

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

P. & S. Docket No. D-09-0088

In re: TRACY CARTER,

Respondent

DEFAULT DECISION AND ORDER

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.), herein referred to as the “Act,” instituted by a Complaint filed on April 7, 2009 by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, charging that the Respondent willfully violated the Act.

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), hereinafter the “Rules of Practice,” were served on Respondent by certified mail on April 9, 2009. Respondent was informed in the letter of service 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.

Further, on April 20, 2009, Respondent called Complainant with questions about the Complaint. Complainant informed Respondent 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. Notwithstanding this notice, Respondent failed to file an answer.

The Respondent failed to file an answer within the time period prescribed by the Rules of Practice (7 C.F.R. § 1.136), and the material facts alleged in the Complaint are admitted and the following Findings of Fact, Conclusions of Law and Order will be entered. Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Tracy Carter, hereinafter referred to as “Respondent,” has a mailing address in Bowling Green, Kentucky 42101.
2. At all times material herein, Respondent was:
 - a. Engaged in the business of buying livestock in commerce on a commission basis;
and
 - b. Registered with the Secretary of Agriculture as dealer.
3. On September 6, 2006, the Packers and Stockyards Program sent Respondent a letter informing him that that he was no longer named as a clearee in a bond filed and maintained by Currey Cattle Company, Inc. The letter also informed Respondent that a \$30,000.00 surety bond or bond equivalent was required to secure the performance of his livestock obligations.
4. On October 18, 2006, the Packers and Stockyards Program sent Respondent a certified letter of notice. The letter referenced the previous letter as well as section 303 of the Act (7 U.S.C. § 203) and sections 9 C.F.R §§ 201.10 and 201.27- 201.34 of the Regulations, and notified the Respondent of his obligation to file proof of a suitable bond or bond equivalent with Packers and Stockyards Program before engaging in any operations subject to the Act. The letter

was returned “unclaimed.” A duplicate letter was hand-delivered to Respondent on March 21, 2007.

5. On March 21, 2007, a representative of Packers and Stockyards Program, Jessica Power, went to Respondent’s home to discuss the letter of notice. Power presented Respondent with a copy of the October 18, 2006 letter of notice and Respondent refused acceptance. Respondent informed Power that he was no longer operating as a dealer; however, Respondent continued to engage in business as a dealer without maintaining an adequate bond or its equivalent as required by the Act and the Regulations.

6. On or about the dates and in the transactions set forth below, Respondent engaged in the business of buying livestock in commerce, on a commission basis, without maintaining an adequate bond or bond equivalent. The transactions occurred at Cattlemen’s Livestock Market, L.L.C, a posted stockyard located in Bowling Green, Kentucky.

Date of Purchase	Purchaser	No. of Head	Livestock Amount	Commission Amount	Check No.
10/01/2007	CPC	41	\$18,968.72	\$93.65	2858
10/01/2007	Nutt Cattle	32	\$11,603.95	\$55.46	2858
10/08/2007	CPC	78	\$36,548.07	\$198.24	2992
10/08/2007	Nutt Cattle	38	\$15,476.87	\$77.77	2992
10/15/2007	Nutt Cattle	30	\$12,029.51	\$60.24	3043
10/15/2007	CPC	12	\$4,717.08	\$24.28	3043
10/22/2007	Nutt Cattle	43	\$17,447.21	\$81.88	3075
10/29/2007	Nutt Cattle	4	\$1,131.05	\$7.11	3147
11/12/2007	Mark Holder	17	\$7,688.27	\$45.57	3274
11/12/2007	Nutt Cattle	3	\$798.60	\$3.65	3274
11/12/2007	Currey Cattle Company	27	\$12,434.56	\$61.63	3274
11/12/2007	CPC	60	\$23,748.29	\$138.98	3274
11/26/2007	CPC	22	\$10,640.91	\$56.13	3341

11/26/2007	Mark Holder	7	\$3,335.85	\$19.98	3341
11/26/2007	Nutt Cattle	8	\$3,127.65	\$14.06	3341
12/03/2007	Nutt Cattle	30	\$11,883.50	\$49.45	3417
12/03/2007	Robinson	21	\$10,431.60	\$50.61	3417
12/03/2007	Lindsey Livestock	12	\$7,007.00	\$34.46	3417
12/03/2007	CPC	9	\$3,601.47	\$17.95	3417
12/10/2007	Nutt Cattle	18	\$7,702.76	\$35.28	3486
12/10/2007	Gregory Farms	5	\$3,136.08	\$17.31	3486
12/17/2007	CPC	12	\$5,097.87	\$27.10	3535
01/07/2008	CPC	33	\$12,536.58	\$66.28	3621
01/14/2008	CPC	33	\$12,156.57	\$66.58	3721
TOTALS		595	\$253,250.02	\$1,303.65	

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts alleged in paragraph 6, Respondent has engaged in operations subject to the Act without maintaining an adequate bond and therefore has willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30).

Order

Tracy Carter, his agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in operations subject to the Act without first obtaining the requisite bond or bond equivalent. Pursuant to section 312(b) of the Packers & Stockyards Act, Respondent's registration is suspended for 30 days, and thereafter until Respondent is properly and adequately bonded.

This decision 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 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, DC
January 7, 2010

PETER M. DAVENPORT
Administrative Law Judge