

USDA
OFFICE OF THE SECRETARY

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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) **P & S Docket No. D-10-0151**
)
John Lundgren)
) **Decision and Order**
Respondent) **by Reason of Default**

1. The Complaint, filed on March 4, 2010, alleged that the Respondent, John Lundgren, in 2008, willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181, *et seq.*) (frequently herein the “Packers and Stockyards Act” or the “Act”), and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*) (frequently herein the “Regulations”).

Parties and Counsel

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

3. The Respondent John Lundgren (herein frequently “Respondent Lundgren” or “Respondent”) is an individual, who has failed to appear.

Procedural History

4. Packers and Stockyards' Motion for Decision Without Hearing by Reason of Default, filed May 20, 2010, is before me. Respondent Lundgren was served on June 1, 2010, with a copy of that Motion and a copy of the proposed Decision, and he has failed to respond to the Motion.

5. Respondent Lundgren was served with a copy of the Complaint on March 9, 2010. The Complaint was accompanied by the Hearing Clerk's letter of service and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130, *et seq.*), hereinafter the "Rules of Practice." Respondent's answer was due to be filed within 20 days after service, according to section 1.136(a) of the Rules of Practice. 7 C.F.R. § 1.136(a). The time for filing an answer to the Complaint expired on March 29, 2010. To date, Respondent still has failed to file an answer. The Respondent is in default, pursuant to section 1.136(c) of the Rules of Practice. 7 C.F.R. § 1.136(c).

6. Further, I am informed that on April 10, 2010, Respondent received a letter from Packers and Stockyards, through counsel, which informed Respondent that if this matter were to go to hearing, Packers and Stockyards would seek a civil penalty of \$20,500.00.

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

forth herein as Findings of Fact. This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice. 7 C.F.R. § 1.139. See 7 C.F.R. §1.130 *et seq.*

Findings of Fact

8. Respondent John Lundgren is an individual whose mailing address is a home address and is on file with the Hearing Clerk's Office, United States Department of Agriculture.

9. Respondent John Lundgren was, at all times material to this Decision, and particularly in 2008:

(a) engaged in the business of buying and selling livestock in commerce as a dealer for his own account;

(b) registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account.

10. Respondent Lundgren, in connection with his operations subject to the Packers and Stockyards Act, on or about the dates and in the transactions set forth below, failed to pay the full amount of the purchase price for livestock within the time period required by the Act:

Seller	Purchase Date	Date Payment Due Per 409(a)	Payment Date	Days Late	Number of Head	Livestock Amount
Chehalis Livestock Market	2/29/2008	3/3/2008	3/16/2008	13	15	\$18,700.00
Chehalis Livestock Market	3/7/2008	3/10/2008	3/21/2008	11	4	\$3,015.00

Seller	Purchase Date	Date Payment Due Per 409(a)	Payment Date	Days Late	Number of Head	Livestock Amount
Chehalis Livestock Market	3/8/2008	3/10/2008	3/12/2008	2	6	\$1,133.80
Chehalis Livestock Market	3/14/2008	3/17/2008	3/24/2008	7	4	\$5,275.00
Chehalis Livestock Market	3/21/2008	3/24/2008	3/30/2008	6	5	\$7,535.00
Chehalis Livestock Market	4/4/2008	4/7/2008	4/14/2008	7	5	\$4,545.50
Chehalis Livestock Market	4/11/2008	4/14/2008	4/21/2008	7	12	\$9,503.20
Chehalis Livestock Market	4/18/2008	4/21/2008	4/28/2008	7	8	\$10,900.00
Chehalis Livestock Market	4/25/2008	4/28/2008	5/6/2008	8	8	\$7,704.75
Chehalis Livestock Market	5/2/2008	5/5/2008	5/29/2008	24	6	\$8,195.00
Chehalis Livestock Market	5/16/2008	5/19/2008	5/28/2008	9	6	\$7,082.20
Chehalis Livestock Market	5/23/2008	5/27/2008	6/6/2008	10	4	\$2,566.90
Chehalis Livestock Market	5/30/2008	6/2/2008	6/10/2008	8	7	\$6,855.95
Chehalis Livestock Market	6/6/2008	6/9/2008	6/16/2008	7	5	\$3,992.60

Seller	Purchase Date	Date Payment Due Per 409(a)	Payment Date	Days Late	Number of Head	Livestock Amount
Chehalis Livestock Market	6/13/2008	6/16/2008	6/26/2008	10	7	\$5,054.30
Chehalis Livestock Market	6/20/2008	6/23/2008	7/9/2008	16	9	\$6,707.23
Chehalis Livestock Market	6/27/2008	6/30/2008	7/18/2008	18	2	\$2,425.00
Chehalis Livestock Market	7/11/2008	7/14/2008	7/22/2008	8	12	\$13,335.00

11. On or about the dates and in the transactions set forth below, Respondent Lundgren issued checks in payment for livestock purchases and said checks were returned because Respondent failed to maintain sufficient funds on deposit at the relevant financial institution:

Seller	Purchase Date	Number. of Head	Check Date	Check Number	Check Amount	Date Returned
Chehalis Livestock Market	3/28/2008	9	4/7/2008	3561	\$8,449.00	4/11/2008
Chehalis Livestock Market	7/18/2008	17	7/28/2008	3602	\$22,151.65	8/7/2008

Conclusions

12. The Secretary of Agriculture has jurisdiction over the parties and the subject matter.

13. By reason of the facts found in paragraphs 9, 10, and 11, Respondent Lundgren has willfully violated sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b).

Order

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

(a) failing to pay, when due, for livestock purchases; and

(b) issuing checks in purported payment of livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented.

15. Respondent Lundgren is assessed a **\$20,500.00** civil penalty, pursuant to section 312(b) of the Act (7 U.S.C. § 213(b)). The civil penalty payment instrument(s) shall be made payable to the order of the **United States Department of Agriculture**, marked with **PS-D-10-0151**, and sent to:

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

Payment shall be made within 60 days from the date this Order is final and effective (*see*

next paragraph).

Finality

16. This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.

this 21st day of July 2010



Jill S. Clifton

Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Bldg Room 1031
1400 Independence Ave SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

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

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

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

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

and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

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

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

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

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

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

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

7 C.F.R. § 1.145