S

⁹ See *D. W. Produce*, *supra* note 6, 53 Agric. Dec. at 1678.

¹⁰ *Middlebury Packing Co.*, 53 Agric. Dec. 639, 652 (U.S.D.A. 1993); *S.S. Farms Linn County, Inc.*, 50 Agric. Dec. 476 (U.S.D.A. 1991).

¹¹ 50 Agric. Dec. at 497.

Act (at the time the transactions occurred; the penalty has since been amended to \$28,000 per violation). 7 U.S.C. § 213; 7 C.F.R. § 3.91. When assessing a civil penalty, the Act requires consideration of the gravity of the offense, the size of the business, and the effect of the penalty on the person's ability to continue in business. Complainant contends, and I agree, that here, the last factor cannot be considered as Respondent has operated without proper bond and registration, and, for the same reason, the second factor should also not be considered. As for the first factor (gravity of offense), under the admitted facts of this case, Respondent has committed serious and willful violations of the P&S Act by failing to pay for livestock in multiple transactions, and for issuing checks with insufficient funds in purported payment of that livestock.¹²

Further, the P&S Act provides that “the Secretary may require reasonable bonds . . . from every person operating as a dealer” and require operation “under such rules and regulations as he may prescribe,” including suspension and imposition of “such conditions as the Secretary may prescribe.” 7 U.S.C. § 204. Therefore, a prohibition/cease and desist order proscribing further operation until obtaining proper registration and bond, and monetary penalty is required to effectuate the Secretary's policies of deterrence in this case.

Here, there were four (4) transactions wherein Respondent failed to pay livestock sellers \$105,885.67 for livestock; seven (7) transactions wherein Respondent failed to pay livestock sellers, when due, \$361,991.71 in livestock purchases, between 20-224 days late; and seven (7) transactions wherein Respondent issued checks in purported payment for livestock, with insufficient funds to pay those checks, in the amount of \$280,647.45. Respondent could be liable

¹² See *Martin d/b/a Martin Livestock*, 64 Agric. Dec. 919 (U.S.D.A. 2005); *Sarcoxie Community Sales, Inc.*, 47 Agric. Dec. 1290, 1300 (U.S.D.A. 1988); *Edwards*, 37 Agric. Dec. 1880 (U.S.D.A. 1978).

for up to \$198,000.00 in civil penalties for these violations.¹³ Complainant requests far below that amount in monetary penalties in this case.

Complainant requests that an order be issued prohibiting Respondent from operating in any manner requiring registration or bond under the P&S Act, provided that such prohibition shall end if: 1) Respondent tenders proof to the Packers and Stockyards Division establishing that the sellers listed in the Complaint in this case have been paid in full; and 2) following that submission of proof, Respondent obtains a proper registration and bond under the Act; and 3) following that submission of proof, Respondent pays a civil penalty of \$2000.00.¹⁴ Considering that operation with proper registration and bond is paramount under the act,¹⁵ and failure to secure a registration and bond before operations is a core violation of the act,¹⁶ a cease and desist order proscribing any operations subject to the P&S Act until properly registered and bonded is

¹³ 18 violations x \$11,000 per violation = \$198,000 in total penalties.

¹⁴ Complainant requests that such submissions of proof and the civil penalty shall be provided to Complainant's counsel; that Respondent shall contact Complainant's counsel, either by telephone or email, if and when such proofs and the civil penalty are available to be sent (and Complainant's counsel will provide Respondent with further instructions as to where and how to send the materials, and whom to contact to apply for registration and secure proper bond).

¹⁵ The Agency considers the bonding provisions of the P&S Act and the Regulations as "vital to the effective enforcement of the Packers and Stockyards Act and for the protection of livestock producers." See *Porter*, 47 Agric. Dec. 656, 670 (U.S.D.A. 1988); *George County Stockyard, Inc.*, 45 Agric. Dec. 2342, 2348 (U.S.D.A. 1986). The underlying purpose of the bond requirement is "to safeguard the farmers and ranchers who produce cattle against the losses they would suffer if they sold their livestock to insolvent or defaulting purchasers." *Travelers Indemnity Co. v. Manley Cattle Co.*, 553 F.2d 943, 945 (5th Cir. 1977); see also *Cooper v. Am. Auto Ins. Co.*, 978 F.2d 602, 609 (10th Cir. 1992); *United States v. Wehrheim*, 332 F.2d 469, 472-73 (5th Cir. 1964); H.R. Rep. No. 85-1048, at 1 (1957).

¹⁶ The USDA's case law has consistently held that operating with impaired or inadequate bond coverage constitutes an unfair and/or deceptive practice that violates section 312(a) of the P&S Act. See *Cobb*, 48 Agric. Dec. at 241; *Tiemann*, 47 Agric. Dec. 1573, 1578 (U.S.D.A. 1988). See also *Vietmeier*, 22 Agric. Dec. 529 (U.S.D.A. 1963); *Caesar Brothers, Inc.*, 22 Agric. Dec. 1248 (1963). In *U.S. v. Hulings*, 484 F. Supp. 562, 566-67 (1980), the U.S. District Court for the District of Kansas held that the Secretary "has the authority to construe failure to maintain a bond on the part of a dealer . . . as a deceptive practice."

entirely reasonable. Further considering that the requested civil penalty of \$2000.00 (only assessed if and after the unpaid livestock sellers listed in the Complaint are paid in full) is a mere fraction of the total allowable penalty of \$198,000.00, I consider the requested monetary penalty to be reasonable under these circumstances where Respondent has committed various serious violations of the Act.

Findings of Fact

1. Respondent is an individual whose principal place of business and mailing address is or was P. O. Box 117, Gainesville, Texas 76240 and (b) (6).
2. Respondent is, and at all times material herein, was:
 - a. Engaged in the business of a dealer, as that term is defined and used in the P&S Act and the regulations promulgated thereunder; and
 - b. Engaged in the business of a market agency buying in commerce livestock on a commission basis; and not registered or bonded with the Secretary of Agriculture as a dealer to buy and sell livestock for his own account or for the account of others, or as a market agency buying livestock on a commission basis.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent's admissions in his Answer demonstrate that there is no real factual dispute in this proceeding, and that a hearing is unnecessary. 7 C.F.R. § 1.139. Because Respondent's admissions prove that he violated Sections 312(a) and 409 of the P&S Act (7 U.S.C. § 213; 7 U.S.C. § 228b), and because of the gravity of the current offense, the order below is issued.

ORDER

1. Complainant's Motion for Decision Without Hearing is GRANTED.

2. Respondent Rodney Dennis, doing business as RD Cattle, and Respondent's agents, employees, successors and assigns, directly or indirectly or through any corporate or other device, in connection with Respondent's activities subject to the Packers and Stockyards Act, shall cease and desist from:
 - a. Engaging in the business of a market agency buying livestock on commission in commerce without obtaining the necessary registration and bond as required by the P&S Act and the Regulations;
 - b. Purchasing livestock and failing to pay, and failing to pay when due, the full purchase price of such livestock within the time period required by the P&S Act and the Regulations promulgated thereunder;
 - c. Purchasing livestock and issuing checks for purported payment of that livestock, without sufficient funds in his bank account to pay for those checks when presented for payment; and
 - d. Failing to keep accounts and maintain records which fully and correctly disclose all the transactions involved in its business as required by section 401 of the Act (7 U.S.C. 221). Specifically, Respondent shall keep and maintain: purchase and sale invoices, balance sheets, income statements, bank statements and checks, monthly reconciliations and documents to show payments or commissions for livestock sales and purchases.
3. Respondent is prohibited from operating in any manner requiring registration or bond under the Act, provided that such prohibition shall end if:
 - a. Respondent tenders proof to the Packers and Stockyards Division establishing that the sellers listed in the Complaint in this case have been paid in full; and

b. Following that submission of proof, Respondent obtains a proper registration and bond under the Act; and

c. Following that submission of proof, Respondent pays a civil penalty of \$2000.00.

Such submissions of proof and the civil penalty shall be provided to Complainant's counsel; Respondent shall contact Complainant's counsel, either by telephone or email, if and when such proofs and the civil penalty are available to be sent, and Complainant's counsel will provide Respondent with further instructions as to where and how to send the materials, and whom to contact to apply for registration and secure proper bond.

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 each of the parties.

Done at Washington, D.C.,
this 15th day of June 2021

CHANNING STROTHER Digitally signed by CHANNING
STROTHER
Date: 2021.06.15 17:51:45 -04'00'

Channing D. Strother
Chief Administrative Law Judge

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