

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
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)
)
Kenneth E. Barrows) P. & S. Docket No. D-06-0018
d.b.a. Schaller's Meats,)
or North American Meat Packers)
)
Respondent.)
)

DECISION WITHOUT HEARING BY REASON OF DEFAULT

Preliminary Statement

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.) (“Act”), by a Complaint filed on May 1, 2006, by the Administrator, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that the Respondent willfully violated the Act. The Complaint 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.) (“Rules of Practice”) were served on Respondent by certified mail. Respondent was informed in a 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.

Respondent failed to file an answer within the time period required by the Rules of Practice (7 C.F.R. § 1.136), and the material facts alleged in the Complaint, which are admitted by Respondent’s failure to file an answer, are adopted and set forth in this decision and order 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. Kenneth E. Barrows, (“Respondent”) d.b.a. Schaller’s Meats, or North American Meat Packers, is an individual whose business address is State Route 8, Bridgewater, NY 13331.

2. Respondent was at all times material to this Decision:

(a) engaged in the business of buying livestock in commerce for purposes of slaughter; and

(b) a packer within the meaning of and subject to the provisions of the Act

3. Respondent, on or about the dates and in the transactions set forth below, purchased livestock and failed to pay, when due, the full purchase price of the livestock:

Purchase Date	Payee	Number of Head	Purchase Amount
03/07/2005	Millers Livestock Auction, 4008 State Route 40 Argyle, NY 12809	10	\$502.93
03/10/2005	Millers Livestock Auction	11	\$620.55
03/14/2005	Millers Livestock Auction	6	\$200.44
06/09/2005	N.N.Y. Farmers Marketing Co-op., Inc. P.O. Box. 169 Lowville, NY 13367	19	\$1,262.32
06/13/2005	N.N.Y. Farmers Marketing Co-op., Inc.	24	\$1,370.68
06/16/2005	N.N.Y. Farmers Marketing Co-op., Inc.	11	\$628.48
06/20/2005	N.N.Y. Farmers Marketing Co-op., Inc.	16	\$902.22
06/23/2005	N.N.Y. Farmers Marketing Co-op., Inc.	10	\$531.18

03/10/2005	Empire Livestock Marketing, Lewis Co. P.O. Box 4844 Syracuse, NY 13221-4844	5	\$1,010.80
03/23/2005	Tom Przysiecki, d.b.a. Fox Valley Vail Farms 247 Zimmer Rd. Schoharie, NY 12157	2	\$1,827.04
Total:		114	\$8,856.64

4. As of the May 1, 2006, there remained unpaid a total of \$6,422.18 for those livestock purchases.

5. Respondent failed to keep records, as required by section 401 of the Act (7 U.S.C. § 221), that fully and correctly disclosed all transactions involved in his business, in that Respondent failed to keep kill sheets, bank statements, invoices and shipping records.

Conclusions

By reason of the facts found in Findings of Fact 3 and 4, Respondent wilfully violated sections 202(a) and 409 of the Act (7 U.S.C. §§ 192(a), 228b) by failing to pay, when due, for livestock.

By reason of the facts found in Finding of Fact 5, Respondent has failed to keep records as required by section 401 of the Act (7 U.S.C. § 221) and, therefore, has willfully engaged in an “unfair practice” under section 202(a) of the Act (7 U.S.C. § 192(a)).

Respondent did not file an answer within the time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), which constitutes an admission of all the material allegations in the Complaint. Complainant has moved for the issuance of a Decision Without Hearing by Reason of Default, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. §

1.139). Accordingly, this decision and order is entered without hearing or further procedure.

Order

Respondent, his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Act, shall cease and desist from failing to pay the full amount of the purchase price for livestock within the time period required by the Act and the regulations promulgated under it.

Respondent and his agents and employees shall keep such accounts, records and memoranda which fully and correctly disclose all transactions conducted subject to the Act, including, but not limited to, kill sheets, bank statements, invoices and shipping records.

Pursuant to section 203(b) of the Act (7 U.S.C. § 193(b)), Respondent is assessed a civil penalty in the amount of Two Thousand dollars (\$2,000.00).

This decision shall become final and effective without further proceedings thirty-five days (35) after service on Respondent, if it is not appealed to the Judicial Officer by a party to the proceeding within thirty (30) days, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies of this order shall be served on the parties.

Done at Washington, D.C.
this 22 nd day of September, 2006

Peter M. Davenport
Administrative Law Judge