

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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| In re: |) | |
| |) | |
| Douglas Todd Mayfield, d/b/a |) | P & S Docket No. D-07-0156 |
| Hominy Livestock Market |) | |
| |) | Decision and Order |
| Respondent |) | by Reason of Default |

The Amended Complaint, filed on September 25, 2007, alleged that the Respondent Douglas Todd Mayfield, doing business as Hominy Livestock Market, was, in 2003, engaged in the business of a market agency selling livestock in commerce on a commission basis and failed to make full payment promptly to the livestock owners and consignors and misused his custodial account, thereby willfully violating 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”).

Parties and Counsel

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 Charles L. Kendall, Esq. with the Office of the General Counsel (Trade Practices Division), United States Department of Agriculture, 1400 Independence Ave. SW, Washington, D.C. 20250-1413.

The Respondent is Douglas Todd Mayfield, an individual, doing business as Hominy Livestock Market (frequently herein “Respondent Mayfield” or “Respondent”), with a last known mailing address in Miami, Oklahoma 74354-3946.

Procedural History

Packers and Stockyards’s Motion for Decision Without Hearing by Reason of Default, filed January 28, 2008, is before me. Respondent Mayfield was served on February 26, 2008, with a copy of that Motion and a copy of the proposed Decision, and he has failed to respond. His time to file a response expired on March 17, 2008.

The Hearing Clerk mailed a copy of the Amended Complaint to Respondent Mayfield by certified mail on September 25, 2007, together with a copy of the Hearing Clerk’s notice letter and a copy of the Rules of Practice. Respondent Mayfield was served on October 3, 2007, when the copy of the Amended Complaint was delivered to and signed for by Amie Mayfield. The 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 October 23, 2007, and Respondent Mayfield failed to file an answer, so he is in default, pursuant to section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)).

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 Amended Complaint, which are admitted by the 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

1. Douglas Todd Mayfield, Respondent, is an individual who did business as Hominy Livestock Market, whose last known mailing address is in Miami, Oklahoma 74354-3946.
2. Respondent Mayfield, during 2003, was engaged in the business of conducting and operating Hominy Livestock Market, a posted stockyard subject to the provisions of the Packers and Stockyards Act, engaged in the business of a market agency selling livestock in commerce on a commission basis, within the meaning of and subject to the provisions of the Packers and Stockyards Act.
3. Respondent Mayfield was, during 2003, registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis.
4. As set forth in paragraph II of the Amended Complaint, on July 22, 2003 Respondent Mayfield sold livestock on a commission basis and in purported payment of the net proceeds thereof issued checks to three (3) consignors or shippers of such livestock which were returned unpaid by the bank upon which they were drawn because Respondent did not have and maintain sufficient funds on deposit.
5. As set forth in paragraph II of the Amended Complaint, during the period July 8, 2003 through August 19, 2003, Respondent Mayfield failed to remit, when due, the net

proceeds due from the sale of livestock on a commission basis, in a total amount of \$46,887.70, to four (4) sellers for 104 head of cattle.

6. As set forth in paragraph III of the Amended Complaint, during the period August 1, 2003, through August 29, 2003, Respondent Mayfield misused his Custodial Account for Shippers' Proceeds by permitting his bank to deduct bank charges from the custodial account and failing to reimburse the custodial account for any such bank charges, and by making transfers from the custodial account to Respondent's general account and to a personal checking account, not for the payment of net proceeds to a consignor or shipper or anyone entitled to payment, or to pay lawful charges against consignment that Respondent was required to pay, or to obtain sums due to Respondent for his services.

Conclusions

1. The Secretary of Agriculture has jurisdiction over Respondent Mayfield and the subject matter involved herein.

2. Respondent Douglas Todd Mayfield's failures to make full payment promptly with respect to the transactions set forth in Findings of Fact Nos. 4 and 5 above, and misuse of his custodial account as set forth in Finding of Fact No. 6 above, constitute willful violations of sections 307 and 312(a) of the Act (7 U.S.C. §§208, 213(a)), and sections 201.43 and 201.42 of the Regulations (9 C.F.R. §§ 201.42, 201.43).

Order

1. Respondent Douglas Todd Mayfield, his agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from:

a. Failing to remit to the owners and consignors, when due, the net proceeds resulting from the sale of consigned livestock in accordance with Section 201.43 of the regulations (9 C.F.R. § 201.43);

b. Issuing checks in payment of the net proceeds resulting from the sale of consigned livestock 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;

c. Using funds received as proceeds due from the sale of livestock sold on a commission basis for purposes of his own or for any purpose other than the payment of lawful marketing charges and the remittance of net proceeds to the consignors of livestock; and

d. Failing to otherwise maintain his Custodial Account for Shippers' Proceeds in strict conformity with the provisions of Section 201.42 of the regulations (9 C.F.R. § 201.42).

2. Respondent Douglas Todd Mayfield is suspended as a Registrant under the Act for a period of 150 days.

Finality

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 attached 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 25th day of March 2008

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

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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