

AGRICULTURE DECISIONS

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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 in *Agriculture Decisions*. However, a list of consent decisions is included in the printed edition. Since Volume 62, the full text of consent decisions is posted on the USDA/OALJ website (See url below). Consent decisions are on file in portable document format (pdf) and may be inspected upon request made to the Hearing Clerk, Office of Administrative Law Judges (OALJ).

Beginning in Volume 63, all **Initial Decisions** decided in the calendar year by the Administrative Law Judge(s) will be arranged by the controlling statute and will be published chronologically along with appeals (if any) of those ALJ decisions issued by the Judicial Officer.

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.

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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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PACKERS AND STOCKYARDS ACT

DEPARTMENTAL DECISIONS

In re: STEVE M. HAND, d/b/a STEVE HAND CATTLE COMPANY.

P. & S. Docket No. D-08-0160.

Decision and Order.

January 13, 2009.

PS – Prompt payment, failure to make.

Charles Spicknall for GIPSA.

Respondent Pro se.

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

Decision and Order

This proceeding was instituted under the Packers & Stockyards Act, 1921, as amended and supplemented, (7 U.S.C. § 181 *et seq.*), hereinafter referred to as the “Act,” by a Complaint filed by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyard Administration, United States Department of Agriculture, on July 31, 2008. Specifically, the Complaint alleged that Respondent: 1) failed to make timely payments for livestock purchases as required by section 409 of the Act; 2) issued insufficient funds checks for livestock in violation of section 312(a) of the Act; and 3) engaged in the business of a livestock dealer without maintaining an adequate bond or its equivalent as required by the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*), hereinafter referred to as the “Regulations.”

Respondent filed an Answer on August 26, 2008. In his Answer, Respondent admitted that he failed to pay livestock sellers within the time period required by section 409 of the Act. Respondent failed to deny or otherwise respond to the Complaint allegations concerning insufficient funds checks that he issued in payment for livestock and such allegations are deemed admitted. *See* 7 C.F.R. § 1.136(c). Respondent also admitted that he is not bonded for the protection of

livestock sellers as alleged in the Complaint, although Respondent asserts that he is no longer in need of a bond because he is no longer operating subject to the Act.

Complainant filed a Motion for Decision on November 24, 2008. Respondent did not file a response to Complainant's Motion.

Based on Respondent's admissions in his Answer, Complainant's "Motion for Decision," filed on November 24, 2008, is hereby granted and the following Decision and Order is issued without hearing pursuant to section 1.139 of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes ("Rules of Practice").

Findings of Fact

1. Steve M. Hand, doing business as Steve Hand Cattle Company, referred to herein as the "Respondent," is an individual whose mailing address is in Ocilla, Georgia.¹
2. Respondent was at all times material herein:
 - (a.) Engaged in the business of buying and selling livestock in commerce for his own account or buying livestock on a commission basis for others; and
 - (b.) Registered with the Secretary of Agriculture as a dealer buying and selling livestock in commerce for his own account or for the account of others.
3. Respondent failed to make timely payment for 610 head of cattle, in the amount of \$256,783.01, during the period of January 17, 2007, through September 12, 2007. As of September 25, 2007, \$78,920.78 of that amount remained unpaid.
4. Respondent issued checks for more than \$250,000 in livestock purchases that were returned unpaid by the bank upon which they were drawn because Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented.
5. Respondent is not bonded for the protection of livestock sellers.

¹ Respondent's address has been omitted to protect his privacy. Respondent's service address is on file with the Hearing Clerk's Office.

Respondent asserts that he is no longer operating as a livestock dealer subject to the Act.

Conclusions

The Complaint alleges that Respondent has engaged in the business of buying and selling livestock in commerce for his own account, or buying livestock on a commission basis for others, and that he is registered with the Secretary of Agriculture as a livestock dealer. *See* Compliant at ¶ I. Respondent fails to deny or otherwise respond to these allegations in his Answer and the allegations are deemed admitted for purposes of this proceeding. *See* 7 C.F.R. § 1.136(c). Livestock dealers are subject to the jurisdiction of the Secretary for purposes of enforcing the Packers and Stockyards Act. *See* 7 U.S.C. § 201(d) (defining “dealer”).²

The Complaint also alleges that Respondent failed to make timely payment for 610 head of cattle, in the amount of \$256,783.01, during the period of January 17, 2007 through September 12, 2007, and that as of September 25, 2007, which was the closing date of the Packers and Stockyards Program’s field investigation, \$78,920.78 of that amount remained unpaid. *Id.* As of August 17, 2008, the date of Respondent’s Answer, he was still trying to repay that debt. *See* Answer at ¶ 1. Section 409(a) of the Act requires livestock dealers and other regulated entities to pay for their livestock purchases before the close of the next business day following the purchase. *See* 7 U.S.C. § 228b(a).³ Payment

². Pursuant to 7 U.S.C. §§ 213(b) and 204, the Secretary is authorized to assess civil penalties for unfair trade practices by dealers and to suspend dealer registrations for violations of the Act. Section 204 of the Packers and Stockyards Act is a freestanding provision that was enacted as part of the Department of Agriculture Appropriation Act, 1944, July 12, 1943.

³. *See also, e.g., Van Wyk v. Bergland*, 570 F.2d 701, 704 (8th Cir. 1978) (stating one purpose of the Packers and Stockyards Act is to assure fair trade practices in the livestock marketing industry in order to safeguard farmers and ranchers against receiving less than the true market value of their livestock); *Bruhn’s Freezer Meats of Chicago, Inc. v USDA*, 438 F.2d 1332, 1337 - 1338 (8th Cir. 1971) (stating the purpose of the Packers and Stockyards Act is to assure fair trade practices in the livestock-
(continued...)

must be made in full. *Id.* The prompt payment requirements in the Packers and Stockyards Act are designed to protect farmers and ranchers from receiving less than fair market value for their livestock. *See In re: Fred Holmes, d/b/a Holmes Livestock*, 62 Agric. Dec. 254, 257 (2003).⁴

Any delay which results in an extension of the statutory payment requirement is expressly made an unfair practice in violation of section 312(a) of Act. *See* 7 U.S.C. § 228b(c). In his Answer, Respondent admits and takes responsibility for the \$78,920.78 that he owes to livestock sellers. *See* Answer at ¶ 1.

The fact that Respondent may be making monthly and weekly payments on his outstanding livestock debt, as he asserts in his Answer, does not excuse the violations of the Packers and Stockyards Act. As noted above, any delay in payment to livestock sellers, regardless of the reason for the delay, is an “unfair practice” and a violation of the Act. *See* 7 U.S.C. § 228b. After-the-fact promissory notes do not meet the express requirements of the Act. *Id.* Even if Respondent had fully repaid the livestock sellers listed in the Complaint, “it is well-settled that present compliance is irrelevant in determining the sanction for past violations.” *See Fred Holmes*, 62 Agric. Dec., at 258 (*quoting In re: A.W. Schmidt & Son, Inc.*, 46 Agric. Dec. 586, 593 (1987)).

The Complaint also alleges that Respondent issued checks for more than \$250,000 in livestock purchases that were returned unpaid by the bank upon which they were drawn because Respondent did not have and

(...continued)

marketing and meat-packing industry in order to safeguard farmers and ranchers against receiving less than the true market value of their livestock and to protect consumers against unfair business practices in the marketing of meats and other products); *Pennsylvania Agric. Coop. Mktg Ass'n v. Ezra Martin Co.*, 495 F. Supp. 565, 570 (M.D. Pa. 1980) (memorandum opinion) (stating one purpose of the Packers and Stockyards Act is to give all possible protection to suppliers of livestock); *United States v. Hulings*, 484 F. Supp. 562, 567 (D. Kan. 1980) (memorandum opinion) (stating one purpose of the Packers and Stockyards Act is to protect farmers and ranchers from receiving less than fair market value for their livestock and to protect consumers from unfair practices); *In re: Ozark County Cattle Co.*, 49 Agric. Dec. 336, 360 (1990) (stating the primary objective of the Packers and Stockyards Act is to safeguard farmers and ranchers against receiving less than the true value of their livestock).

maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented. *See* Complaint at ¶ III. The issuance of insufficient funds checks is an unfair practice in violation of section 312(a) of the Act. *See, e.g., In re: George O. Durflinger, Jr.*, 58 Agric. Dec. 940, 942 (1999); *In re: Richard Garver*, 45 Agric. Dec. 1090, 1095 (1986). In his Answer, Respondent fails to deny or otherwise respond to the Complaint allegations concerning the insufficient funds checks that he issued in payment for livestock and such allegations are deemed admitted. *See* 7 C.F.R. § 1.136(c).

Finally, the Complaint alleges that Respondent has been put on notice of the bonding requirements in the Packers and Stockyards Act and Regulations and that Respondent has continued to engage in the business of a livestock dealer without maintaining an adequate bond. *See* Complaint at ¶ V. Livestock dealers are required to maintain registration and bonding for the protection of livestock sellers. *See* 7 U.S.C. §§ 203 and 204; 9 C.F.R. §§ 201.10 (registration requirements and procedures) and 201.29 (bonding requirements).⁵ “[M]embers of the industry are entitled to rely upon the fact that all livestock dealers are required to carry an appropriate bond.” *See In re: Robert F. Johnson*, 47 Agric. Dec. 436, 440 (1988).⁶ Failure to maintain a bond is an unfair and deceptive practice in violation of section 312(a) the Act. *See, e.g., In re: Highmore Livestock Exchange*, 48 Agric. Dec. 329, 339 - 340 (1989); *Robert Johnson*, 47 Agric. Dec. at 441; *In re Mark V. Porter*, 47 Agric. Dec. 656, 667 (1988); *In re: Klemme Cattle Co., Inc.*, 45 Agric. Dec. 1108, 1110 (1986).

⁵ The amount of the required bond, or bond equivalent, is determined in accordance with section 201.30 of the Regulations. *See* 9 C.F.R. § 201.30. Originally, the Packers and Stockyards Act did not grant the Secretary the authority to require bonding by market agencies and livestock dealers. The authority was granted in the Annual Department of Agriculture Appropriation Act of 1924 and made permanent by the Department of Agriculture Appropriation Act of 1943, which is codified at 7 U.S.C. § 204.

⁶ *See also In re: Edwards Tiemann*, 47 Agric. Dec. 1573, 1585 (1988) (“sellers of livestock have a right to expect that respondent has the required [bond] coverage, and that the registrant has a secondary source of payment

In his Answer, Respondent admits that he is not bonded but asserts that he is no longer dealing cattle. *See* Answer at ¶2. According to Respondent, he is only “backgrounding” cattle on grass at his farm. *Id.* Complainant is seeking no sanction for the bonding allegation. Respondent is required to be bonded for the protection of livestock sellers if he reenters the livestock trade as a dealer. *See* 7 U.S.C. § 204; 9 C.F.R. § 201.29.

Sanctions are appropriate for serious and repeated violations of the Department’s regulatory programs in order to deter the named respondent and others in the regulated industry from future violations. *See, e.g., In re: Larry F. Wooten and Roswell Livestock Auction Sales, Inc.*, 58 Agric. Dec. 944, 980 (1999).⁷ In this case, Respondent’s failure-to-pay and NSF check violations are serious and repeated. When livestock purchasers do not make prompt payment it forces the sellers to finance the transaction. *See Van Wyk v. Bergland*, 570 F.2d 701, 704 (8th Cir. 1978).

The Packers and Stockyards Program’s recommendation that Respondent be ordered to cease and desist from violating the Act and suspended as a registrant under the Act for five years is consistent with the sanctions that are regularly imposed for serious and repeated violations of the Packers and Stockyards Act. *See, e.g., In re: Don Latham and Poplar Plains Livestock, Inc.*, 65 Agric. Dec. 1231, 1235 (2006) (five year suspension for failing to pay, failing to pay when due, and issuing NSF checks with a one year proviso); *Fred Holmes*, 62 Agric. Dec., at 259 - 260 (five year suspension for failing to pay, failing to pay when due, and issuing NSF checks, with a one year proviso).⁸ In

⁷ Current Departmental sanction guidelines are set forth in *In re: S.S. Farms Linn County, Inc.*, 50 Agric. Dec. 476, 497 (1991), *aff’d* 991 F.2d 803 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3).

⁸ Dec. 349, 353 (2002) (five-year suspension); *In re: Charles L. Hamborsky*, 59 Agric. Dec. 834, 838 (2000) (same); *In re: Wayne H. Crites*, 59 Agric. Dec. 333, 335 (2000) (same); *In re: Marysville Enterprises, Inc., d/b/a Marysville Hog Buying Co., James L. Breeding, and Byron E. Thoreson*, 59 Agric. Dec. 299, 332 (2000) (same); *In re: Press Harmon Andrews*, 58 Agric. Dec. 464, 465 - 466 (1999) (same); *Durflinger*, 58 Agric. Dec. at 943 (same); *In re: Hines and Thurn Feedlot, Inc., d/b/a Thurn & Hines Livestock, James L. Thurn, and Deryl D. Hines*, 57 Agric. Dec. 1408, 1431 (1998)

(continued...)

this case, a five-year suspension is particularly appropriate given that Respondent is already subject to an Order of the Secretary that requires him to cease and desist from failing to pay when due and issuing NSF checks. *See In re: Steve M. Hand*, P&S Docket No. D-06-0013, slip op. (October 12, 2006) (attached to the Complaint as “Exhibit A”). Respondent violated the provisions of that Order within four months of its issuance.

Order

Respondent Steve M. Hand, doing business as Steve Hand Cattle Company, 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:

Purchasing livestock and failing to pay for such livestock purchases within the time period required by the Act; and
Issuing checks in payment for livestock without having and maintaining sufficient funds on deposit and available in the accounts upon which they are drawn to pay such checks when presented.

Respondent is hereby suspended as a registrant under the Act for a period of five (5) years and thereafter until Respondent is properly bonded. Provided, however, that upon application to the Packers and Stockyards Program, a supplemental order may be issued terminating the suspension of Respondent’s registration at any time after one (1) year upon demonstration by Respondent that he is in full compliance with the Act and Regulations; And provided further, that this Order may be modified upon application to the Packers and Stockyards Program to permit the salaried employment of Respondent by another registrant or packer after the expiration of one year of the suspension term upon demonstration of circumstances warranting modification of the Order.

The provisions of this Order shall become effective on the sixth (6th)

(...continued)

(same); *In re: S. Levon Owens*, 55 Agric. Dec. 499, 502 - 503 (1996) (same); *Tiemann*, 47 Agric. Dec. at 1605 (same).

Steve M. Hand d/b/a Steve Hand Cattle Company 445
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day after service on Respondent.

Copies of this Decision and Order shall be served on the parties.
Issued in Washington D.C.

PACKERS AND STOCKYARDS ACT

DEFAULT DECISIONS

In re: BILL SHAFER.
P. & S. Docket No. D-08-0157.
Default Decision.
January 22, 2009.

PS – Default.

Christopher Young-Morales for APHIS.
Respondent pro se.

Default Decision by Administrative Law Judge Peter M. Davenport..

DEFAULT DECISION AND ORDER

This is a disciplinary proceeding under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.) (the “Act”), instituted by a Complaint filed on July 30, 2008 by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondent Bill Shafer (hereinafter “Respondent”) violated the Act.

The Complaint alleged that between August 2006 and September 2006 Respondent engaged in operations subject to the Act without maintaining adequate bond or bond equivalent. A copy of the Complaint was mailed by the Hearing Clerk to Respondent by certified mail in July of 2008, and was returned as “unclaimed” by the U.S. Postal Service to the Hearing Clerk's office. The Hearing Clerk re-mailed the Complaint and served the Respondent via regular mail on August 27, 2008 pursuant to Section 1.147 of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By The Secretary (7 C.F.R. § 1.147, hereinafter referred to as the “Rules of Practice”), as of that date. As the Respondent failed to file an answer to the Complaint within the 20 day time period prescribed by Section 1.136 of the Rules of Practice, the Complainant has moved for the issuance of a Decision

Without Hearing by the Administrative Law Judge, pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Since Respondent failed to answer the Complaint within the 20 day time period prescribed by the Rules of Practice thereby admitting the factual allegations contained in the Complaint, the following Default Decision and Order will be issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent is an individual proprietor whose business mailing address is in the state of Texas. Respondent's business mailing address is also a personal address, and will therefore be omitted from this decision to protect Respondent's privacy, but has been provided to the Hearing Clerk for purposes of service of this decision.

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

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

(b) Registered with the Secretary of Agriculture as a dealer.

3. On March 17, 2004, the Packers and Stockyards Program received notice from the International Fidelity Insurance Company of Newark, New Jersey that Respondent's bond was cancelled, effective April 19, 2004. On May 5, 2004, Respondent was notified¹ that his bond had terminated on April 19, 2004, and that unless Respondent secured a new bond or bond equivalent securing the performance of his dealer obligations, Respondent must discontinue dealer operations for which bonding is required under the Packers and Stockyards Act. Respondent was also notified that continuing operations without proof of adequate bond was a violation of 7 U.S.C. § 204 and 213(a) and 9 C.F.R. § 201.29 and 201.30.

¹ Respondent was notified by letter dated March 19, 2004. The return receipt card of the March 19, 2004 certified letter was returned to the Packers and Stockyards Program on April 12, 2004 as "unclaimed." The letter was then delivered to Respondent by Federal Express on May 5, 2004.

4. On October 4, 2004, Respondent was notified² by certified letter from the Packers and Stockyards Program that Respondent was operating subject to the Packers and Stockyards Act and regulations without being properly bonded, in violation of the bonding requirements of the Act and Regulations. Respondent was informed that he must immediately cease all livestock operations subject to the Act until Respondent was properly bonded. Respondent was also required to submit to the Packers and Stockyards Program, within 30 days of receipt of the letter, a bond equivalent to his previous bond of \$25,000.00, or a summary of his total dollar volume of all livestock traded and/or purchased in the past twelve months in order for the Packers and Stockyards Program to accurately assess Respondent's bonding requirement. Notwithstanding this notice, Respondent did not submit a bond equivalent to his previous bond of \$25,000.00, or a summary of his total dollar volume of all livestock traded and/or purchased. Respondent continued to engage in the business of purchasing livestock in commerce, on a commission basis, without maintaining an adequate bond as required by the Act and the Regulations.

5. Respondent, between August 2006 and September 2006, engaged in the business of purchasing livestock in commerce, on a commission basis, without maintaining an adequate bond or bond equivalent. The details of the purchase transactions are more fully set forth in paragraph III of the Complaint.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts above, Respondent willfully violated section 312(a) of the Act (7 U.S.C. §§ 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30).

² Respondent was notified by certified letter dated September 7, 2004. The signed return receipt card was received by the Packers and Stockyards Program on October 4, 2004.

Joseph Frank Haun
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Order

Respondent Bill Shafer, his agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in operations subject to the act without maintaining adequate bond or bond equivalent.

This decision shall become final and effective without further proceedings 35 days after the date of service upon Respondent, 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.

Done at Washington, DC

In re: JOSEPH FRANK HAUN.
P. & S. Docket No. D-08-0143.
Default Decision.
February 6, 2009.

PS – Default.

Christopher Young-Morales for APHIS.
Respondent Pro se.
Default Decision by Chief Administrative Law Judge Marc R. Hillson..

Decision Without Hearing By Reason of Default

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.)(the “Act”), instituted by a Complaint filed on June 18, 2008 by the Deputy Administrator, Packers and Stockyards

Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondent Joseph Frank Haun (hereinafter "Respondent") violated the Act.

The Complaint alleged that Respondent 1) issued checks in payment for livestock purchases that were returned unpaid by the bank upon which they were drawn because Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented; 2) failed to pay, and failed to pay, when due, for livestock purchases; and 3) failed to keep accounts, records, and memoranda which fully and correctly disclosed all transactions in his business as a dealer and market agency as required by Section 401 of the Act.

A copy of the Complaint was mailed by the Hearing Clerk to Respondent by certified mail in June of 2008, and was returned as "unclaimed" by the U.S. Postal Service to the Hearing Clerk's office. The Hearing Clerk re-mailed the Complaint via regular mail on July 14, 2008, and therefore served the Complaint upon Respondent pursuant to Section 1.147 of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By The Secretary (7 C.F.R. § 1.147, hereinafter referred to as the "Rules of Practice"), as of that date. Respondent did not file an answer to the Complaint within the 20 day time period prescribed by Section 1.136 of the Rules of Practice. Complainant moved for the issuance of a Decision Without Hearing by the Administrative Law Judge, pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Since Respondent failed to answer the Complaint within the 20 day time period prescribed by the Rules of Practice, and upon the motion of the Complainant for the issuance of a Default Order, the following Decision and Order is issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent is an individual doing business in the State of

Tennessee. Respondent's business mailing address is also a personal address, and will therefore be omitted from this decision to protect Respondent's privacy. However, the address will be given to the Hearing Clerk for purposes of service of this decision.

2. 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) Engaged in the business of a market agency buying livestock on a commission basis;
- (c) Registered with the Secretary of Agriculture as a dealer buying and selling livestock for his own account in commerce, and as a market agency buying livestock on a commission basis.

3. On August 14, 1998, Judge Thomas G. Hull of the United States District Court, Eastern District of Tennessee, ordered that Respondent be permanently enjoined from operating in any capacity for which registration and bonding were required under the Packers and Stockyards Act, without registering with the Secretary of Agriculture and furnishing a bond as required by the Act. Respondent was also permanently enjoined from failing to file, within the time fixed by the Secretary, such annual or special reports as the Secretary of Agriculture may require, pursuant to the Act and regulations issued thereunder.

4. On January 3, 2005, Respondent was indicted in the State of North Carolina, Buncombe County, by two separate indictments, each containing one count of worthless checks, a criminal felony. The first indictment stated that Respondent issued a check, dated March 13, 2004 and made payable to United Producers, Inc., drawn upon the National Bank of Commerce, for payment of \$96,663.47. The indictment also stated that Respondent knew at the time he issued the check that there were not sufficient funds on deposit with the bank to pay the check upon its presentation. The second indictment stated that Respondent issued a check, dated March 13, 2004 and made payable to United Producers, Inc., drawn upon the National Bank of Commerce, for payment of \$127,888.82. The indictment also stated that Respondent knew at the time he issued the check that there were not sufficient funds on deposit

with the bank to pay the check upon its presentation.

5. On June 27, 2008, Respondent pled guilty to two counts of misdemeanor criminal charges for obtaining property by worthless check. The misdemeanor criminal plea was made on the basis of the same checks identified in the two January 3, 2005 criminal indictments. The first count to which Respondent pled guilty involved the March 13, 2004 check made payable to United Producers, Inc., drawn upon the National Bank of Commerce, for payment of \$96,663.47. The second count to which Respondent pled guilty involved the March 13, 2004 check made payable to United Producers, Inc., drawn upon the National Bank of Commerce, for payment of \$127,888.82. Respondent was sentenced to a 30 day suspended jail sentence and 12 months of unsupervised probation.

6. Respondent, on March 13, 2004, issued checks in payment for livestock purchases that were returned unpaid by the bank upon which they were drawn because Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented. The details of the checks and the transactions for which they were written are more fully set forth in paragraph III of the Complaint.

7. Respondent, between March 8, 2004 and March 22, 2004, purchased livestock, and failed to pay for such livestock purchases. The details of the purchases are more fully set forth in paragraph III of the Complaint. As of the date of the filing of the Complaint, of the total of \$356,424.31 in livestock purchases for which Respondent failed to pay, outlined in paragraph III of the Complaint, there remained unpaid a total of \$156,424.31 for livestock purchases made by Respondent.

8. Respondent, between January 10, 2004 and May 5, 2004, purchased livestock, and failed to pay, when due, for such livestock purchases.

9. Respondent failed to keep accounts, records, and memoranda which fully and correctly disclosed all transactions in his business as a dealer and market agency as required by Section 401 of the Act, in that he failed to keep and maintain: cash receipts and disbursements records, credit agreements with sellers, load make-up sheets, bank statements,

cancelled checks, deposit slips, and accounts receivable records.

Conclusions

By reason of the facts alleged above, Respondent willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228(b)), and section 201.43 of the regulations (9 C.F.R. § 201.43(b)). By reason of the facts alleged above, Respondent has failed to keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, as required by section 401 of the Act (7 U.S.C. § 221)

Order

Respondent Joseph Frank Haun, his agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from:

- 1) Issuing checks in payment for livestock purchases that are returned unpaid by the bank upon which they are drawn because Respondent does not have and maintain sufficient funds on deposit and available in the account upon which the checks are drawn to pay the checks when presented;
- 2) Failing to pay livestock sellers for livestock purchases in accordance with the Act and regulations; and
- 3) Failing to pay livestock sellers, when due, for livestock purchases in accordance with the Act and regulations.

Respondent shall keep accounts, records and memoranda that fully and correctly disclose all transactions involved in his business. Specifically, Respondent shall keep and maintain cash receipts and disbursements records, credit agreements with sellers, load make-up sheets, bank statements, cancelled checks, deposit slips, and accounts receivable records.

Respondent is suspended as a registrant under the Act for a period of five (5) years. Provided, however, that upon application to Packers and

Stockyards Program, a supplemental order may be issued terminating the suspension at any time after 310 days, upon demonstration of circumstances warranting modification of the original order. Provided, further, that this order may be modified upon application to Packers and Stockyards Program to permit the salaried employment of Respondent by another registrant or packer after the expiration of 310 days of this suspension term and upon demonstration of circumstances warranting modification of the order.

This decision shall become final and effective without further proceedings 35 days after the date of service upon Respondent, 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.

Done at Washington, DC

In re: LEE JOHNSON.
P. & S. Docket No. D-08-0165.
Default Decision.
February 17, 2009.

PS – Default.

Charles L. Kendall for APHIS.
Respondent Pro se.

Default Decision by Administrative Law Judge Peter M. Davenport..

DEFAULT DECISION AND ORDER

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 August 20, 2008, by the Deputy Administrator, Packers and

Stockyards Program, GIPSA, United States Department of Agriculture. The Complaint alleged that during the period October 23, 2007, through November 15, 2007, Lee Johnson, (hereinafter "Respondent"), Respondent issued checks in payment for five (5) livestock purchases from four (4) sellers, in a total amount of \$107,229.89, which were returned unpaid by the bank upon which they were drawn because Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay them when presented. The Complaint further alleged that Respondent purchased livestock in the five (5) transactions above and in one (1) additional transaction with an additional seller, and failed to pay the full purchase price of such livestock, in a total amount of \$127,674.66. A copy of the Complaint was mailed to Respondent by certified mail at his last known mailing address on August 21, 2008, and was returned marked "Unclaimed" to the office of the Hearing Clerk on September 22, 2008. A copy of the Complaint was remailed to Respondent at the same address by ordinary mail on September 23, 2008, pursuant to Section 1.147(c) of the Rules of Practice (7 C.F.R. § 1.147(c)) and is therefore deemed served. Respondent has not answered the Complaint. 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 (7 C.F.R. § 1.139).

Findings of Fact

1. Lee Johnson (hereinafter "Respondent") is an individual whose mailing address is 1540 AN CR 489, Montalba, Texas 75863.
2. Respondent at all times material to this Complaint was engaged in the business of buying and selling livestock in commerce as a dealer for his own account and was registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account.
3. As set forth in paragraph II of the Complaint, during the period October 23, 2007, through November 15, 2007, Lee Johnson,

(hereinafter "Respondent"), purchased livestock and failed to pay the full purchase price of such livestock, in a total amount of \$127,674.66, to five (5) sellers for six (6) transactions, and issued checks in purported payment for five (5) of those transactions which were returned unpaid by the bank upon which they were drawn because Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay them when presented.

Conclusions of Law

1. The Secretary has jurisdiction over this matter.
2. Respondent's failures to make full payment promptly with respect to the six (6) transactions set forth in the total amount of \$127,674.66, and his issuance of insufficient funds checks, constitute willful 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 Lee Johnson, his agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from failing to pay the full purchase price of livestock.

In accordance with 7 U.S.C. § 204, Respondent Lee Johnson is suspended as a Registrant under the Act for a period of six (6) years.

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).

Copies hereof shall be served upon the parties.

Done at Washington, D.C.

**In re: SOUTH SHORE MEATS CORPORATION
P. & S. Docket No. D-08-0126.
Default Decision.
May 4, 2009.**

PS –Default.

Ciarra A. Toomey for APHIS.
Respondent Pro se.
Default Decision by Administrative Law Judge Jill S. Clifton..

Decision and Order by Reason of Default

1. The Respondent's name is clarified in the Status Filing filed on April 30, 2009 (*see* footnote 1), and I hereby amend the case caption accordingly. The Complaint, filed on May 22, 2008, alleged that the Respondent, in or about 2007, willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181, *et seq.*) (frequently herein the "Packers and Stockyards Act" or the "Act"), and the regulations promulgated thereunder, 9 C.F.R. § 201.1 *et seq.*

Parties and Counsel

2. The Complainant is the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (frequently herein "Packers and Stockyards" or "Complainant"). Packers and Stockyards is represented by Ciarra A. Toomey, Esq. with the Office of the General Counsel (Trade Practices Division), United States Department of Agriculture, South Building Room 2309 Stop 1413, 1400 Independence Avenue S.W., Washington, D.C. 20250-1413.

3. The Respondent is South Shore Meats Corporation (herein frequently "South Shore" or "Respondent"), a corporation organized and existing

under the laws of the State of Florida, which ceased business operations in about August 2008, but had been operating at 6712 State Rd 674, Wimauma, Florida 33598 (this address is found in Online Yellow Pages, and is apparently preferred by the U.S. Postal Service); or 6712 Hwy 674 East, Wimauma, Florida 33598 (this address is in filings with the Florida Department of State, and in the Affidavit of Resident Agent Nilsa Ramos Taylor, dated April 30, 2009).

Procedural History

4. Packers and Stockyards' Motion for Decision Without Hearing by Reason of Default, filed October 20, 2008, is before me. Respondent South Shore was served on February 9, 2009, with a copy of that Motion and a copy of the proposed Decision and has failed to respond.

5. Respondent South Shore was served with a copy of the Complaint on July 16, 2008, as follows. The Hearing Clerk's certified mailing on June 16, 2008, to Respondent South Shore, of a copy of the Complaint, was sent to "South Shore Meats, Inc., 6712 State Road 674, Wimauma, Florida 33598". In the same mailing, the Hearing Clerk included a "notice letter" (Acting Hearing Clerk letter) and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151) (the "Rules of Practice"). The envelope was returned as "Unclaimed" by the United States Postal Service. On July 16, 2008, the Hearing Clerk re-mailed a copy of the Complaint with the enclosures to the same address by regular mail.

6. Under the Rules of Practice, a Complaint returned "Unclaimed" "shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address." 7 C.F.R. §1.147(c) (1).

7. Further, on July 3, 2008, Complainant sent a letter to Respondent South Shore, to the same address as the July 16, 2008 mailing of the Complaint. The letter informed Respondent that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the

Complaint. The letter also informed Respondent that if this matter was to proceed to hearing, the Packers and Stockyards Program would seek a civil penalty of \$43,000. On July 17, 2008, Respondent responded to Complainant's letter, but failed to file an answer.

8. The Respondent's answer was due to be filed within 20 days after service, according to section 1.136(a) of the Rules of Practice. 7 C.F.R. § 1.136(a). The time for filing an answer to the Complaint expired on August 5, 2008. To date, the Respondent still has failed to file an answer. The Respondent is in default, pursuant to section 1.136(c) of the Rules of Practice. 7 C.F.R. § 1.136(c).

9. Failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. § 1.136(c). Failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. Accordingly, the material facts alleged in the Complaint, which are admitted by the Respondent's default, 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. *See* 7 C.F.R. § 1.130 *et seq.*

Findings of Fact

10. Respondent South Shore Meats Corporation is a corporation organized and existing under the laws of the State of Florida with the following **current** mailing address:

South Shore Meats Corporation
c/o Mr. Richard Nusman
5465 46th Ct W
Bradenton, FL 34210-6601

11. Mr. Richard Nusman is the registered agent and 100% stockholder of Respondent South Shore Meats Corporation.

12. Respondent South Shore Meats Corporation, was, at all times

material to this Decision:

(a) Engaged in the business of buying livestock in commerce for purposes of slaughter and of manufacturing or preparing meats or meat food products for sale or shipment in commerce; and

(b) A packer within the meaning of that term under the Act and subject to the Act.

(c) Respondent's average annual purchases of livestock exceeded \$500,000.

13. Respondent South Shore Meats Corporation, on or about the dates and in the transactions set forth below, issued checks in payment for livestock purchases which checks were returned unpaid by the bank upon which they were drawn because Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented.

Seller	No. of Head	Check Amount	Check No.	Check Date	Date Returned
Jolley's	225	\$16,707.81	1832	2/16/07	2/27/07
Jolley's	88	\$6,442.60	1834	2/20/07	2/27/07
Jolley's	193	\$16,870.25	1840	2/22/07	2/27/07
Jolley's	168	\$17,347.36	1855	2/28/07	3/9/07
Jolley's	178	\$19,183.62	1858	3/3/07	3/9/07
Jolley's	200	\$17,948.77	1871	3/14/07	3/22/07
Jolley's	188	\$17,480.01	1866	3/15/07	3/22/07
Jolley's	251	\$23,337.99	2021	4/5/07	4/17/07
Neely¹	N/A	\$20,156.47	2035	4/24/07	5/3/07
Jolley's	189	\$18,971.81	2054	4/27/07	5/14/07
Totals	1680	\$174,446.69			

South Shore Meats Corporation
68 Agric. Dec. 457

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¹ Respondent did not maintain an invoice for this transaction; check no 2035 was returned, not presented again. Respondent wire transferred two amounts \$14,500 on 05/15/07 and \$5,700 on 05/17/07 to pay this balance.

14. On or about the dates and in the transactions set forth below, Respondent purchased livestock and failed to pay, within the time period required by the Act, the full purchase price of such livestock.

Purchas ed From	Purchase Date	No. of Head	Invoice Amount	Payment Date	Due Date per §409	Days late
Jolley's	3/13/07	183	\$17,384.49	3/16/07	3/14/07	2
Jolley's	4/18/07	180	\$16,799.04	4/20/07	4/19/07	1
Jolley's	4/19/07	140	\$13,116.46	4/24/07	4/20/07	4
Jolley's	4/23/07	240	\$20,356.62	4/26/07	4/24/07	2
Jolley's	4/24/07	119	\$12,080.44	4/30/07	4/25/07	5
Jolley's	4/30/07	160	\$ 6,633.00	5/9/07	5/1/07	8
Jolley's	5/22/07	140	\$16,960.80	5/24/07	5/23/07	1
Jolley's	5/24/07	140	\$14,910.95	5/31/07	5/25/07	6
Jolley's	5/23/07	198	\$21,600.26	5/31/07	5/24/07	7
Jolley's	5/28/07	154	\$18,225.57	5/31/07	5/29/07	2
Jolley's	5/30/07	188	\$21,207.38	6/15/07	5/31/07	15
Jolley's	5/31/07	200	\$21,792.96	6/6/07	6/1/07	5
Jolley's	6/3/07	159	\$16,636.72	6/6/07	6/4/07	2
Jolley's	6/7/07	178	\$18,980.66	6/15/07	6/8/07	7
Jolley's	6/10/07	293	\$23,852.97	6/15/07	6/11/07	4
Jolley's	6/11/07	125	\$14,064.65	6/15/07	6/12/07	3
Jolley's	6/12/07	215	\$24,710.63	6/15/07	6/13/07	2
Totals		3012	\$299,313.60	Average days late		4. 5

15. Respondent failed to keep accounts, records, and memoranda that fully and correctly disclosed all transactions involved in its business, as required by section 401 of the Act (7 U.S.C. § 221), including, but not limited to, all livestock invoices, written credit agreements, copies of all third party checks that were given to livestock sellers in payment for Respondent's livestock purchases, and a complete record showing the dates and amounts of all payments made for livestock purchases, including payments made using third party checks.

16. On August 8, 2007 the Packers and Stockyards Program sent Respondent a certified letter, which the Respondent received on August 17, 2007, stating that the Respondent's surety bond would be terminated on September 1, 2007. The letter referenced 9 C.F.R. § 201.29 which requires packers to file and maintain bonds and reminded the Respondent that violators are subject to disciplinary action under the Act. The letter also notified the Respondent that failure to furnish the requested bond coverage and a continuation of livestock purchases as a packer would be a violation of the Act, 7 U.S.C. § 204.

Notwithstanding such notice, Respondent continued to engage in business as a packer without maintaining an adequate bond or its equivalent as required by the Act and the regulations.

17. On or about the dates and in the transactions set forth below, Respondent purchased livestock for the purpose of slaughter without maintaining an adequate bond or bond equivalent. The transactions occurred at Neely Livestock, in Murfreesboro, Tennessee, and at Jolley's, in Doyle, Tennessee.

Seller	Date of Purchase	Number of Head	Invoice Total
Jolley's	09/03/2007	181	\$14,320.10
Neely	09/04/2007	221	\$19,289.60
Jolley's	09/04/2007	179	\$14,681.42
Jolley's	09/05/2007	75	\$6,021.35
Jolley's	09/09/2007	135	\$11,619.27
Neely	09/11/2007	378	\$27,087.60

Jolley's	09/11/2007	192	\$14,728.80
Jolley's	09/12/2007	60	\$4,790.40
Jolley's	09/16/2007	88	\$6,667.79
Neely	09/17/2007	276	\$17,055.00
Jolley's	09/18/2007	215	\$13,864.87
Jolley's	09/19/2007	132	\$10,097.70
Jolley's	09/24/2007	162	\$11,152.86
Jolley's	09/25/2007	150	\$11,880.70
Jolley's	09/26/2007	100	\$6,939.26
Jolley's	09/30/2007	200	\$10,523.84
Totals		2744	\$200,720.56

Conclusions

18. The Secretary of Agriculture has jurisdiction over Respondent South Shore Meats Corporation and the subject matter involved herein.

19. Respondent South Shore Meats Corporation willfully violated sections 202(a) and 409 of the Act. 7 U.S.C. §§ 192(a), 228b. Paragraphs 13 and 14.

20. Respondent South Shore Meats Corporation failed to keep records as required by section 401 of the Act (7 U.S.C. §221) and therefore willfully engaged in an "unfair practice" under section 202(a) of the Act. 7 U.S.C. §192(a). Paragraph 15.

21. Respondent South Shore Meats Corporation, by failing to maintain a bond, willfully violated section 202(a) of the Act and sections 201.29 and 201.30 of the Regulations. 7 U.S.C. § 204; 9 C.F.R. §§ 201.29, 201.30. Paragraphs 16 and 17.

Order

22. Respondent South Shore Meats Corporation, and its agents and employees, directly or through any corporate or other device, in

connection with its activities subject to the Packers and Stockyards Act, shall cease and desist from: (a) failing to pay the full amount of the purchase price for livestock within the time period required by the Act and the regulations promulgated under it; (b) issuing checks in payment for livestock without sufficient funds on deposit and available in the account upon which the checks are drawn to pay the checks when presented; and (c) purchasing livestock for the purpose of slaughter without maintaining an adequate bond or bond equivalent.

23. Respondent South Shore Meats Corporation and its agents and employees shall keep such accounts, records, and memoranda which fully and correctly disclose all transactions conducted subject to the Act, including, but not limited to, all livestock invoices, written credit agreements, copies of all third party checks that were given to livestock sellers in payment for Respondent's livestock purchases, and a complete record showing the dates and amounts of all payments made for livestock purchases, including payments made using third party checks.

24. Respondent South Shore Meats Corporation is assessed a civil penalty in the amount of Forty Three Thousand dollars (**\$43,000**), in accordance with section 203(b) of the Act. 7 U.S.C. § 193(b). The civil penalty payment instrument shall be made payable to the order of **USDA-GIPSA** and sent to:

USDA-GIPSA
P.O. Box 790335
St. Louis, Missouri 63179-0335

Payment shall be made within 30 days from the date this Order is final and effective (*see* next paragraph).

Finality

25. This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service,

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

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties, USING the address in Paragraph 10 for Respondent.

Done at Washington, D.C.

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

**SUBTITLE A—OFFICE OF THE SECRETARY OF
AGRICULTURE**

PART 1—ADMINISTRATIVE REGULATIONS

....

**SUBPART H—RULES OF PRACTICE GOVERNING
FORMAL**

**ADJUDICATORY PROCEEDINGS INSTITUTED BY THE
SECRETARY UNDER**

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the

Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

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

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

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within

the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

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

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

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

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

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

petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

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

7 C.F.R. § 1.145

In re: TERRY LIVESTOCK, INC.

P. & S. Docket No. D-09-0034.

Default Decision.

May 5, 2009.

PS – Default.

Leah C. Battagioli for APHIS.

Respondent Pro se.

Default Decision by Administrative Law Judge Peter M. Davenport.

Default Decision

Preliminary Statement

This disciplinary proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*; hereinafter "Act"), by a Complaint filed on November 21, 2008, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (hereinafter "Complainant"), alleging that Respondent Terry Livestock, Inc. (hereinafter "Respondent"), willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*; hereinafter "Regulations").

A copy of the Complaint was sent to Respondent by certified mail on November 24, 2008, and it was returned to the Hearing Clerk on January 2, 2009, marked "unclaimed" by the U.S. Postal Service. Accordingly, pursuant to the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.1301.151; hereinafter "Rules of Practice"), on January 6, 2009, the Hearing Clerk re-mailed the Complaint using regular mail. Complainant's attorney also sent a letter to Respondent dated December 2, 2008, by certified mail, informing Respondent that Complainant would seek the assessment of a civil penalty against Respondent in the amount of Thirteen Thousand and Two Hundred Dollars (\$13,200.00). The letter was returned to Complainant's attorney on January 5, 2009, as "unclaimed" and pursuant to the Rules of Practice, on January 7, 2009, Complainant's attorney re-mailed the letter using regular mail. The mailing of the Complaint and letter by regular mail is deemed to constitute service on Respondent pursuant to section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)). Respondent has not answered the Complaint.

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. Therefore, upon Complainant's motion, this decision and order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Terry Livestock, Inc., is a business incorporated in the State of Texas with a mailing address of P.O. Box 258, Hargill, Texas 78549.
2. At all times material to the Complaint, Respondent was:
Engaged in the business of a dealer buying and selling livestock in commerce for its own account; and Registered with the Secretary of Agriculture as a dealer to buy or sell livestock in commerce.

Purchase Date	Seller	No. of Head	Total Cost
Sep. 29, 2007	Edinburg	11	\$5,638.55
Oct. 5, 2007	R. Y.	10	\$4,621.43
Oct. 6, 2007	Edinburg	6	\$2,502.03
Oct. 12, 2007	R. Y.	2	\$398.50
Nov. 9, 2007	Luling	3	\$1,900.00
Nov. 9, 2007	Flatonia	7	\$3,404.53
Nov. 14, 2007	Seguin Cattle	4	\$2,460.00
Nov. 16, 2007	Luling	1	\$551.00
Dec. 14, 2007	Luling	12	\$8,296.80

3. Respondent was notified by certified letter delivered on July 17, 2007, that the surety bond then maintained by Respondent would terminate on August 30, 2007. Respondent was notified that operation after August 30, 2007, without acquiring a new bond or bond equivalent would be a violation of the Act and could subject Respondent to disciplinary action. Respondent did not obtain a new bond or bond equivalent.

24. Respondent, on or about the dates and in the transactions set forth below, purchased livestock as a dealer in commerce without maintaining an adequate bond or bond equivalent.

Conclusions of Law

The Secretary has jurisdiction over this matter. By reason of the facts found in Findings of Fact 3 and 4, Respondent willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30).

Zach A. Landry, Sr.
d/b/a Cowtown Horse and Mule Auction
68 Agric. Dec. 471

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Order

Respondent Terry Livestock, Inc., its agents and employees, directly or through any corporate or other device, in connection with its activities subject to the Act, shall cease and desist from engaging in business in any capacity for which bonding is required under the Act and the Regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the Regulations.

Pursuant to section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent is assessed a civil penalty in the amount of Thirteen Thousand and Two Hundred Dollars (\$13,200.00).

This decision and order shall become final and effective without further proceedings thirty-five (35) days after service on Respondent, unless appealed to the Judicial Officer 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, 1.145).

Copies of this decision and order shall be served upon the parties.
Done at Washington, D.C.

In re: ZACH A. LANDRY, SR. d/b/a COWTOWN HORSE and MULE AUCTION.

P. & S. Docket No. D-08-0039.

Default Decision.

June 16, 2009.

PS – Default.

Charles L. Kendall for APHIS.
Respondent Pro se.

Default Decision by Administrative law Judge Peter M. Davenport.

DEFAULT DECISION AND ORDER

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*)(hereinafter referred to as the “Act”), instituted by a Complaint filed on December 28, 2007, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection Packers and Stockyards Administration (GIPSA), United States Department of Agriculture. The Complaint alleged that Zach Landry, Sr., d/b/a Cowtown Horse and Mule Auction, registered under the Act as a market agency (hereinafter “Respondent”), engaged in the business of selling livestock in commerce on a commission basis without having a sufficient bond or bond equivalent. 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.*) (“Rules of Practice”) were served on Respondent by certified mail on January 4, 2008. Respondent was informed in a letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all of the material allegations contained in the Complaint. Respondent has failed to file an answer within the time period required under 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 in this decision and order as findings of fact. Based on these admissions, Complainant’s motion for the issuance of a Default Order, made pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), is granted and order shall be issued without further procedure.

Findings of Fact

1. Zach A. Landry, Sr., d/b/a Cowtown Horse and Mule Auction (hereinafter “Respondent”) is an individual whose mailing address is 2925 South Goldenstate Blvd. Turlock, California 95380.

2. Respondent at all times material to the Complaint was engaged in the business of selling livestock in commerce on a commission basis.

3. Respondent was registered as a market agency with the Secretary of Agriculture to sell livestock in commerce on commission basis.

4. Respondent failed to secure a sufficient bond or bond equivalent, despite notification by certified mail and multiple phone communications from GIPSA personnel that GIPSA had information indicating Respondent’s bond would be expiring, and that the regulations (9 C.F.R. §§ 201.29- 201.30) require that he file a bond or bond equivalent in the required coverage amount. Respondent was notified that he must refrain from engaging in activities subject to the Act until the bonding requirements had been met. Despite these notices, Respondent continued to engage in the business of a market agency selling livestock in commerce on commission without first obtaining a bond or bond equivalent.

5. Respondent’s response to the Complainant’s Motion for Default includes Respondent’s admission that he opened a interest bearing “Time Deposit” with the F&M Bank of Central California in the original amount of \$10,000 whereas Respondent was required to post a bond of \$20,000 at that time.

Conclusions of Law

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

2. By failing to secure a bond or bond equivalent in the required amount of \$20,000 before engaging in business subject to the Act, Respondent willfully 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. §§ 201.27, 201.29, 201.30).

3. 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 and order is entered without hearing or further procedure.

Order

Respondent Zach A. Landry, Sr., d/b/a Cowtown Horse and Mule Auction, his successors and assigns, in whatever business form or trade name, shall cease and desist from engaging in operations subject to the Act without first obtaining the requisite bond or bond equivalent. Pursuant to section 312(b) of the Packers & Stockyards Act, Respondent's registration is suspended for 30 days, and thereafter until Respondent is properly and adequately bonded. Respondent is assessed a civil penalty of \$3,000. 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).

Copies hereof shall be served upon the parties.

Done at Washington, D.C.

Consent Decisions**Date Format [YY/MM/DD]****PACKERS AND STOCKYARDS ACT**

Tom Johnson a/k/a Thomas L. Johnson d/b/a Tom Johnson Livestock Co., PS-08-0135, 09/02/25.

Barber Livestock, LLC, Mark Barber and Lora Barber, PS-D-09-0018, 09/01/15.

John Connery and Mississippi Valley Livestock, Inc., PS-08-0023, 09/01/15.

Muenster Livestock Auction Commission, Inc., and Ronnie Austin, PS-D-08-0059, 09/03/25.

Premium Gold foods, LLC., PS-D-08-0123, 09/04/09.

Central Beef Ind., LLC, PS-D-09-0086, 09/05/04.

Donald D. Baker Cattle Company, LLC, and Donald D. Baker, PS-08-0133, 09/05/07.

Hereford Livestock Exchange, Inc., d/b/a Livestock Exchange, LTD; and Randy Bouldin and Portales Livestock Auction, Inc., and Randy Bouldin, PS-08-0151 & PS-08-0152, 09/06/02.

Daniel D. Miller, PS-D-08-0132, 09/06/11.

Donald W. Hallmark, Donald R. Hallmark d/b/a Hallmark Meat Packing Company, PS-D-08-0104, 09/06/23.

Clifford F. Dance, Jr., and Mike Whitfield d/b/a Gowan Stockyards, PS-D-07- 0163, 09/06/25.

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Robert W. Campbell d/b/a RWC Cattle Company, PS-D-09-0108,
09/06/30.

Fergus Falls Livestock Auction Market, Inc., and Joe Varner, PS-D-
09-0067, 09/06/30.