

A. Christian  
L. Mitchell  
USDA  
OALC/CHC

2012 JUN 17 PM 2:55

RECEIVED

RECEIVED  
JUN 25 2012  
OFFICE OF POLICY/INVESTIGATION SUPPORT

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0144

In re: Nick Pesetsky and,  
Pesetsky Land and Cattle, LLC,

Respondents

RECEIVED  
JUN 22 2012  
USDA, GIPSA, OA

**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.), herein referred to as the Act, instituted by a Complaint filed on December 22, 2011 by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that Nick Pesetsky and Pesetsky Land and Cattle, LLC, herein referred to as Respondents, willfully violated the Act.

The Complaint and a copy of the Rules of Practice were served upon Respondents on February 28, 2012 pursuant to section 1.147 of the Rules of Practice. Respondents were 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.

As Respondents failed to file an Answer within the time period prescribed by the Rules of Practice (7 C.F.R. § 1.136), the following Finding of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

CC: B. O'Connell

### **Findings of Fact**

1. Respondent Nick Pesetsky is an individual who resides in the State of Oklahoma and who is the 100% owner of Respondent Pesetsky Land and Cattle, LLC, a corporation organized and existing under the laws of the state of Oklahoma.

2. Respondents, at all times material herein, were:

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

(b) Not registered, as required, as a dealer to buy and sell livestock in commerce on a commission basis, with the Secretary of Agriculture.

3. On or about the dates and in the transactions set forth set forth in Appendix A, Respondents failed to pay the full purchase price of such livestock *and* failed to pay, when due, for such livestock purchases.

4. On or about the dates and in the transactions set forth in Appendix B, Respondents engaged in the business of a dealer without maintaining an adequate bond or bond equivalent.

5. As of the date of the issuance of this Decision, Respondents continue to owe livestock sellers as follows:

(a) Respondents owe Decatur Livestock Auction in the amount of \$97,424.88;

(b) Respondents owe Stilwell Livestock Auction in the amount of \$74,315.36;

(c) Respondents owe Benton County Sale Barn in the amount of \$26,621.35.

### **Conclusions of Law**

1. The Secretary has jurisdiction in this matter.

2. Respondents willfully violated Sections 312(a) of the Act, 7 U.S.C. §213(a), and Section 201.29 of the Regulations, 9 C.F.R. §201.29.

**Order**

1. Respondents, their agents and employees, directly or through any corporate or other device, in connection with activities subject to the Act, shall cease and desist from:
- a) failing to pay the full purchase of livestock as required by section 409 of the Act (7 U.S.C. §228b);
  - b) failing to pay, when due, the full purchase of livestock as required by section 409 of the Act (7 U.S.C. §228b); and
  - c) engaging in the business of a dealer without maintaining an adequate bond or bond equivalent (9 C.F.R § 201.29).
2. Respondents are assessed a civil penalty of \$33,000.00.
3. 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.

June 19, 2012

  
**Peter M. Davenport**  
Chief Administrative Law Judge

## Appendix A

### Schedule of Failure to Pay within time period required by the Act for Livestock

Purchase / Harvest Date	Seller's Name	Number of Head	Net Invoice	Due Date	Payment Date	Check Number	Payment Amount	Days Late Per Instrument Date	Remarks
5/22/2010	Grove Livestock Auction, Inc.	83	\$50,716.64	5/24/2010	6/3/2010		\$50,716.64	10	
6/3/2010	Benton County Sale Barn, Inc.	25	\$13,847.88	6/4/2010	6/9/2010	1004	\$13,847.88	5	
6/8/2010	Decatur Livestock Auction	48	\$25,048.75	6/9/2010	6/15/2010	1015	\$25,048.75	6	
6/19/2010	Grove Livestock Auction, Inc.	52	\$26,674.99	6/21/2010	6/23/2010	1038	\$26,674.31	2	Paid \$0.68 short
7/10/2010	Grove Livestock Auction, Inc.	71	\$39,949.84	7/12/2010	7/14/2010	1075	\$39,949.84	2	
7/17/2010	Grove Livestock Auction, Inc.	89	\$53,581.85	7/19/2010	7/20/2010	1094	\$54,120.10	1	Overpaid \$538.25
8/3/2010	Decatur Livestock Auction	40	\$24,098.46	8/4/2010	8/9/2010	1144	\$24,098.46	5	
8/22/2010	Grove Livestock Auction, Inc.	77	\$52,081.36	8/23/2010	8/24/2010	1170	\$52,081.36	1	
8/31/2010	Decatur Livestock Auction	169	\$78,065.98	9/1/2010				Unpaid	
9/1/2010	Stilwell Livestock Auction	132	\$74,315.36	9/2/2010				Unpaid	
9/2/2010	Benton County Sale Barn, Inc.	53	\$26,621.35	9/3/2010				Unpaid	
9/7/2010	Decatur Livestock Auction	35	\$19,358.90	9/8/2010				Unpaid	

## Appendix B

### Operating without Bond Livestock Purchase/Sale Documentation

Purchase Date	No. Head Purchased	Livestock Amount	Seller / Purchased From	Purchased For
4/13/2010	78	\$37,071.71	Decatur Livestock Auction, Inc.	Nick Pesetsky
4/14/2010	62	\$29,757.59	Stilwell Livestock Auction	Nick Pesetsky
5/11/2010	24	\$11,125.13	Decatur Livestock Auction, Inc.	Nick Pesetsky
5/12/2010	29	\$14,946.05	Stilwell Livestock Auction	Nick Pesetsky
5/13/2010	22	\$9,790.05	Benton County Sale Barn, Inc.	Nick Pesetsky
5/18/2010	22	\$9,262.13	Decatur Livestock Auction, Inc.	Nick Pesetsky
5/19/2010	21	\$9,897.70	Stilwell Livestock Auction	Nick Pesetsky
6/17/2010	137	\$84,048.53	Benton County Sale Barn, Inc.	Nick Pesetsky
7/15/2010	31	\$17,883.62	Benton County Sale Barn, Inc.	Nick Pesetsky
7/27/2010	58	\$35,115.39	Decatur Livestock Auction, Inc.	Nick Pesetsky
8/14/2010	81	\$53,314.05	Grove Livestock Auction	Nick Pesetsky
8/22/2010	77	\$52,081.36	Grove Livestock Auction	Nick Pesetsky
Sale / Invoice Date	No. Head Sold	Livestock Amount	Sold To	
4/19/2010	10	\$4,848.23	Trent Wilson	
5/17/2010	3	\$1,100.91	Trent Wilson	
5/24/2010	6	\$2,292.42	Trent Wilson	



**CERTIFIED RECEIPT REQUESTED**

United States  
Department of  
Agriculture

June 19, 2012

Office of  
Administrative  
Law Judges

Nick Pesetsky  
(To Protect Personal Identifiable  
Information the Parties address  
Will not be Disclosed)

Hearing Clerk

Room 1031  
South Building

1400 Independence  
Avenue SW

Dear Respondent:

Washington, DC  
20250-9200

Subject: Nick Pesetsky and Pestsy Land and Cattle, LLC, Respondent  
Docket Number 12-0144

(202) 720-4443  
(202) 720-9776 fax

Enclosed is a copy of the Default Decision and Order issued in this proceeding by Chief Administrative Law Judge Peter M. Davenport on June 19, 2012. Please note that each party has **thirty (30) days** after being served with a copy of this Default Decision and Order to file an appeal to the Department's Judicial Officer.

If no appeal is filed, the Default Decision and Order shall become final and effective as to each party **thirty-five (35) days** after the date of service. However, if an appeal is filed the Default Decision and Order is not final for purposes of judicial review. Upon completion of judicial review, an Order will be issued by the Secretary of Agriculture or the Judicial Officer.

If you elect to file an appeal, please note that an original and three (3) copies of the appeal are required. Please refer to the Uniform Rules of Practice (7 C.F.R. § 1.145) to obtain information regarding the procedure for filing an appeal. Lastly, you received a copy of the Uniform Rules of Practice when you were served with the Complaint.

Sincerely,



L. Eugene Whitfield  
Hearing Clerk

Enclosure(s)

CC: Brian P. Sylvester, OGC  
Alan R. Christian, GIPSA

JC: 6/19/12

