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UNITED STATES DEPARTMENT OF AGRICULTURE 177 SEP -1 AM 9:55

BEFORE THE SECRETARY OF AGRICULTURE

THE PACKERS AND STOCKYARDS
ADMINISTRATION

In re:)	P. & S. Docket No. D-98-0035
)	
Nolan Ulmer d/b/a)	
NU Cattle and NU Cattle Co.)	
)	Decision Without Hearing
Respondent)	by Reason of Admissions

Preliminary Statement

This disciplinary proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. §181 *et seq.*), hereinafter, the P&S Act, by a complaint filed on August 26, 1998 by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection Packers and Stockyards Administration (GIPSA). The complaint alleges that Respondent wilfully violated the P&S Act and the regulations issued thereunder (9 C.F.R. §201.1 *et seq.*) by: (1) engaging in business without filing or maintaining an adequate bond, or its equivalent, after termination of a clearor bond; (2) issuing an insufficient funds check in payment for livestock purchases; (3) failing to pay the full purchase price for livestock purchases; and (4) failing to pay, when due, the full purchase price for livestock purchases. The complaint requests a finding that Respondent wilfully violated Sections 312(a) and 409 of the P&S Act (7 U.S.C. §§213(a), 228b) and sections 201.29 and 201.30 of the regulations (9 C.F.R. §§201.29, 102.30). The complaint requests an order that Respondent cease and desist from the violations found to exist and that he be suspended as a registrant under the P&S Act.

A copy of the complaint was served on Respondent on September 3, 1998. Respondent filed an answer to the complaint on October 16, 1996 in which he admits: (1) the jurisdictional

allegations of Section I of the complaint; (2) that Respondent engaged in business without filing or maintaining an adequate bond, or its equivalent, after termination of a clearor bond; (3) that an insufficient funds check was issued in payment for Respondent's livestock purchases; (5) that Respondent failed to pay, when due, for its livestock purchases; and (6) that \$17,500.00 of the amounts alleged in the complaint remained unpaid.¹

Respondent's answer constitutes the admission of the material allegations of fact contained in the complaint. The admission of the material allegations of fact contained in a complaint constitute a waiver of hearing, pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. §1.139). Complainant moved for the issuance of a Decision and the following Decision and Order is issued without further investigation or hearing pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. §1.139).

Findings of Fact

1. Nolan Ulmer, hereinafter referred to as the Respondent, is an individual doing business as NU Cattle and NU Cattle Co., whose business mailing address is 16529 WCR 70, Greeley, Colorado 80631.
2. Respondent Ulmer is and at all times material herein was:
 - a. Engaged in the business of buying and selling livestock in commerce for his own account, and buying livestock in commerce on a commission basis; and
 - b. Registered with the Secretary of Agriculture as a dealer to buy

¹Respondent, in its answer dated October 16, 1998, stated that the remaining balance of \$17,500.00 "will be taken care of on Nov.1, 1998, which was the agreement that was made".

and sell livestock in commerce for his own account, and as a market agency to buy livestock on a commission basis.

3. On August 5, 1993, Respondent's registration as a clearee operating as a dealer and as a market agency buying on commission was accepted. Respondent was operating under the clearor bond of Albers Cattle Co., Inc., Winser, Nebraska. On January 24, 1996, Respondent was sent, by certified mail, a termination of clearance letter stating that he was required to have a bond and that the bonding instrument maintained in connection with his registration would terminate on February 22, 1996. On March 1, 1996, the Grain Inspection, Packers and Stockyards Administration Denver regional office received a trust agreement from Gary Rasmussen d/b/a R.U. Cattle Company, Ault, Colorado which showed Respondent as a clearee. On December 16, 1996, the principal subsequently requested that the trust agreement be terminated. On December 27, 1996, Respondent was sent, by certified mail, a termination of clearance letter stating that the bonding instrument maintained in connection with his registration was terminating on January 15, 1997. During the period January through November 17, 1997, Respondent continued to operate without an adequate bond as required by the P&S Act and the regulations after the termination of the clearor bond.

4. Respondent, in connection with his operations subject to the P&S Act, on or about the date and in the transaction set forth below, issued a check in payment for livestock purchases which check was returned unpaid by the bank upon which it was drawn because Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the check was drawn to pay the check when presented.

Purchase Date	Seller	# of Head	Amount of Check	Check Number	Returned Check Dates
11/07/97	Kathy Miller d/b/a KM Cattle	68	\$34,508.57	#2549	12/04/97 12/09/97

5. Respondent, in connection with his operations subject to the P&S Act, on or about the date and in the transaction set forth below, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

Purchase Date	Seller	Amount Due	Payment Due Date	Amount Paid
11/07/97	Kathy Miller KM Cattle Co.	\$34,508.57	11/10/97	\$17,500.00 ²

6. As of May 26, 1998, \$17,500.00 of the amount due from the transaction set forth in findings of fact 4 and 5 remains unpaid.³

Conclusions

By reason of Finding of fact 3, Respondent wilfully violated section 312(a) of the Act (7 U.S.C. §213(a)) and sections 201.29 and 201.30 (9 C.F.R. §§201.29, 201.30) of the Regulations.

By reason of Findings of fact 4 and 5, Respondent willfully violated sections 312 (a) & 409 of the P&S Act (7 U.S.C. §§213 (a) & 228b).

²On or about April 30, 1998, Gordi Ulmer, Respondent's father, paid Kathy M. Miller d/b/a KM Cattle, \$17,500.00 on his son's behalf and signed a promissory note for the balance due payable November 1, 1998. Although the balance due is \$17,008.57, Respondent's father signed a promissory note for \$17,500.00.

³Respondent, in its answer dated October 16, 1998, stated that the remaining balance of \$17,500.00 "will be taken care of on Nov. 1, 1998, which was the agreement that was made".

Order

Respondent, Nolan Ulmer, his agents and employees, directly or indirectly or through any corporate or other device, in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from:

- (a) Issuing checks in payment for livestock purchases without maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;
- (b) Failing to pay, when due, the full purchase price of livestock;
- (c) Failing to pay for the full purchase price of livestock; and
- (d) Operating without an adequate bond.

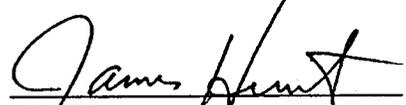
Respondent Nolan Ulmer is suspended as a registrant under the P&S Act for a period of 5 years. Provided, however, that upon application to the Packers and Stockyards Administration, GIPSA, a supplemental order may be issued terminating the suspension of the Respondent at any time after the expiration of the initial 90 days of the suspension term upon demonstration by the Respondent that the livestock seller identified by the complaint in this proceeding has been paid in full, and provided further that this order may be modified upon application to the Packers and Stockyards Programs to permit the salaried employment of Respondent by another registrant or packer after the expiration of the initial 90 days of this suspension term upon demonstration of circumstances warranting modification of the order.

This decision shall become final and effective without further proceedings thirty-five (35) days after the date of service on Respondent unless 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.

Done at Washington, D.C.
this 1st day of September, ~~1998~~ 1999



JAMES W. HUNT
Administrative Law Judge