

AGRICULTURE DECISIONS

Volume 61

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Pages 786 - 813



THIS IS A COMPILATION OF DECISIONS ISSUED BY THE
SECRETARY OF AGRICULTURE AND THE COURTS
PERTAINING TO STATUTES ADMINISTERED BY THE
UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURE DECISIONS

AGRICULTURE DECISIONS is an official publication by the Secretary of Agriculture consisting of decisions and orders issued in adjudicatory administrative proceedings conducted for the Department under various statutes and regulations. Selected court decisions concerning the Department's regulatory programs are also included. The Department is required to publish its rules and regulations in the *Federal Register* and, therefore, they are not included in AGRICULTURE DECISIONS.

Beginning in 1989, AGRICULTURE DECISIONS is comprised of three Parts, each of which is published every six months. Part One is organized alphabetically by statute and contains all decisions and orders other than those pertaining to the Packers and Stockyards Act and the Perishable Agricultural Commodities Act, which are contained in Parts Two and Three, respectively.

The published decisions and orders may be cited by giving the volume number, page number and year, e.g., 1 Agric. Dec. 472 (1942). It is unnecessary to cite a decision's docket number, e.g., AWA Docket No. 99-0022, and the use of such references generally indicates that the decision has not been published in AGRICULTURE DECISIONS.

Consent decisions entered subsequent to December 31, 1986, are no longer published. However, a list of consent decisions is included. Consent decisions are on file and may be inspected upon request made to the Hearing Clerk, Office of Administrative Law Judges.

Beginning in Volume 60, each part of AGRICULTURE DECISIONS has all the parties for that volume, including consent decisions, listed alphabetically in a supplemental List of Decisions Reported. The alphabetical List of Decisions Reported and the subject matter Index (from the beginning of the annual Volume) are included in a separate volume, entitled Part Four.

Volumes 59 (circa 2000) through the current volume of *Agriculture Decisions* are also available online at <http://www.usda.gov/da/oaljdecisions/> along with links to other related websites.

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PACKERS AND STOCKYARDS ACT**MISCELLANEOUS ORDERS**

**In re: WAYNE W. COBLENTZ, d/b/a COBLENTZ & SONS LIVESTOCK.
P. & S. Docket No. D-01-0013.**

Stay Order.

Filed July 29, 2002.

Charles E. Spicknall, for Complainant.

Bruce H. Wilson, for Respondent.

Order issued by William G. Jenson, Judicial Officer.

On May 30, 2002, I issued a Decision and Order: (1) concluding that Wayne W. Coblentz, d/b/a Coblentz & Sons Livestock [hereinafter Respondent], willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229) [hereinafter the Packers and Stockyards Act]; (2) ordering Respondent to cease and desist from (a) issuing checks in payment for livestock purchases without maintaining sufficient funds on deposit and available in the account upon which the checks are drawn to pay the checks when presented, (b) failing to pay, when due, the full purchase price of livestock, and (c) failing to pay the full purchase price of livestock; and (3) suspending Respondent as a registrant under the Packers and Stockyards Act for 5 years. *In re Wayne W. Coblentz*, 61 Agric. Dec. 330 (2002).

On July 23, 2002, Respondent filed "Motion for Stay of Suspension" [hereinafter Motion for Stay] requesting a stay of the Order in *In re Wayne W. Coblentz*, 61 Agric. Dec. 330 (2002), during the pendency of Respondent's Petition for Review filed in the United States Court of Appeals for the Sixth Circuit. On July 24, 2002, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Respondent's Motion for Stay.

On July 24, 2002, Charles E. Spicknall, counsel for the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter Complainant], informed me by telephone that Complainant does not oppose Respondent's Motion for Stay.

Respondent has appealed *In re Wayne W. Coblentz*, 61 Agric. Dec. 330 (2002), to the United States Court of Appeals for the Sixth Circuit. Therefore, in accordance with 5 U.S.C. § 705, Respondent's Motion for Stay is granted.

For the foregoing reasons, the following Order should be issued.

ORDER

The Order issued in *In re Wayne W. Coblentz*, 61 Agric. Dec. 330 (2002), is stayed pending the outcome of proceedings for judicial review. This Stay Order shall remain in effect until it is lifted by the Judicial Officer or vacated by a court of competent jurisdiction.

**In re: MARVIN WINEGAR.
P&S Docket No. D-02-0020.
Order of Dismissal.
Filed August 30, 2002.**

Mary Hobbie, for Complainant.
Respondent, Pro se.
Order issued by Jill S. Clifton, Administrative Law Judge.

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) herein referred to as the "Act", instituted by a complaint filed by the Acting Deputy Administrator, Grain Inspection Packers and Stockyards Administration, United States Department of Agriculture, charging that the respondent wilfully violated the Act.

Copies of the complaint and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*) governing proceedings under the Act were served upon Respondent by certified mail.

Findings of Fact

1. Marvin Winegar, hereinafter referred to as the Respondent, is a individual whose mailing address is 9090 NE 38th, Altoona, Iowa 50009.
2. Respondent is, and at all times material herein was:
 - (a) Engaged in business of a market agency buying on commission livestock in commerce;
 - (b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account, and as a market agency buying on commission.
3. Respondent has an adequate bond or its equivalent as required by the Act and regulations.

Conclusions

By reason of the facts found in the Finding of Facts herein, Respondent is in compliance with 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. §§ 201.29, 201.30), therefore the complaint should be dismissed.

Order

Complaint is dismissed.
Copies hereof shall be served upon the parties

PACKERS AND STOCKYARDS ACT

DEFAULT DECISIONS

**In re: BILLY MIKE GENTRY.
P&S Docket No. D-02-0002.
Decision and Order.
Filed July 25, 2002.**

P&S – Default – Bond, failure to maintain adequate, bond.

Ann Parness, for Complainant.

Respondent, Pro se.

Decision and Order issued by Jill S. Clifton, Administrative Law Judge.

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*) by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain, Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondent willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*). 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 mailed to Respondent by regular mail on February 28, 2002. Accompanying the complaint was a cover letter informing Respondent that an answer must be filed within twenty (20) days of service 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.

Respondent has failed to file an answer within the time period required by the Rules of Practice (7 C.F.R. § 1.136), and the material facts alleged in the complaint, which are admitted by Respondent's failure to file an answer, are adopted and set forth herein as findings of fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Gentry, hereinafter referred to as Respondent, is an individual whose mailing address is P. O. Box 667, Houston, Mississippi 38851.
2. 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 a dealer to buy and sell livestock in commerce for his own account.

3. Respondent Gentry was ordered in docket D-91-24 issued July 5, 1991, to cease and desist from engaging in business in any capacity for which bonding is required under the Act and regulations without filing and maintaining a reasonable bond or its equivalent, as required by the Act and regulations. Respondent Gentry was also assessed a civil penalty.

4. As set forth in section II of the complaint, Respondent was served with a letter of notice on March 13, 2000, informing him that the \$10,000.00 surety bond he maintained was inadequate, and that a \$75,000.00 surety bond was required to secure the performance of his livestock obligations. Notwithstanding this notice, the Respondent continued to engage in the business of a market agency and a dealer without maintaining an adequate bond or its equivalent.

Conclusions

By reason of the facts alleged in Finding of Fact 4, Respondent has wilfully 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. §§ 201.29, 201.30).

Respondent did not file an answer within the time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), which constitutes an admission of all of the material allegations in the complaint. Complainant has moved for the issuance of a Decision Without Hearing by Reason of Default, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Accordingly, this decision is entered without hearing or further procedure.

Order

Respondent Billy Mike Gentry, 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, shall cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent is hereby assessed a civil penalty in the amount of five thousand dollars (\$5,000).

This decision and order shall become final and effective without further proceedings thirty-five (35) days after service on Respondent, if it is not appealed to the Judicial Officer by a party to the proceeding within thirty (30) days, pursuant

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

Copies hereof shall be served upon the parties.

[This Decision and Order became final November 2, 2002. - Editor]

In re: HOUSTON LIVESTOCK CO., INC., BILLY MIKE GENTRY.
P&S Docket No. D-02-0003.
Decision and Order.
Filed July 25, 2002.

P&S – Default – Proceeds, failure to remit, net – Custodial account, failure to maintain .

Ann Parnes, for Complainant.

Respondents, Pro se.

Decision and Order issued by Jill S. Clifton, Administrative Law Judge.

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*) by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain, Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondents willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*). 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 mailed to both parties via certified mail on January 29, 2002. On February 21, 2002, the complaint addressed to Houston Livestock was returned undeliverable and remailed by regular mail on February 21, 2002. The complaint addressed to Billy Mike Gentry came back unclaimed on March 5, 2002, and was remailed by regular mail on March 6, 2002. Accompanying the complaint was a cover letter informing Respondents that an answer must be filed within twenty (20) days of service 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.

Respondents have failed to file an answer within the time period required by the Rules of Practice (7 C.F.R. § 1.136), and the material facts alleged in the complaint, which are admitted by Respondents' failure to file an answer, are adopted and set forth herein as findings of fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

(1) Houston Livestock Co, Inc. hereinafter referred to as Respondent Houston, is

a corporation organized and existing under the laws of the state of Mississippi. Its business mailing address is 5050 Highway 6 East, Pontonoc, MS, 38863.

(2) Respondent Houston is and at all times material herein was:

(a) Engaged in the business of a market agency selling livestock on a commission basis; and

(b) Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis.

(3) Respondent Billy Mike Gentry, hereinafter referred to as Respondent Gentry, is an individual whose mailing address is P.O. Box 667, Houston, Mississippi 38851.

(4) Respondent Gentry is and at all times material herein was:

(a) President and Treasurer of Respondent Houston;

(a) Owner of 50% of the stock of Respondent Houston; and

(c) Responsible for the direction, management, and control of Respondent Houston;

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

(e) alter ego of the Respondent Houston.

(5) As set forth in section II(a) of the complaint, Respondent Houston, under the direction, management and control of Respondent Gentry, issued insufficient funds checks in purported payment of the net proceeds from the sale of consigned livestock.

(6) As set forth in section II(b) of the complaint, Respondent Houston, under the direction, management and control of Respondent Gentry, failed to remit, when due, the net proceeds from the sale of consigned livestock.

(7) As set forth in section II(c) of the complaint, Respondent Houston, under the direction, management and control of Respondent Gentry, failed to remit the net proceeds from the sale of consigned livestock.

(8) As set forth in section III of the complaint, Respondent Houston, under the direction, management and control of Respondent Gentry, failed to maintain and use properly its Custodial Account for Shippers' Proceeds.

Respondents did not file an answer within the time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), which constitutes an admission of all of the material allegations in the complaint. Complainant has moved for the issuance of a Decision Without Hearing by Reason of Default, pursuant to section 1.139 of the Rules of Practice

(7 C.F.R. § 1.139). Accordingly, this decision is entered without hearing or further procedure.

Order

By reason of the facts alleged in Findings of Fact 4,5 and 6, Respondents have willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228(b), and section 201.43 of the regulations (9 C.F.R. § 201.43).

By reason of the facts alleged in Finding of Fact 7, Respondents have willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), and section 201.42 of the regulations (9 C.F.R. § 201.42).

Respondents Houston and Gentry, their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Issuing checks or drafts in payment of the net proceeds from the sale of consigned livestock without having sufficient funds on deposit and available in the custodial account upon which such checks are drawn to pay such checks when presented;
2. Failing to remit, when due, the net proceeds received from the sale of consigned livestock;
3. Failing to remit the net proceeds received from the sale of consigned livestock;
4. Failing to deposit in the Custodial Account for Shippers' Proceeds within the time prescribed by section 201.42 of the regulations (9 C.F.R. § 201.42), an amount equal to the proceeds receivable from the sale of consigned livestock; and
5. Failing to otherwise maintain the Custodial Account for Shippers' Proceeds in strict conformity with the provisions of Section 201.42 of the regulations (9 C.F.R. § 201.42)

Houston Livestock Co., Inc., and Billy Mike Gentry as its alter ego, are suspended for a period of five years and thereafter until such time as the shortage in the Custodial Account for Shippers' Proceeds is corrected, provided, however, that upon application to the Packers and Stockyards Programs, a supplemental order may be issued after 90 days of the suspension have been served allowing for the salaried employment of Billy Mike Gentry by another registrant or by a packer. If the Respondents pay in full all debts to consignors resulting from the Respondents' failure to remit the net proceeds from the sale of consigned livestock, and the shortage in the Custodial Account for Shippers' Proceeds is corrected, and upon application to the Packers and Stockyards Programs and documentation substantiating such restitution and compliance, a supplemental order may be issued terminating the suspension after 90 days of the suspension have been served.

This decision and order shall become final and effective without further proceedings thirty-five (35) days after service on Respondents, if it is not appealed to the Judicial Officer by a party to the proceeding within thirty (30) days, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies hereof shall be served upon the parties.

[This Decision and Order became final October 2, 2002. - Editor]

In re: BERT SMITH, IV d/b/a B4 CATTLE COMPANY, AND B4 CATTLE COMPANY, INC.

P&S Docket No. D-02-0010.

Decision and Order.

Filed August 12, 2002.

P&S – Default – Bond, failure to maintain adequate, bond – Custodial account, failure to maintain adequate – Purchase price, failure to pay full.

David Richman, for Complainant.

Respondents, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*) by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondents willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*) 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 “Rules of Practice,” were mailed to the Respondents via certified mail on March 22, 2002. As indicated by the return date stamped on the return receipt cards, copies of the complaint were received by both Respondents, on March 25, 2002. Accompanying the complaint was a cover letter informing Respondents that an answer must be filed within twenty (20) days of service, 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.

Respondents have failed to file an answer within the time period prescribed by the Rules of Practice (7 C.F.R. § 1.136), and the material facts alleged in the complaint, which are admitted by Respondents’ failure to file an answer, are adopted and set forth herein as findings of fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Bert Smith, IV, hereinafter referred to as “Respondent Smith, is an individual who was doing business as B4 Cattle Company until September 5, 2001, the date on which B4 Cattle Company was incorporated under the laws of the

Commonwealth of Virginia as the successor entity B4 Cattle Company, Inc. Respondent Smith's business mailing address is P.O. Box 1610, Chilhowie, VA 24319.

2. Respondent Smith is, and at all times material herein was:

(a) Engaged in the business of a dealer buying and selling livestock in commerce for his own account;

(b) Either doing business as B4 Cattle Company or was president and 100% shareholder of B4 Cattle Company, Inc.;

(c) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account or the accounts of others;

(d) Responsible for the direction, management and control of the day-to-day operations of B4 Cattle Company and its successor entity B4 Cattle Company, Inc.

3. B4 Cattle Company, Inc., hereinafter referred to as the "Corporate Respondent," is a successor entity to B4 Cattle Company, and a corporation organized and existing under the laws of the Commonwealth of Virginia, whose business mailing address is P.O. Box 1610, Chilhowie, VA 24319.

4. The Corporate Respondent is, and at all times material herein was:

(a) Engaged in the business of a dealer buying and selling livestock in commerce for its own account; and

(b) Not registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for its own account or the accounts of others.

5. Respondent Smith is the alter ego of the Corporate Respondent.

6. As set forth in section II of the complaint, Respondent Smith, doing business as B4 Cattle Company, and/or as President of the successor entity B4 Cattle Company, Inc., engaged, and has continued to engage, in the business of a dealer subject to the Act without obtaining an adequate bond or bond equivalent.

7. As set forth in section III of the complaint, Respondent Smith, doing business as B4 Cattle Company, and the Corporate Respondent issued checks in payment for livestock purchases which were returned unpaid by the bank upon which they were drawn because Respondents did not have and maintain sufficient funds on deposit and available in the accounts upon which such checks were drawn to pay such checks when presented.

8. As set forth in section IV of the complaint, Respondent Smith, doing business as B4 Cattle Company, and the Corporate Respondent, in connection with their operations subject to the Act, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

Respondents did not file an answer within the time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), which constitutes an admission of all of the material allegations in the complaint. Complainant has moved for the issuance of a Decision Without Hearing by Reason of Default, pursuant to section 1.139 of the Rules of Practice

(7 C.F.R. § 1.139). Accordingly, this decision is entered without hearing or further procedure.

Order

By reason of the facts alleged in finding of fact 6, the Respondents have 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. §§ 201.29, 201.30) .

By reason of the facts alleged in findings of fact 7 and 8, the Respondents have willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

Respondents Bert Smith, IV and B4 Cattle Company, Inc., their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to pay the full purchase price of livestock;
2. Failing to pay, when due, the full purchase price of livestock;
3. Issuing checks in payment for livestock purchases without maintaining sufficient funds on deposit and available in the account upon which the checks are drawn to pay the checks when presented; and
4. Engaging in business in any capacity for which registration and bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations, without registering and filing an adequate bond or its equivalent, as required by the Act and the regulations.

Respondent Bert Smith, IV is hereby suspended as a registrant under the Act for a period of ten (10) years. Provided, however, that upon application to the Packers and Stockyards Programs, a supplemental order terminating the suspension may be issued at any time after the expiration of 390 days upon demonstration by Respondent Smith that he has obtained the required bond or bond equivalent, and that all unpaid livestock sellers identified in the complaint have been paid in full; and provided further that this order may be modified upon application to the Packers and Stockyards Programs to permit the salaried employment of Respondent by another registrant or packer after the expiration of the initial 390 days and upon demonstration of circumstances warranting modification of the order.

Respondent B4 Cattle Company, Inc. shall not be registered with the Secretary of Agriculture for a period of ten (10) years. Pursuant to section 303 of the Act (7 U.S.C. § 203), Respondent B4 Cattle Company, Inc. is prohibited from operating subject to the Act without being registered. Provided, however, that upon application to the Packers and Stockyards Programs, a supplemental order allowing Respondent B4 Cattle Company, Inc. to register with the Secretary of Agriculture may be issued at any time after the expiration of 390 days upon demonstration by Respondent B4 Cattle Company, Inc. that it has obtained the required bond or bond

equivalent, and that all unpaid livestock sellers identified in the complaint have been paid in full.

This decision and order shall become final and effective without further proceedings thirty-five (35) days after service on Respondents, if it is not appealed to the Judicial Officer by a party to the proceeding within thirty (30) days, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies hereof shall be served upon the parties.

[This Decision and Order became final October 31, 2002 - Editor]

**In re: WAITE & WAITE COMPANY, L.L.C., RALPH B. WAITE, SR., AND
RALPH WAITE, JR.
P&S Docket No. D-02-0008.
Decision Without Hearing by Reason of Default as to Corporate Respondent
Waite & Waite Company, L.L.C.
Filed September 19, 2002.**

P&S – Default – Payment, failure to make prompt – Funds on account, failure to maintain adequate.

Charles L. Kendall, for Complainant.
Respondent, Pro se.

Decision and Order issued by James W. Hunt, Administrative Law Judge.

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (hereinafter referred to as the “Act”), instituted by a Complaint filed on March 1, 2002, by the Deputy Administrator, Packers and Stockyards Programs, GIPSA, United States Department of Agriculture. The Complaint alleged that during the period January 3, 2001, through January 13, 2001, Waite & Waite Company, L.L.C., hereinafter referred to as the Corporate Respondent, issued checks in payment for livestock purchases which checks were returned unpaid by the bank upon which they were drawn, because Corporate Respondent did not have and maintain sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented. The Complaint further alleged that Corporate Respondent purchased livestock during that same period and failed to pay, when due, the full purchase price of such livestock to nine (9) sellers for eleven (11) transactions. As of the date of the issuance of the complaint, there remained unpaid \$69,681.09 for the livestock purchases referred to herein.

A copy of the Complaint was served on Corporate Respondent, and Corporate Respondent has not responded. The time for filing an Answer having expired, and upon motion of the Complainant for the issuance of a Default Order, the following

Decision and Order shall be issued without further procedure pursuant to Section 1.139 of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*)("Rules of Practice").

Findings of Fact

1. Waite & Waite Company, L.L.C., hereinafter referred to as the Corporate Respondent, is a limited liability company organized and doing business in the State of Oklahoma, with a mailing address of 913 North 161st East Avenue, Tulsa, Oklahoma 74116.

2. The Corporate Respondent, at all times material herein, was engaged in the business of a dealer buying and selling livestock in commerce for its own account and for the account of others and registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce.

3. The Secretary has jurisdiction over Respondent and the subject matter involved herein.

4. As set forth in paragraph II, subpart (a), of the Complaint, during the period January 3, 2001, through January 13, 2001, Corporate Respondent issued checks in payment for livestock purchases which checks were returned unpaid by the bank upon which they were drawn, because Corporate Respondent did not have and maintain sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

5. As set forth in paragraph II, subpart (b), of the Complaint, during the period January 3, 2001, through January 13, 2001, Corporate Respondent purchased livestock and failed to pay, when due, the full purchase price of such livestock to nine (9) sellers for eleven (11) transactions. As of the date of the issuance of the complaint, there remained unpaid \$69,681.09 for the livestock purchases referred to herein.

Conclusions

Corporate Respondent's issuance of checks in payment for livestock purchases without sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented, and Corporate Respondent's failure to make full payment promptly with respect to the 11 transactions set forth in Finding of Fact No. 4 above, constitute wilful violations of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b) for which the Order below is issued.

Order

Respondent Waite & Waite Company, L.L.C., its agents and employees, directly or through any corporate or other device, in connection with its operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to pay the full purchase price of livestock;
2. Failing to pay, when due, the full purchase price of livestock; and
3. Issuing checks in payment for livestock purchases without sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented.

In accordance with 7 U.S.C. § 204, the registration of Respondent Waite & Waite Company, L.L.C. is suspended for a period of five (5) years. Provided, however, that should full restitution be made to all unpaid sellers identified in the Complaint, a supplemental order may be issued terminating the suspension at any time after 125 days of suspension.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 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).

[This Decision and Order became final November 1, 2002. - Editor]

**In re: MBA POULTRY, LLC, AND MARK A. HASKINS.
P&S Docket No. D-01-0010.
Decision and Order as to Respondent MBA Poultry, LLC Upon Admission of
Facts by Reason of Default.
Filed October 3, 2002.**

P&S – Default – Payment, failure to make full.

Eric Paul, for Complainant.
James J. Stumpf, Trustee, for Respondent.
Decision and Order issued by Jill S. Clifton, Administrative Law Judge.

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (U.S.C. § 181 *et seq.*), herein referred to as the Act, instituted by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, charging that the Respondents wilfully violated the Act.

Copies of the complaint and the Rules of Practice (7 C.F.R. § 1.130 *et seq.*)

governing proceedings under the Act were served upon Respondents. Respondent Mark A. Haskins filed an answer as an individual Respondent, and subsequently resolved the allegations brought against him as a Respondent in this proceeding by agreeing to a consent decision. Service was made on Respondent MBA Poultry, LLC, by regular mail sent to its Chapter 7 Trustee, Mr. James J. Stumpf, on July 25, 2001, after an attempted delivery by certified mail was returned refused on July 16, 2001. By letter dated August 15, 2001, Respondent MBA Poultry, LLC, was notified that it had failed to file an answer with the Hearing Clerk by the required date of August 14, 2001.

Respondent MBA Poultry, LLC, has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted by Respondent MBA Poultry, LLC's failure to file an answer, are adopted and set forth herein as findings of fact.

Findings of Fact

1. Respondent MBA Poultry, LLC, hereinafter Respondent MBA, is a Nebraska limited liability company whose business address at all times material herein was 333 South 3rd Street, Tecumseh, NE 68450.

2. The current mailing address of Respondent MBA, as a debtor under Chapter 7 of the Bankruptcy Code, is: MBA Poultry, LLC, c/o James J. Stumpf, Trustee, 11623 Arbor St., # 100, Omaha, NE 68144.

3. Respondent MBA at all times material herein was:

(a) Engaged in the business of obtaining live poultry under a poultry growing arrangement for the purpose of slaughter and the sale and shipment of poultry products in commerce; and

(b) A live poultry dealer within the meaning of and subject to the provisions of the Act.

4. Respondent MBA, on or about the dates and in the transactions set forth below, obtained live chickens under poultry growing arrangements and failed to pay, when due, for this live poultry when it failed to deliver to the poultry growers, before the close of the fifteenth day following the week in which the poultry was slaughtered, the full amount due to such poultry growers on account of such poultry.

| Poultry Grower | Flock Kill Date | Payment Due per §410(a) | Poultry Amt. Due Grower | Unpaid Poultry Amounts |
|-----------------------|------------------------|--------------------------------|--------------------------------|-------------------------------|
| Steve Jennett | 10/07/99 | 10/25/99 | \$8,196.20 | \$8,196.20 |

| | | | | |
|---------------------------------------|----------|----------|-------------|-------------|
| Kenneth Jennett | 10/08/99 | 10/25/99 | 9,133.40 | 9,133.40 |
| Todd Dunphy | 10/12/99 | 11/01/99 | 17,740.09 | 17,740.09 |
| Jerry Burtnett | 10/13/99 | 11/01/99 | 7,807.80 | 7,807.80 |
| Wendell Jackson | 10/15/99 | 11/01/99 | 14,297.36 | 14,297.36 |
| Frederick Kay | 10/19/99 | 11/08/99 | 16,698.11 | 16,698.11 |
| Tom Kosch [Chicks II, Inc.] | 10/22/99 | 11/08/99 | 7,824.14 | 7,824.14 |
| Kenneth Kosch [Chicks R US, Inc.] | 10/25/99 | 11/15/99 | 8,040.16 | 8,040.16 |
| Darell Aerts | 10/27/99 | 11/15/99 | \$18,275.36 | \$18,275.36 |
| Gerald Schmidt [Elton Schmidt & Sons] | 10/29/99 | 11/15/99 | 18,117.71 | 18,117.71 |
| Gary Wiese | 11/03/99 | 11/22/99 | 17,577.78 | 17,577.78 |
| Michael Standley | 11/05/99 | 11/22/99 | 15,371.36 | 15,371.36 |
| William (Bill) Ehm | 11/10/99 | 11/29/99 | 15,977.28 | 15,977.28 |
| Rex Adams | 11/11/99 | 11/29/99 | 10,265.30 | 10,265.30 |
| Richard Weehler [Weehler Farms] | 11/15/99 | 12/06/99 | 16,488.23 | 16,488.23 |
| Joe & Michael Warin [W&W Partnership] | 11/17/99 | 12/06/99 | 15,832.68 | 15,832.68 |
| John Priest | 11/19/00 | 12/06/99 | 16,481.04* | 16,481.04* |
| Dennis Quam [Quam Brooders, LLC] | 11/23/99 | 12/13/99 | 10,159.79** | 10,159.79** |
| | | | | |

*This amount includes \$78.11 due under a retroactive incentive program addendum to the poultry growout agreement.

**This amount includes \$50.55 due under a retroactive incentive program addendum to the poultry growout agreement.

5. The total amount unpaid to poultry growers for live poultry grown pursuant to a poultry growing arrangement in the above transactions is \$244,283.79.

6. Respondent MBA, on or about the dates and in the transactions set forth below, obtained live chickens under poultry growing arrangements and failed to pay, when due, for this live poultry when it failed to deliver to poultry growers, before the close of the fifteenth day following the week in which the poultry was slaughtered, the full amount due to such poultry growers on account of such poultry.

| Poultry Grower | Flock Kill Date | Payment Due per §410(a) | Poultry Amt. Due Grower | Full Payment Made By Poultry Trust Distribution Check | No. of Days Payment Late |
|--|------------------------|--------------------------------|--------------------------------|--|---------------------------------|
| Robert Drewes [Triple DDD, Inc.] | 12/01/99 | 12/20/99 | \$26,977.54 | 03/14/00 | 85 |
| Johnny Haer | 12/03/99 | 12/20/99 | 17,382.66 | 03/14/00 | 85 |
| Richard Moberg | 12/06/99 | 12/27/99 | 8,266.89 | 03/14/00 | 78 |
| Roland Routh | 12/08/99 | 12/27/99 | 17,373.91 | 03/14/00 | 78 |
| Joe Maynes | 12/10/99 | 12/27/99 | 16,438.38 | 03/14/00 | 78 |
| Gary Kunkel | 12/13/99 | 01/03/00 | 7,835.94 | 03/14/00 | 71 |
| Lee Smith | 12/15/99 | 01/03/00 | 17,803.46 | 03/14/00 | 71 |
| Steve Jennett | 12/16/99 | 01/03/00 | 8,156.03 | 03/14/00 | 71 |
| Kenneth Jennett | 12/17/99 | 01/03/00 | 9,086.40 | 03/14/00 | 71 |
| Todd Dunphy | 12/22/99 | 01/10/00 | 17,288.10 | 03/14/00 | 64 |
| Jerry Burtnett | 12/23/99 | 01/10/00 | 8,348.64 | 03/14/00 | 64 |
| Ralph Oliphant | 01/04/00 | 01/24/00 | 18,521.42 | 03/14/00 | 50 |

| Poultry Grower | Flock Kill Date | Payment Due per §410(a) | Poultry Amt. Due Grower | Full Payment Made By Poultry Trust Distribution Check | No. of Days Payment Late |
|--|-----------------|-------------------------|-------------------------|---|--------------------------|
| Tom Kosch [Chicks II, Inc.] | 01/05/00 | 01/24/00 | 7,865.72 | 03/14/00 | 50 |
| Kenneth Kosch [Chicks R US, Inc.] | 01/06/00 | 01/24/00 | 8,007.38 | 03/14/00 | 50 |
| Darell Aerts | 01/10/00 | 01/31/00 | 17,321.75 | 03/14/00 | 43 |
| Gerald Schmidt [Elton Schmidt & Sons] | 01/12/00 | 01/31/00 | 17,648.36 | 03/14/00 | 43 |
| Gary Wiese | 01/14/00 | 01/31/00 | 17,718.08 | 03/14/00 | 43 |

Conclusions

By reason of the facts alleged admitted in Finding of Fact 4 through 6 herein, Respondent MBA has wilfully violated section 410 of the Act (7 U.S.C. § 228b-1).

Order

Respondent MBA Poultry, LLC, its officers, directors, agents and employees, successors and assigns, in connection with their operations as a live poultry dealer, shall cease and desist from:

1. Failing to pay the full amount due to poultry growers on account of live poultry obtained under poultry growing arrangements; and
2. Failing to pay, when due, for live poultry obtained under poultry growing arrangements by not delivering to poultry growers the full amount due for the live poultry before the close of the fifteenth day following the week in which the poultry was slaughtered.

This decision shall become final and effective without further proceedings 35 days after the date of service upon Respondent MBA Poultry, LLC, unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies of this decision shall be served upon the parties.

[This Decision and Order became final November 12, 2002. - Editor]

**In re: BARNESVILLE LIVESTOCK SALES CO. AND GARY W. FOGLE.
P&S Docket No. D-00-0007.**

Decision and Order.

Filed November 1, 2002.

P&S – Default – Payment, failure to make full – Account, failure to maintain custodial – Funds on deposit, failure to maintain adequate.

Charles Spicknal, for Complainant.

Respondent, Pro se.

Decision and Order issued by James W. Hunt, Administrative Law Judge.

This proceeding under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*), hereinafter the “Act,” was instituted by a complaint filed on June 21, 2000, by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture alleging that the Respondents willfully violated the Act. 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), hereinafter the “Rules of Practice,” were served on the Respondents.

The Hearing Clerk’s letter of service accompanying the complaint informed the Respondents that their answers to the complaint were to set forth any defenses that they wished to assert and that they were to specifically admit, deny or explain each allegation of the complaint. The letter went on to explain that “filing an answer which does not deny the material allegations of the complaint, shall constitute an admission of those allegations and a waiver of your right to an oral hearing.” Letter from Joyce A. Dawson, Hearing Clerk to Respondent Barnesville Livestock Sales Co. (dated June 22, 2000). In a letter response dated July 10, 2000, Respondents failed to deny the material allegations in the complaint. Instead, Respondents asserted that Barnesville Livestock Sales Co. (“Barnesville Livestock”) was working to obtain a bank loan and that the money necessary to cure the complaint violations would be “in place with in 30 to 60 days. *See* Letter from Gary Fogle to Hearing Clerk (dated July 10, 2000) (emphasis added).

The complaint was subsequently amended on August 23, 2000 and a “Second Amended Complaint” was filed on April 24, 2002. The amended complaints were served on the Respondents and alleged continuing violations of the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*). Respondents answered both complaints with letter responses asserting that Barnesville Livestock was in the process of obtaining the financing necessary to cure the alleged violations. Respondents did not deny any of the

continuing violations alleged in the amended complaints.

Respondents have failed to file an answer denying the material allegations in the Second Amended Complaint, thus, pursuant to section 1.136 of the Rules of Practice (7 C.F.R. § 1.136) the material allegations of fact in the Second Amended Complaint are deemed admitted. Based on these admissions, Complainant's motion for the issuance of a decision pursuant to section 1.139 of the Rules of Practice, (7 C.F.R. § 1.139) is hereby granted and this Decision and Order are entered without hearing or further procedure.

Findings of Fact

1. Barnesville Livestock Sales Co., hereinafter referred to as "Corporate Respondent," is a corporation organized and existing under the laws of the state of Ohio. Its mailing address is P.O. Box 377, Barnesville, Ohio 43713.

2. Corporate Respondent is and, at all times material herein, was:

(a) Engaged in the business of conducting and operating Barnesville Livestock Sales Co., a posted stockyard under the Act located in Barnesville, Ohio;

(b) Engaged in the business of a market agency selling livestock on a commission basis; and

(c) Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis and furnish stockyard services.

3. Gary Fogle, hereinafter referred to as "Respondent Fogle," is an individual whose mailing address is P.O. Box 377, Barnesville, Ohio 43713.

4. Respondent Fogle is and, at all times material herein, was:

(a) The president of Corporate Respondent;

(b) The owner of 50 percent of the corporate stock issued by Corporate Respondent;

(c) Responsible for the day-to-day direction, management and control of Corporate Respondent;

(d) A market agency within the meaning of and subject to the provisions of the Act; and

(e) The alter ego of Corporate Respondent.

5. Corporate Respondent, under the direction, management, and control of Respondent Fogle, on or about the dates and in the transactions set forth in paragraph II of the Second Amended Complaint, failed to properly use and maintain its Custodial Account for Shipper's Proceeds ("custodial account"), thereby endangering the faithful and prompt accounting therefor and the payment of portions due the owners or consignors of livestock.

6. As more fully set forth in paragraph III of the Second Amended Complaint, the financial condition of the Corporate Respondent does not meet the requirements of the Packers and Stockyards Act.

7. Corporate Respondent, under the direction, management and control of Respondent Fogle, in connection with its operations subject to the Act, on or about the dates and in the transactions set forth in paragraph IV of the Second Amended Complaint, sold livestock on a consignment basis and in purported payment of the net proceeds therefor, issued checks which were returned unpaid by the bank upon which they were drawn because Corporate Respondent did not have sufficient funds on deposit and available in the custodial account upon which such checks were drawn to pay the checks when presented.

8. Corporate Respondent, under the direction, management and control of Respondent Fogle, in connection with its operations subject to the Act, on or about the dates and in the transactions listed paragraph IV of the Second Amended Complaint, sold consigned livestock on a commission basis and failed to remit, when due, proceeds to its consignors from the sale of livestock.

Conclusions

By reason of the facts found herein, Corporate Respondent's financial condition does not meet the requirements of the Act (7 U.S.C. § 204) and Respondents have willfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213(a)) and section 201.42 of the Regulations (9 C.F.R. § 201.42).

Order

Respondents Gary W. Fogle and Barnesville Livestock Sales Co., their agents and employees, directly, or through any corporate or other device, in connection with their activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to deposit in the Custodial Account for Shippers' Proceeds, within the time prescribed by Section 201.42 of the Regulations (9 C.F.R. § 201.42), amounts equal to the proceeds received or due from the sale of consigned livestock;
2. Failing to otherwise maintain the Custodial Account for Shippers' Proceeds in strict conformity with the provisions of Section 201.42 of the Regulations (9 C.F.R. § 201.42);
3. Using funds received from the sale of consigned livestock for purposes of their own or for any purpose other than payment to consignors of the amount due from the sale of their livestock and the payment of lawful marketing charges;
4. Engaging in the business of a market agency while insolvent with current liabilities exceeding current assets;
5. Issuing checks in payment for livestock sold on a commission basis without maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented; and

6. Failing to remit, when due, the full amount owed to consignors following the sale of livestock consigned to Respondents.

Respondents Gary W. Fogle and Barnesville Livestock Sales Co., are hereby suspended as registrants under the Act for a period of forty-nine (49) days and thereafter until the custodial account shortage and insolvency have been eliminated

Pursuant to the Rules of Practice governing procedures under the Act, this Order shall become final without further proceedings thirty-five (35) days after service hereof, unless appealed to the Secretary by a party to the proceeding 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.

[This Decision and Order became final January 8, 2003. - Editor]

In re: PHILIP G. COX.
P&S Docket No. D-02-0019.
Decision and Order.
Filed November 25, 2002.

P&S – Default – Payment, failure to make prompt – Funds on deposit, failure to maintain adequate funds.

Ann Parnes, for Complainant.
Respondent, Pro se.

Decision and Order issued by Jill S. Clifton, Administrative Law Judge.

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*) by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain, Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the Respondent willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), hereinafter referred to as the Act, by failing to pay when due the full purchase price of livestock. The complaint also alleged that Respondent further violated the Act and regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*), hereinafter referred to as the regulations, by failing to maintain an adequate bond or its equivalent as is required.

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 on Respondent by certified mail on July 5, 2002. Accompanying the complaint was a cover letter informing Respondent that an answer must be filed within twenty

(20) days of service 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.

Respondent has failed to file an answer within the time period required by the Rules of Practice (7 C.F.R. § 1.136), and the material facts alleged in the complaint, which are admitted by Respondent's failure to file an answer, are adopted and set forth herein as Findings of Fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Philip G. Cox, hereinafter referred to as Respondent, is an individual whose mailing address is 431 Old Mayfield Mill Road, Glasgow, Kentucky 42141.
2. The Respondent, at all times material herein, was engaged in the business of a dealer buying and selling livestock in commerce for his own account and the account of others, and as a market agency buying livestock on a commission basis.
3. The Respondent, at all times material herein, was registered with the Secretary of Agriculture as a dealer and as a market agency to buy livestock on a commission basis.
4. As set forth in paragraph II of the complaint, Respondent purchased livestock, and in purported payment issued checks that were returned unpaid by the bank upon which they were drawn because Respondent did not have sufficient funds available in the account upon which the checks were drawn to pay the checks when presented.
5. As set forth in paragraph II of the complaint, Respondent purchased livestock and failed to pay, when due, the full purchase price of such livestock.
6. As set forth in paragraph II of the complaint, Respondent purchased livestock and failed to pay the full purchase price of such livestock.
7. As set forth in paragraph III of the complaint, Respondent engaged in the business of a dealer and market agency without obtaining the necessary bond or equivalent as is required by the Act and regulations.

Conclusions

By reason of the facts alleged in Findings of Fact 4, 5, and 6, Respondent has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228(b)).

By reason of the facts alleged in Finding of Fact 7, Respondent has violated sections 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. §§ 201.29, 201.30).

Respondent did not file an answer within the time period prescribed by section

1.136 of the Rules of Practice (7 C.F.R. § 1.136) which constitutes an admission of all of the material allegations in the complaint. Complainant has moved for the issuance of a Decision Without Hearing by Reason of Default, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Accordingly, this Order is entered without hearing or further procedure.

Order

Philip G. Cox, his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Issuing checks in payment for livestock purchases without maintaining sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented;
2. Failing to pay, when due, the full purchase price of livestock;
3. Failing to pay the full purchase price of livestock; and
4. Engaging in the business of a dealer and market agency without first obtaining an adequate bond or bond equivalent.

Respondent Philip G. Cox is hereby suspended as a registrant under the Act for a period of five (5) years and thereafter until he obtains the required bond or bond equivalent. Provided, however, that upon application to Packers and Stockyards Programs, a Supplemental Order may be issued terminating the suspension of the Respondent at any time after 150 days upon demonstration by Respondent that the livestock sellers identified in the complaint have been paid in full and upon demonstration that the required bond or bond equivalent has been obtained. Further, this Order may be modified upon application to Packers and Stockyards Programs to permit Respondent's salaried employment by another registrant or a packer after the expiration of the 150 day period of suspension, upon demonstration of circumstances warranting modification of the Order.

This Decision and Order shall become final and effective without further proceedings thirty-five (35) days after service on Respondent, if it is not appealed to the Judicial Officer by a party to the proceeding within thirty (30) days after service, pursuant to sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139, 1.145).

Copies hereof shall be served upon the parties.

[This Decision and Order became final January 6, 2003. - Editor]

**In re: BOBBY L. BROTHERTON d/b/a B&B CATTLE COMPANY.
P&S Docket No. D-02-0017.
Decision and Order.
Filed November 18, 2002.**

P&S – Default – Payment, failure to make full – Records, failure to maintain.

David Richman, for Complainant.

Respondent, Pro se.

Decision and Order issued by Jill S. Clifton, Administrative Law Judge.

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*) by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Bobby L. Brotherton (hereinafter “Respondent”) willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*) 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 “Rules of Practice,” were mailed to Respondent via certified mail on June 26, 2002. As indicated by the return date stamped on the return receipt card, the complaint was received by Respondent on July 2, 2002. Accompanying the complaint was a cover letter informing Respondent that an answer must be filed within twenty (20) days of service, 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.

Respondent has failed to file an answer within the time period prescribed by the Rules of Practice (7 C.F.R. § 1.136), and the material facts alleged in the complaint, which are admitted by Respondent’s failure to file an answer, are adopted and set forth herein as findings of fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Bobby L. Brotherton, the Respondent, is an individual doing business as B&B Cattle Company, whose mailing address is P.O. Box 1850, Palestine, Texas 75802-1850.
2. The Respondent is, and at all times material herein was:
 - (a) Engaged in the business of a dealer buying and selling livestock in commerce for his own account;
 - (b) Registered with the Secretary of Agriculture as a dealer to buy and sell

livestock in commerce.

3. As set forth in section II of the complaint, Respondent, in connection with his operations subject to the Act, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

4. As set forth in section III of the complaint, Respondent failed to keep such accounts, records, and memoranda which fully and correctly disclosed all transactions in his business as a dealer under the Act in that he failed to keep and maintain load make-up sheets, scale tickets evidencing weighing of livestock, adequate sales invoices and deposit slips.

Order

By reason of the facts alleged in finding of fact 3, the Respondent has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228(b)).

By reason of the facts alleged in finding of fact 4, the Respondent has willfully violated sections 312(a) and 401 of the Act (7 U.S.C. §§ 213(a), 221).

Respondent Bobby L. Brotherton, his agents and employees, directly or through any corporate or other device, in connection with activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to pay, when due, the full purchase price of livestock;
2. Failing to keep such accounts, records, and memoranda which fully and correctly disclose all transactions in his business as a dealer under the Act, specifically including load make-up sheets, scale tickets evidencing weighing of livestock, adequate sales invoices and deposit slips.

Respondent Bobby L. Brotherton is hereby assessed a civil penalty in the amount of Eight Thousand Dollars (\$8,000.00).

This decision and order shall become final and effective without further proceedings thirty-five (35) days after service on Respondent, if it is not appealed to the Judicial Officer by a party to the proceeding within thirty (30) days, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies hereof shall be served upon the parties.

[This Decision and Order became final December 30, 2002. - Editor]

CONSENT DECISIONS

(Not published herein-Editor)

PACKERS AND STOCKYARDS ACT

Richard H. Swanz d/b/a Lewistown Livestock Auction. P&S Docket No. D-01-0009. 7/29/2002.

Carl M. Simon. P&S Docket No. D-02-0016. 7/31/2002.

Calhan Auction Market, Inc. and Kenneth Larry Miller. P&S Docket No. D-01-0004. 8/1/2002.

Salah Abdalla and Hassan Boukhari d/b/a Wells Processing Plant a/k/a Badr Halal Meat Plant. P&S Docket No. D-01-0012. 8/14/2002.

Sheridan Livestock, Inc. and Gib Lloyd. P&S Docket No. D-02-0014. 9/16/2002.

Waite & Waite Company, L.L.C. Ralph B. Waite, Sr. Ralph Waite, Jr. (Consent as to Ralph Waite, Jr.) P&S Docket No. D-02-0006. 9/19/2002.

Weikert's Livestock, Inc., and Todd D. Weikert. P&S Docket No. D-02-0006. 9/19/2002.

MBA Poultry, LLC, and Mark A. Haskins. P&S docket No. D-01-0010. Decision as to Respondent Mark A. Haskins. 10/3/2002.

Foremost Packing Company and William McDermott. P&S Docket No. D-01-0006. 10/18/2002.

Ronald A. Wilson d/b/a Parkersburg Livestock Market. P&S Docket No. D-02-0018. 10/22/2002.

Ranger Auction Co., Inc., d/b/a Eastland Auction Co. and Ranger Auction Co., David L. Coan, and Laquetta J. Coan. Decision as to Respondent Ranger Auction Co., Inc.. P&S Docket No. 02-0007. 11/18/2002

Ranger Auction Co., Inc. d/b/a Eastland Auction Co., and Ranger Auction Co., David L. Coan; and Laquetta J. Coan.. Decision as to Respondents David L. Coan and Laquetta J. Coan. P&S Docket No. D-02-0007. 11/18/2002.

Larry C. Smith d/b/a Big Springs Cattle Company. P& S Docket No. D-02-0012.
11/22/2002.

Sugarcreek Livestock Auction, Inc., and Leroy H. Baker, Jr. P&S Docket No. D-
02-0001. 12/3/2002.

Dale Meyer d/b/a Wagner Livestock Sales Company. P&S Docket No. D-01-0005.
12/9/2002.
