

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	P. & S. Docket No. D-03-0017
Ronald C. Perkins,)	
)	Decision Without Hearing
Respondent)	by Reason of Default

Preliminary Statement

[1] This proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. _ 181 *et seq.*) (hereinafter often referred to as "the Act"), by a complaint filed on July 18, 2003, by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondent Ronald C. Perkins willfully violated the Act and the regulations issued thereunder (9 C.F.R. _ 201.1 *et seq.*).

[2] The complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. _ 1.130 *et seq.*), hereinafter the Rules of Practice, were served upon Respondent Ronald C. Perkins (hereinafter often referred to as "Respondent") by certified mail on August 1, 2003. Accompanying the complaint was a cover letter informing Respondent that he had 20 days from receipt to file an answer, and that failure to file an answer would constitute an admission of all of the material allegations in the complaint and a waiver of the right to an oral hearing.

[3] Respondent failed to file an answer to the Complaint within 20 days after August 1, 2003,

the time prescribed in the Rules of Practice, 7 C.F.R. § 1.136(a); to date, Respondent has not filed an answer to the Complaint.

[4] The Rules of Practice provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the Complaint. 7 C.F.R. § 1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. Accordingly, the material allegations in the Complaint are adopted and set forth in this Default Decision as the Findings of Fact, and this Decision is issued pursuant to the Rules of Practice. 7 C.F.R. § 1.139. *See* 7 C.F.R. § 1.130 *et seq.*

Findings of Fact

[5] Respondent Ronald C. Perkins is an individual, whose current mailing address is believed to be RR 1, Box 10, Danbury, Nebraska 69026-9711.

[6] Respondent is and at all times material herein was:

(a) Engaged in the business of a market agency buying on commission, and of a dealer buying and selling livestock in commerce for his own account; and

(b) Registered with the Secretary of Agriculture as a market agency buying on commission, and as dealer to buy and sell livestock in commerce for his own account.

[7] Respondent was served with a letter of notice on August 19, 2002, informing him that the \$10,000.00 surety bond he maintained was inadequate, and that a \$35,000.00 surety bond was required to secure the performance of his livestock obligations under the Act. Notwithstanding this notice, Respondent continued to engage in the business of a market agency and a dealer without maintaining an adequate bond or its equivalent.

Conclusions

[8] By reason of the foregoing Findings of Fact, Respondent Ronald C. Perkins has willfully violated section 312(a) of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. _ 213(a)); and sections 201.29 and 201.30 of the regulations issued thereunder (9 C.F.R. __ 201.29, 201.30).

Order

[9] Respondent Ronald C. Perkins, his agents and employees, directly or indirectly through any corporate or other device, in connection with his operations subject to the Packers and Stockyards Act, 1921, as amended and supplemented, shall cease and desist from engaging in business in any capacity for which bonding is required under the Act, and the regulations issued thereunder, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations.

[10] Respondent is suspended as a registrant under the Act until such time as he complies fully with the bonding requirements under the Act and the regulations. When Respondent demonstrates that he is in full compliance with such bonding requirements, and has paid the civil penalty assessed in paragraph [11], a supplemental order will be issued in this proceeding terminating the suspension.

[11] Respondent is assessed a civil penalty in the amount of one thousand two hundred fifty dollars (\$1,250.00), in accordance with section 312(b) of the Act (7 U.S.C. _ 213(b)).

[12] This Decision and Order shall have the same force and effect as if entered after a full hearing and shall be final and effective without further proceedings 35 days after service, unless an appeal to the Judicial Officer is filed within 30 days after service, pursuant to section 1.145 of

the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 14th day of April 2004

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue, SW
Room 1081, South Building
Washington, D.C. 20250-9200
202-720-4443
Fax: 202-720-9776

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time

for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145