

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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In re: ) P. & S. Docket No. D-01-0010  
MBA Poultry, LLC, and )  
Mark A. Haskins, )  
Respondents )

DECISION AND ORDER AS TO RESPONDENT MBA POULTRY, LLC  
UPON ADMISSION OF FACTS BY REASON OF DEFAULT

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (U.S.C. § 181 et seq.), herein referred to as the Act, instituted by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, charging that the Respondents wilfully violated the Act.

Copies of the complaint and the Rules of Practice (7 C.F.R. § 1.130 et seq.) governing proceedings under the Act were served upon Respondents. Respondent Mark A. Haskins filed an answer as an individual Respondent, and subsequently resolved the allegations brought against him as a Respondent in this proceeding by agreeing to a consent decision. Service was made on Respondent MBA Poultry, LLC, by regular mail sent to its Chapter 7 Trustee, Mr. James J. Stumpf, on July 25, 2001, after an attempted delivery by certified mail was returned refused on July 16, 2001. By letter dated August 15, 2001, Respondent MBA Poultry, LLC, was notified that it had failed to file an answer with the Hearing Clerk by the required date of August 14, 2001.

Respondent MBA Poultry, LLC, has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted by

Respondent MBA Poultry, LLC's failure to file an answer, are adopted and set forth herein as findings of fact.

Findings of Fact

1. Respondent MBA Poultry, LLC, hereinafter Respondent MBA, is a Nebraska limited liability company whose business address at all times material herein was 333 South 3<sup>rd</sup> Street, Tecumseh, NE 68450.

2. The current mailing address of Respondent MBA, as a debtor under Chapter 7 of the Bankruptcy Code, is: MBA Poultry, LLC, c/o James J. Stumpf, Trustee, 11623 Arbor St., # 100, Omaha, NE 68144.

3. Respondent MBA at all times material herein was:

(a) Engaged in the business of obtaining live poultry under a poultry growing arrangement for the purpose of slaughter and the sale and shipment of poultry products in commerce; and

(b) A live poultry dealer within the meaning of and subject to the provisions of the Act.

4. Respondent MBA, on or about the dates and in the transactions set forth below, obtained live chickens under poultry growing arrangements and failed to pay, when due, for this live poultry when it failed to deliver to the poultry growers, before the close of the fifteenth day following the week in which the poultry was slaughtered, the full amount due to such poultry growers on account of such poultry.

Poultry Grower	Flock Kill Date	Payment Due per §410(a)	Poultry Amt. Due Grower	Unpaid Poultry Amounts
Steve Jennett	10/07/99	10/25/99	\$8,196.20	\$8,196.20
Kenneth Jennett	10/08/99	10/25/99	9,133.40	9,133.40
Todd Dunphy	10/12/99	11/01/99	17,740.09	17,740.09
Jerry Burtnett	10/13/99	11/01/99	7,807.80	7,807.80
Wendell Jackson	10/15/99	11/01/99	14,297.36	14,297.36
Frederick Kay	10/19/99	11/08/99	16,698.11	16,698.11
Tom Kosch [Chicks II, Inc.]	10/22/99	11/08/99	7,824.14	7,824.14
Kenneth Kosch [Chicks R US, Inc.]	10/25/99	11/15/99	8,040.16	8,040.16
Darell Aerts	10/27/99	11/15/99	\$18,275.36	\$18,275.36
Gerald Schmidt [Elton Schmidt & Sons]	10/29/99	11/15/99	18,117.71	18,117.71
Gary Wiese	11/03/99	11/22/99	17,577.78	17,577.78
Michael Standley	11/05/99	11/22/99	15,371.36	15,371.36
William (Bill) Ehm	11/10/99	11/29/99	15,977.28	15,977.28
Rex Adams	11/11/99	11/29/99	10,265.30	10,265.30
Richard Weehler [Weehler Farms]	11/15/99	12/06/99	16,488.23	16,488.23
Joe & Michael Warin [W&W Partnership]	11/17/99	12/06/99	15,832.68	15,832.68
John Priest	11/19/00	12/06/99	16,481.04*	16,481.04*
Dennis Quam [Quam Brooders, LLC]	11/23/99	12/13/99	10,159.79**	10,159.79**

\*This amount includes \$78.11 due under a retroactive incentive program addendum to the poultry growout agreement.

\*\*This amount includes \$50.55 due under a retroactive incentive program addendum to the poultry growout agreement.

5. The total amount unpaid to poultry growers for live poultry grown pursuant to a poultry growing arrangement in the above transactions is \$244,283.79.

6. Respondent MBA, on or about the dates and in the transactions set forth below, obtained live chickens under poultry growing arrangements and failed to pay, when due, for this live poultry when it failed to deliver to poultry growers, before the close of the fifteenth day following the week in which the poultry was slaughtered, the full amount due to such poultry growers on account of such poultry.

Poultry Grower	Flock Kill Date	Payment Due per §410(a)	Poultry Amt. Due Grower	Full Payment Made By Poultry Trust Distribution Check	No. of Days Payment Late
Robert Drewes [Triple DDD, Inc.]	12/01/99	12/20/99	\$26,977.54	03/14/00	85
Johnny Haer	12/03/99	12/20/99	17,382.66	03/14/00	85
Richard Moberg	12/06/99	12/27/99	8,266.89	03/14/00	78
Roland Routh	12/08/99	12/27/99	17,373.91	03/14/00	78
Joe Maynes	12/10/99	12/27/99	16,438.38	03/14/00	78
Gary Kunkel	12/13/99	01/03/00	7,835.94	03/14/00	71
Lee Smith	12/15/99	01/03/00	17,803.46	03/14/00	71
Steve Jennett	12/16/99	01/03/00	8,156.03	03/14/00	71
Kenneth Jennett	12/17/99	01/03/00	9,086.40	03/14/00	71
Todd Dunphy	12/22/99	01/10/00	17,288.10	03/14/00	64
Jerry Burtnett	12/23/99	01/10/00	8,348.64	03/14/00	64
Ralph Oliphant	01/04/00	01/24/00	18,521.42	03/14/00	50

Poultry Grower	Flock Kill Date	Payment Due per §410(a)	Poultry Amt. Due Grower	Full Payment Made By Poultry Trust Distribution Check	No. of Days Payment Late
Tom Kosch [Chicks II, Inc.]	01/05/00	01/24/00	7,865.72	03/14/00	50
Kenneth Kosch [Chicks R US, Inc.]	01/06/00	01/24/00	8,007.38	03/14/00	50
Darell Aerts	01/10/00	01/31/00	17,321.75	03/14/00	43
Gerald Schmidt [Elton Schmidt & Sons]	01/12/00	01/31/00	17,648.36	03/14/00	43
Gary Wiese	01/14/00	01/31/00	17,718.08	03/14/00	43

#### Conclusions

By reason of the facts alleged admitted in Finding of Fact 4 through 6 herein, Respondent MBA has wilfully violated section 410 of the Act (7 U.S.C. § 228b-1).

#### Order

Respondent MBA Poultry, LLC, its officers, directors, agents and employees, successors and assigns, in connection with their operations as a live poultry dealer, shall cease and desist from:

1. Failing to pay the full amount due to poultry growers on account of live poultry obtained under poultry growing arrangements; and
2. Failing to pay, when due, for live poultry obtained under poultry growing arrangements by not delivering to poultry growers the full amount due for the live poultry before the close of the fifteenth day following the week in which the poultry was slaughtered.

This decision shall become final and effective without further proceedings 35 days after

the date of service upon Respondent MBA Poultry, LLC, unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies of this decision shall be served upon the parties.

Done at Washington, D.C.  
this 3 day of October 2002

Jill A. Cijtz  
Administrative Law Judge