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**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

Docket No. 15-0064 P&S

In re:

BRACK D. BRISCOE,

Respondent.

Appearances:

Thomas Bolick, Esq. for Complainant

Brack D. Briscoe, pro se Respondent

Before:

Janice K. Bullard, Administrative Law Judge

DECISION WITHOUT HEARING BY REASON OF ADMISSIONS

I. Preliminary Statement

The instant matter involves allegations by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration (“GIPSA”) of the United States Department of Agriculture (“USDA”; “Complainant”) that Brack D. Briscoe (“Respondent”) violated provisions of the Packers & Stockyards Act, 1921, as amended and supplemented, 7 U.S.C. §181 et seq. (“the Act”).

II. ISSUES

1. Whether a hearing is necessary in this matter;
2. Whether Respondent willfully violated the Act;
3. Whether the sanctions recommended by Complainant should be imposed.

III. Procedural and Factual History

On February 2, 2015, Complainant filed a complaint with the Hearing Clerk, Office of Administrative Law Judges (“OALJ”; “Hearing Clerk”). On the same date, the Hearing Clerk sent the complaint to Respondent by certified mail, and informed Respondent that an Answer should be filed pursuant to the Rules of Practice Governing Formal Adjudications before the Secretary of USDA (“the Rules”). Respondent signed for receipt of the complaint and correspondence on February 6, 2015.

By correspondence filed on February 19, 2015, Respondent requested an extension of time to consult counsel and file an answer. By Order issued February 20, 2015, I granted Respondent’s request and extended the time to file an answer to March 20, 2015. On March 20, 2015, Respondent filed correspondence explaining that he would be representing himself.

On May 20, 2015, Complainant filed a motion for a decision on the record by reason of default. Respondent did not file a response, and on July 21, 2015, I held a telephone conference with Respondent and counsel for Complainant. Respondent explained that a lot of his problems arose due to interference with his bank account by a third party. Complainant’s counsel acknowledged that other participants in programs covered by the Act had been similarly affected. I extended the time within which Respondent could respond to the motion by Order issued July 23, 2015.

On August 20, 2015, Respondent filed correspondence in which he advised that he wished to put the matter behind him and accepted Complainant’s proposed sanction. Respondent asserted that he could not obtain a bond and would repurpose the use of his land.

Pursuant to 7 C.F.R. § 1.136 (c), Respondent is hereby deemed to have admitted the allegations set forth in the complaint, and entry of Decision and Order by reason of admissions is appropriate, pursuant to 7 C.F.R. §1.139. Complainant’s proposed sanctions are warranted.

IV. Findings of Fact

1. Brack D. Briscoe is an individual with a mailing address in the State of Indiana.
2. At all times material to the allegations raised here, Respondent was engaged in the business of a dealer buying and selling livestock in commerce on his own account and the accounts of others.
3. Respondent engaged in the business of a market agency buying livestock on commission.
4. Respondent was registered with the Secretary of Agriculture as a dealer buying and selling livestock on commission.
5. On or about September 22, 2013, Respondent's registration expired for his failure to timely file his required 2012 Annual Report of Dealer or Market Agency buying on commission.
6. By letter dated August 22, 2013, GIPSA advised Respondent that he had not filed his annual report due April 16, 2013, and further advised him that his registration would expire if he did not file the report within 30 days of receipt of the correspondence.
7. By letter dated September 24, 2013, GIPSA advised Respondent that his registration had expired because he had not filed his 2012 Annual Report, and that he would need to file a new application for registration to operate as a dealer or market agency.
8. Respondent filed his 2012 report on October 14, 2013.
9. Respondent is not currently registered.
10. During the period from January 14, 2013, through June 15, 2013, Respondent purchased 1272 head of livestock for a total purchase price of \$1,060,004.22 in 46 different transactions involving 30 different livestock sellers and failed to pay the full purchase price when due within the time required by the Act.

11. Respondent issued checks for the purchase of livestock totaling \$392,881.89 in 26 transactions, which checks were returned for insufficient funds on deposit.
12. On February 11, 2013, and on June 10, 2013, Respondent purchased 69 head of livestock from two livestock exchanges for a total of \$60,365.10 and failed to pay the full purchase price when due within the time required by the Act.
13. Respondent failed to maintain accurate records of dates on which he made payments for livestock purchases.
14. On June 18, 2013, GIPSA received two claims against Respondent's bond for transactions on April 22, 2013, in the amount of \$85,231.61, and a transaction on April 29, 2013, in the amount of \$8,436.25.
15. On July 15, 2013, GIPSA received a letter from the trustee and surety on Respondent's bond informing the agency that it had canceled Respondent's bond.
16. By correspondence dated July 22, 2013, GIPSA advised Respondent that his bond would be canceled as of August 14, 2013, and informed Respondent of his obligation to secure a bond in order to engage in business covered by the Act.
17. During the period from August 25, 2013, through September 16, 2013, Respondent purchased 208 head of livestock in 21 transactions from 20 livestock dealers for a total purchase price of \$152,586.71 without having an adequate bond or bond equivalent.
18. Respondent's insufficient funds were caused by third party interference with his account.
19. Respondent is unable to secure a bond and intends to use his property in a manner unrelated to the Act.
20. Respondent has made payments of the amounts due.

V. Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent willfully violated the Act and regulations by engaging in activity subject to the Act without a bond or bond equivalent.
3. Respondent violated the Act and regulations by failing to pay for transactions when due.
4. Respondent's violations of sections 312(a), 401 and 409 of the Act (7 U.S.C. §§ 213(a); 221; and 228b) and of the regulations set forth at 9 C.F.R. §§ 201.43, 201.29 and 201.30 support the imposition of sanctions.

ORDER

Respondent Brack Briscoe, his agents, and employees, directly or indirectly through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in business in any capacity for which a bond is required under the Act and regulations without first becoming properly registered under the Act as required by 9 C.F.R. § 210.10(a), and without filing and maintaining an adequate bond or its equivalent pursuant to section 312(a) of the Act (7 U.S.C. § 213(a)) and 9 C.F.R. §§ 201.29 and 201.30.

Respondent Brack Briscoe shall cease and desist from failing to pay the full amount of the purchase price for livestock before the close of the next business day following each purchase of livestock, as required by 7 U.S.C. §§ 213(a) and 228b, and 9 C.F.R. § 201.43.

Respondent Brack Briscoe shall cease and desist from failing to maintain sufficient funds on deposit and available in the account upon which payment checks are drawn to pay the checks when presented, as required by 7 U.S.C. § 213(a).

Respondent Brack Briscoe shall maintain all accounts, records, and memoranda that fully and accurately document all transactions involved in his business operations covered by the Act, as required by 7 U.S.C. § 221.

Respondent Brack Briscoe is prohibited from operating in any capacity that is subject to the Act and regulations, either individually or through any corporate or other device, for a period of two (2) years and thereafter for any period until he become properly registered and bonded pursuant to the Act and regulations, provided, however, as follows:

At any time after ninety (90) days after the effective date of this Order, Respondent may make a written request to Complainant to be permitted to work as a salaried employec of another registrant or packer. Respondent shall include with such a request signed correspondence on the registrant's or packer's letterhead or similar documentation demonstrating that Respondent has been hired by the registrant or packer to work solely as a salaried employee and that states that the registrant or packer assumes full responsibility for all of Respondent's actions within the scope of his employment related to the Act and regulations. Complainant's grant of Respondent's request to work as a salaried employee of another registrant or packer shall be subject to Complainant's verification of his employment and verification of the putative employer's compliance with the Act and regulations.

This Order shall have the same effect as if entered after a full hearing.

Pursuant to the Rules, this Decision and Order shall become final and effective without further proceedings 35 days after the date of service upon Respondent, unless it is appealed to the Judicial Officer by a party to the proceeding within thirty (30) days after service, pursuant to the Rules, 7 C.F.R. §§1.139 and 1.145.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk.

So ORDERED this 1st day of September, 2015 at Washington, D.C.



Janice K. Bullard
Administrative Law Judge