

**In re: MONTE VISTA LIVESTOCK AUCTION, INC., JODY L. PETERSON.
P&S Docket No. D-01-0007.
Decision Without Hearing By Reason of Default.
Filed March 1, 2002.**

Ann Pames, for Complainant.
Respondents, Pro se.
Decision and Order issued by James W. Hunt, Administrative Law Judge.

P&S – Default – No answer.

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*) by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain, Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondents willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*). 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.*), hereinafter the Rules of Practice, were served on Respondents by certified mail on June 15, 2001. Accompanying the complaint was a cover letter informing Respondents that an answer must be filed within twenty (20) days of service and that failure to file an answer would constitute an admission of all of the material allegations in the complaint and a waiver of the right to an oral hearing.

Respondents did not file an answer within the time period required by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), which constitutes an admission to all of the material allegations of fact 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 is entered without hearing or further procedure.

Findings of Fact

1. Monte Vista Livestock Auction, Inc., hereinafter referred to as Respondent Monte Vista, is a corporation organized and existing under the laws of the state of Colorado. Its business mailing address is 5660 East Highway 160, Monte Vista, Colorado 81144.
2. Respondent Monte Vista is and at all times material herein was:
 - a) Engaged in the business of conducting and operating Monte Vista Livestock Auction, Inc. Stockyard, a posted stockyard subject to the provisions of the Act;
 - (b) Engaged in the business of a market agency selling livestock on a

commission basis and as a dealer buying and selling livestock in commerce for its own account; and

(c) Registered with the Secretary of Agriculture as a market agency to buy and sell livestock in commerce on a commission basis, and as a dealer to buy and sell livestock in commerce for its own account.

3. Jody L. Peterson, hereinafter Respondent Peterson, is an individual whose business mailing address is 5660 East Highway 160, Monte Vista, Colorado 81144.
4. Respondent Peterson is, and at all times material herein was:
 - (a) Secretary and Treasurer of Respondent Monte Vista;
 - (b) Owner of 90% of the stock issued by Respondent Monte Vista;
 - (c) Responsible for the direction, management and control of Respondent Monte Vista;
 - (d) A market agency and dealer within the meaning of and subject to the provisions of the Act; and
 - (e) The *alter ego* of Respondent Monte Vista.
5. As set forth in section II of the complaint, during the period July 31, 2000, through August 25, 2000, Respondent Monte Vista, under the direction, management, and control of Respondent Peterson, operated subject to the Act, notwithstanding the fact that its current liabilities exceeded its current assets. Corporate Respondent's current liabilities presently exceed its current assets.
6. As set forth in section III(a) of the complaint, Respondent Monte Vista, under the direction, management and control of Respondent Peterson, issued insufficient funds checks in purported payment of the net proceeds from the sale of consigned livestock.
7. As set forth in section III(b) of the complaint, Respondent Monte Vista, under the direction, management and control of Respondent Peterson, failed to remit, when due, the net proceeds from the sale of consigned livestock.
8. As set forth in section IV of the complaint, Respondent Monte Vista, under the direction, management and control of Respondent Peterson, failed to maintain and use properly its Custodial Account for Shippers' Proceeds.

Conclusions

By reason of the facts alleged in Finding of Fact 5, Respondent Monte Vista's financial condition does not meet the requirements of the Act (7 U.S.C. § 204), and the Respondents have willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)).

By reason of the facts alleged in Findings of Fact 6 and 7, Respondents have willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), and section 201.43 of the regulations (9 C.F.R. § 201.43).

By reason of the facts alleged in Finding of Fact 8, Respondents have willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), and section 201.42 of the regulations (9 C.F.R. § 201.42).

Respondents 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 of 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 is entered without hearing or further procedure.

Order

Respondent Monte Vista, and its *alter ego*, Respondent Peterson, their officers, directors, agents and employees, successors and assigns, directly or through any corporate or other device, in connection with their operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Engaging in business as a market agency selling on a commission basis under the Act while their current liabilities exceed their current assets;
2. Issuing checks in payment of the net proceeds from the sale of consigned livestock without having sufficient funds on deposit and available in the custodial account upon which such checks are drawn to pay such checks when presented;
3. Failing to remit, when due, the net proceeds received from the sale of consigned livestock;
4. Failing to deposit in the Custodial Account for Shippers' Proceeds within the time prescribed by section 201.42 of the regulations (9 C.F.R. § 201.42), an amount equal to the proceeds receivable from the sale of consigned livestock; and
5. Failing to otherwise maintain the Custodial Account for Shippers' Proceeds in strict conformity with the provisions of section 201.42 of the regulations (9 C.F.R. § 201.42).

Respondent Monte Vista is suspended as a registrant under the Act for a period of 28 days and thereafter until it is demonstrated that Respondent Monte Vista is solvent and the shortage in Respondent Monte Vista's Custodial Account for Shippers' Proceeds has been eliminated. Respondent Peterson is prohibited from being registered under the Act for a period of 28 days. Pursuant to section 303 of the Act, Respondent Peterson is prohibited from carrying on the business of a market agency or dealer without being registered. If after the 28 day suspension period, Respondents demonstrate solvency and the elimination of the custodial account deficiency, a supplemental order will be issued in this proceeding

terminating the suspension of Respondent Monte Vista and providing that Respondent Peterson may be registered.

This decision and order shall become final and effective without further proceedings thirty-five (35) days after service on Respondents, 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 hereof shall be served upon the parties.

[This Decision and Order became final April 17, 2002 - Editor]
