

AGRICULTURE DECISIONS

Volume 63

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Part Two (P & S)
Pages 892 - 906



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*.

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*.

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.

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.

Beginning in Volume 63 Jul. - Dec. (2004), the initial decisions (and selected miscellaneous orders) of the Administrative Law Judges will be published in *AGRICULTURE DECISIONS* in addition to the Appealed Decisions (if any) issued by the Judicial Officer in the same case.

Consent decisions entered subsequent to December 31, 1986, are no longer published in this publication. However, a list of consent decisions is included. Beginning in Volume 62, consent decisions may be viewed in portable document (pdf) format on the OALJ website (see url below) and may be inspected upon request made to the Hearing Clerk, Office of Administrative Law Judges.

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. Volumes 39 (circa 1980) through Volume 58 (circa 1999) have been scanned and will appear in portable document format (pdf) on the same OALJ website. Beginning on July 1, 2003, current ALJ Decisions will be displayed in pdf format on the OALJ website in chronological order.

A compilation of past volumes on Compact Disk of *AGRICULTURE DECISIONS* will be available for sale at the U.S. Government Printing Office On-line book store at <http://bookstore.gpo.gov/>.

Direct all inquiries regarding this publication to: Editor, Agriculture Decisions, Office of Administrative Law Judges, U.S. Department of Agriculture, Room 1057 South Building, Washington, D.C. 20250-9200, Telephone: (202) 720-6645, Fax (202) 690-0790, and e-mail address of Editor.OALJ@usda.gov.

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LIST OF DECISIONS REPORTED

JULY - DECEMBER 2004

PACKERS AND STOCKYARDS ACT

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PACKERS AND STOCKYARDS ACT**MISCELLANEOUS ORDERS****In re: BILLY MIKE GENTRY.****P. & S. Docket No. D-02-0002.****Order Denying Respondent's Motion for Extension of Time filed.
October 23, 2002.**

Ann K. Parnes, for Complainant.

Respondent, Pro se.

Order issued by William G. Jenson, Judicial Officer.

On July 25, 2002, Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] issued a "Decision Without Hearing by Reason of Default." The Hearing Clerk sent Billy Mike Gentry [hereinafter Respondent] the ALJ's Decision Without Hearing by Reason of Default by certified mail on July 26, 2002.¹ The United States Postal Service marked the Hearing Clerk's July 26, 2002, certified mailing "unclaimed" and returned the certified mailing to the Hearing Clerk. On August 28, 2002, the Hearing Clerk remailed the ALJ's Decision Without Hearing by Reason of Default to Respondent by ordinary mail.² On October 2, 2002, Respondent filed a letter requesting an extension of time within which to appeal to the Judicial Officer [hereinafter Motion for Extension of Time]. On October 15, 2002, JoAnn Waterfield, Deputy Administrator, Packers and Stockyards Programs [hereinafter Complainant], filed "Complainant's Response to

¹See: (1) Letter dated July 26, 2002, from Joyce A. Dawson, Hearing Clerk, to Respondent; (2) Certified Mail Receipt Number 7099 3400 0014 4579 3236; and (3) Document Distribution Form, Office of Administrative Law Judges, Hearing Clerk's Office, indicating the Hearing Clerk sent the ALJ's Decision Without Hearing by Reason of Default and the Hearing Clerk's service letter dated July 26, 2002, to Respondent by certified mail on July 26, 2002.

²See Memorandum to the File, Office of the Hearing Clerk, dated August 28, 2002, signed by Fe Carolina Angeles, Legal Technician.

Respondent's Request for Extension of Time to Appeal Decision Without Hearing by Reason of Default." On October 18, 2002, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Respondent's Motion for Extension of Time.

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice], which are applicable to this proceeding, provide that where the United States Postal Service marks a certified mailing "unclaimed" and returns the mailing to the Hearing Clerk, the date of service is the date the Hearing Clerk remails the mailing to the same address by ordinary mail.³ Thus, the Hearing Clerk served Respondent with the ALJ's Decision Without Hearing by Reason of Default on August 28, 2002. Section 1.145(a) of the Rules of Practice (7 C.F.R. § 1.145(a)) provides that a party must file an appeal petition with the Hearing Clerk within 30 days after receiving service of the administrative law judge's decision. Hence, Respondent's appeal petition was due no later than September 27, 2002. Respondent filed Respondent's Motion for Extension of Time on October 2, 2002, 35 days after the Hearing Clerk served Respondent with the ALJ's Decision Without Hearing by Reason of Default and 5 days after Respondent's time for filing an appeal petition had expired. Therefore, Respondent's Motion for Extension of Time must be denied.

Moreover, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the ALJ's Decision Without Hearing by Reason of Default became final on October 2, 2002. The Judicial Officer does not have jurisdiction to consider an appeal petition filed on or after the date an administrative law judge's initial decision becomes final.⁴ Thus, the

³See 7 C.F.R. § 1.147(c)(1).

⁴See *In re Samuel K. Angel*, 61 Agric. Dec. ____ (Apr. 24, 2002) (dismissing the respondent's appeal petition filed 3 days after the initial decision and order became final); *In re Paul Eugenio*, 60 Agric. Dec. 676 (2001) (dismissing the respondent's appeal petition filed 1 day after the initial decision and order became final); *In re* (continued...)

⁴(...continued)

Harold P. Kafka, 58 Agric. Dec. 357 (1999) (dismissing the respondent's appeal petition filed 15 days after the initial decision and order became final), *aff'd per curiam*, 259 F.3d 716 (3d Cir. 2001) (Table); *In re Kevin Ackerman*, 58 Agric. Dec. 340 (1999) (dismissing Kevin Ackerman's appeal petition filed 1 day after the initial decision and order became final); *In re Severin Peterson*, 57 Agric. Dec. 1304 (1998) (dismissing the applicants' appeal petition filed 23 days after the initial decision and order became final); *In re Queen City Farms, Inc.*, 57 Agric. Dec. 813 (1998) (dismissing the respondent's appeal petition filed 58 days after the initial decision and order became final); *In re Gail Davis*, 56 Agric. Dec. 373 (1997) (dismissing the respondent's appeal petition filed 41 days after the initial decision and order became final); *In re Field Market Produce, Inc.*, 55 Agric. Dec. 1418 (1996) (dismissing the respondent's appeal petition filed 8 days after the initial decision and order became effective); *In re Ow Duk Kwon*, 55 Agric. Dec. 78 (1996) (dismissing the respondent's appeal petition filed 35 days after the initial decision and order became effective); *In re New York Primate Center, Inc.*, 53 Agric. Dec. 529 (1994) (dismissing the respondents' appeal petition filed 2 days after the initial decision and order became final); *In re K. Lester*, 52 Agric. Dec. 332 (1993) (dismissing the respondent's appeal petition filed 14 days after the initial decision and order became final and effective); *In re Amril L. Carrington*, 52 Agric. Dec. 331 (1993) (dismissing the respondent's appeal petition filed 7 days after the initial decision and order became final and effective); *In re Teofilo Benicta*, 52 Agric. Dec. 321 (1993) (dismissing the respondent's appeal petition filed 6 days after the initial decision and order became final and effective); *In re Newark Produce Distributors, Inc.*, 51 Agric. Dec. 955 (1992) (dismissing the respondent's appeal petition filed after the initial decision and order became final and effective); *In re Laura May Kurjan*, 51 Agric. Dec. 438 (1992) (dismissing the respondent's appeal petition filed after the initial decision and order became final); *In re Kermit Breed*, 50 Agric. Dec. 675 (1991) (dismissing the respondent's late-filed appeal petition); *In re Bihari Lall*, 49 Agric. Dec. 896 (1990) (stating the respondent's appeal petition, filed after the initial decision became final, must be dismissed because it was not timely filed); *In re Dale Haley*, 48 Agric. Dec. 1072 (1989) (stating the respondents' appeal petition, filed after the initial decision became final and effective, must be dismissed because it was not timely filed); *In re Mary Fran Hamilton*, 45 Agric. Dec. 2395 (1986) (dismissing the respondent's appeal petition filed with the Hearing Clerk on the day the initial decision and order had become final and effective); *In re Bushelle Cattle Co.*, 45 Agric. Dec. 1131 (1986) (dismissing the respondent's appeal petition filed 2 days after the initial decision and order became final and effective); *In re William T. Powell*, 44 Agric. Dec. 1220 (1985) (stating it has consistently been held that, under the Rules of Practice, the Judicial Officer has no jurisdiction to hear an appeal after the initial decision and order becomes final); *In re Toscony Provision Co., Inc.*, 43 Agric. Dec. 1106 (1984) (stating the Judicial Officer has no jurisdiction to hear an appeal that is filed after the initial

(continued...)

Judicial Officer cannot grant a request for an extension of time to file an appeal petition if the request is filed on or after the date the administrative law judge's initial decision becomes final.

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

ORDER

Respondent's Motion for Extension of Time, filed October 2, 2002, is denied.

⁴(...continued)

decision becomes final), *aff'd*, No. 81-1729 (D.N.J. Mar. 11, 1985) (court reviewed merits notwithstanding late administrative appeal), *aff'd*, 782 F.2d 1031 (3d Cir. 1986) (unpublished); *In re Dock Case Brokerage Co.*, 42 Agric. Dec. 1950 (1983) (dismissing the respondents' appeal petition filed 5 days after the initial decision and order became final); *In re Veg-Pro Distributors*, 42 Agric. Dec. 1173 (1983) (denying the respondent's appeal petition filed 1 day after the default decision and order became final); *In re Samuel Simon Petro*, 42 Agric. Dec. 921 (1983) (stating the Judicial Officer has no jurisdiction to hear an appeal that is filed after the initial decision and order becomes final and effective); *In re Yankee Brokerage, Inc.*, 42 Agric. Dec. 427 (1983) (dismissing the respondent's appeal petition filed on the day the initial decision became effective); *In re Charles Brink*, 41 Agric. Dec. 2146 (1982) (stating the Judicial Officer has no jurisdiction to consider the respondent's appeal dated before the initial decision and order became final, but not filed until 4 days after the initial decision and order became final and effective), *reconsideration denied*, 41 Agric. Dec. 2147 (1982); *In re Mel's Produce, Inc.*, 40 Agric. Dec. 792 (1981) (stating since the respondent's petition for reconsideration was not filed within 35 days after service of the default decision, the default decision became final and neither the administrative law judge nor the Judicial Officer has jurisdiction to consider the respondent's petition); *In re Animal Research Center of Massachusetts, Inc.*, 38 Agric. Dec. 379 (1978) (stating failure to file an appeal petition before the effective date of the initial decision is jurisdictional); *In re Willie Cook*, 39 Agric. Dec. 116 (1978) (stating it is the consistent policy of the United States Department of Agriculture not to consider appeals filed more than 35 days after service of the initial decision).

In re: HOUSTON LIVESTOCK CO., INC., BILLY MIKE GENTRY.

P. & S. Docket No. D-02-0003.

Order Denying Respondents' Motion for Extension of Time.

Filed October 23, 2002.

Ann K. Parnes, for Complainant.

Respondents, Pro se.

Order issued by William G. Jenson, Judicial Officer.

On July 25, 2002, Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] issued a "Decision Without Hearing by Reason of Default." The Hearing Clerk sent Houston Livestock Co., Inc., and Billy Mike Gentry [hereinafter Respondents] the ALJ's Decision Without Hearing by Reason of Default by certified mail on July 26, 2002.¹ The United States Postal Service marked the Hearing Clerk's July 26, 2002, certified mailings "unclaimed" and returned the certified mailings to the Hearing Clerk. On August 28, 2002, the Hearing Clerk remailed the ALJ's Decision Without Hearing by Reason of Default to Respondents by ordinary mail.² On October 2, 2002, Respondents filed a letter requesting an extension of time within which to appeal to the Judicial Officer [hereinafter Motion for Extension of Time]. On October 15, 2002, JoAnn Waterfield, Deputy Administrator, Packers and Stockyards Programs [hereinafter Complainant], filed "Complainant's Response to Respondents' Request for Extension of Time to Appeal Decision Without Hearing by Reason of Default." On

¹See: (1) Letter dated July 26, 2002, from Joyce A. Dawson, Hearing Clerk, to Respondents; (2) Certified Mail Receipt Numbers 7099 3400 0014 4578 8256 and 7099 3400 0014 4579 3229; and (3) Document Distribution Form, Office of Administrative Law Judges, Hearing Clerk's Office, indicating the Hearing Clerk sent the ALJ's Decision Without Hearing by Reason of Default and the Hearing Clerk's service letter dated July 26, 2002, to Respondents by certified mail on July 26, 2002.

²See Memoranda to the File, Office of the Hearing Clerk, dated August 28, 2002, signed by Fe Carolina Angeles, Legal Technician.

October 18, 2002, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Respondents' Motion for Extension of Time.

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice], which are applicable to this proceeding, provide that where the United States Postal Service marks a certified mailing "unclaimed" and returns the mailing to the Hearing Clerk, the date of service is the date the Hearing Clerk re-mails the mailing to the same address by ordinary mail.³ Thus, the Hearing Clerk served Respondents with the ALJ's Decision Without Hearing by Reason of Default on August 28, 2002. Section 1.145(a) of the Rules of Practice (7 C.F.R. § 1.145(a)) provides that a party must file an appeal petition with the Hearing Clerk within 30 days after receiving service of the administrative law judge's decision. Hence, Respondents' appeal petition was due no later than September 27, 2002. Respondents filed Respondents' Motion for Extension of Time on October 2, 2002, 35 days after the Hearing Clerk served Respondents with the ALJ's Decision Without Hearing by Reason of Default and 5 days after Respondents' time for filing an appeal petition had expired. Therefore, Respondents' Motion for Extension of Time must be denied.

Moreover, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the ALJ's Decision Without Hearing by Reason of Default became final on October 2, 2002. The Judicial Officer does not have jurisdiction to consider an appeal petition filed on or after the date an administrative law judge's initial decision becomes final.⁴ Thus, the

³See 7 C.F.R. § 1.147(c)(1).

⁴See *In re Samuel K. Angel*, 61 Agric. Dec. ____ (Apr. 24, 2002) (dismissing the respondent's appeal petition filed 3 days after the initial decision and order became final); *In re Paul Eugenio*, 60 Agric. Dec. 676 (2001) (dismissing the respondent's appeal petition filed 1 day after the initial decision and order became final); *In re Harold P. Kafka*, 58 Agric. Dec. 357 (1999) (dismissing the respondent's appeal petition filed 15 days after the initial decision and order became final), *aff'd per curiam*,
(continued...)

⁴(...continued)

259 F.3d 716 (3d Cir. 2001) (Table); *In re Kevin Ackerman*, 58 Agric. Dec. 340 (1999) (dismissing Kevin Ackerman's appeal petition filed 1 day after the initial decision and order became final); *In re Severin Peterson*, 57 Agric. Dec. 1304 (1998) (dismissing the applicants' appeal petition filed 23 days after the initial decision and order became final); *In re Queen City Farms, Inc.*, 57 Agric. Dec. 813 (1998) (dismissing the respondent's appeal petition filed 58 days after the initial decision and order became final); *In re Gail Davis*, 56 Agric. Dec. 373 (1997) (dismissing the respondent's appeal petition filed 41 days after the initial decision and order became final); *In re Field Market Produce, Inc.*, 55 Agric. Dec. 1418 (1996) (dismissing the respondent's appeal petition filed 8 days after the initial decision and order became effective); *In re Ow Duk Kwon*, 55 Agric. Dec. 78 (1996) (dismissing the respondent's appeal petition filed 35 days after the initial decision and order became effective); *In re New York Primate Center, Inc.*, 53 Agric. Dec. 529 (1994) (dismissing the respondents' appeal petition filed 2 days after the initial decision and order became final); *In re K. Lester*, 52 Agric. Dec. 332 (1993) (dismissing the respondent's appeal petition filed 14 days after the initial decision and order became final and effective); *In re Amril L. Carrington*, 52 Agric. Dec. 331 (1993) (dismissing the respondent's appeal petition filed 7 days after the initial decision and order became final and effective); *In re Teofilo Benicta*, 52 Agric. Dec. 321 (1993) (dismissing the respondent's appeal petition filed 6 days after the initial decision and order became final and effective); *In re Newark Produce Distributors, Inc.*, 51 Agric. Dec. 955 (1992) (dismissing the respondent's appeal petition filed after the initial decision and order became final and effective); *In re Laura May Kurjan*, 51 Agric. Dec. 438 (1992) (dismissing the respondent's appeal petition filed after the initial decision and order became final); *In re Kermit Breed*, 50 Agric. Dec. 675 (1991) (dismissing the respondent's late-filed appeal petition); *In re Bihari Lall*, 49 Agric. Dec. 896 (1990) (stating the respondent's appeal petition, filed after the initial decision became final, must be dismissed because it was not timely filed); *In re Dale Haley*, 48 Agric. Dec. 1072 (1989) (stating the respondents' appeal petition, filed after the initial decision became final and effective, must be dismissed because it was not timely filed); *In re Mary Fran Hamilton*, 45 Agric. Dec. 2395 (1986) (dismissing the respondent's appeal petition filed with the Hearing Clerk on the day the initial decision and order had become final and effective); *In re Bushelle Cattle Co.*, 45 Agric. Dec. 1131 (1986) (dismissing the respondent's appeal petition filed 2 days after the initial decision and order became final and effective); *In re William T. Powell*, 44 Agric. Dec. 1220 (1985) (stating it has consistently been held that, under the Rules of Practice, the Judicial Officer has no jurisdiction to hear an appeal after the initial decision and order becomes final); *In re Toscony Provision Co., Inc.*, 43 Agric. Dec. 1106 (1984) (stating the Judicial Officer has no jurisdiction to hear an appeal that is filed after the initial decision becomes final), *aff'd*, No. 81-1729 (D.N.J. Mar. 11, 1985) (court reviewed merits notwithstanding late administrative appeal), *aff'd*, 782 F.2d 1031 (3d Cir. 1986)

(continued...)

Judicial Officer cannot grant a request for an extension of time to file an appeal petition if the request is filed on or after the date the administrative law judge's initial decision becomes final.

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

ORDER

Respondents' Motion for Extension of Time, filed October 2, 2002, is denied.

⁴(...continued)

(unpublished); *In re Dock Case Brokerage Co.*, 42 Agric. Dec. 1950 (1983) (dismissing the respondents' appeal petition filed 5 days after the initial decision and order became final); *In re Veg-Pro Distributors*, 42 Agric. Dec. 1173 (1983) (denying the respondent's appeal petition filed 1 day after the default decision and order became final); *In re Samuel Simon Petro*, 42 Agric. Dec. 921 (1983) (stating the Judicial Officer has no jurisdiction to hear an appeal that is filed after the initial decision and order becomes final and effective); *In re Yankee Brokerage, Inc.*, 42 Agric. Dec. 427 (1983) (dismissing the respondent's appeal petition filed on the day the initial decision became effective); *In re Charles Brink*, 41 Agric. Dec. 2146 (1982) (stating the Judicial Officer has no jurisdiction to consider the respondent's appeal dated before the initial decision and order became final, but not filed until 4 days after the initial decision and order became final and effective), *reconsideration denied*, 41 Agric. Dec. 2147 (1982); *In re Mel's Produce, Inc.*, 40 Agric. Dec. 792 (1981) (stating since the respondent's petition for reconsideration was not filed within 35 days after service of the default decision, the default decision became final and neither the administrative law judge nor the Judicial Officer has jurisdiction to consider the respondent's petition); *In re Animal Research Center of Massachusetts, Inc.*, 38 Agric. Dec. 379 (1978) (stating failure to file an appeal petition before the effective date of the initial decision is jurisdictional); *In re Willie Cook*, 39 Agric. Dec. 116 (1978) (stating it is the consistent policy of the United States Department of Agriculture not to consider appeals filed more than 35 days after service of the initial decision).

PACKERS AND STOCKYARDS ACT

DEFAULT DECISIONS

**In re: BILLY PRUITT.
P&S Docket No. D-03-0012.
Decision and Order.
Filed August 16, 2004.**

P&S - Default – Surety bond.

Jeffrey H. Armistead, for Complainant.
Respondent, Pro se.

Decision and Order issued by Marc R. Hillson, Administrative Law Judge.

Preliminary Statement

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 served upon Respondent by certified mail on July 19, 2003. 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. Billy Pruitt, hereinafter referred to as Respondent, is an individual whose mailing address is 314 Dunn Cannon Lane, Richmond, Kentucky 40475.
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 was served with a letter of notice on August 9, 2002, informing him that he was no longer named as a clearee in a bond filed and maintained by another market agency registered to provide clearing services and that a \$10,000.00 surety bond or bond equivalent 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 3, Respondent has 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 and 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 Pruitt, 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.

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, a supplemental order will be issued in this proceeding terminating the suspension.

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 one thousand dollars (\$1000).

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 September 27, 2004.-Editor]

**In re: FARON HELVEY.
P&S Docket No. D-04-0003.
Decision and Order.
Filed September 15, 2004.**

P&S - Default – Surety bond.

David A. Richman, for Complainant.
Respondent, Pro se.

Decision and Order issued by Marc. R. Hillson, Chief Administrative Law Judge.

Preliminary Statement

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 Rules of Practice, were served to the Respondent by certified mail on May 13, 2004. Accompanying the complaint was a cover letter informing the 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 finding 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. Faron Helvey, is hereinafter referred to as Respondent, is an individual whose mailing address is 1205 24th Street, Hondo, Texas

78861.

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

(a) Engaged in the business of a market agency buying livestock on commission; 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 was notified by certified mail dated January 28, 2003, that the \$10,000 surety bond he maintained to secure the performance of his livestock obligations would terminate on February 26, 2003, and that a \$10,000 surety bond or bond equivalent was required to secure the continued performance of his livestock obligations. The letter was returned and pursuant to section 1.147 of the Rules of Practice (7 C.F.R. § 1.147), a Resident Agent of the Packers and Stockyards Programs personally delivered it on April 7, 2003. Notwithstanding this notice, Respondent continued to engage in the business of a market agency buying on commission with maintaining an adequate bond or its equivalent.

Conclusions

By reason of the facts alleged of Fact 3, Respondent has willfully violated section 312 (a) of the Act (7 U.S.C. § 213(a)), and sections 201.29 of the regulations (9 C.F.R. § 201.29 and 201.30).

Respondent did not file an answer within the time prescribed by section 1.136 of the Rule 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, 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.

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, a supplemental order will be issued in this proceeding terminating the suspension.

In accordance with section 312 (b) of the Act (7 U.S.C. § *(b)), Respondent is hereby assessed a civil penalty in the amount of one thousand dollars (\$1000).

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 17, 2004.-Editor]

*Section number missing from Original - Editor.

CONSENT DECISIONS

(Not published herein - Editor)

PACKERS AND STOCKYARDS ACT

Weldon Mack Glidewell, d/b/a Mineral Wells Stockyards Company and Weatherford Stockyards Company. P&S Docket No. D-03-0014. 7/22/04.

Larry F. Wooton and Roswell Livestock Auction Sales, Inc. P&S Docket No. D-02-0013. 7/23/04.

Patsy L. Leone, Jr. P&S Docket No. D-03-0001. 4/20/04.

Joe Don Pogue d/b/a Pogue Cattle Co. P&S Docket No. D-04-0009. 8/27/04.

Aire Alto Cattle, Corp., and Susan C. E. Carter. P&S Docket No. D-04-0007. 9/15/04.

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