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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P. & S. Docket No. D-01-0013
	)	
Wayne W. Coblentz, d/b/a	)	
Coblentz & Sons Livestock,	)	
	)	
Respondent	)	**Decision and Order**

PROCEDURAL HISTORY

JoAnn Waterfield, Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter Complainant], instituted this proceeding by filing a "Complaint" on September 26, 2001. Complainant instituted this proceeding under the Packers and Stockyards Act, 1921, as amended and supplement (7 U.S.C. §§ 181-229) [hereinafter the Packers and Stockyards Act]; and the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

Complainant alleges that Wayne W. Coblentz, d/b/a Coblentz & Sons Livestock [hereinafter Respondent], willfully violated sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b): (1) by issuing 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 accounts upon which the checks were drawn to pay such checks; and (2) by purchasing livestock and failing to pay, when due, the full purchase price of the livestock (Compl. ¶¶ II-III).

On October 2, 2001, the Hearing Clerk served Respondent with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter dated September 27, 2001.[1] Respondent failed to answer 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)). On October 24, 2001, the Hearing Clerk sent a letter to Respondent informing him that an answer to the Complaint had not been filed within the time required in the Rules of Practice.[2]

On March 18, 2002, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed "Motion for a Decision Without Hearing By Reason of Default" and a proposed "Decision Without Hearing By Reason of Default." On March 23, 2002, the Hearing Clerk served Respondent with Complainant's Motion for Decision Without Hearing By Reason of Default, Complainant's proposed Decision Without Hearing By Reason of Default, and the Hearing Clerk's service letter dated

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[1]*See* Domestic Return Receipt for Article Number 7099 3400 0014 4578 8393.

[2]*See* letter dated October 24, 2001, from Joyce A. Dawson, Hearing Clerk, to Wayne W. Coblentz.

March 20, 2002.[3] Respondent failed to file objections to Complainant's Motion for Decision Without Hearing By Reason of Default and Complainant's proposed Decision Without Hearing By Reason of Default within 20 days after service, as required by section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

On April 12, 2002, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] issued a "Decision Without Hearing By Reason of Default" [hereinafter Initial Decision and Order]: (1) finding Respondent 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 accounts upon which the checks were drawn to pay the checks when presented; (2) finding Respondent purchased livestock and failed to pay, when due, the full purchase price of the livestock; (3) finding $281,970.90 of the $477,591.30 Respondent failed to pay, when due, remained unpaid at the time the Complaint was issued; (4) concluding Respondent willfully violated sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b); (5) ordering Respondent to cease and desist from violating sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b); and (6) suspending Respondent as a registrant under the Packers and Stockyards Act for a period of 5 years (Initial Decision and Order at 2-3).

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[3]*See* Domestic Return Receipt for Article Number 7099 3400 0014 4579 3038.

On May 10, 2002, Respondent appealed to and requested oral argument before the Judicial Officer. On May 28, 2002, Complainant filed "Complainant's Opposition to Respondent's Appeal Petition." On May 29, 2002, the Hearing Clerk transmitted the record to the Judicial Officer to rule on Respondent's request for oral argument and issue a decision.

Respondent's request for oral argument before the Judicial Officer, which the Judicial Officer may grant, refuse, or limit (7 C.F.R. § 1.145(d)), is refused because Complainant and Respondent have thoroughly addressed the issues and the issues are not complex; thus, oral argument would appear to serve no useful purpose.

Based upon a careful consideration of the record, I agree with the ALJ's Initial Decision and Order. Therefore, pursuant to section 1.145(i) of the Rules of Practice (7 C.F.R. § 1.145(a)), I adopt with minor modifications the Initial Decision and Order as the final Decision and Order. Additional conclusions by the Judicial Officer follow the ALJ's conclusions of law, as restated.

PERTINENT STATUTORY PROVISIONS

7 U.S.C.:

TITLE 7—AGRICULTURE

. . . .

CHAPTER 9—PACKERS AND STOCKYARDS

. . . .

SUBCHAPTER III—STOCKYARDS AND STOCKYARD DEALERS

§ 201. "Stockyard owner"; "stockyard services"; "market agency"; "dealer"; defined

When used in this chapter–

. . . .

(c) The term "market agency" means any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services; and

(d) The term "dealer" means any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser.

§ 213. Prevention of unfair, discriminatory, or deceptive practices

(a) It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with the receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock.

(b) Whenever complaint is made to the Secretary by any person, or whenever the Secretary has reason to believe, that any stockyard owner, market agency, or dealer is violating the provisions of subsection (a) of this section, the Secretary after notice and full hearing may make an order that he shall cease and desist from continuing such violation to the extent that the Secretary finds that it does or will exist. The Secretary may also assess

a civil penalty of not more than $10,000 for each such violation. In determining the amount of the civil penalty to be assessed under this section, the Secretary shall consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the person's ability to continue in business. If, after the lapse of the period allowed for appeal or after the affirmance of such penalty, the person against whom the civil penalty is assessed fails to pay such penalty, the Secretary may refer the matter to the Attorney General who may recover such penalty by an action in the appropriate district court of the United States.

. . . .

SUBCHAPTER V—GENERAL PROVISIONS

. . . .

§ 228b. Prompt payment for purchase of livestock

(a) Full amount of purchase price required; methods of payment

Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full amount of the purchase price: *Provided,* That each packer, market agency, or dealer purchasing livestock for slaughter shall, before the close of the next business day following purchase of livestock and transfer of possession thereof, actually deliver at the point of transfer of possession to the seller or his duly authorized representative a check or shall wire transfer funds to the seller's account for the full amount of the purchase price; or, in the case of a purchase on a carcass or "grade and yield" basis, the purchaser shall make payment by check at the point of transfer of possession or shall wire transfer funds to the seller's account for the full amount of the purchase price not later than the close of the first business day following determination of the purchase price: *Provided further,* That if the seller or his duly authorized representative is not present to receive payment at the point of transfer of possession, as herein provided, the packer, market agency or dealer shall wire transfer funds or place a check in the United States mail for the full amount of the purchase price, properly addressed to the seller, within the time limits specified in this

subsection, such action being deemed compliance with the requirement for prompt payment.

(b) Waiver of prompt payment by written agreement; disclosure requirements

Notwithstanding the provisions of subsection (a) of this section and subject to such terms and conditions as the Secretary may prescribe, the parties to the purchase and sale of livestock may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required in subsection (a) of this section. Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction.

(c) Delay in payment or attempt to delay deemed unfair practice

Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an "unfair practice" in violation of this chapter. Nothing in this section shall be deemed to limit the meaning of the term "unfair practice" as used in this chapter.

7 U.S.C. §§ 201(c)-(d), 213, 228b.

ADMINISTRATIVE LAW JUDGE'S INITIAL DECISION AND ORDER (AS RESTATED)

Introduction

Respondent failed to file an answer 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 that 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 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. Respondent is an individual whose business mailing address is P.O. Box 650, Sugarcreek, Ohio 44681.

2. Respondent, at all times material to this proceeding, was:

(a) Engaged in the business of a dealer buying and selling livestock in commerce 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 to buy livestock on a commission basis.

3. Respondent, in connection with his operations subject to the Packers and Stockyards Act, on or about the dates and in the transactions set forth in paragraph II of the Complaint, 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 accounts upon which the checks were drawn to pay the checks when presented.

4. (a) Respondent, in connection with his operations subject to the Packers and Stockyards Act, on or about the dates and in the transactions set forth in paragraph III(a) of the Complaint, purchased livestock and failed to pay, when due, the full purchase price of the livestock.

(b) At the time the Complaint was issued, on September 20, 2001, $281,970.90 of the $477,591.30 referred to in paragraph III(a) of the Complaint remained unpaid.

Conclusions of Law

By reason of the Findings of Fact in this Decision and Order, Respondent willfully violated sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b).

ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER

Respondent raises two issues in Respondent's Appeal Brief. First, Respondent asserts he has paid all of the debts that are the subject of this proceeding, except his debt to The Kidron Auction, Inc., and that he has an agreement with The Kidron Auction, Inc., to effect payment to The Kidron Auction, Inc., in a manner other than required in section 409(a) of the Packers and Stockyards Act (7 U.S.C. § 228b(a)). Respondent admits that his agreement with The Kidron Auction, Inc., does not "technically satisfy" the requirements in section 409(b) of the Packers and Stockyards Act (7 U.S.C. § 228b(b)) for waiver of the full and prompt payment requirements in section 409(a) of the Packers

and Stockyards Act (7 U.S.C. § 228b(a)) because Respondent and The Kidron Auction, Inc., did not agree in writing before Respondent made the purchases of livestock from The Kidron Auction, Inc., which are the subject of this proceeding. (Respondent's Appeal Brief at 1st and 2nd unnumbered pages.)

I agree with Respondent's assertion that the agreement between Respondent and The Kidron Auction, Inc., described in Respondent's Appeal Brief, does not meet the requirements in section 409(b) of the Packers and Stockyards Act (7 U.S.C. § 228b(b)) for waiver of the full and prompt payment requirements in section 409(a) of the Packers and Stockyards Act (7 U.S.C. § 228b(a)).[4] Therefore, Respondent's assertion in his

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[4]Respondent states the agreement with The Kidron Auction, Inc., does not "technically satisfy" the requirements of section 409(b) of the Packers and Stockyards Act (7 U.S.C. § 228b(b)) because Respondent and The Kidron Auction, Inc., did not agree in writing to effect payment in a manner other than provided in section 409(a) of the Packers and Stockyards Act (7 U.S.C. § 228b(a)) before Respondent made the purchases of livestock from The Kidron Auction, Inc., which are the subject of this proceeding. I infer Respondent's position is that the requirement of a written agreement *prior* to the livestock purchases is not an important requirement. Respondent cites no basis for this position, and I can find no basis for Respondent's position. The Packers and Stockyards Act explicitly provides that the parties to the purchase and sale of livestock may expressly agree in writing, *before the purchase or sale*, to effect payment in a manner other than required in section 409(a) of the Packers and Stockyards Act (7 U.S.C. § 228b(a)). Legislative history applicable to the 1976 amendment to the Packers and Stockyards Act, which added section 409, emphasizes that a written agreement to waive the prompt and full payment requirements must be made prior to the purchase or sale of livestock, as follows:

> This section adds to title IV of the Packers and Stockyards Act a new section 409 which, *absent an express prior agreement in writing between the buyer and seller*, requires each packer, market agency, or dealer

(continued...)

Appeal Brief that he has an agreement with The Kidron Auction, Inc., for the payment of purchases of livestock, which are the subject of this proceeding, is not a basis for setting aside the ALJ's Initial Decision and Order. Moreover, Respondent's late payment, in violation of section 409(a) of the Packers and Stockyards Act (7 U.S.C. § 228b(a)), to other livestock sellers identified in the Complaint, is not a basis for setting aside the ALJ's Initial Decision and Order.

Second, Respondent contends his failure to answer the Complaint was an honest mistake. Respondent asserts he believed his communication with Charles E. Spicknall, Complainant's counsel; his payment of the debts that are the subject of this proceeding; and his agreement with The Kidron Auction, Inc., would "remedy the present matter." (Respondent's Appeal Brief at 2nd unnumbered page.)

Respondent has raised no meritorious basis for his belief that he was not required to answer the Complaint. Moreover, I cannot find anything in the record before me that would cause Respondent to believe that he would not be deemed, for purposes of this

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[4](...continued)
purchasing livestock before the close of the next business day following the purchase of livestock and transfer of possession thereof to wire transfer funds to the seller's account or to deliver to the seller or his duly authorized agent, at the point of transfer of possession of the livestock, a check for the full amount of the purchase price.

H.R. Rep. No. 94-1043, at 7 (1976) (emphasis added).

proceeding, to have admitted the allegations in the Complaint if he failed to answer the Complaint within 20 days after the Hearing Clerk served him with the Complaint.

The Hearing Clerk served Respondent with the Complaint, the Rules of Practice, and the Hearing Clerk's September 27, 2001, service letter on October 2, 2001.[5] Sections 1.136(a), 1.136(c), 1.139, and 1.141(a) of the Rules of Practice clearly state the time within which an answer must be filed and the consequences of failing to file a timely answer, as follows:

> **§ 1.136 Answer.**
>
> (a) *Filing and service.* Within 20 days after the service of the complaint . . ., the respondent shall file with the Hearing Clerk an answer signed by the respondent or the attorney of record in the proceeding . . . .
>
> . . . .
>
> (c) *Default.* Failure to file an answer within the time provided under § 1.136(a) shall be deemed, for purposes of the proceeding, an admission of the allegations in the Complaint, and failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation, unless the parties have agreed to a consent decision pursuant to § 1.138.
>
> **§ 1.139 Procedure upon failure to file an answer or admission of facts.**
>
> The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion

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[5] *See* note 1.

> shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.
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> **§ 1.141 Procedure for hearing.**
>
> (a) *Request for hearing.* Any party may request a hearing on the facts by including such request in the complaint or answer, or by a separate request, in writing, filed with the Hearing Clerk within the time in which an answer may be filed . . . . Failure to request a hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing.

7 C.F.R. §§ 1.136(a), (c), .139, .141(a).

Moreover, the Complaint clearly informs Respondent of the consequences of failing to file a timely answer, as follows:

> Respondent shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 *et seq.*). Failure to file an answer shall constitute an admission of all the material allegations in this complaint.

Compl. at 6.

Similarly, the Hearing Clerk informed Respondent in the September 27, 2001, service letter that a timely answer must be filed pursuant to the Rules of Practice and that failure to file a timely answer to any allegation in the Complaint would constitute an admission of that allegation, as follows:

September 27, 2001

Mr. Wayne W. Coblentz
d/b/a Coblentz & Sons Livestock
P.O. Box 650
Sugarcreek, Ohio 44681

Gentlemen:

Subject: In re: Wayne W. Coblentz, d/b/a Coblentz & Sons Livestock, Respondent
P&S Docket No. D-01-0013

Enclosed is a copy of a Complaint, which has been filed with this office under the Packers and Stockyards Act, 1921.

Also enclosed is a copy of the Rules of Practice which govern the conduct of these proceedings. You should familiarize yourself with the rules in that the comments which follow are not a substitute for their exact requirements.

The rules specify that you may represent yourself personally or by an attorney of record. Unless an attorney files an appearance in your behalf, it shall be presumed that you have elected to represent yourself personally. Most importantly, you have ***20 days from the receipt of this letter to file with the Hearing Clerk an original and three copies of your written and signed answer to the Complaint.*** It is necessary that your answer set forth any defense you wish to assert, and to specifically admit, deny or explain each allegation of the complaint. Your answer may include a request for an oral hearing. Failure to file an answer or filing an answer which does not deny the material allegations of the complaint, shall constitute an admission of those allegations and a waiver of your right to an oral hearing.

In the event this proceeding does go to hearing, the hearing shall be formal in nature and will be held and the case decided by an Administrative Law Judge on the basis of exhibits received in evidence and sworn testimony subject to cross-examination.

You must notify us of any future address changes. Failure to do so may result in a judgment being entered against you without your knowledge. We also need your present and future telephone number.

Your answer, as well as any motions or requests that you may hereafter wish to file in the proceeding should be submitted in **quadruplicate** to the Hearing Clerk, OALJ, Room 1081-South Building, United States Department of Agriculture, Washington, D.C. 20250-9200.

Questions you may have respecting the possible settlement of this case should be directed to the attorney whose name and telephone number appear on the last page of the complaint.

Sincerely,
/s/
JOYCE A. DAWSON
Hearing Clerk

On October 24, 2001, the Hearing Clerk sent a letter to Respondent informing him that an answer to the Complaint had not been filed within the time required in the Rules of Practice.[6] Respondent did not respond to the Hearing Clerk's October 24, 2001, letter.

On March 18, 2002, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed Motion for a Decision Without Hearing By Reason of Default and a proposed Decision Without Hearing By Reason of Default. On March 23, 2002, the Hearing Clerk served Respondent with Complainant's Motion for Decision Without Hearing By Reason of Default, Complainant's proposed Decision Without Hearing By Reason of Default, and the Hearing Clerk's service letter dated March 20, 2002.[7] The Hearing Clerk informed Respondent in the March 20, 2002,

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[6]*See* note 2.

[7]*See* note 3.

service letter that he had 20 days within which to file objections to Complainant's proposed Decision Without Hearing By Reason of Default, as follows:

March 20, 2002

Mr. Wayne W. Coblentz
d/b/a Coblentz & Sons Livestock
P.O. Box 650
Sugarcreek, Ohio 44681

Dear Sir:

Subject: In re: Wayne W. Coblentz, d/b/a Coblentz & Sons Livestock, Respondent
P&S Docket No. D-01-0013

Enclosed is a copy of Complainant's Motion for Decision Without Hearing by Reason of Default, together with a copy of the Proposed Decision Without Hearing by Reason of Default, which have been filed with this office in the above-captioned proceeding.

In accordance with the applicable rules of practice, respondents [sic] will have 20 days from the receipt of this letter in which to file with this office an original and four copies of your objections to the Proposed Decision.

Sincerely,
/s/
JOYCE A. DAWSON
Hearing Clerk

Respondent failed to file objections to Complainant's Motion for Decision Without Hearing By Reason of Default and Complainant's proposed Decision Without Hearing By Reason of Default within 20 days after service, as required by section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Although, on rare occasions, default decisions have been set aside for good cause shown or where the complainant states that the complainant does not object to setting aside the default decision,[8] generally there is no basis for setting aside a default decision that is based upon a respondent's failure to file a timely answer.[9]

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[8]*See In re Dale Goodale*, 60 Agric. Dec. ___ (Dec. 11, 2001) (Remand Order) (setting aside the default decision because the administrative law judge adopted apparently inconsistent findings of a dispositive fact in the default decision, and the order in the default decision was not clear); *In re Deora Sewnanan*, 60 Agric. Dec. ___ (Nov. 9, 2001) (setting aside the default decision because the respondent was not served with the complaint); *In re H. Schnell & Co.*, 57 Agric. Dec. 1722 (1998) (Remand Order) (setting aside the default decision, which was based upon the respondent's statements during two telephone conference calls with the administrative law judge and the complainant's counsel, because the respondent's statements did not constitute a clear admission of the material allegations in the complaint and concluding that the default decision deprived the respondent of its right to due process under the Fifth Amendment to the Constitution of the United States); *In re Arizona Livestock Auction, Inc.*, 55 Agric. Dec. 1121 (1996) (setting aside the default decision because facts alleged in the complaint and deemed admitted by failure to answer were not sufficient to find a violation of the Packers and Stockyards Act or jurisdiction over the matter by the Secretary of Agriculture); *In re Veg-Pro Distributors*, 42 Agric. Dec. 273 (1983) (Remand Order) (setting aside the default decision because service of the complaint by registered and regular mail was returned as undeliverable, and the respondent's license under the PACA had lapsed before service was attempted), *final decision*, 42 Agric. Dec. 1173 (1983); *In re Vaughn Gallop*, 40 Agric. Dec. 217 (1981) (Order Vacating Default Decision and Remanding Proceeding) (vacating the default decision and remanding the case to the administrative law judge to determine whether just cause exists for permitting late answer), *final decision*, 40 Agric. Dec. 1254 (1981); *In re J. Fleishman & Co.*, 38 Agric. Dec. 789 (1978) (Remand Order) (remanding the proceeding to the administrative law judge for the purpose of receiving evidence because the complainant had no objection to the respondent's motion for remand), *final decision*, 37 Agric. Dec. 1175 (1978); *In re Richard Cain*, 17 Agric. Dec. 985 (1958) (Order Reopening After Default) (setting aside a default decision and accepting a late-filed answer because the complainant did not object to the respondent's motion to reopen after default).

[9]*See generally In re Jim Aron*, 58 Agric. Dec. 451 (1999) (holding the

(continued...)

[9](...continued)
administrative law judge properly issued a default decision where the respondent's first filing in the proceeding was 5 months 1 day after the Hearing Clerk served him with the complaint and 133 days after the respondent's answer was due and holding the respondent is deemed, by his failure to file a timely answer, to have admitted violating 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 issued under the Packers and Stockyards Act (9 C.F.R. §§ 201.29-.30) [hereinafter the Regulations] as alleged in the complaint); *In re Hines and Thurn Feedlot, Inc.*, 57 Agric. Dec. 1408 (1998) (holding the administrative law judge properly issued the default decision where the respondents filed an answer 23 days after the Hearing Clerk served them with the complaint and holding the respondents are deemed, by their failure to file a timely answer, to have admitted violating sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b) and section 201.43 of the Regulations (9 C.F.R. § 201.43) as alleged in the complaint); *In re Spring Valley Meats, Inc.* (Decision as to Charles Contris), 56 Agric. Dec. 1731 (1997) (holding the administrative law judge properly issued the default decision where the respondents' first filing was 46 days after the Hearing Clerk served the complaint on respondents and holding respondent Charles Contris is deemed, by the failure to file a timely answer, to have admitted violating sections 202(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 192(a), 228b) and section 201.200 of the Regulations (9 C.F.R. § 201.200) as alleged in the complaint); *In re Spring Valley Meats, Inc.* (Decision as to Spring Valley Meats, Inc.), 56 Agric. Dec. 1704 (1997) (holding the administrative law judge properly issued the default decision where the respondents' first filing was 46 days after the Hearing Clerk served the complaint on the respondents and holding respondent Spring Valley Meats, Inc., is deemed, by the failure to file a timely answer, to have admitted violating sections 202(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 192(a), 228b) and section 201.200 of the Regulations (9 C.F.R. § 201.200) as alleged in the complaint); *In re Bruce Thomas*, 53 Agric. Dec. 1569 (1994) (holding the administrative law judge properly issued the default decision where the respondent failed to file an answer and holding the respondent is deemed, by his failure to file an answer, to have admitted violating sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b) as alleged in the complaint); *In re Mike Robertson*, 47 Agric. Dec. 879 (1988) (holding the administrative law judge properly issued the default decision where the respondent did not file an answer and holding the respondent is deemed, by his failure to file a timely answer, to have admitted violating 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) as alleged in the complaint); *In re Johnson-Hallifax, Inc.*,
(continued...)

[9](...continued)
47 Agric. Dec. 430 (1988) (holding the administrative law judge properly issued the default decision where the respondent did not file an answer and holding the respondent is deemed, by the failure to file a timely answer, to have admitted violating sections 202(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 192(a), 228b) as alleged in the complaint); *In re Charley Charton*, 46 Agric. Dec. 1082 (1987) (holding the administrative law judge properly issued the default decision where the respondent did not file an answer and holding the respondent is deemed, by his failure to file a timely answer, to have admitted violating 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) as alleged in the complaint); *In re Les Zedric*, 46 Agric. Dec. 948 (1987) (holding the administrative law judge properly issued the default decision where the respondent failed to file a timely answer and holding the respondent is deemed, by his failure to file a timely answer, to have admitted violating sections 307 and 312(a) of the Packers and Stockyards Act (7 U.S.C. §§ 208, 213(a)) and section 201.42 of the Regulations (9 C.F.R. § 201.42) as alleged in the complaint); *In re A.W. Schmidt & Son, Inc.*, 46 Agric. Dec. 586 (1987) (holding the administrative law judge properly issued the default order where the respondent failed to file a timely answer and holding the respondent is deemed, by the failure to file a timely answer, to have admitted violating 7 U.S.C. §§ 192(a), 204, 228b and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29-.30) as alleged in the complaint); *In re Elmo Mayes*, 45 Agric. Dec. 2320 (1986) (holding the administrative law judge properly issued the default decision where the respondent failed to file a timely answer and holding the respondent is deemed, by his failure to file a timely answer, to have admitted violating sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b) as alleged in the complaint), *rev'd on other grounds*, 836 F.2d 550, 1987 WL 27139 (6th Cir. 1987); *In re Ray H. Mayer* (Decision as to Jim Doss), 43 Agric. Dec. 439 (1984) (holding the administrative law judge properly issued the default decision where the respondent failed to file a timely answer and holding the respondent is deemed, by his failure to file a timely answer, to have admitted violating sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b) and section 201.43(b) of the Regulations (9 C.F.R. § 201.43(b)) as alleged in the complaint), *appeal dismissed*, No. 84-4316 (5th Cir. July 25, 1984); *In re Danny Rubel*, 42 Agric. Dec. 800 (1983) (holding the administrative law judge properly issued the default decision where the respondent failed to file a timely answer and holding the respondent is deemed, by his failure to file a timely answer, to have admitted violating section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)) and section 201.55 of the Regulations (9 C.F.R. § 201.55) as

(continued...)

The Rules of Practice provide that an answer must be filed within 20 days after service of the complaint (7 C.F.R. § 1.136(a)). Respondent did not file a timely answer. Respondent's first and only filing in this proceeding was May 10, 2002, 7 months 8 days after the Hearing Clerk served Respondent with the Complaint. Respondent's failure to file a timely answer is deemed, for purposes of this proceeding, an admission of the allegations in the Complaint and constitutes a waiver of hearing (7 C.F.R. §§ 1.136(c), .139, .141(a)).

Accordingly, there are no issues of fact on which a meaningful hearing could be held in this proceeding, and the ALJ properly issued the Initial Decision and Order. Application of the default provisions of the Rules of Practice does not deprive Respondent of his rights under the due process clause of the Fifth Amendment to the Constitution of the United States.[10]

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[9](...continued)
alleged in the complaint); *In re Pastures, Inc.*, 39 Agric. Dec. 395 (1980) (holding the administrative law judge properly issued the default decision where the respondents failed to file a timely answer to the complaint and holding the respondents are deemed, by failing to file a timely answer, to have admitted violating 7 U.S.C. §§ 192(a), 204, 228b(a) and section 201.43(b) of the Regulations (9 C.F.R. § 201.43(b)) as alleged in the complaint); *In re Thomaston Beef & Veal, Inc.*, 39 Agric. Dec. 171 (1980) (holding the administrative law judge properly issued the default decision where the respondents failed to file a timely answer to the complaint and holding the respondents are deemed, by failing to file a timely answer, to have admitted violating sections 202(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 192(a), 228b(a)) and sections 201.29, 201.30, and 201.43(b) of the Regulations (9 C.F.R. §§ 201.29-.30, .43(b)) as alleged in the complaint).

[10]*See United States v. Hulings*, 484 F. Supp. 562, 567-68 (D. Kan. 1980)
(continued...)

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

ORDER

Paragraph I

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

1. Issuing checks in payment for livestock purchases without maintaining sufficient funds on deposit and available in the account upon which the checks are drawn to pay the checks when presented;

2. Failing to pay, when due, the full purchase price of livestock; and

3. Failing to pay the full purchase price of livestock.

The cease and desist provisions of this Order shall become effective on the day after service of this Order on Respondent.

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[10](...continued)
(concluding a hearing was not required under the Fifth Amendment to the United States Constitution where the respondent was notified that failure to deny the allegations of the complaint would constitute an admission of those allegations under the Rules of Practice and the respondent failed to specifically deny the allegations). *See also Father & Sons Lumber and Building Supplies, Inc. v. NLRB*, 931 F.2d 1093, 1096 (6th Cir. 1991) (stating due process generally does not entitle parties to an evidentiary hearing where the National Labor Relations Board has properly determined that a default summary judgment is appropriate due to a party's failure to file a timely response); *Kirk v. INS*, 927 F.2d 1106, 1108 (9th Cir. 1991) (rejecting the contention that the administrative law judge erred by issuing a default judgment based on a party's failure to file a timely answer).

Paragraph II

Respondent is suspended as a registrant under the Packers and Stockyards Act for a period of 5 years; *Provided, however*, That upon application to the Packers and Stockyards Programs a supplemental order may be issued terminating the suspension of Respondent as a registrant under the Packers and Stockyards Act at any time after the expiration of the initial 150 days of the 5-year period of suspension upon demonstration by Respondent that the livestock sellers identified in the Complaint have been paid in full; *And provided further*, That this Order may be modified upon application to the Packers and Stockyards Programs to permit Respondent's salaried employment by another registrant or a packer after the expiration of the initial 150 days of the 5-year period of suspension and upon demonstration of circumstances warranting modification of the Order, such as a reasonable and current schedule of restitution.

The registration-suspension provisions of this Order shall become effective on the 60th day after service of this Order on Respondent.

Done at Washington, DC

May 30, 2002

William G. Jenson
Judicial Officer

FILED

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION DEC 1 8 2003

No. 02-3806 LEONARD GREEN, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
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WAYNE W. COBLENTZ, d/b/a COBLENTZ & SONS LIVESTOCK,	)	ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DEPARTMENT OF AGRICULTURE
Petitioner,	)	
v.	)	
UNITED STATES DEPARTMENT OF AGRICULTURE,	)	OPINION
Respondent.	)	

BEFORE: MARTIN and SUTTON, Circuit Judges; MILLS, District Judge.*

RICHARD MILLS, District Judge:

I.

Mr. Wayne Coblentz is a dealer who buys and sells livestock for others on a commission basis. Coblentz, like other livestock dealers, is required to be registered under the Packers and Stockyards Act ("Act"). Section 312(a) of the Act prohibits any dealer from engaging in any unfair or deceptive practice in connection with the buying or selling of livestock. 7 U.S.C. § 213(a). Under the Act, a dealer must pay the full purchase price for livestock no later than one business day following the date of purchase. 7 U.S.C. § 228b(a). Any delay or attempt to delay the collection of payment for a livestock purchase is an unfair practice in violation of the Act. 7 U.S.C. § 228b(c).

*Honorable Richard Mills, United States District Judge for the Central District of Illinois, sitting by designation.

On September 6, 2001, the Deputy Administrator of the Packers and Stockyards Programs, Grain Inspection and Packers and Stockyards Administration, United States Department of Agriculture ("Respondent"), filed a Complaint against Coblentz. The Complaint alleged that on several dates in 1999 and 2000, Coblentz purchased livestock from various entities and failed to timely pay for several of these purchases and attempted to pay for others with checks returned by the bank due to insufficient funds. The Complaint alleged Coblentz's actions constituted willful violations of sections 312(a) and 409 of the Act. 7 U.S.C. §§ 213(a), 228b.

On October 2, 2001, Coblentz was served with the Complaint along with the Rules of Practice Governing Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes ("Rules of Practice") and a service letter from the Clerk. The Rules of Practice stated, "Within 20 days after the service of the complaint" an answer shall be filed with the Hearing Clerk. 7 C.F.R. § 1.136(a). "Failure to file an answer . . . shall be deemed, for purposes of the proceeding, an admission of the allegations in the Complaint." 7 C.F.R. § 1.136(c). The Clerk's letter reiterated, "Most importantly, you have *20 days from the receipt of this letter to file with the Hearing Clerk an original and three copies of your written and signed answer to the Complaint*" (emphasis in original). "Failure to file . . . shall constitute an admission of those allegations and a waiver of your right to an oral hearing." Coblentz did not file an answer.

On October 24, 2001, the Hearing Clerk sent a letter to Coblentz advising him that an answer had not been filed within the time required by the Rules of Practice. On March 18, 2002, the Respondent filed a Motion for Default. On March 23, 2002, the Hearing Clerk served Coblentz with the Motion for Default, a Proposed Decision, and the Hearing Clerk's service letter. The letter stated, "In accordance with applicable rules of practice, [you] will have 20 days from the receipt of

this letter in which to file with this office an original and four copies of your objections to the Proposed Decision." Coblentz did not file objections.

On April 12, 2002, the Administrative Law Judge ("ALJ") issued a Decision Without Hearing By Reason of Default finding Coblentz had willfully violated sections 312(a) and 409 of the Act, ordering Coblentz to cease and desist from further violations and suspending Coblentz as a registrant under the Act for a period of five years provided:

> that upon application to the Packers and Stockyards Programs a supplemental order may be issued terminating the suspension of [Coblentz] as a registrant under the Packers and Stockyards Act at any time after 150 days upon demonstration by [Coblentz] that the livestock sellers identified in the Complaint have been paid in full.

In re Coblentz, No. D-01-0013 (U.S.D.A. Apr. 12, 2002) (ALJ decision). On May 10, 2002, Coblentz appealed and requested the Judicial Officer ("JO") to vacate the ALJ's default judgment. On May 30, 2002, the Judicial Officer issued a Decision and Order affirming the ALJ's decision. Coblentz appeals the JO's decision. Coblentz's suspension as a registrant under the Act was stayed pending the outcome of this appeal.

II.

We apply the "abuse of discretion" standard of review to an administrative decision finding no "good cause" for accepting an untimely answer to a complaint. *Father & Sons Lumber and Bldg Supplies, Inc v N.L.R.B.*, 931 F.2d 1093, 1095 (6th Cir. 1991). A default judgment will be affirmed unless the agency's "construction of the good cause standard is so arbitrary as to defeat justice." *Id.* at 1096.

Section 228 of Title 7 authorizes the Secretary to "make such rules, regulations, and orders as may be necessary to carry out the provisions of this [Act]." The Rules of Practice provide that

an answer must be filed within twenty days of service of the complaint. 7 C.F.R. § 1.136(a) Failure to file an answer within twenty days is deemed an admission of the complaint's allegations, 7 C.F.R. § 1.136(c), and a waiver of a hearing, 7 C.F.R. § 1.139. Section 1.139 permits filing of objections to a motion for default judgment. If the judge finds the objections meritorious, the motion for default judgment "shall be denied with supporting reasons." 7 C.F.R. § 1.139. "If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing." *Id.*

Despite the repeated admonitions Coblentz received via the Rules of Practice and the Hearing Clerk's letter, Coblentz failed to file an answer within twenty days. In March 2002, Respondent filed a Motion for Default. Again, despite the warning in the Rules of Practice and the Hearing Clerk's letter, Coblentz failed to file objections within twenty days. As a result, default judgment was entered. Finally, on May 10, 2002, Coblentz formally entered the case when he filed an Appeal Petition requesting the Judicial Officer vacate the default judgment for, essentially, "good cause."

Although an explicit "good cause" provision is absent from the Rules of Practice, default judgments have been vacated for good cause or when the motion to vacate was unopposed. *See In re Dale Goodale*, 60 Agric. Dec. 670 (Dec. 11, 2001) (vacating judgment when administrative law judge adopted inconsistent findings on a dispositive fact); *In re Deora Sewnanan*, 60 Agric. Dec. 688 (Nov. 9, 2001) (vacating when no evidence the complaint was served); *In re H. Schnell & Co.*, 57 Agric. Dec. 1722 (1998) (vacating default when ALJ incorrectly characterized statements as admissions); *In re Arizona Livestock Auction, Inc.*, 55 Agric. Dec. 1121 (1996) (vacating default when the facts alleged in complaint were insufficient to find violation of Act); *In re Veg-Pro Distribs* , 42 Agric. Dec. 273 (1983) (vacating default when the complaint was returned as

undeliverable); *see also In re Vaughn Gallop*, 40 Agric. Dec. 217 (1981) (remanded for determination of whether just cause existed for permitting late answer).

In his appeal brief to the JO, Coblentz explained why he did not file a timely answer to the Complaint.

> Upon information and belief that he could remedy the situation and avoid an adverse decision, Coblentz wrote Attorney Spicknall [counsel for the respondent] to inform him that all of Coblentz's debts had been paid in full except the debt of The Kidron Auction, Inc. . . . Moreover, Coblentz informed Attorney Spicknall that an agreement was reached between Coblentz and The Kidron Auction, Inc. regarding payment of his debt. Discussions with Attorney Spicknall continued until mid February 2002. . . . Coblentz's failure to respond to the Complaint was an honest mistake, in that he truthfully believed his communications with Attorney Spicknall, in addition to his orderly payment of all of his debts and his agreement with The Kidron Auction, Inc., would remedy the present matter. In essence, Coblentz believed that if all parties were paid in full, the USDA Complaint against him would be withdrawn.

Coblentz's Appeal Brief (May 10, 2002). Coblentz also argued that his agreement with The Kidron Auction, Inc. satisfied 7 U.S.C. § 228b(b). Section 228b(b) allows parties to expressly agree in writing, prior to the purchase, to effect payment in a manner other than that required in 228b(a). 7 U.S.C. § 228b(b).

The JO rejected Coblentz's arguments. First, Coblentz's payments to the other livestock sellers did not alter the fact that the payments were late and in violation of 7 U.S.C. § 228b(a). Second, the agreement between The Kidron Auction and Coblentz did not satisfy 228b(b) because it was not entered into prior to the purchases. Third, the JO concluded Coblentz's "honest mistake" was unreasonable in light of the directives to respond issued in the Complaint, the Rules of Practice, and the Hearing Clerk's letters.

We review the JO's decision for abuse of discretion and will not substitute its judgment with ours. The JO considered Coblentz's request to vacate the default judgment and his accompanying

arguments. After addressing each argument in turn, the JO concluded Coblentz failed to present good cause to vacate. Coblentz argues the Secretary has not developed a standard by which to determine when good cause exists to set aside a default judgment. Respondent asserts the good cause standard is simply a fact specific, case-by-case analysis. We agree with Respondent. Simply because it is justifiably difficult to obtain relief from default, does not mean a standard for good cause does not exist. The JO concluded Coblentz's proffered reasons fell short of excusing his torpid response to the Complaint. We find no fault with the JO's decision.

Although we cannot provide the outcome Coblentz is seeking, he is not without options. If Coblentz simply repays the debts referenced in the Complaint, he could be back in business in just 150 days. For his sake, the Court hopes Coblentz has made good use of the last two years and can readily satisfy the conditions of the sanction. If so, Coblentz may return to his livelihood in the not too distant future.

AFFIRMED.