

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*. Decisions and Orders found on the OALJ Website may be cited as primary sources.

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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A compilation of past volumes on Compact Disk (CD) and individual softbound volumes from Vol. 59 (Circa 2000) of *Agriculture Decisions* are available.

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 DECISION

In re: TERRY LIVESTOCK, INC.

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

Decision and Order.

Filed August 25, 2009.

P&S – Default – Cease and desist order – Civil penalty – Dealer – Engaging in business without adequate bond – Failure to file answer.

Battaglioli, for the Deputy Administrator, GIPSA.

Respondent, Pro se.

Initial decision issued by Peter S. Davenport, Administrative Law Judge.

Decision and Order issued by William G. Jenson, Judicial Officer.

PROCEDURAL HISTORY

Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on November 21, 2008. The Deputy Administrator instituted the proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act]; the regulations issued under the Packers and Stockyards Act (9 C.F.R. pt. 201) [hereinafter the Regulations]; and 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].

The Deputy Administrator alleges that Terry Livestock, Inc., purchased livestock as a dealer in commerce without maintaining an adequate bond or bond equivalent, in willful violation of section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29-.30) (Compl. ¶¶ III-IV).

The Hearing Clerk sent Terry Livestock, Inc., the Complaint, the

Rules of Practice, and a service letter by certified mail on November 24, 2008.¹ The United States Postal Service marked the November 24, 2008, mailing unclaimed and returned the mailing to the Hearing Clerk. In accordance with section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)), the Hearing Clerk remailed the Complaint, the Rules of Practice, and a service letter by ordinary mail to Terry Livestock, Inc., on December 1, 2008. Terry Livestock, Inc., failed to file an answer to the Complaint within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). The Hearing Clerk sent Terry Livestock, Inc., a letter dated January 26, 2009, stating Terry Livestock, Inc., had not filed a timely response to the Complaint. Terry Livestock, Inc., failed to file a response to the Hearing Clerk's January 26, 2009, letter.

On February 6, 2009, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the Deputy Administrator filed a Motion for Decision Without Hearing by Reason of Default [hereinafter Motion for Default Decision] and a proposed Decision Without Hearing by Reason of Default [hereinafter Proposed Default Decision]. The Hearing Clerk sent Terry Livestock, Inc., the Deputy Administrator's Motion for Default Decision, the Deputy Administrator's Proposed Default Decision, and a service letter by certified mail on February 6, 2009.² The United States Postal Service marked the February 6, 2009, mailing unclaimed and returned the mailing to the Hearing Clerk. In accordance with section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)), the Hearing Clerk remailed the Deputy Administrator's Motion for Default Decision, the Deputy Administrator's Proposed Default Decision, and the service letter by ordinary mail to Terry Livestock, Inc., on March 17, 2009. Terry Livestock, Inc., failed to file objections to the Deputy Administrator's Motion for Default Decision

¹United States Postal Service Domestic Return Receipt for article number 7004 2510 0003 7022 8241.

²United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3859 2363.

and the Deputy Administrator's Proposed Default Decision within 20 days after service, as required by section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). The Hearing Clerk sent Terry Livestock, Inc., a letter dated April 6, 2009, stating Terry Livestock, Inc., had not filed timely objections to the Deputy Administrator's Motion for Default Decision. Terry Livestock, Inc., failed to file a response to the Hearing Clerk's April 6, 2009, letter.

On May 5, 2009, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued a Default Decision and Order [hereinafter the ALJ's Decision]: (1) concluding Terry Livestock, Inc., willfully violated the Packers and Stockyards Act and the Regulations, as alleged in the Complaint; (2) ordering Terry Livestock, Inc., to cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act and the Regulations, without filing and maintaining an adequate bond or its equivalent; and (3) assessing Terry Livestock, Inc., a \$13,200 civil penalty. The Hearing Clerk sent Terry Livestock, Inc., the ALJ's Decision and a service letter by certified mail on May 6, 2009.³ The United States Postal Service returned the mailing to the Hearing Clerk.⁴ On June 24, 2009, Julie M. Shamblin, an employee of the United States Department of Agriculture, personally served the ALJ's Decision and the Hearing Clerk's May 6, 2009, service letter on Terry Livestock, Inc., in accordance with section 1.147(c)(3)(i) of the Rules of Practice (7 C.F.R. § 1.147(c)(3)(i)).⁵

On July 14, 2009, Terry Livestock, Inc., appealed to the Judicial Officer. On July 30, 2009, the Deputy Administrator filed a response to Terry Livestock, Inc.'s appeal petition. On August 3, 2009, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision. Based upon a careful review of the record, I affirm the ALJ's Decision.

³United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3862 8369.

⁴Hearing Clerk's Notice of Returned Mail dated May 19, 2009.

⁵Certificate of Service filed July 9, 2009.

DECISION

Statement of the Case

Terry Livestock, Inc., failed to file an answer to the Complaint within the time prescribed in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides the failure to file an answer within the time provided in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) shall be deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the failure to file an answer or the admission by the answer of all the material allegations of fact contained in the complaint constitutes a waiver of hearing. Accordingly, the material allegations in the Complaint are adopted as findings of fact. 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 instant proceeding, Terry Livestock, Inc., was:
 - (a) Engaged in the business of a dealer buying and selling livestock in commerce for its own account; and
 - (b) Registered with the Secretary of Agriculture as a dealer to buy or sell livestock in commerce.
3. Terry Livestock, Inc., was notified by certified letter delivered on July 17, 2007, that the surety bond then maintained by Terry Livestock, Inc., would terminate on August 30, 2007. Terry Livestock, Inc., was notified that operation after August 30, 2007, without acquiring a new bond or bond equivalent would be a violation of the Packers and Stockyards Act and could subject Terry Livestock, Inc., to disciplinary action. Terry Livestock, Inc., did not obtain a new bond or bond

equivalent.

4. Terry Livestock, Inc., on or about the dates and in the transactions set forth in this Finding of Fact number 4, purchased livestock as a dealer in commerce without maintaining an adequate bond or bond equivalent.

Purchase Date	Seller	No. of Head	Total Cost
Sep. 29, 2007	Edinburg Livestock Auction, Inc.	11	\$5,638.55
Oct. 5, 2007	R. Y. Livestock Sales, Inc.	10	\$4,621.43
Oct. 6, 2007	Edinburg Livestock Auction, Inc.	6	\$2,502.03
Oct. 12, 2007	R. Y. Livestock Sales, Inc.	2	\$398.50
Nov. 9, 2007	Luling Livestock Auction	3	\$1,900.00
Nov. 9, 2007	Flatonia Livestock Comm. Co.	7	\$3,404.53
Nov. 14, 2007	Seguin Cattle Company	4	\$2,460.00
Nov. 16, 2007	Luling Livestock Auction	1	\$551.00
Dec. 14, 2007	Luling Livestock Auction	12	\$8,296.80
Dec. 15, 2007	Gonzales Livestock Market, Inc.	2	\$1,400.00
TOTALS		58	\$31,172.84

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction over this matter.
2. By reason of the facts found in Findings of Fact numbers 3 and 4, Terry Livestock, Inc., willfully violated section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29-.30).

Terry Livestock, Inc.'s Appeal Petition

On July 14, 2009, Terry Livestock, Inc., filed a 1-page letter stating that the letter is an appeal of "the findings by L. Eugene Whitfield, Hearing Clerk and signed by administrative Law Judge, Peter M.

Davenport.” I find Terry Livestock, Inc.’s letter to be an appeal of the ALJ’s May 5, 2009, Decision.

Terry Livestock, Inc., denies that it purchased livestock as a dealer without an adequate bond or its equivalent during the period September 29, 2007, through December 15, 2007, as alleged in the Complaint and found by the ALJ. Terry Livestock, Inc., states it ceased doing business as a livestock dealer in August 2007. (Appeal Pet. at 1.)

Terry Livestock, Inc.’s denial of the allegations in the Complaint comes too late to be considered. The Hearing Clerk served Terry Livestock, Inc., with the Complaint on December 1, 2008. In accordance with the Rules of Practice, Terry Livestock, Inc.’s answer was due 20 days after service of the Complaint; namely, December 22, 2008.⁶ Terry Livestock, Inc.’s first and only filing in this proceeding is its appeal petition filed July 14, 2009, 6 months 22 days after Terry Livestock, Inc.’s answer was due. Terry Livestock, Inc., is deemed, by its failure to file a timely answer, to have admitted the allegations in the Complaint.⁷ Therefore, I reject Terry Livestock, Inc.’s late-filed denial of the allegations in the Complaint, and I find the ALJ’s Decision, concluding that Terry Livestock, Inc., violated the Packers and Stockyards Act and the Regulations, as alleged in the Complaint, was properly issued.

Terry Livestock, Inc., also asks why the ALJ’s Decision was “hand delivered to the proper address” (Appeal Pet. at 1). Under the Rules of Practice, a party who disagrees with the decision or any ruling by the administrative law judge or who alleges any deprivation of rights, may appeal to the Judicial Officer.⁸ Terry Livestock, Inc.’s inquiry as to the reason for the hand-delivery of the ALJ’s Decision to its address does not indicate that Terry Livestock, Inc., disagrees with the ALJ’s Decision or any ruling by the ALJ and does not contain an allegation

⁶7 C.F.R. § 1.136(a).

⁷7 C.F.R. § 1.136(c).

⁸7 C.F.R. § 1.145(a).

that Terry Livestock, Inc., suffered a deprivation of any right. Nonetheless, I note the Rules of Practice specifically provide that documents or papers, authorized or required under the Rules of Practice, may be served other than by mail, as follows:

§ 1.147 Filing; service; extensions of time; and computation of time.

....

(c) *Service on party other than the Secretary. . . .*

....

(3) Any document or paper served other than by mail, on any party to a proceeding, other than the Secretary or agent thereof, shall be deemed to be received by such party on the date of:

(i) Delivery to any responsible individual at, or leaving in a conspicuous place at, the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, or

(ii) Delivery to such party if an individual, to an officer or director of such party if a corporation, or to a member of such party if a partnership, at any location.

7 C.F.R. § 1.147(c)(3). Therefore, I find Ms. Shamblin's hand-delivery of the ALJ's Decision to Terry Livestock, Inc., was in accordance with the Rules of Practice.

For the foregoing reasons, the following Order is issued.

ORDER

1. Terry Livestock, Inc., its agents and employees, directly or indirectly through any corporate or other device, in connection with its activities 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 and the Regulations, without filing and maintaining an adequate bond or its equivalent, as

Terry Livestock, Inc.
68 Agric. Dec. 1162

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required by the Packers and Stockyards Act and the Regulations.

Paragraph 1 of this Order shall become effective on the day after service of this Order on Terry Livestock, Inc.

2. Terry Livestock, Inc., is assessed a \$13,200 civil penalty. The civil penalty shall be paid by certified check or money order made payable to "USDA-GIPSA" and sent to:

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

Payment of the civil penalty shall be sent to USDA-GIPSA within 30 days after service of this Order on Terry Livestock, Inc. Terry Livestock, Inc., shall state on the certified check or money order that payment is in reference to P. & S. Docket No. D-09-0034.

PACKERS AND STOCKYARDS ACT

MISCELLANEOUS ORDER

**In re: MEADOWBROOK FARMS COOPERATIVE.
P. & S. Docket No. D-09-0097.
Order Denying Appeal Petition.
Filed October 5, 2009.**

PS – Default – Failure to file answer – Intervene.

Jonathan D. Gordy, for the Deputy Administrator, GIPSA.
Respondent, Pro se.
Initial decision issued by Peter M. Davenport, Administrative Law Judge.
Order issued by William G. Jenson, Judicial Officer.

PROCEDURAL HISTORY

Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], instituted this disciplinary administrative proceeding by filing a Complaint and Notice of Hearing on April 16, 2009. The Deputy Administrator instituted the proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act]; the regulations issued under the Packers and Stockyards Act (9 C.F.R. pt. 201) [hereinafter the Regulations]; and 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]. The Deputy Administrator alleges Meadowbrook Farms Cooperative willfully violated sections 202(a), 409, and 409(b) of the Packers and Stockyards Act (7 U.S.C. §§ 192(a), 228b, 228b(b)) and sections 201.99(b) and 201.200 of the Regulations (9 C.F.R. §§ 201.99(b), .200) (Compl. ¶¶ II-V).

The Hearing Clerk served Meadowbrook Farms Cooperative with the Complaint and Notice of Hearing, the Rules of Practice, and a service

letter by certified mail on April 23, 2009.¹ Meadowbrook Farms Cooperative failed to file an answer to the Complaint and Notice of Hearing within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Instead, on May 5, 2009, Meadowbrook Farms Cooperative, through its bankruptcy attorney, Edward J. Karfeld, filed a “Limited Entry of Appearance to Suggest the Bankruptcy of Respondent.” Meadowbrook Farms Cooperative suggested that its petition in bankruptcy operates as an automatic stay of the instant proceeding pursuant to the Bankruptcy Act. (See 11 U.S.C. § 362(a)(1).) The Deputy Administrator filed a “Response to Suggestion” stating the instant proceeding falls within the exceptions to the automatic stay provision in the Bankruptcy Act. On May 12, 2009, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued an Order: (1) finding the instant proceeding falls within the exceptions to the automatic stay provision of the Bankruptcy Act; (2) ordering that Meadowbrook Farms Cooperative’s Limited Entry of Appearance to Suggest the Bankruptcy of Respondent “be considered nugatory and of no force”; and (3) ordering that the instant action proceed. The Hearing Clerk served Mr. Karfeld with the ALJ’s May 12, 2009, Order by certified mail.²

The Hearing Clerk sent Meadowbrook Farms Cooperative a letter dated May 14, 2009, stating Meadowbrook Farms Cooperative had not filed a timely response to the Complaint and Notice of Hearing. Meadowbrook Farms Cooperative failed to file a response to the Hearing Clerk’s May 14, 2009, letter.

On June 24, 2009, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the Deputy Administrator filed a Motion for Decision Without Hearing Based on Default [hereinafter Motion for Default Decision] and a Proposed Decision Without Hearing Based on

¹United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3862 8321.

²United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3862 8925.

Default [hereinafter Proposed Default Decision]. The Hearing Clerk served Meadowbrook Farms Cooperative with the Deputy Administrator's Motion for Default Decision, the Deputy Administrator's Proposed Default Decision, and a service letter by certified mail on June 29, 2009.³ Meadowbrook Farms Cooperative failed to file objections to the Deputy Administrator's Motion for Default Decision and the Deputy Administrator's Proposed Default Decision within 20 days after service, as required by section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). The Hearing Clerk sent Meadowbrook Farms Cooperative a letter dated July 21, 2009, stating Meadowbrook Farms Cooperative had not filed timely objections to the Deputy Administrator's Motion for Default Decision. Meadowbrook Farms Cooperative failed to file a response to the Hearing Clerk's July 21, 2009, letter.

On August 4, 2009, the ALJ issued a Default Decision and Order [hereinafter the ALJ's Decision]: (1) concluding Meadowbrook Farms Cooperative willfully violated the Packers and Stockyards Act and the Regulations, as alleged in the Complaint and Notice of Hearing; and (2) ordering Meadowbrook Farms Cooperative to cease and desist violations of the Packers and Stockyards Act and the Regulations. The Hearing Clerk served Meadowbrook Farms Cooperative with the ALJ's Decision and a service letter by certified mail.⁴

On September 8, 2009, Laura K. Grandy, Trustee of the Chapter 7 Bankruptcy Estate of Meadowbrook Farms Cooperative [hereinafter the Trustee], appealed to, and requested oral argument before, the Judicial Officer. On September 28, 2009, the Deputy Administrator filed a response to the Trustee's appeal petition arguing the Trustee's appeal petition should be denied because the Trustee is not a party to the instant proceeding and has no right to intervene in the instant proceeding. On September 30, 2009, the Hearing Clerk transmitted the

³United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3862 5627.

⁴United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3862 5283.

record to the Judicial Officer for consideration and decision. Based upon a careful review of the record, I agree with the Deputy Administrator that the Trustee is not a party to the instant proceeding and has no basis for intervention in the instant proceeding; therefore, the Trustee's September 8, 2009, appeal petition must be denied.

CONCLUSIONS BY THE JUDICIAL OFFICER

The Trustee's Appeal Petition

The Rules of Practice provide that only a party in a proceeding may appeal an administrative law judge's decision, as follows:

§ 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.

7 C.F.R. § 1.145(a).⁵ The parties in the instant proceeding are Meadowbrook Farms Cooperative and the Deputy Administrator, and, under the Rules of Practice, only Meadowbrook Farms Cooperative and the Deputy Administrator had the opportunity to appeal the ALJ's August 4, 2009, Decision. Therefore, the Trustee's appeal petition is denied on the ground that the Trustee is not a party in the instant proceeding.

The Trustee argues the Packers and Stockyards Act allows her to intervene in the instant proceeding. The Packers and Stockyards Act

⁵See also *In re Wayne Edwards*, 68 Agric. Dec.371, 373-74 (2009).

provides that any person, for good cause shown, may be allowed to intervene, as follows:

§ 193. Procedure before Secretary for violations

(a) Complaint; hearing; intervention

Whenever the Secretary has reason to believe that any packer . . . has violated or is violating any provision of this subchapter, he shall cause a complaint in writing to be served on the packer . . . , stating his charges in that respect, and requiring the packer . . . to attend and testify at a hearing at a time and place designated therein, at least thirty days after the service of such complaint; and at such time and place there shall be afforded the packer . . . a reasonable opportunity to be informed as to the evidence introduced against him (including the right to cross-examination), and to be heard in person or by counsel and through witnesses, under such regulations as the Secretary may prescribe. Any person for good cause shown may on application be allowed by the Secretary to intervene in such proceeding, and appear in person or by counsel.

7 U.S.C. § 193(a).

The Rules of Practice make no provision for intervention in a disciplinary proceeding, which is a matter solely between the respondent (in the instant proceeding Meadowbrook Farms Cooperative) and the complainant (in the instant proceeding the Deputy Administrator).⁶ Moreover, I do not find the Trustee has shown good cause to allow her to intervene in the instant proceeding.

⁶*In re Syracuse Sales Co.* (Decision as to John Knopp), 52 Agric. Dec. 1511, 1513 (1993) (denying intervention of a group of investors composed of creditors and members of the local business community in a disciplinary proceeding instituted under the Rules of Practice), *appeal dismissed*, No. 94-9505 (10th Cir. Apr. 29, 1994); *In re Bananas, Inc.* (Order Denying Intervention), 42 Agric. Dec. 426 (1983) (denying intervention of a creditor in a disciplinary proceeding instituted under the Rules of Practice).

The Trustee's Request For Oral Argument

The Rules of Practice provide that only a party bringing an appeal may request oral argument before the Judicial Officer.⁷ The parties in the instant proceeding are Meadowbrook Farms Cooperative and the Deputy Administrator, and, under the Rules of Practice, only Meadowbrook Farms Cooperative and the Deputy Administrator may request the opportunity for oral argument before the Judicial Officer. Therefore, the Trustee's request for oral argument before the Judicial Officer must be denied.

For the foregoing reasons, the following Order is issued.

ORDER

1. The Trustee's September 8, 2009, request for oral argument before the Judicial Officer is denied.
2. The Trustee's September 8, 2009, appeal petition is denied.
3. This Order shall become effective upon service on the Trustee and Meadowbrook Farms Cooperative.

⁷ C.F.R. § 1.145(d).

PACKERS AND STOCKYARDS ACT

DEFAULT DECISIONS

In re: GREAT WESTERN AUCTIONS, LLC.

P.&S. Docket No. D-09-0002.

Default Decision.

Filed August 4, 2009.

P&S.

Ciarra A. Toomey for Complainant.

Respondent, Pro se.

Decision and Order issued by Peter M. Davenport, Administrative Law Judge.

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.*), herein referred to as the “Act,” instituted by a Complaint filed on October 1, 2008 by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, charging that the Respondent willfully violated the Act.

The Complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130), hereinafter the “Rules of Practice,” were served on Respondent by certified mail on October 6, 2008. Respondent was informed in the 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 the material allegations contained in the Complaint.

Further, on October 20, 2008, Complainant sent a letter to Respondent informing 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 were to proceed to hearing, the Packers and Stockyards Program would seek

a civil penalty of \$10,000. On October 23, 2008, Respondent responded to Complainant's letter, by telephone, but failed to file an answer.

Because Respondent has failed to file an answer within the time period prescribed by the Rules of Practice (7 C.F.R. § 1.136), and the material facts alleged in the Complaint, which are admitted by Respondent's failure to file an answer, are adopted and set forth herein as findings of fact. This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1) Respondent is a limited liability company whose mailing address is 30822 Nichols Sawmill Rd., Magnolia, Texas 77355.

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

a. Engaged in the business of selling livestock in commerce on a commission basis; and

b. Registered with the Secretary of Agriculture as a market agency.

3. On September 19, 2007, the Packers and Stockyards Program sent Respondent a certified letter which stated that Respondent's surety bond would terminate on October 17, 2007. The letter referenced 9 C.F.R. §§ 201.29-201.30, which requires market agencies to file and maintain bonds and reminded Respondent that violators are subject to disciplinary action under the Act. The letter also notified Respondent that without the requested bond coverage, continuation of livestock operations as a market agency would be a violation of 7 U.S.C §213(a) of the Act. The letter was returned "unclaimed." On October 23, 2007, the letter was resent, via Federal Express, and served on Respondent October 24, 2007.

4. On October 18, 2007, Packers and Stockyards Program representatives contacted Respondent, by telephone, to inquire about the status of the replacement bond or bond equivalent and discussed the potential administrative procedures that could follow if Respondent violated provisions of the Act. Notwithstanding such notice, Respondent continued to engage in business as a market agency without

maintaining an adequate bond or its equivalent as required by the Act and the Regulations.

5. On or about the dates and in the transactions set forth below, Respondent engaged in the business of a market agency without maintaining an adequate bond or bond equivalent. The transactions occurred at Great Western Auction.

Purchase Date	Purchased For	No. of Head	Livestock Amount	Commissions
11/10/07	R. Walton	1	\$75.00	\$15.00
11/10/07	D. Calhoun	2	\$1,900.00	\$172.00
11/10/07	M. Winstead	2	\$225.00	\$30.00
11/10/07	D. Clevenger	1	\$525.00	\$42.00
11/10/07	M. Annuot	1	\$225.00	\$18.00
11/10/07	J. Bass	1	\$925.00	\$74.00
11/10/07	B. Sadler	1	\$525.00	\$42.00
11/10/07	B. McVaney	1	\$375.00	\$30.00
11/10/07	D. Nichols	3	\$2,100.00	\$210.00
11/10/07	T. Hayne	4	\$1,050.00	\$109.00
11/10/07	K. Lewis	2	\$400.00	\$32.00
11/10/07	L. Ragan	4	\$2,125.00	\$170.00
11/10/07	Harris City Sheriffs' Dept.	7	\$525.00	\$105.00
11/10/07	C. Young	1	\$1,000.00	\$0.00
11/10/07	J. Runnels	1	\$325.00	\$26.00
11/10/07	W. Griffin	1	\$225.00	\$18.00
11/10/07	D. Cobb	1	\$375.00	\$30.00
11/10/07	D. Stephens	5	\$2,950.00	\$239.00
11/10/07	J. Jarel	5	\$1,925.00	\$177.50
11/24/07	BL Ritchey	4	\$1,000.00	\$80.00
11/24/07	L. Ragan	1	\$900.00	\$72.00
11/24/07	D. Cobb	3	\$1,350.00	\$145.00
11/24/07	B. Allen	1	\$225.00	\$18.00
11/24/07	G. Nunnelly	2	\$435.00	\$41.00
11/24/07	J. Helton	2	\$425.00	\$35.00
11/24/07	B. Hurst	2	\$450.00	\$40.00
11/24/07	J. Lamb	2	\$170.00	\$30.00
11/24/07	L. Marshall	1	\$725.00	\$72.50
11/24/07	Horses Barn	11	\$3,515.00	\$323.00
11/24/07	D. Nace	10	\$4,675.00	\$389.00
12/08/07	C. Young	1	\$375.00	\$37.50
12/08/07	G. Kemp	1	\$800.00	\$80.00

12/08/07	Terry Ranch	3	\$825.00	\$71.00
12/08/07	J. Jones	1	\$400.00	\$32.00
12/08/07	K. Narvaez	1	\$450.00	\$45.00
12/08/07	K. Watson	1	\$200.00	\$16.00
12/08/07	A. Drake	6	\$5,450.00	\$508.50
12/08/07	K. Welfel	2	\$125.00	\$30.00
12/08/07	H. Plitt	2	\$525.00	\$48.00
12/08/07	B. Hurst	2	\$500.00	\$46.00
12/08/07	Kvalsvida	1	\$200.00	\$16.00
12/08/07	T. Witt	4	\$625.00	\$69.00
12/08/07	Horses Barn	12	\$7,825.00	\$761.00
12/08/07	D. Cobb	1	\$900.00	\$90.00
12/08/07	T. Saulters	13	\$4,400.00	\$368.00
Totals		134	\$55,245.00	\$5,003.00

6. Respondent failed to keep accounts, records, and memoranda that fully and correctly disclosed all transactions involved in the business, as required by section 401 of the Act (7 U.S.C. § 221), including but not limited to, sale and bank records, ring sheets, and accounts of sales.

Conclusions Of Law

- 1) The Secretary has jurisdiction in this matter.
- 2) 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). Paragraph 5.
- 3) Respondent has failed to keep records as required by section 401 of the Act (7 U.S.C. § 221) and, therefore, has willfully engaged in an “unfair practice” in violation of section 312 (a) of the Act (7 U.S.C. §213(a)). Paragraph 6.

Order

- 1) Respondent Great Western Auctions, LLC, its 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 an adequate bond or bond equivalent.

2) Respondent Great Western Auctions, LLC and its agents and employees shall keep such accounts, records, and memoranda that fully and correctly disclosed all transactions involved in the business, including but not limited to, sale and bank records, ring sheets, and accounts of sales.

3) Respondent Great Western Auctions, LLC is assessed a civil penalty in the amount of Ten Thousand dollars (\$10,000).

4) 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: MEADOWBROOK FARMS COOPERATIVE.

P.&S. Docket No. D-09-0097.

Default Decision.

Filed August 4, 2009.

P&S.

Jonathan D. Gordy, for Complainant.

Mary E. Lopinot, for Respondent.

Decision and Order issued by Peter M. Davenport, Administrative Law Judge.

Preliminary Statement

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*) (Act), by a Complaint filed on April 16, 2009, by the Administrator, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that the Respondent willfully violated the Act.

The Complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*) (Rules of

Practice) were served on Respondent by certified mail. 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 the material allegations contained in the Complaint. On May 5, 2009, Edward J. Karfeld filed a "Limited Entry of Appearance to Suggest the Bankruptcy of Respondent," which requested that these proceedings be stayed due to Respondent's Bankruptcy. On May 12, 2009, the Administrative Law Judge ordered that "the Suggestion be considered nugatory and of no force and this action may proceed." Respondent received the Order on May 16, 2009.

Respondent 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 in this decision and order as findings of fact.

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. Respondent Meadowbrook Farms Cooperative, (Meadowbrook), is an agricultural cooperative organized and operating in the State of Illinois.
2. Meadowbrook at all times material to this Decision was:
 - a. engaged in the business of buying livestock in commerce for the purpose of slaughter; and
 - b. a packer within the meaning of and subject to the provisions of the Act.
3. On or about the dates and in the transactions set forth below, Meadowbrook purchased livestock in cash sales and failed to pay, when due, the full purchase price for the livestock:

Slaughter Date	Livestock Seller	Purchase Amount	Date Due	Date Paid
39791	Van Boekel Hog	\$20,915.01	12/11/2008	12/15/2008

	Farms, Mt. Elgin, Ontario			
39791	Van Boekel Hog Farms	\$19,236.80	12/11/2008	12/15/2008
39791	Van Boekel Hog Farms	\$20,217.99	12/11/2008	12/15/2008
39799	Van Boekel Hog Farms	\$19,819.84	12/19/2008	12/22/2008
39799	Van Boekel Hog Farms	\$22,106.21	12/19/2008	12/22/2008
39808	Keystone Mill, LLC Ephrata, PA	\$20,287.06	12/29/2008	12/31/2008
39808	Keystone Mill, LLC	\$19,861.29	12/29/2008	12/31/2008

4. In addition, Meadowbrook purchased livestock and failed to pay, when due, the full purchase price of the livestock for purchases of livestock on the following credit terms:

Producer shall be paid within ten (10) days of delivery. MFC may, at its option, extend the payment to Producer in the following manner, provided that in no event shall the payment herein be longer than the payments being made by MFC to the MFC general membership:

a. MFC may extend the payment to Producer to not more than fourteen (14) days upon the posting of at least \$500,000.00 of Adequate Protection with an independent trustee.

b. MFC may extend the payment to Producer to not more than twenty-one (21) days upon the posting of at least \$750,000.00 of Adequate Protect with an independent trustee.

c. MFC may extend the payment to Producer to not more than twenty-eight (28) days upon the posting of at least \$1,000,000.00 of Adequate Protection with an independent trustee.

Meadowbrook failed to obtain “Adequate Protection” — as that term is used in the quoted contract’s sub-paragraphs “a”, “b”, and “c” above — and failed to pay, within 10 days of delivery, the full purchase price in the following transactions:

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Slaughter Date	Livestock Seller	Purchase Amount	Date Due	Date of Check or Wire Transfer
11/28/2008	Robert Elliot, Sheffield, IL	\$18,845.28	12/08/2008	12/09/2008
12/13/20	Allen Weidner Marengo, IL	\$8,778.57	12/23/2008	12/24/2008
12/13/2008	Robert Elliot	\$17,547.94	12/23/2008	12/24/2008
12/13/2008	Vonholten Farms Lyndon, IL	\$18,908.25	12/23/2008	12/24/2008
12/13/2008	Vonholton Farms	\$21,517.09	12/23/2008	12/24/2008

5. In addition, on or about the dates and in the transactions set forth in the following table, Meadowbrook purchased livestock, and failed to pay, when due, the full purchase price of the livestock, on credit sales “within fourteen (14) days of delivery,” as required by its agreements with those producers:

Slaughter Date	Livestock Seller	Purchase Amount	Date Due	Date of Check or Wire Transfer
11/15/2008	Beeler Farms, Inc., Raymond, IL	\$19,310.30	11/29/2008	12/3/2008
11/18/2008	Beeler Farms Inc.	\$18,275.41	12/2/2008	12/3/2008
11/20/2008	Beeler Farms, Inc.	\$18,659.65	12/4/2008	12/5/2008
12/17/2008	Tony Thoele, Dieterich, IL	\$12,761.89	12/31/2008	01/2/2009

6. On or about the dates and in the transactions set forth in the following table, Meadowbrook purchased livestock, and failed to pay,

when due, the full purchase price of the livestock, on credit terms that required that “MFC will pay to Member no later than twenty-eight (28) days after the Delivery Date one hundred percent (100%) of the Base Meat Value for all Market Hogs delivered...”:

Slaughter Date	Livestock Seller	Purchase Amount	Date Due	Date of Check or Wire Transfer
09/26/2008	Wayne, Garnet & Melody Schlueter, Rock City, IL	\$11,816.66	10/24/2008	10/27/2008
10/14/2008	BLT Pork, Inc. Strown, IL	\$3,016.14	11/11/2008	11/13/2008
10/14/2008	Roger Dewerff Farms, Inc., Nokomis, IL	\$4,236.83	11/11/2008	11/12/2008
10/17/2008	Phillip and Betty Sudkamp, Sigel, IL	\$7,229.22	11/14/2008	11/17/2008
10/18/2008	Daniel Miller. Janesville, WI	\$3,064.39	11/15/2008	11/18/2008
10/18/2008	Russell and Kathleen Dahl Deerfield, WI	\$2,490.96	11/15/2008	11/18/2008
10/22/2008	Larry, Lynda, and Aaron Seals, Mt. Carmel, IL	\$7,206.85	11/19/2008	11/20/2008
11/3/2008	Michael O'Neill, Philo, IL	\$1,844.16	12/01/2008	12/03/2008
11/05/2008	Dale Von Bokel, Pocahontas, IL	\$2,791.33	12/03/2008	12/05/2008
11/05/2008	Phillip and Betty Sudkamp	\$3,216.93	12/03/2008	12/05/2008
11/06/2008	Russell and Kathleen	\$6,966.35	12/04/2008	12/8/2008

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	Dahl, Deerfield, WI			
11/07/2008	Fairview Acres Emden, IL	\$10,319.27	12/05/2008	12/09/2008
11/11/2008	For-C Pork Farm, Melvin Coulter Paxton, IL	\$19,665.90	12/09/2008	12/10/2008
11/11/2008	Johnson Pork Farms Inc.. Nokomis, IL	\$12,080.27	12/09/2008	12/10/2008
11/11/2008	Roger Dewerff Farms Inc. Nokomis, IL	\$3,510.14	12/09/2008	12/10/2008
11/12/2008	Ron and Julia Ness Hinckley, IL	\$9,396.08	12/10/2008	12/12/2008
11/13/2008	Charles Becker and Jeffrey Baumann. Millstadt, IL	\$2,736.77	12/11/2008	12/12/2008
11/20/2008	Cedar Ridge Primary SPF Farm, Inc. Red Bud, IL	\$17,868.06	12/18/2008	12/22/2008
11/20/2008	Hammett Farms Dekalb, IL	\$16,839.50	12/18/2008	12/22/2008
11/21/2008	Daniel Boston Pawnee, IL	\$3,223.73	12/19/2008	12/22/2008
11/21/2008	Edward and Jane Goeckner Effingham, IL	\$3,084.88	12/19/2008	12/22/2008
11/21/2008	Flood Brothers, David Flood, Dietrich, IL	\$7,687.34	12/19/2008	12/22/2008
11/21/2008	Lower Farms, Lanark, IL	\$20,309.11	12/19/2008	12/22/2008

11/24/2008	Keith and Sandy Deters, Sigel, IL	\$11,514.41	12/22/2008	12/23/2008
11/24/2008	Lehmann Brothers Farms LLC, Strawn, IL	\$14,939.32	12/22/2008	12/23/2008
11/25/2008	Andy Shull, Inc. Hidalgo, IL	\$16,929.39	12/23/2008	12/24/2008
11/25/2008	Bernhard Farms, Inc., Elwood, IL	\$16,197.88	12/23/2008	12/24/2008
11/25/2008	Hog Haven, Inc., Loda, IL	\$16,081.85	12/23/2008	12/24/2008
11/25/2008	KB AG Enterprises, Inc., Wyoming, IL	\$5,663.19	12/23/2008	12/24/2008
11/25/2008	Kellogg Farms, Yorkville, IL	\$14,803.47	12/23/2008	12/24/2008
11/25/2008	Marvin and Carlyle Mueller, Columbia, IL	\$7,625.39	12/23/2008	12/24/2008
11/25/2008	Metzger Farm, Inc., Ursa, IL	\$16,077.09	12/23/2008	12/24/2008
11/25/2008	Omer and Suzanna Jess, Arthur, IL	\$3,799.61	12/23/2008	12/24/2008
11/25/2008	Safford Farm Sycamore, IL	\$8,822.66	12/23/2008	12/24/2008
11/25/2008	Seboldt Brothers Fults, IL	\$5,462.36	12/23/2008	12/24/2008
11/25/2008	Great Lakes Pork, Allendale, MI	\$14,016.09	12/23/2008	12/24/2008
11/25/2008	Walk Stock Farms, Inc.,	\$19,802.48	12/23/2008	12/24/2008

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	Neoga, IL			
11/25/2008	Walk Stock Farms, Inc.	\$19,811.95	12/23/2008	12/24/2008
11/26/2008	Brent Reed, Cambridge, IL	\$5,364.34	12/24/2008	12/29/2008
11/26/2008	David Helregel, Willow Hill, IL	\$2,805.76	12/24/2008	12/29/2008
11/26/2008	Logeman Brothers Farm, Metropolis, IL	\$14,949.15	12/24/2008	12/29/2008
11/26/2008	Ronald and Marie Flood, Toledo, IL	\$2,761.08	12/24/2008	12/29/2008
11/26/2008	Schlabach Pork Farm, Sullivan, IL	\$4,744.53	12/24/2008	12/29/2008
11/28/2008	Earnest Diener, Arthur, IL	\$3,038.37	12/26/2008	12/31/2008
11/28/2008	Johnathan Helmink, Montrose, IL	\$3,003.11	12/26/2008	12/31/2008
11/28/2008	Scott Birkey, Hopedale, IL	\$9,179.74	12/26/2008	12/31/2008
11/28/2008	Mark Gebben, Casey, IL	\$19,042.03	12/26/2008	12/31/2008
11/28/2008	Miller Pork Farm – ABF, Danvers, IL	\$15,904.85	12/26/2008	12/31/2008
11/28/2008	Ronald Helmink, Montrose, IL	\$10,728.18	12/26/2008	12/31/2008
11/28/2008	Shiloh Hill, LLC, Virginia, IL	\$16,652.74	12/26/2008	12/31/2008
11/28/2008	Shiloh Hill, LLC	\$19,072.84	12/26/2008	12/31/2008

11/28/2008	Shiloh Hill, LLC	\$13,242.79	12/26/2008	12/31/2008
11/28/2008	William Uhlman and Sons, Morton, IL	\$2,605.40	12/26/2008	12/31/2008
11/29/2008	Donald Niebrugge, Effingham, IL	\$2,126.82	12/27/2008	12/31/2008
11/29/2008	Russell and Kathleen Dahl	\$8,837.58	12/27/2008	12/31/2008
12/01/2008	Busse Farms, Inc., Farina, IL	\$3,693.55	12/29/2008	12/31/2008
12/01/2008	Dennis Holkenbrink, Louisville, IL	\$2,994.99	12/29/2008	12/31/2008
12/03/2008	Phillip and Betty Sudkamp	\$3,602.48	12/31/2008	01/02/2009
12/04/2008	Russell and Kathleen Dahl	\$7,801.56	01/01/2009	01/05/2009
12/05/2008	Flood Brothers	\$3,219.13	01/02/2009	01/05/2009
12/05/2008	KB AG Enterprises, Inc.	\$7,065.08	01/02/2009	01/05/2009
12/05/2008	Lower Farms, Inc.	\$18,934.78	01/02/2009	01/05/2009
12/05/2008	Shiloh Hill, LLC	\$20,095.93	01/02/2009	01/05/2009
12/05/2008	Shiloh Hill, LLC	\$20,751.05	01/02/2009	01/05/2009
12/05/2008	Shiloh Hill, LLC	\$20,880.52	01/02/2009	01/05/2009
12/05/2008	Shiloh Hill, LLC	\$19,962.07	01/02/2009	01/05/2009
12/05/2008	Shiloh Hill, LLC	\$20,096.81	01/02/2009	01/05/2009
12/05/2008	Wayne, Garnet & Melody Schlueter	\$19,237.38	01/02/2009	01/05/2009

7. On or about the dates and in the transactions set forth below, Meadowbrook purchased livestock, and, as of the date of the Complaint, has failed to pay the full purchase price of the livestock, in the total

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amount of \$839,674.71:

Livestock Seller	Slaughter Date/Purchase Date	Purchase Amount
Andy Shull, Inc.	12/11/2008	\$16,903.78
	12/13/2008	\$18,909.43
	12/16/2008	\$17,342.07
	12/17/2008	\$16,879.13
	12/26/2008	\$17,082.41
	12/27/2008	\$16,045.82
	12/30/2008	\$13,722.99
	12/31/2008	\$6,007.94
	01/03/2009	\$15,974.49
Charles Becker and Jeffery Baumann	12/11/2008	\$2,786.00
	01/08/2009	\$1,892.33
Scott Birkey	12/11/2008	\$6,789.61
For-C Pork Farm, Melvin Coulter	12/16/2008	\$16,471.43
	12/17/2008	\$16,074.40
	12/23/2008	\$16,402.33
	12/30/2008	\$6,350.49
	01/06/2009	\$17,305.12
	01/07/2009	\$16,748.62
Roger Elliot	12/27/2008	\$6,974.17
Fairview Acres	01/09/2009	\$16,330.90
Ronald and Marie Flood	12/26/2009	\$5,688.99
	01/02/2009	\$4,828.12

Flood Brothers, David Flood	01/03/2009	\$8,240.93
	01/09/2009	\$9,922.33
Grube Farms, Dennis Grube, El Paso, IL	12/17/2008	\$4,042.40
	01/08/2009	\$3,265.46
Christopher Hartke, Teutopolis, IL	12/11/2008	\$14,026.94
	12/12/2008	\$15,061.16
	12/13/2008	\$14,681.03
	12/16/2008	\$13,937.86
	12/17/2008	\$15,565.83
Hartke Swine Center, Effingham Clay, & Phillip Hartke, Teutopolis, IL	01/07/2009	\$14,611.88
	01/08/2009	\$15,062.08
Ronald Helmink, Montrose, IL	12/13/2008	\$9,082.83
	12/27/2008	\$5,152.80
David Helregel	12/12/2008	\$3,086.91
	12/18/2008	\$3,928.39
	12/22/2008	\$2,832.81
J&V Probst Pork, Inc. James Probst, Sigel, IL	01/08/2009	\$18,999.52
	1/09/2009	\$16,588.90
Johnson Pork Farms, Inc.	12/16/2008	\$11,950.06
	12/23/2008	\$15,102.66
	01/06/2009	\$9,555.28
Alan and Glen Koch Farms, Inc., Mt. Sterling, IL	12/13/2008	\$17,338.76
Leland and Jane Bahl, West Liberty, IL	12/18/2008	\$1,554.06

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	12/31/2008	\$1,758.43
	01/09/2009	\$7,728.35
Allen Magnus, St. Peter, IL	12/17/2008	\$2,729.26
	01/02/2009	\$1,627.72
Ron and Julia Ness	12/15/2008	\$18,484.13
	12/20/2008	\$18,114.38
	12/26/2008	\$18,014.88
	12/27/2008	\$17,896.88
	12/31/2008	\$17,585.25
	01/02/2009	\$17,105.58
	01/03/2009	\$17,949.85
	01/05/2009	\$18,220.89
	01/06/2009	\$18,598.94
	01/07/2009	\$18,901.34
	01/08/2009	\$18,095.29
	01/12/2009	\$17,197.77
RCM Farms, Ltd./Ronald Meyers, Griggsville, IL	12/18/2008	\$15,331.13
	12/20/2008	\$14,458.20
	01/09/2009	\$15,194.89
Brent Reed	12/31/2008	\$4,076.85
Roger Dewerff Farms, Inc.	12/16/2008	\$3,536.08
	01/06/2009	\$5,685.42
Anthony Strutner, West Liberty, IL	12/12/2008	\$2,042.70
	12/18/2008	\$2,024.00
	12/31/2008	\$1,643.63

Steven Sturtevant	12/13/2008	\$18,485.23
Phillip and Betty Sudkamp	12/15/2008	\$1,820.42
	01/07/2008	\$6,450.74
Joel and Shelly Young	01/02/2009	\$1,815.03
Totals		\$839,674.71

8. For four contracts entitled “Cash Uniform Marketing Agreements,” Meadowbrook entered into credit agreements with sellers of livestock without obtaining an acknowledgement that the sellers were waiving their rights under the trust provisions of section 206 of the Act. Meadowbrook agreed to pay the sellers of livestock — Lehmann Brothers Farms, LLC, Great Lakes Pork, Inc., Johson-Pate Pork, Inc., and WSF, LLC (aka Walk Stock Farms, LLC) — according to the following payment terms:

Upon executing this Agreement and Exhibit A, Producer knowingly and voluntarily agrees to waive all rights to prompt payment established in the Act in consideration for the payments, mutual covenants and agreements provided herein and agrees to receive payments in the manner set forth and established by this Agreement and Exhibit A. . . . [Meadowbrook] shall send to Member any net payments(s) due hereunder no later than 28 days after Member’s delivery to [Meadowbrook].

9. For the producers in the following table, Meadowbrook entered into credit agreements in which sellers waived prompt payment for their livestock and all rights to “constructive trust,” but the agreements did not include a clear waiver of the statutory trust provisions in section 206 of the Act. These credit agreements replaced the terms of older credit agreements that had included a waiver of the “statutory or constructive trust” established in the Act.

Seller’s name	Date of seller’s signature.
Phil and Betty Sudkamp	10/30/2008
RCM Farms, Ltd.	12/07/2008

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BLT Pork, Inc.	12/29/2008
Thomas Deters, Sigel, IL	12/29/2008
Andy Shull, Inc.	12/29/2008
Flood Brothers	12/30/2008
Marvin and Carlyle Mueller	12/30/2008
David Helregel	12/30/2008
Kellogg Farms	12/30/2008
Logeman Bros.	12/30/2008
Schlabach Pork Farm, Willard Schlabach, Willard, IL	12/30/2008
Melvin Coulter	01/01/2009
Paul and Martha Hoene, Sigel, IL	01/01/2009
Cliff Hammett	01/01/2009
Joseph and Jeanne Hoene	01/01/2009
Janssen Farms	01/01/2009
Hartke Swine Center	01/02/2009
Allen Magnus	01/02/2009
Joel A. Young	01/02/2009
Lehland and Jane Bahl	01/02/2009
Wayne, Garnet & Melody Schlueter	01/02/2009
Ronald Helmink	01/04/2009
Jonathan Helmink	01/04/2009
Anthony Strutner	01/04/2009
Donald Niebrugge	01/05/2009
J&V Probst Pork, Inc.	01/06/2009
Dennis Holkenbrink	01/06/2009
Leland & Marianna Moffett, Winsor, IL	01/06/2009
Kelsey Farms	01/06/2009
Mark Gebben, Casey, IL	01/07/2009

Cedar Ridge Primary SPF Farm, Inc.	01/09/2009
Earnest Diener	12/31/2008
For-C Pork Farm	Signature without date

10. On December 17, 2008, and on other dates not specifically alleged in the Complaint, Meadowbrook purchased livestock on a grade and weight basis and failed to accurately maintain the identity of each seller's livestock and the carcasses derived from the livestock, and Meadowbrook failed to keep accurate account of the number of animals in each lot as they were weighed and graded.

11. Meadowbrook failed to deliver a true written account of the grade and weight of the animals slaughtered in each lot in that Meadowbrook shifted animals between lots slaughtered on December 17, 2008, and accounted to the livestock sellers based on the shifted lots.

Conclusions Of Law

1. The Secretary has jurisdiction in this matter.
2. By reason of Findings of Fact 3-7, Meadowbrook has willfully violated sections 202(a) and 409 of the Act (7 U.S.C. §§ 192(a); 228b).
3. By reason of the Findings of Fact 8 and 9, Meadowbrook has willfully violated section 202(a) the Act, section 409(b) of the Act, and section 201.200 of the regulations (7 U.S.C. §§ 192(a), 228b(b); 9 C.F.R. § 201.200).
4. By reason of Findings of Fact 10 and 11, Meadowbrook has willfully violated section 202(a) of the Act and (7 U.S.C. § 192(a)) and section 201.99(b) of the regulations (9 C.F.R. § 201.99(b)).
5. Meadowbrook failed to 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 the material allegations in the Complaint.

Order

Meadowbrook, 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:

1. 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;
2. entering into written agreements to purchase livestock on credit without execution by both parties of the trust waiver prescribed in section 201.200 (9 C.F.R. § 201.200) of the regulations;
3. failing to maintain the identity of each seller's livestock and the carcasses therefrom;
4. failing to transmit or deliver to the seller, or his or her duly authorized agent, a true written account of Meadowbrook's purchases showing the number, weight, and price of the carcasses of each grade (identifying the grade) and of the ungraded carcasses, an explanation of any condemnations, and any other information affecting final accounting;
5. failing to maintain sufficient records to substantiate the settlement of each grade and yield transaction.

This decision shall become final and effective without further proceedings thirty-five days (35) 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 of this order shall be served on the parties.
Done at Washington, D.C.

In re: JOHNNY SLOVER.
P.&S. Docket No. D-08-0192.
Default Decision.
Filed August 17, 2009.

P&S.

Leah C. Battagololi, for Complainant.

Respondent, Pro se.

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

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 an Amended Complaint filed on October 30, 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 Johnny Slover (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 Amended Complaint was sent to Respondent by certified mail on October 31, 2008, and it was returned to the Hearing Clerk on December 4, 2008, 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. §§ 1.130-1.151; hereinafter “Rules of Practice”), on December 5, 2008, the Hearing Clerk re-mailed the Amended Complaint using regular mail. Complainant’s attorney also sent a letter to Respondent dated November 10, 2008, by certified mail, informing Respondent that Complainant would seek the assessment of a civil penalty against Respondent not to exceed Fourteen Thousand Dollars (\$14,000.00). To date, Complainant’s attorney has not received a response to the letter, nor has the letter been returned by the U.S. Postal Service.¹ Respondent has not answered the Amended Complaint.

¹Complainant’s attorney previously sent an identical letter to Respondent dated October 14, 2008, by certified mail. However, the letter was addressed to “Robert Johnny Slover” instead of “Johnny Slover.” This letter was returned to Complainant’s

(continued...)

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 Amended 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. Johnny Slover is an individual whose mailing address is in the State of Texas.
2. At all times material to the Amended Complaint, Respondent was:
 - (a) Engaged in the business of a market agency buying livestock in commerce on a commission basis;
 - (b) Registered as a dealer,² but not registered as a market agency with the Secretary of Agriculture; and
 - (c) Operating as a market agency within the jurisdiction of the Secretary.
3. In a certified letter dated February 21, 2007, and served upon

¹(...continued)
attorney on November 24, 2008, marked "unclaimed" by the U.S. Postal Service.

²Respondent was the subject of two prior Packers and Stockyards cases (*In re: Johnny Slover, d/b/a T&J Farms*, P&S Docket No. 6890 and *In re: Davis Livestock Commission, Inc., and Billy Joe Davis and Johnny Slover and Billy Joe Davis, d/b/a Davis Cattle Company*, P&S Docket No. 6908). Orders were issued against Respondent on August 11, 1987, and February 23, 1988, respectively, finding that Respondent was registered with the Secretary of Agriculture as a dealer and suspending him as a registrant under the Act for two consecutive five year terms. The orders were later modified to permit his salaried employment by another registrant.

Respondent on or about March 9, 2007,³ Margaret Mills, Resident Agent Supervisor of the Aurora, Colorado regional office of Complainant, informed Respondent that he was not in compliance with the bonding provisions of the Packers and Stockyards Act. The letter reminded Respondent of two prior orders suspending him as a registrant under the Act, which were modified to permit his salaried employment by another registrant. The letter referenced sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30) and informed Respondent that if he continued livestock operations without filing a bonding instrument and a new application for registration to include his market agency activities, further legal administrative action would be initiated. Specifically, Respondent was informed that he could be subject to a cease and desist order until he complied with the Act. Respondent was further informed that his actions constituted an unfair trade practice pursuant to 7 U.S.C. § 213(a). Notwithstanding such notice, Respondent continued to engage in the business of buying livestock on a commission basis without being adequately registered as a market agency with the Secretary and without maintaining an adequate bond or bond equivalent as required by the Act and the Regulations.

4. Respondent, on or about the dates and in the transactions set forth in Appendix A and incorporated herein by reference, engaged in the business of buying livestock in commerce on a commission basis without being adequately registered with the Secretary as a market agency and without maintaining an adequate bond or bond equivalent. The transactions occurred at Emory Livestock Auction, Inc., a posted stockyard in Emory, Texas, and Hubbard Livestock Market, LLC, a posted stockyard in Hubbard, Texas.

5. On January 27, 2009, Respondent filed with the Aurora, Colorado regional office of Complainant a Trust Fund Agreement in Lieu of Bond secured by a \$10,000.00 certificate of deposit. On February 6, 2009,

³United States Postal Service Domestic Return Receipt for Article No. 7006 0810 0005 2552 1717 was stamped as received in Athens, Texas on March 9, 2007. Respondent signed and returned the return receipt to Complainant's Aurora, Colorado regional office, but failed to date it. A Track and Confirm printout from the United States Postal Service website confirms that Article No. 7006 0810 0005 2552 1717 was delivered in Athens, Texas on March 9, 2007.

Respondent registered with the Aurora, Colorado regional office of Complainant as a dealer and a market agency. An investigation of Respondent's records on April 20, 2009, disclosed that Respondent's bond coverage is inadequate and that he is required to maintain a \$20,000.00 bond or bond equivalent. On May 19, 2009, Respondent was personally served by a Packers and Stockyards representative with notice of his inadequate bond coverage.

Conclusions

By reason of the facts found in Finding 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).

Order

Respondent Johnny Slover, as an individual, and his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Act, shall cease and desist from engaging in business in any capacity for which registration and bonding is required under the Act and the Regulations, without registering with the Secretary of Agriculture and 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 One Thousand Dollars (\$1,000.00).

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: JAMES EMANUEL MOWERY.
P.&S. Docket No. D-09-0093.
Default Decision.
Filed August 17, 2009.

P&S -Default.

Leah C. Battaglioli, for Complainant.
Respondent, Pro se.

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

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 April 8, 2009, 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 James Emanuel Mowery (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 April 9, 2009, and it was returned to the Hearing Clerk on or about May 5, 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. §§ 1.130-1.151; hereinafter “Rules of Practice”), on May 6, 2009, the Hearing Clerk re-mailed the Complaint using regular mail. Complainant’s attorney also sent a letter to Respondent dated April 15, 2009, by certified mail, informing Respondent that Complainant would seek a suspension of Respondent’s registration under the Act. The letter was returned to Complainant’s attorney on May 12, 2009, marked “unclaimed” by the U.S. Postal Service. On May 13, 2009, Complainant’s attorney re-mailed the letter using regular mail.

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. James Emanuel Mowery (hereinafter "Respondent"), is an individual whose mailing address is in the State of Tennessee.

2. At all times material to the Complaint, Respondent was:

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

3. In a letter dated June 6, 2008, sent by first-class mail, Carla Thomas, Legal Instrument Examiner, Atlanta, Georgia Regional Office, informed Respondent that his letter of credit pledged towards a trust agreement would expire on July 5, 2008. Respondent was further informed that it is a violation of 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) for market agencies, packers, and dealers to operate without the required bond or bond equivalent. Respondent was instructed that he must file a new bond or bond equivalent of at least \$15,000.00 on or before July 5, 2008, or he must discontinue all livestock operations for which bonding is required under the Act. Respondent was informed that if he continued livestock operations without filing a new bond or bond equivalent, he may be subject to disciplinary proceedings.

4. On July 8, 2008, a Packers and Stockyards Program

representative personally informed Respondent that his bond had terminated and that he was in violation of the Act and the Regulations for continuing to operate without a bond. Respondent was instructed to obtain a new bond or bond equivalent. Notwithstanding such notice, and subsequent telephone inquiries, Respondent continued to engage in the business of a market agency without maintaining an adequate bond or its equivalent as required by the Act and the Regulations.

5. On or about the dates and in the transactions set forth below, Respondent engaged in the business of a market agency buying livestock in commerce on a commission basis without maintaining an adequate bond or bond equivalent. The transactions occurred at Athens Stockyard, a posted stockyard in Athens, Tennessee, and East Tennessee Livestock Center, Inc., a market agency in Sweetwater, Tennessee.

Location of Purchase	Purchase Date	Purchased For	No. Head	Livestock Amount	Commission
Athens Stockyard Athens, Tennessee	07/29/08	Prairie Livestock, LLC West Point, Mississippi	40	\$17,415.80	\$88.23
	08/05/08		18	\$9,650.95	\$49.20
	08/12/08		30	\$12,166.60	\$58.50
East Tennessee Livestock Center, Inc. Sweetwater, Tennessee	07/23/08		26	\$9,904.85	\$49.65
	07/30/08		19	\$6,827.55	\$35.18
	08/06/08		13	\$7,356.25	\$40.23
	08/13/08		32	\$13,547.54	\$62.13
TOTALS			178	\$76,869.54	\$383.12

Conclusions

By reason of the facts found in Findings of Fact 3 through 5, 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).

Order

Respondent James Emanuel Mowery, as an individual, and his

agents and employees, directly or through any corporate or other device, in connection with his 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.

Respondent is hereby suspended as a registrant under the Act for a period of 30 days and thereafter until Respondent files an adequate bond or bond equivalent with the Atlanta, Georgia Regional Office of Complainant pursuant to 7 U.S.C. § 204.

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: DAVID NOLAN, d/b/a NORTHERN LIVESTOCK.
P.& S. Docket No. D-09-0094.
Default Decision.
Filed September 9, 2009.**

P&S – Default.

Ciarra A. Toomey, for Complainant.
Respondent, Pro se.

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

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 April 8, 2009 by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration,

United States Department of Agriculture, alleging that Respondent David Nolan d/b/a Northern Livestock (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 on May 4, 2009, 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 June 4, 2009 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 has failed to file an answer within the time period prescribed by the Rules of Practice (7 C.F.R. § 1.136), and the material facts alleged in the Complaint, which are admitted by Respondent's failure to file an answer, are adopted and set forth herein as findings of fact. This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

- (1) Respondent is an individual whose mailing address is 730 South Main Street, Marion, Wisconsin 54950.
- (2) Respondent at all times material to this complaint was:
 - a. Engaged in the business of buying and selling livestock in commerce as a dealer for his own account; and
 - b. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce, and as a market

agency buying on commission.

- (3) Respondent, between May 30, 2007 and July 25, 2007, issued checks in payment for livestock purchases which were returned unpaid by the bank upon which they were drawn. These checks were returned 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 II(a) of the Complaint.
- (4) Respondent, between May 30, 2007 and July 25, 2007, purchased livestock, and failed to pay, when due, for such livestock purchases. The details of the purchases are more fully set forth in paragraph II(b) of the Complaint.
- (5) Respondent, between July 19, 2007 and September 7, 2007, purchased livestock, and failed to pay for such livestock purchases. As of the date of the filing of the Complaint, all of the \$634,125.49 in livestock purchases for which Respondent failed to pay, outlined in paragraph II(c) of the Complaint, remains unpaid.
- (6) Respondent failed to keep accounts, records, and memoranda that fully and correctly disclosed all transactions involved in his business, as required by section 401 of the Act (7 U.S.C. § 221), including but not limited to, copies of all livestock invoices, copies of cancelled, returned and/or reissued checks, bank statements, balance sheets, records of inventory, records of profit or loss, documentation indicating Respondent's commission fee agreements, and complete and accurate accounts and records reflecting Respondent's financial condition.

Conclusions

- (7) By reason of the facts found in paragraphs 3, 4, and 5, Respondent has willfully violated sections 312(a) and 409 of

- the Act (7 U.S.C. §§ 213(a), 228b).
- (8) By reason of the facts found in paragraph 6, Respondent has failed to keep records as required by section 401 of the Act (7 U.S.C. § 221) and, therefore, has willfully engaged in an “unfair practice” in violation of section 312(a) of the Act (7 U.S.C. §213(a)).

Order

- (9) Respondent David Nolan, d/b/a Northern Livestock, its 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:
- (10) 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;
- (11) Failing to pay livestock sellers for livestock purchases in accordance with the Act and regulations; and
- (12) Failing to pay livestock sellers, when due, for livestock purchases in accordance with the Act and regulations.
- (13) Respondent shall keep accounts, records and memoranda that fully and correctly disclose all transactions involved in his business. Specifically, Respondent shall keep and maintain copies of all livestock invoices, copies of cancelled, returned and/or reissued checks, bank statements, balance sheets, records of inventory, records of profit or loss, documentation indicating Respondent’s commission fee agreements, and complete and accurate accounts and records reflecting Respondent’s financial condition.
- (14) 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 420 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 420 days of this suspension term and upon demonstration of circumstances warranting modification of the order.

- (15) 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.

Consent Decisions

Packers and Stockyards Act

Bob Evans Farms, Inc., PS-07-0146, 09/08/03.

Sioux-Preme Packing Co. Inc., d/b/a Sioux-Preme Pork Products, Ltd.,
PS-D-09-0136, 09/08/12.

McAndrews Livestock Company, Inc. John McAndrews, PS-D-08-0142,
09/10/06.

Michael J. Seubert, PS-D-09-0145, 09/10/08.

Scott Neimitz, PS-09-0142, 09/09/11.

Vermillion Ranch Company d/b/a Billings Livestock Commission
Company, PS-D-09-0020, 09/09/23.

Gary D. Fulton d/b/a Duncan Farms, PS-D-08-0081, 09/10/16.

North Star Beef, Inc. and William Gilger, PS-D-08-0190, 09/10/22.

Lamar Delmas, PS-08-0014, 09/11/17.

C. B. Schley, PS-09-0201, 09/11/18.

Bruce and Susie Ford d/b/a Ford Horse Ranch, PS-D-09-0008, 09/11/24.