

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

P. & S. Docket No. D-09-0165

In re: JAMES BAILEY,
d/b/a B & B FARMS, LLC,

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 August 5, 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 August 7, 2009.¹ Respondent was informed in a 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.

¹ The certified receipt was signed by Nikki Bailey.

Respondent has 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, which are admitted by Respondent's failure to file an answer, are adopted and set forth herein as findings of fact.

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. James Bailey, doing business as B&B Farms, hereinafter referred to as "the Respondent," is an individual whose mailing address is (b) (6)

(b) (6)

2. Respondent at all times material to this complaint was:

- a. Engaged in the business of buying and selling livestock in commerce as a dealer;
and
- b. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce.

3. Respondent, on or about the dates and in the transactions set forth below, issued checks in payment for livestock purchases which checks were returned unpaid by the bank upon which they were drawn because Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented.

Purchased From	Purchase Date	No. of Head	Check Date	Check Number	Check Amount	Return Date (s)
Sumter County Farmers Market	9/30/08	51	10/6/08	1585	\$7,961.15	10/9/08 & 10/15/08
			9/30/05	1597		11/19/08 & 11/25/08
Calhoun Stockyard Highway 53, Inc.	11/20/08	14	Illegible	1588	\$2,298.80	12/22/08
TOTALS		65			\$10,259.95	

4. On or about the dates and in the transactions set forth below, Respondent purchased livestock and failed to pay, within the time period required by the Act, the full purchase price of such livestock.

Purchased From	Purchase Date	Due Date per §409	No. of Head	Purchase Amount	Unpaid Balance
Sumter County Farmers Market	9/30/08	10/01/08	51	\$7,961.15	\$7,961.15
North Florida Livestock Market	11/19/08	11/20/08	37	\$5,449.80	\$5,449.80
Calhoun Stockyard Highway 53, Inc.	11/20/08	11/21/08	14	\$2,298.80	\$998.78 ²
	12/11/08	12/12/08	7	\$1,277.35	\$1,277.35
	01/15/09	01/16/09	6	\$960.40	\$960.40
TOTALS			115	\$17,947.50	\$16,647.48

5. As of the date of issuance of the Complaint, the \$16,647.48 referred to in paragraph 4 above remains unpaid.³

² Respondent has paid Calhoun Stockyard Highway 53 Inc. a total of \$1,300.02 towards his balance.

³ On November 20, 2008, Sumter County Farmers Market, Inc. filed a bond claim against Respondent's bond in the amount of \$7,961.15 for non-payment of livestock. The total amount of the bond claim filed includes \$7,961.15 in livestock purchases and \$200.00 in freight charges. On March 4, 2009, Calhoun Stockyard Highway 53 Inc. filed a bond claim against Respondent's bond in the amount of \$3,236.53 for non-payment of livestock. On March 3, 2009, the Packers and Stockyards Program received a bond claim against Respondent's bond from North Florida Livestock Market in the amount of \$5,449.80 for non-payment of livestock.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts found in Findings of Fact 3 and 4, Respondent willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b).

Order

1. Respondent James Bailey, d/b/a B&B Farms, LLC, its agents and employees, directly or through any corporate or other device, in connection with its activities subject to the Packers and Stockyards Act, shall cease and desist from:
 - a. Failing to pay the full amount of the purchase price for livestock within the time period required by the Act and the regulations promulgated under it; and
 - b. Issuing checks in payment for livestock without sufficient funds on deposit and available in the account upon which the checks are drawn to pay the checks when presented.
2. In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent is suspended as a registrant under the Act for a period of five (5) years; provided, however, that upon application to Packers and Stockyards Program a supplemental order may be issued terminating the suspension of Respondent at any time after 120 days upon demonstration by Respondent of circumstances warranting the termination.
3. Respondent is assessed a civil penalty of \$11,000.

4. This decision shall become final without further proceedings thirty-five (35) days after service upon the 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 of this Default Decision and Order shall be served upon the parties by the Hearing Clerk.

Done at Washington, D.C.
February 25, 2010

PETER M. DAVENPORT
Acting Chief Administrative Law Judge