

DAVIS



UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-98-0030
)
Jim Aron,)
)
Respondent) **Decision and Order**

The Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229) [hereinafter the Packers and Stockyards Act]; the regulations promulgated under the Packers and Stockyards Act (9 C.F.R. §§ 201.1-.200) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice], by filing a Complaint on July 23, 1998.

The Complaint alleges that Jim Aron [hereinafter Respondent] engaged in business as a dealer under the Packers and Stockyards Act without maintaining an adequate bond or its equivalent, in willful violation of section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, .30) (Compl. ¶¶ II, III). Respondent failed to answer the Complaint within 20 days after service of the Complaint, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). On October 28, 1998, in accordance with

section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a Motion for Decision Without Hearing and a Proposed Decision Without Hearing by Reason of Default. Respondent failed to file objections to Complainant's Motion for Decision Without Hearing or to Complainant's Proposed Decision Without Hearing by Reason of Default within 20 days after service of the Motion for Decision Without Hearing and the Proposed Decision Without Hearing by Reason of Default, as required by section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

On December 1, 1998, Chief Administrative Law Judge Victor W. Palmer [hereinafter Chief ALJ] issued a Decision Without Hearing by Reason of Default [hereinafter Default Decision] in which the Chief ALJ: (1) found that Respondent failed to obtain a bond and has continued to engage in the business of a dealer without maintaining an adequate bond or its equivalent; (2) concluded that Respondent willfully violated section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, .30); (3) issued a cease and desist order, directing that Respondent cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act and the Regulations without filing and maintaining an adequate bond or its equivalent; and (4) assessed a civil penalty of \$1,000 against Respondent (Default Decision at 2-3).

On December 28, 1998, Respondent appealed to the Judicial Officer to whom the Secretary of Agriculture has delegated authority to act as final deciding officer in the United States Department of Agriculture's [hereinafter USDA] adjudicatory proceedings

subject to 5 U.S.C. §§ 556 and 557 (7 C.F.R. § 2.35).¹ On January 15, 1999, Complainant filed Complainant's Response to Respondent's Appeal Petition, and on January 19, 1999, the Hearing Clerk transferred the record of the proceeding to the Judicial Officer for decision.

Based upon a careful consideration of the record and pursuant to section 1.145(i) of the Rules of Practice (7 C.F.R. § 1.145(i)), I adopt the Default Decision as the final Decision and Order. Additional conclusions by the Judicial Officer follow the Chief ALJ's conclusions.

**CHIEF ADMINISTRATIVE LAW JUDGE'S DEFAULT DECISION
(AS RESTATED)**

Copies of the Complaint and the Rules of Practice were served upon Respondent by certified mail on July 27, 1998. Respondent was informed in a letter of service, which accompanied the Complaint and the Rules of Practice, 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 prescribed in the Rules of Practice, and the facts alleged in the Complaint, which are deemed admitted for the purposes of this proceeding by Respondent's failure to file an answer, are adopted and set forth in this Decision and Order, *infra*, as Findings of Fact.

¹The position of Judicial Officer was established pursuant to the Act of April 4, 1940 (7 U.S.C. §§ 450c-450g); section 4(a) of Reorganization Plan No. 2 of 1953, 18 Fed. Reg. 3219, 3221 (1953), *reprinted in* 5 U.S.C. app. § 4(a) at 1491 (1994); and section 212(a)(1) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6912(a)(1)).

This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Jim Aron is an individual doing business in the State of Mississippi and whose mailing address is P.O. Box 181, Bruce, Mississippi 38915.
2. Respondent is and, at all times material to this proceeding, was:
 - (a) Engaged in business as a dealer buying and selling livestock in commerce for his own account; and
 - (b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account.
3. In *In re Eddie Holcombe* (Consent Decision as to Jim Aron), 47 Agric. Dec. 1538 (1988), Respondent consented to an Order to cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act. Respondent, in connection with his operation subject to the Packers and Stockyards Act, was notified by certified mail received on January 23, 1998, as set forth in paragraph II in the Complaint, that he was required to maintain a surety bond or its equivalent in the amount of \$10,000 to secure the performance of his livestock obligations under the Packers and Stockyards Act. Notwithstanding such notice, Respondent failed to obtain the bond and has continued to engage in the business as a dealer without maintaining an adequate bond or its equivalent, as required by the Packers and Stockyards Act and the Regulations.

Conclusions

By reason of the facts found in the Finding of Facts in this Decision and Order, *supra*, Respondent has willfully violated section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, .30).

ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER

Respondent's letter, dated December 20, 1998 [hereinafter Appeal Petition] appears to be an appeal of the Chief ALJ's Default Decision. Respondent's Appeal Petition states in its entirety, as follows:

Dear United States Dep of Ag.

Dec. 20, 1998

On Oct. 22, 1997[,] I had a car wreck that knocked my brain aloose [sic] an[d] nearly killed me. For about 2 weeks[,] my brain like to have busted. For app. 1 year & 6 months[,] I do not remember what I was doing an[d] since that time my memory bank in my brain has come back to me.

I must tell you that during that 1 year & ½ I made a lots [sic] of bad business mistakes. I have not been to a cow sale in the last 3 or 4 months. If you'll [sic] are going to punish me for having a car wreck that knocked my brain aloose [sic] then just come after me.

I am a taxpayer an[d] a[n] American citizen that spent time in the army when I was drafted. Berline [sic] crisis 1962 Fort Poke La.

Sections 1.136(a), (c), 1.139, and 1.141(a) of the Rules of Practice provide:

§ 1.136 Answer.

(a) *Filing and service.* Within 20 days after the service of the complaint . . . , the respondent shall file with the Hearing Clerk an answer signed by the respondent or the attorney of record in the proceeding. . . .

(c) *Default.* Failure to file an answer within the time provided under § 1.136(a) shall be deemed, for purposes of the proceeding, an

admission of the allegations in the Complaint, and failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation, unless the parties have agreed to a consent decision pursuant to § 1.138.

§ 1.139 Procedure upon failure to file an answer or admission of facts.

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.

§ 1.141 Procedure for hearing.

(a) *Request for hearing.* Any party may request a hearing on the facts by including such request in the complaint or answer, or by a separate request, in writing, filed with the Hearing Clerk within the time in which an answer may be filed. . . . Failure to request a hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing.

7 C.F.R. §§ 1.136(a), (c), .139, 1.141(a).

Moreover, the Complaint served on Respondent on July 27, 1998, with the Rules of Practice, clearly informs Respondent of the consequences of failing to file an answer, as follows:

The Respondent shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an answer shall constitute an admission of all the material allegations of this complaint.

Compl. at 2.

Likewise, the letter from the Hearing Clerk accompanying the Complaint and the Rules of Practice expressly advises Respondent of the effect of failure to file a timely answer or deny any allegation in the Complaint, as follows:

CERTIFIED RECEIPT REQUESTED

July 24, 1998

Mr. Jim Aron
P.O. Box 181
Bruce, Mississippi 38915

Dear Mr. Aron:

Subject: In re: Jim Aron, Respondent
P&S Docket No. D-98-0030

Enclosed is a copy of a Complaint, which has been filed with this office under the Packers and Stockyards Act, 1921.

Also enclosed is a copy of the Rules of Practice which govern the conduct of these proceedings. You should familiarize yourself with the rules in that the comments which follow are not a substitute for their exact requirements.

The rules specify that you may represent yourself personally or by an attorney of record. Unless an attorney files an appearance in your behalf, it shall be presumed that you have elected to represent yourself personally. Most importantly, you have 20 days from the receipt of this letter to file with the Hearing Clerk an original and three copies of your written and signed answer to the complaint. It is necessary that your answer set forth any defense you wish to assert, and to specifically admit, deny or explain each allegation of the complaint. Your answer may include a request for an oral hearing. Failure to file an answer or filing an answer which does not deny the material allegations of the complaint, shall constitute an admission of those allegations and a waiver of your right to an oral hearing.

July 24, 1998, letter from Joyce A. Dawson, Hearing Clerk, to Jim Aron, at 1 (emphasis in original).

Respondent's answer was due no later than August 17, 1998. Respondent's first and only filing in this proceeding was filed December 28, 1998, 5 months and 1 day after the Complaint was served on Respondent and 133 days after Respondent's answer was due. Moreover, Respondent's December 28, 1998, filing does not admit, deny, or explain the allegations in the Complaint, and I find that Respondent's December 28, 1998, filing is not an answer, as provided in section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).

Respondent's failure to file an answer constitutes an admission of the material allegations in the Complaint (7 C.F.R. § 1.136(a), (c)) and a waiver of hearing (7 C.F.R. §§ 1.139, .141(a)).

On October 28, 1998, in accordance with 7 C.F.R. § 1.139, Complainant filed a Motion for Decision Without Hearing and a Proposed Decision Without Hearing by Reason of Default based upon Respondent's failure to file an answer to the Complaint within the time prescribed in 7 C.F.R. § 1.136(a). A copy of the Complainant's Motion for Decision Without Hearing, a copy of the Complainant's Proposed Decision Without Hearing by Reason of Default, and a letter dated October 28, 1998, from the Hearing Clerk were served on Respondent by certified mail on November 3, 1998. The October 28, 1998, letter from the Hearing Clerk, which accompanied a copy of Complainant's Motion for Decision Without Hearing and a copy of Complainant's Proposed Decision Without Hearing by Reason of Default states, as follows:

CERTIFIED RECEIPT REQUESTED

October 28, 1998

Mr. Jim Aron
P.O. Box 181
Bruce, Mississippi 38915

Dear Mr. Aron:

Subject: In re: Jim Aron, Respondent
P&S Docket No. D-98-0030

Enclosed is a copy of Complainant's Motion for Decision Without Hearing, together with a copy of the Proposed Decision, which have been filed with this office in the above-captioned proceeding.

In accordance with the applicable rules of practice, respondents [sic] will have 20 days from the receipt of this letter in which to file with this office an original and four copies of objections to the Proposed Decision.

October 28, 1998, letter from Joyce A. Dawson, Hearing Clerk, to Jim Aron.

Respondent failed to file objections to Complainant's Motion for Decision Without Hearing and Complainant's Proposed Decision Without Hearing by Reason of Default within 20 days, as provided in 7 C.F.R. § 1.139, and on December 1, 1998, the Chief ALJ filed the Default Decision, which was served on Respondent on December 8, 1998.

On December 28, 1998, Respondent filed his Appeal Petition in which he asserts that he was in an automobile accident that caused him to lose memory and that he is a taxpayer, a United States citizen, and a veteran of the United States Army.

Although on rare occasions default decisions have been set aside for good cause shown or where Complainant did not object,² Respondent has shown no basis for setting aside the Default Decision and allowing Respondent to file an answer.³ The Rules of

²See *In re H. Schnell & Co.*, 57 Agric. Dec. ___ (Sept. 17, 1998) (setting aside the default decision, which was based upon respondent's statements during two telephone conference calls with the administrative law judge and complainant's counsel, because respondent's statements did not constitute a clear admission of the material allegations in the complaint and concluding that the default decision deprived respondent of its right to due process under the Fifth Amendment to the United States Constitution) (Remand Order); *In re Arizona Livestock Auction, Inc.*, 55 Agric. Dec. 1121 (1996) (setting aside the default decision because facts alleged in the complaint and deemed admitted by failure to answer were not sufficient to find a violation of the Packers and Stockyards Act or jurisdiction over the matter by the Secretary of Agriculture); *In re Veg-Pro Distributors*, 42 Agric. Dec. 273 (1983) (setting aside the default decision because service of the complaint by registered and regular mail was returned as undeliverable, and respondent's license under the Perishable Agricultural Commodities Act had lapsed before service was attempted) (Remand Order), *final decision*, 42 Agric. Dec. 1173 (1983); *In re Vaughn Gallop*, 40 Agric. Dec. 217 (1981) (vacating the default decision and remanding the case to the administrative law judge to determine whether just cause exists for permitting late answer) (Order Vacating Default Decision and Remanding Proceeding), *final decision*, 40 Agric. Dec. 1254 (1981); *In re J. Fleishman & Co.*, 38 Agric. Dec. 789 (1978) (remanding the proceeding to the administrative law judge for the purpose of receiving evidence because complainant had no objection to respondent's motion for remand) (Remand Order), *final decision*, 37 Agric. Dec. 1175 (1978); *In re Richard Cain*, 17 Agric. Dec. 985 (1958) (setting aside a default decision and accepting a late-filed answer because complainant did not object to respondent's motion to reopen after default) (Order Reopening After Default).

³See generally *In re Anna Mae Noell*, 58 Agric. Dec. ___ (Jan. 6, 1999) (holding that the default decision was proper where respondents filed an answer 49 days after they were served with the complaint); *In re Conrad Payne*, 57 Agric. Dec. ___ (Dec. 8, 1998) (holding that the default decision was proper where respondent's first filing was 60 days after the complaint was served on respondent); *In re Hines & Thurn Feedlot, Inc.*, 57 Agric. Dec. ___ (Aug. 24, 1998) (holding that the default decision was proper where respondents filed an answer 23 days after they were served with the complaint); *In re Jack D. Stowers*, 57 Agric. Dec. ___ (July 16, 1998) (holding the default decision proper where respondent filed his answer 1 year and 12 days after the complaint was served on respondent); *In re James J. Everhart*, 56 Agric. Dec. 1400 (1997) (holding the default decision proper where respondent's first filing was more than 8 months after the

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³(...continued)

complaint was served on respondent); *In re Dean Byard*, 56 Agric. Dec. 1543 (1997) (holding that the default decision was proper where respondent failed to file an answer); *In re Spring Valley Meats, Inc.* (Decision as to Charles Contris), 56 Agric. Dec. 1731 (1997) (holding the default decision proper where respondents' first filing was 46 days after the complaint was served on respondents); *In re Spring Valley Meats, Inc.* (Decision as to Spring Valley Meats, Inc.), 56 Agric. Dec. 1704 (1997) (holding the default decision proper where respondents' first filing was 46 days after the complaint was served on respondents); *In re John Walker*, 56 Agric. Dec. 350 (1997) (holding the default decision proper where respondent's first filing was 126 days after the complaint was served on respondent); *In re Mary Meyers*, 56 Agric. Dec. 322 (1997) (holding the default decision proper where respondent's first filing was filed 117 days after respondent's answer was due); *In re Dora Hampton*, 56 Agric. Dec. 301 (1997) (holding the default decision proper where respondent's first and only filing in the proceeding was filed 135 days after respondent's answer was due); *In re Gerald Funches*, 56 Agric. Dec. 517 (1997) (holding the default decision proper where respondent's first and only filing in the proceeding was filed 94 days after the complaint was served on respondent); *In re City of Orange*, 55 Agric. Dec. 1081 (1996) (holding that the default decision proper where respondent's first and only filing in the proceeding was filed 70 days after respondent's answer was due); *In re Bibi Uddin*, 55 Agric. Dec. 1010 (1996) (holding the default decision proper where response to complaint was filed more than 9 months after service of complaint on respondent); *In re Billy Jacobs, Sr.*, 56 Agric. Dec. 504 (1996) (holding the default decision proper where response to complaint was filed more than 9 months after service of complaint on respondent), *appeal dismissed*, No. 96-7124 (11th Cir. June 16, 1997); *In re Sandra L. Reid*, 55 Agric. Dec. 996 (1996) (holding the default decision proper where response to complaint was filed 43 days after service of complaint on respondent); *In re Jeremy Byrd*, 55 Agric. Dec. 443 (1996) (holding the default order proper where a timely answer not filed); *In re Moreno Bros.*, 54 Agric. Dec. 1425 (1995) (holding the default order proper where a timely answer was not filed); *In re Ronald DeBruin*, 54 Agric. Dec. 876 (1995) (holding the default order proper where an answer was not filed); *In re James Joseph Hickey, Jr.*, 53 Agric. Dec. 1087 (1994) (holding the default order proper where an answer was not filed); *In re Bruce Thomas*, 53 Agric. Dec. 1569 (1994) (holding the default order proper where an answer was not filed); *In re Ron Morrow*, 53 Agric. Dec. 144 (1994), *aff'd per curiam*, 65 F.3d 168 (Table), 1995 WL 523336 (6th Cir. 1995) (holding the default order proper where respondent was given an extension of time until March 22, 1994, to file an answer, but it was not received until March 25, 1994); *In re Donald D. Richards*, 52 Agric. Dec. 1207 (1993) (holding the default order proper where timely answer was not filed); *In re A.P. Holt* (Decision as to A.P. Holt), 50 Agric. Dec. 1612 (1991) (holding the default order proper where respondent was given an extension of time to file an answer, but the answer was not filed until 69 days after the extended date for filing the answer); *In re Mike Robertson*, 47 Agric. Dec. 879 (1988) (holding the
(continued...))

³(...continued)

default order proper where answer was not filed); *In re Morgantown Produce, Inc.*, 47 Agric. Dec. 453 (1988) (holding the default order proper where an answer was not filed); *In re Johnson-Hallifax, Inc.*, 47 Agric. Dec. 430 (1988) (holding the default order proper where an answer was not filed); *In re Charley Charton*, 46 Agric. Dec. 1082 (1987) (holding the default order proper where an answer was not filed); *In re Les Zedric*, 46 Agric. Dec. 948 (1987) (holding the default order proper where a timely answer not filed); *In re Arturo Bejarano, Jr.*, 46 Agric. Dec. 925 (1987) (holding the default order proper where a timely answer not filed; respondent properly served even though his sister, who signed for the complaint, forgot to give it to him until after the 20-day period had expired); *In re Schmidt & Son, Inc.*, 46 Agric. Dec. 586 (1987) (holding the default order proper where a timely answer was not filed); *In re Roy Carter*, 46 Agric. Dec. 207 (1987) (holding the default order proper where a timely answer was not filed; respondent properly served where complaint sent to his last known address was signed for by someone); *In re Luz G. Pieszko*, 45 Agric. Dec. 2565 (1986) (holding the default order proper where an answer was not filed); *In re Elmo Mayes*, 45 Agric. Dec. 2320 (1986) (holding the default order proper where an answer was not filed), *rev'd on other grounds*, 836 F.2d 550, 1987 WL 27139 (6th Cir. 1987); *In re Leonard McDaniel*, 45 Agric. Dec. 2255 (1986) (holding the default order proper where a timely answer was not filed); *In re Joe L. Henson*, 45 Agric. Dec. 2246 (1986) (holding the default order proper where the answer admits or does not deny material allegations); *In re Northwest Orient Airlines*, 45 Agric. Dec. 2190 (1986) (holding the default order proper where a timely answer was not filed); *In re J.W. Guffy*, 45 Agric. Dec. 1742 (1986) (holding the default order proper where an answer, filed late, does not deny material allegations); *In re Wayne J. Blaser*, 45 Agric. Dec. 1727 (1986) (holding the default order proper where the answer does not deny material allegations); *In re Jerome B. Schwartz*, 45 Agric. Dec. 1473 (1986) (holding the default order proper where a timely answer not filed); *In re Midas Navigation, Ltd.*, 45 Agric. Dec. 1676 (1986) (holding the default order proper where an answer, filed late, does not deny material allegations); *In re Gutman Bros., Ltd.*, 45 Agric. Dec. 956 (1986) (holding the default order proper where the answer does not deny material allegations); *In re Dean Daul*, 45 Agric. Dec. 556 (1986) (holding the default order proper where the answer, filed late, does not deny material allegations); *In re Eastern Air Lines, Inc.*, 44 Agric. Dec. 2192 (1985) (holding the default order proper where a timely answer was not filed; irrelevant that respondent's main office did not promptly forward complaint to its attorneys); *In re Carl D. Cuttone*, 44 Agric. Dec. 1573 (1985) (holding the default order proper where a timely answer was not filed; Respondent Carl D. Cuttone properly served where complaint sent by certified mail to his last business address was signed for by Joseph A. Cuttone), *aff'd per curiam*, 804 F.2d 153 (D.C. Cir. 1986) (unpublished); *In re Corbett Farms, Inc.*, 43 Agric. Dec. 1775 (1984) (holding the default order proper where a timely answer was not filed); *In re Ronald Jacobson*, 43 Agric. Dec. 780 (1984) (holding the default order proper where a timely answer was not filed); *In re Joseph Buzun*, 43

(continued...)

Practice, a copy of which was served on Respondent on July 27, 1998, with a copy of the Complaint, clearly provide that an answer must be filed within 20 days after service of the Complaint (7 C.F.R. § 1.136(a)). Respondent's first and only filing in this proceeding was filed December 28, 1998, 5 months and 1 day after Respondent was served with the Complaint and 133 days after Respondent's answer was due. Moreover, the Rules of Practice require that any objections to a motion for a default decision and proposed default decision must be filed within 20 days after service of the motion and proposed decision (7 C.F.R. § 1.139). Respondent did not file any objections to Complainant's Motion for Decision Without Hearing and Proposed Decision Without Hearing by Reason of Default.

Further, the requirement in the Rules of Practice that Respondent deny or explain any allegation of the Complaint and set forth any defense in a timely answer is

³(...continued)

Agric. Dec. 751 (1984) (holding the default order proper where a timely answer was not filed; Respondent Joseph Buzun properly served where complaint sent by certified mail to his residence was signed for by someone named Buzun); *In re Ray H. Mayer* (Decision as to Jim Doss), 43 Agric. Dec. 439 (1984) (holding the default order proper where a timely answer was not filed; irrelevant whether respondent was unable to afford an attorney), *appeal dismissed*, No. 84-4316 (5th Cir. July 25, 1984); *In re William Lambert*, 43 Agric. Dec. 46 (1984) (holding the default order proper where a timely answer was not filed); *In re Randy & Mary Berhow*, 42 Agric. Dec. 764 (1983) (holding the default order proper where a timely answer was not filed); *In re Danny Rubel*, 42 Agric. Dec. 800 (1983) (holding the default order proper where respondent acted without an attorney and did not understand the consequences and scope of a suspension order); *In re Pastures, Inc.*, 39 Agric. Dec. 395, 396-97 (1980) (holding the default order proper where respondents misunderstood the nature of the order that would be issued); *In re Jerry Seal*, 39 Agric. Dec. 370, 371 (1980) (holding the default order proper where a timely answer was not filed); *In re Thomaston Beef & Veal, Inc.*, 39 Agric. Dec. 171, 172 (1980) (refusing to set aside the default order because of respondents' contentions that they misunderstood USDA's procedural requirements, when there is no basis for the misunderstanding).

necessary to enable USDA to handle its workload in an expeditious and economical manner. USDA's three administrative law judges frequently dispose of hundreds of cases in a year. In recent years, USDA's Judicial Officer has disposed of 30 to 50 cases per year.

Courts have recognized that administrative agencies "should be 'free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.'"⁴ If Respondent was permitted to contest some of the allegations of fact after failing to file an answer, or raise new issues, all other respondents in all other cases would have to be afforded the same privilege. Permitting such practice would greatly delay the administrative process and would require additional personnel.

The record establishes that Respondent was provided with a meaningful opportunity for a hearing in accordance with the Rules of Practice. Respondent waived his right to a hearing by failing to file an answer (7 C.F.R. §§ 1.139, .141(a)). Moreover,

⁴See *Cella v. United States*, 208 F.2d 783, 789 (7th Cir. 1953), *cert. denied*, 347 U.S. 1016 (1954), quoting from *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 143 (1940). Accord *Silverman v. CFTA*, 549 F.2d 28, 33 (7th Cir. 1977). See *Seacoast Anti-Pollution League v. Costle*, 597 F.2d 306, 308 (1st Cir. 1979) (stating that absent law to the contrary, agencies enjoy wide latitude in fashioning procedural rules); *Nader v. FCC*, 520 F.2d 182, 195 (D.C. Cir. 1975) (stating that the Supreme Court has stressed that regulatory agencies should be free to fashion their own rules of procedure and to pursue methods for inquiry capable of permitting them to discharge their multitudinous duties; similarly this court has upheld in the strongest terms the discretion of regulatory agencies to control disposition of their caseload); *Swift & Co. v. United States*, 308 F.2d 849, 851-52 (7th Cir. 1962) (stating that administrative convenience or even necessity cannot override constitutional requirements, however, in administrative hearings, the hearing examiner has wide latitude as to all phases of the conduct of the hearing, including the manner in which the hearing will proceed).

Respondent's failure to file an answer is deemed, for the purposes of this proceeding, to be an admission of the allegations in the Complaint (7 C.F.R. § 1.136(c)).

Respondent's automobile accident, loss of memory, payment of taxes, status as a United States citizen, and status as a veteran of the United States Army are not bases for setting aside the Default Decision issued in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).⁵

Moreover, Respondent states that "if you'll [sic] are going to punish me for having a car wreck that knocked my brain aloose [sic] then just come after me" (Appeal Pet.). As an initial matter, the sanction which I impose in this Decision and Order is not imposed because of Respondent's automobile accident, but rather, the sanction is imposed because of Respondent's violations of the Packers and Stockyards Act and the Regulations. Second, the sanction in this Decision and Order is not imposed for any punitive reasons. Instead, the sanction is imposed to accomplish the remedial purposes of the Packers and Stockyards Act by deterring future similar violations of the Packers and Stockyards Act and the Regulations by Respondent and other livestock dealers.

Accordingly, the Default Decision was properly issued in this proceeding. Application of the default provisions of the Rules of Practice does not deprive Respondent of his rights under the due process clause of the Fifth Amendment to the United States Constitution. *See United States v. Hulings*, 484 F. Supp. 562, 567-68

⁵*Cf. In re Anna Mae Noell*, 58 Agric. Dec. ___, slip op. at 22 (Jan. 6, 1999) (stating that the age, ill health, and hospitalization of one of the respondents at the time the complaint was served on respondents are not bases for setting aside the default decision, which was issued in accordance with 7 C.F.R. § 1.139, after respondents failed to file a timely answer).

(D. Kan. 1980). There is no basis for allowing Respondent to present matters by way of defense at this time.

For the foregoing reasons, the following Order should be issued.

Order

1. Respondent, Jim Aron, his agents and employees, successors and assigns, directly or indirectly through any corporate or other device, in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act and the Regulations issued under the Packers and Stockyards Act without filing and maintaining an adequate bond or its equivalent, as required by the Packers and Stockyards Act and the Regulations. The cease and desist provisions of this Order shall become effective on the day after service of this Order on Respondent.

2. Respondent is assessed a civil penalty of \$1,000. The civil penalty shall be paid by a certified check or money order, made payable to the Treasurer of the United States, and sent to:

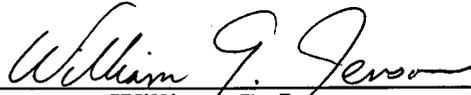
Assistant General Counsel
United States Department of Agriculture
Office of the General Counsel
Trade Practices Division
Room 2446 South Building
1400 Independence Avenue, SW
Washington, D.C. 20250-1413

The certified check or money order shall be forwarded to, and received by, the Assistant General Counsel, Trade Practices Division, within 65 days after service of this

Order on Respondent. Respondent shall indicate on the certified check or money order that payment is in reference to P.& S. Docket No. D-98-0030.

Done at Washington, D.C.

January 20, 1999

A handwritten signature in cursive script, reading "William G. Jenson". The signature is written in dark ink and is positioned above a horizontal line.

William G. Jenson
Judicial Officer