

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re: RICHARD REECE,) Docket No. 11-0213
)
Respondent)

**DECISION WITHOUT HEARING BY ENTRY
OF DEFAULT AGAINST RESPONDENT**

Preliminary Statement

The instant matter involves a disciplinary proceeding under the Packers and Stockyards Act, 1921, 7 U.S.C. §§181 et seq. (the Act). The proceeding was instituted by a Complaint filed by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA) of the U.S. Department of Agriculture (USDA).

Procedural History

On April 29, 2011, GIPSA filed a Complaint with the Hearing Clerk, Office of Administrative Law Judges (OALJ), charging Richard Reece (Respondent) with violations of the Act. The Hearing Clerk attempted to serve the Complaint on Respondent by certified mail on May 2, 2011. The Complaint was returned as "unclaimed" by the United States Post Office, and on June 1, the Hearing Clerk sent the Complaint by regular mail to Respondent. In addition Respondent was advised that pursuant to the Rules of Practice applicable to adjudications before OALJ (the Rules), Respondent was required to file a formal Answer to the Complaint by not later than June 21, 2011. 7 C.F.R. § 1.136. Respondent did not respond to the second mailing, and none of the correspondence served on Respondent was returned as undeliverable by that date.

The case was assigned to me, and by Order issued June 22, 2011, I directed the parties to show cause in writing within twenty days why default should not be entered against Respondent

for failure to timely file an Answer to the Complaint. I issued this Order in lieu of motion by Complainant for entry of default decision pursuant to 7 C.F.R. §1.139. On June 23, 2011¹, Respondent filed correspondence that referenced the complaint and correspondence sent by the Hearing Clerk, and which I construe to be an Answer. Respondent did not file any document or response to my Order to show cause. On July 11, 2011, Complainant provided me with a Draft Default Decision, in compliance with my Order.

Discussion

Respondent filed correspondence two days after the date within which an Answer was due pursuant to 7 C.F.R. § 1.136. Although the correspondence is dated June 21, 2011, Respondent used facsimile to file his response, and the date of the facsimile is June 23, 2011. An administrative law judge may extend the time for filing of any document described by the Rules when good reason is provided. In the instant matter, Respondent advised in his correspondence filed on June 23, 2011 that he received the Hearing Clerk's letter on June 6, 2011. Respondent provided no reason for failing to meet the deadline of June 21, 2011, and indeed, attempted to suggest compliance with the deadline by dating his correspondence "June 21, 2011". However, the document was not sent on that date, but rather was filed by facsimile two days later. I find that Respondent has failed to provide good cause to extend the time within which an Answer must be filed. Respondent failed to timely file an Answer as contemplated by the Rules, and default is appropriate.

Even if I were to find good cause for Respondent's untimely filing and construe it to have been filed nunc pro tunc, the content of the correspondence suggests admission of the allegations set forth in the Complaint. The Complaint alleged that Respondent failed to timely pay Colfax

¹ I take official notice that Respondent could hardly have received my Order of June 22, 2011, as it appears to have been mailed by the Hearing Clerk on June 23, 2011, the date that Respondent's correspondence was docketed.

Livestock for transactions entered into with that enterprise on May 20, 2009 and November 28, 2009. In addition, the Complaint alleged that Respondent owed Waverly Sales Co. for a transaction that transpired on December 7, 2009. Respondent advised in his filing that he made arrangements with Shawn Cogley at Colfax Livestock and with Ron Dean at Waverly Sales Co. to make payments. Respondent did not provide proof of payments, or documentation of an agreement between the parties for such installment payments. Respondent asserts as a defense that he fell behind in his payments because he in turn was owed money. Respondent included a copy of a letter from his attorney to an entity that allegedly failed to pay Respondent for sales during the period from 2008 through 2010.

Although I commiserate with Respondent's dilemma, I find that it does not absolve him of his obligations under the Act. In addition, I find that Respondent's correspondence lacks the specificity required of an Answer by 7 C.F.R. § 1.136(b), and further find that Respondent tacitly admitted to the alleged violations of the Act, by failing to specifically deny the allegations. Accordingly, pursuant to 7 C.F.R. § 1.136 (c), default is appropriate.

In addition, I find that Respondent's failure to respond to my Order to show cause is tantamount to failure to file an objection pursuant to 7 C.F.R. § 1.139. Respondent's admissions and failure to specifically deny the allegations set forth in the Complaint therefore constitute a waiver of a hearing under 7 C.F.R. § 1.139.

Findings of Fact

- 1.) Richard L. Reece, Respondent herein, is an individual whose mailing address is 604 Nile Kinnick Drive, Adel, Iowa 50003.
- 2.) At all times material herein, Respondent was:
 - a. Engaged in the business of buying and selling livestock in commerce for its own account as a dealer and as a market agency buying on commission; and

- b. Registered with the Secretary of Agriculture as a dealer within the meaning of and subject to the provisions of the Act.
- 3.) On or about the dates and in the transactions set forth in Appendix A hereto, Respondent purchased livestock and failed to pay, within the time period required by the Act, the full purchase price of such livestock.
- 4.) As of March 31, 2011, Respondent owed Colfax Livestock Sales approximately \$46,000.00 of the amount involved in the May 30, 2009 and November 28, 2009 transactions referenced in Appendix A.
- 5.) In addition, as of March 31, 2011, Respondent owed Waverly Sales Co. approximately \$1,900.00 for the December 7, 2009 transaction referenced in Appendix A.
- 6.) In correspondence filed on June 23, 2011, Respondents tacitly admit outstanding payments due to the aforesated entities.

Conclusions of Law

By reason of the facts alleged in paragraphs 1 through 6, supra., Respondent has willfully violated sections 312(a) and 409(z) of the Act. See, 7 U.S.C. §§ 213(a) and 228b(a).

ORDER

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

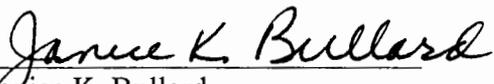
1. Failing to pay, when due, the full purchase price of livestock; and
2. Failing to pay the full purchase price of livestock.

Pursuant to section 312(b) of the Act (7 U.S.S. §213(b)), the Respondent is hereby assessed a civil penalty of \$40,625.00.

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 thirty (30) days, pursuant to the Rules, 7 C.F.R. §1.145.

Copies of this Decision and Order together with Appendix A shall be served upon the parties by the Hearing Clerk.

So ORDERED this 19th day of July, 2011 at Washington, D.C.



Janice K. Bullard
Administrative Law Judge

Appendix A

Purchase Date	Livestock Seller	No. of Head	Purchase and Payment Amount	Date Payment Due per § 409(a)	Deposit Date	Payment Amount	Number of Days Late
5/16/09	Colfax Livestock Sales	233	\$23,090.57	5/18/09	6/4/09	\$23,090.57	17
5/30/09	Colfax Livestock Sales	405	\$38,134.63	6/1/09	8/1/10 - 3/31/11	\$13,942.15*	427 - 669
6/27/09	Colfax Livestock Sales	393	\$38,445.13	6/29/09	7/11/09	\$27,834.75	12
					7/18/09	\$6,735.81	19
					8/1/10 - 3/31/11	\$3,874.57**	398 - 640
					Total	\$38,445.13	
7/25/09	Colfax Livestock Sales	513	\$52,392.72	7/27/09	7/30/09	\$20,000.00	3
					8/1/09	\$12,392.72	5
					8/6/09	\$15,000.00	10
					8/1/10 - 3/31/11	\$5,000**	371 - 613
					TOTAL	\$52,392.72	
9/19/09	Colfax Livestock Sales	515	\$54,433.17	9/21/09	9/28/09	\$6,433.17	7
					9/29/09	\$32,000.00	8
					9/30/09	\$16,000.00	9
					TOTAL	\$54,433.17	
9/26/09	Colfax Livestock Sales	506	\$56,510.00	9/28/09	10/3/09	\$16,510.00	5
					10/7/09	\$20,000.00	9
					10/10/09	\$20,000.00	12
					TOTAL	\$56,510.00	
10/3/09	Colfax Livestock Sales	413	\$41,450.21	10/5/09	10/10/09	\$1,450.21	5
					10/14/09	\$25,000.00	9

					10/17/09	\$5,000.00	12
					10/30/09	\$10,000.00	25
					TOTAL	\$41,450.21	
10/10/09	Colfax Livestock Sales	503	\$53,139.08	10/13/09	10/15/09	\$35,139.08	2
					10/20/09	\$6,000.00	7
					10/30/09	\$11,000.00	17
					10/31/09	\$1,000.00	18
					TOTAL	\$53,139.08	
10/17/09	Colfax Livestock Sales	312	\$31,347.35	10/19/09	10/30/09	\$6,347.35	11
					10/31/09	\$25,000.00	12
					TOTAL	\$31,347.35	
10/24/09	Colfax Livestock Sales	306	\$29,014.87	10/26/09	10/30/09	\$10,000.00	4
					11/7/09	\$17,014.87	12
					11/9/09	\$1,000.00	14
					11/19/09	\$1,000.00	24
					TOTAL	\$29,014.87	
10/31/09	Colfax Livestock Sales	234	\$22,869.49	11/2/09	11/19/09	\$22,869.49	17
11/7/09	Colfax Livestock Sales	170	\$17,150.28	11/9/09	11/19/09	\$17,150.28	10
11/14/09	Colfax Livestock Sales	260	\$24,448.20	11/16/09	11/27/09	\$24,448.20	11
11/21/09	Colfax Livestock Sales	245	\$24,010.58	11/23/09	12/4/09	\$24,010.58	11
11/28/09	Colfax Livestock Sales	337	\$35,749.67	11/30/09	8/1/10 - 3/31/11	\$13,942.15*	245 - 487
12/7/09	Waverly Sales Co.	309	\$32,178.82	12/8/09	12/21/09	\$5,178.82	13
					12/23/09	\$11,000.00	15
					1/15/10	\$1,000.00	38
					1/21/10	\$1,000.00	44
					1/29/10	\$500.00	52

					8/1/10 - 3/31/11	\$16,778.82 **	237 - 479
					TOTAL	\$30,278.82	

* Respondent has made and continues to make weekly installment payments on these transactions.

** Respondent made weekly installment payments on these transactions during the period of August 1, 2010 through March 31, 2011.