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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P. & S. Docket No. D-12-0357
	)	
Ronald Ryan Shepard, Jr., a/k/a	)	
Ronald Ryan Sheppard, Jr., a/k/a	)	
Ron Shephard; Jeremy E. Pierce;	)	
and Brookfield Cattle Co., LLC,	)	
	)	**Decision and Order as to**
Respondents	)	**Ronald Ryan Shepard, Jr.**

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 April 12, 2012. 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: (1) Ronald Ryan Shepard, Jr., on or about the dates and in the transactions set forth in Appendix A attached to the Complaint, issued checks in payment for livestock purchases which were returned unpaid by the bank upon which the checks were drawn because Mr. Shepard 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, in willful violation of 7 U.S.C. §§ 213(a) and 228b; (2) Mr. Shepard, on or about the dates and in the transactions set forth in Appendices A and B attached to the Complaint, purchased livestock and failed to pay, when due, the full purchase price of the livestock, in willful violation of 7 U.S.C. §§ 213(a) and 228b; (3) Mr. Shepard, on or about the dates and in the transactions set forth in Appendix C attached to the Complaint, purchased livestock and failed to pay for the livestock, in willful violation of 7 U.S.C. §§ 213(a) and 228b; and (4) Mr. Shepard, beginning in April 2011, and on the dates and in the transactions set forth in Appendices A, B, and C attached to the Complaint and in other transactions on other dates, engaged in the business of a dealer buying and selling livestock in commerce without maintaining a bond or bond equivalent, in willful violation of 7 U.S.C. §§ 204 and 213(a) and 9 C.F.R. §§ 201.29-.30.[1]

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[1]Compl. at 4-6 ¶¶ III-V.

The Hearing Clerk served Mr. Shepard with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter on April 24, 2012.[2] Mr. Shepard failed to file an answer to the Complaint, and on July 6, 2012, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] issued a Show Cause Order in which the Chief ALJ provided the parties 15 days within which to show cause why a default decision should not be entered.

On July 17, 2012, the Deputy Administrator filed "Complainant's Response to Show Cause Order; Motion for Adoption of Proposed Default Decision and Order" [hereinafter Motion for Default Decision] and a "Proposed Default Decision and Order" [hereinafter Proposed Default Decision]. Mr. Shepard did not file a response to the Chief ALJ's Show Cause Order.

On August 13, 2012, the Hearing Clerk served Mr. Shepard with the Deputy Administrator's Motion for Default Decision and Proposed Default Decision and the Hearing Clerk's service letter.[3] Mr. Shepard failed to file objections to the Deputy Administrator's Motion for Default Decision and Proposed Default Decision.

On October 25, 2012, the Chief ALJ, in accordance with 7 C.F.R. § 1.139, issued a Default Decision and Order as to Ronald Ryan Shepard, Jr. [hereinafter the Chief ALJ's

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[2]United States Postal Service Domestic Return Receipt for article number 7005 1160 0002 7836 1287.

[3]United States Postal Service Domestic Return Receipt for article number 7005 1160 0002 7836 1706.

Decision]: (1) concluding Mr. Shepard willfully violated 7 U.S.C. §§ 204, 213(a), and 228b and 9 C.F.R. §§ 201.29-.30, as alleged in the Complaint; (2) ordering Mr. Shepard to cease and desist from violations of the Packers and Stockyards Act and the Regulations; (3) prohibiting Mr. Shepard from being registered and engaging in activities for which registration is required under the Packers and Stockyards Act for a period of 10 years; and (4) assessing Mr. Shepard a $582,000 civil penalty.[4]

On December 26, 2012, Mr. Shepard appealed the Chief ALJ's Decision to the Judicial Officer. On January 15, 2013, the Deputy Administrator filed Complainant's Response to Respondent's Appeal of Default Decision and Order. On January 18, 2013, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision. Based upon a careful review of the record, I adopt, with minor changes, the Chief ALJ's Decision as the final agency decision.

DECISION

Statement of the Case

Mr. Shepard failed to file a timely answer to the Complaint. Pursuant to 7 C.F.R. § 1.136(c), the failure to file a timely answer is deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to 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

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[4]Chief ALJ's Decision at 4-5.

material allegations in the Complaint are adopted as findings of fact, and I issue this Decision and Order as to Ronald Ryan Shepard, Jr., pursuant to 7 C.F.R. § 1.139.

Findings of Fact

1. Ronald Ryan Shepard, Jr., also known as Ronald Ryan Sheppard, Jr., and also known as Ron Shephard, is an individual whose home address is in the State of Illinois.

2. At all times material to this proceeding, Mr. Shepard was:

(a) Engaged in the business of a dealer buying and selling livestock in commerce;

(b) Not registered with the Secretary of Agriculture as a dealer buying and selling livestock in commerce;

(c) Responsible for the direction, management, and control of buying activities for Brookfield Cattle Co., LLC; and

(d) The alter ego of Brookfield Cattle Co., LLC.

3. On or about April 11, 2011, the Midwestern Regional Office, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration [hereinafter GIPSA], sent Mr. Shepard a Notice of Default by certified mail, which Mr. Shepard received on or about April 13, 2011. The Notice of Default stated GIPSA had information indicating that Mr. Shepard was engaged in the business of buying and selling livestock in commerce. The Notice of Default informed Mr. Shepard that buying

and selling livestock in commerce without being properly registered with GIPSA and without filing a bond or bond equivalent are violations of the Packers and Stockyards Act and the Regulations. The Notice of Default warned Mr. Shepard that failure to comply with registration and bonding requirements would result in appropriate corrective action. Relevant provisions, forms, and instructions for registration and bonding were enclosed with the Notice of Default.

4. During the period August 4, 2011, through March 15, 2012, Mr. Shepard issued checks in payment for livestock purchases which were returned unpaid by the bank upon which the checks were drawn because Mr. Shepard did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented.

5. During the period August 4, 2011, through March 15, 2012, Mr. Shepard purchased livestock and failed to pay, when due, the full purchase price of the livestock.

6. During the period August 6, 2011, through March 22, 2012, Mr. Shepard purchased livestock and failed to pay for the livestock.

7. During the period April 2011 through March 2012, Mr. Shepard engaged in the business of a dealer buying and selling livestock in commerce without maintaining a bond or bond equivalent.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.

2. Mr. Shepard was the alter ego of Brookfield Cattle Co., LLC.

3. Mr. Shepard willfully violated 7 U.S.C. §§ 204, 213(a), and 228b and 9 C.F.R. §§ 201.29-.30.

Mr. Shepard's Appeal Petition

Mr. Shepard raises two issues in his Appeal of Default Decision and Order as to Ronald Ryan Shepard [hereinafter Appeal Petition]. First, Mr. Shepard contends he was not served with the Complaint on April 24, 2012. Mr. Shepard asserts he was in Mexico at the time the United States Postal Service delivered the Complaint. (Appeal Pet. at 1, 7.)

The Rules of Practice provide that a complaint shall be deemed to be received by a party on the date of delivery of the complaint by certified mail to the last known residence of that party.[5] The record establishes that the Hearing Clerk, by certified mail, sent the Complaint to Mr. Shepard's last known residence, where, on April 24, 2012, "Janet

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[5]7 C.F.R. § 1.147(c)(1). *See also In re Tracey Harrington*, 66 Agric. Dec. 1061, 1067-68 (2007) (stating proper service of a complaint is made under the Rules of Practice when the complaint is delivered by certified mail to the respondent's last known address and someone signs for the complaint); *In re Ow Duk Kwon* (Order Denying Late Appeal), 55 Agric. Dec. 78, 93 (1996) (stating proper service by certified mail is made when a respondent is served with a certified mailing at his or her last known address and someone signs for the document); *In re Shulamis Kaplinsky*, 47 Agric. Dec. 613, 619 (1988) (stating the excuse, occasionally given in an attempt to justify the failure to file a timely answer, that the person who signed the certified receipt card failed to give the complaint to the respondent in time to file a timely answer has been and will be routinely rejected); *In re Arturo Bejarano, Jr.*, 46 Agric. Dec. 925, 929 (1987) (stating a default order is proper where the respondent's sister signed the certified receipt card as to a complaint and forgot to give it to the respondent when she saw him 2 weeks later).

Shepard" signed United States Postal Service Domestic Return Receipt for article number 7005 1160 0002 7836 1287, which contained the Complaint. Thus, I reject Mr. Shepard's contention that he was not served with the Complaint on April 24, 2012. Instead, I find Mr. Shepard was served with the Complaint on April 24, 2012, and Mr. Shepard's answer was required by 7 C.F.R. § 1.136(a) to be filed with the Hearing Clerk no later than 20 days after service of the Complaint, namely, May 14, 2012.

Moreover, I find the Hearing Clerk's manner of service meets the requirement of due process of law. To meet the requirement of due process of law, it is only necessary that notice of a proceeding be sent in a manner "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).[6]

As held in *Fancher v. Fancher*, 8 Ohio App. 3d 79, 455 N.E.2d 1344, 1346 (Ohio Ct. App. 1982):

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[6]*See also Trimble v. U.S. Dep't of Agric.*, 87 F. App'x 456, 458 (6th Cir. 2003) (holding that sending a complaint to the respondent's last known business address by certified mail is a constitutionally adequate method of notice and lack of actual receipt of the certified mailing does not negate the constitutional adequacy of the attempt to accomplish actual notice); *Weigner v. City of New York*, 852 F.2d 646, 649-51 (2d Cir. 1988) (stating the reasonableness and hence constitutional validity of any chosen method of providing notice may be defended on the ground that it is in itself reasonably certain to inform those affected; the state's obligation to use notice "reasonably certain to inform those affected" does not mean that all risk of non-receipt must be eliminated), *cert. denied*, 488 U.S. 1005 (1989); *NLRB v. Clark*, 468 F.2d 459, 463-65 (5th Cir. 1972) (stating due process does not require receipt of actual notice in every case).

> It is immaterial that the certified mail receipt was signed by the defendant's brother, and that his brother was not specifically authorized to do so. The envelope was addressed to the defendant's address and was there received; this is sufficient to comport with the requirements of due process that methods of service be reasonably calculated to reach interested parties. See *Mullane v. Central Hanover Bank & Trust Co.* (1950), 339 U.S. 306, 314, 70 S. Ct. 652, 94 L.Ed. 865. [Footnote omitted.]

I find the Hearing Clerk's mailing the Complaint by certified mail to Mr. Shepard's last known residence (where it was received by "Janet Shepard") was reasonably calculated, under all the circumstances, to apprise Mr. Shepard of the pendency of this proceeding and to afford Mr. Shepard an opportunity to respond to the Complaint.

Second, Mr. Shepard contends the findings of fact in the Chief ALJ's Decision are "materially false" and, because the Chief ALJ's conclusions of law and the Chief ALJ's order are based upon these "materially false" facts, the Chief ALJ's conclusions of law and the Chief ALJ's order, are error (Appeal Pet. at 1-7).

The Rules of Practice provide that an answer to a complaint must be filed within 20 days after service of the complaint.[7] Failure to file an answer within the time provided in 7 C.F.R. § 1.136(a) is deemed an admission of the allegations in the complaint. The record establishes that the Hearing Clerk served Mr. Shepard with the Complaint on April 24, 2012.[8] Mr. Shepard's answer to the Complaint was required to be filed with the

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[7] 7 C.F.R. § 1.136(a).

[8] See note 2.

Hearing Clerk no later than May 14, 2012. Mr. Shepard's first and only filing was his Appeal Petition filed with the Hearing Clerk on December 26, 2012, 7 months 12 days after his answer was required to be filed; thus, Mr. Shepard is deemed to have admitted the allegations in the Complaint. The Chief ALJ adopted as findings of fact the allegations in the Complaint which Mr. Shepard is deemed to have admitted.[9] Mr. Shepard's contention that the Chief ALJ's findings of fact are "materially false" is tantamount to a denial of the allegations in the Complaint. Mr. Shepard's denial of the allegations in the Complaint, which he has been deemed to have admitted, comes far too late to be considered. Therefore, I reject Mr. Shepard's contention that the Chief ALJ's findings of fact are "materially false" and the Chief ALJ's conclusions of law and the Chief ALJ's order, are error.

For the foregoing reasons, the following Order is issued.

ORDER

1. Mr. Shepard, 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 and failing to pay, when due, the full purchase price of livestock, as required by 7 U.S.C. § 228b;

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[9]Chief ALJ's Decision at 2.

(b) Failing to have and maintain sufficient funds on deposit and available in the account upon which checks are drawn to pay the checks when presented;

(c) Buying and selling livestock in commerce without maintaining an adequate bond or bond equivalent; and

(d) Engaging in any business subject to the Packers and Stockyards Act without being registered with the Packers and Stockyards Program.

Paragraph 1 of this Order shall become effective upon service of this Decision and Order as to Ronald Ryan Shepard, Jr., on Mr. Shepard.

2. Mr. Shepard is prohibited from being registered and engaging in any activity for which registration is required under the Packers and Stockyards Act for a period of 10 years. After the expiration of this 10-year time period, Mr. Shepard may submit an application for registration to the Packers and Stockyards Program along with the required bond or bond equivalent.

Paragraph 2 of this Order shall become effective upon service of this Decision and Order as to Ronald Ryan Shepard, Jr., on Mr. Shepard.

3. Mr. Shepard is assessed a $582,000 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the "Treasurer of the United States" and sent to:

USDA-GIPSA
P.O. Box 790335
St. Louis, MO 63197-0335

Payment of the civil penalty shall be sent to, and received by, USDA-GIPSA within 60 days after service of this Decision and Order as to Ronald Ryan Shepard, Jr., on Mr. Shepard. Mr. Shepard shall state on the certified check or money order that payment is in reference to P. & S. Docket No. D-12-0357.

RIGHT TO JUDICIAL REVIEW

Mr. Shepard has the right to seek judicial review of the Order in this Decision and Order as to Ronald Ryan Shepard, Jr., in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. Mr. Shepard must seek judicial review within 60 days after entry of the Order in this Decision and Order as to Ronald Ryan Shepard, Jr.[10] The date of entry of the Order in this Decision and Order as to Ronald Ryan Shepard, Jr., is January 29, 2013.

Done at Washington, DC

January 29, 2013

William G. Jenson
Judicial Officer

[10] 28 U.S.C. § 2344.