

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

P. & S. Docket No. D-09-0092

In re: CLARENCE RICKY FISHER,
a/k/a RICKY FISHER,

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 alleged that between January 2008 and April 2008 Respondent engaged in operations subject to the Act without being registered with the Secretary and without maintaining an adequate bond or bond equivalent. A copy of the Complaint was mailed by the Hearing Clerk to Respondent by certified mail in April of 2009, and was returned as “unclaimed” by the U.S. Postal Service to the Hearing Clerk's office. The Hearing Clerk re-mailed the Complaint and served Respondent via regular mail on May 12, 2009 pursuant to Section 1.147 of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By The Secretary (7 C.F.R. § 1.147, hereinafter referred to as the “Rules of Practice), as of that date.

Further, on May 26, 2009 Respondent was notified by a certified letter from Complainant 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 letter also informed Respondent that if this matter was to proceed to hearing, the Packers and Stockyards Program would seek a civil penalty of \$12,500.00.

As Respondent failed to file an answer to the Complaint within the 20 day time period prescribed by Section 1.136 of the Rules of Practice, the Complainant has moved for the issuance of a Decision Without Hearing by the Administrative Law Judge, pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent is an individual residing in Loretto, Tennessee.
2. At all times material herein, Respondent was:
 - a. Engaged in the business of buying livestock in commerce on a commission basis;
 - b. Not registered as a dealer or market agency with the Secretary of Agriculture; and
 - c. Operating as a market agency and dealer within the jurisdiction of the Secretary.
3. Respondent was served with a letter of notice on January 7, 2008, informing him that in order for Respondent to continue his livestock operations subject to the Act, he must obtain an adequate bond or its equivalent. Notwithstanding such notice, Respondent continued to engage in

¹ Respondent was notified by certified letter dated April 23, 2009. The signed return receipt card was received by Complainant on June 18, 2009.

livestock operations without maintaining an adequate bond or its equivalent as required by the Act and the Regulations.

4. On or about the dates and in the transactions set forth below, Respondent engaged in the business of buying and selling livestock in commerce without maintaining an adequate bond or bond equivalent. The transactions occurred at two stockyards in Tennessee: (1) Lawrence County Stockyards (“LCS”) and (2) Tennessee Livestock Producers (“TLP”).

Purchase Date	Market	No. of Head	Livestock Amount	Principal	Commission Amount	Check Amount	Check No.
01/09/08	LCS	91	\$41323.20	Riley Livestock	\$240.18	\$525.53	16388
		79	\$32735.98	TN Lvstk Prod #29	\$179.25		
		33	\$17349.99	TN Lvstk Prod #49	\$106.10		
01/16/08	LCS	68	\$33869.84	Riley Livestock	\$211.65	\$422.40	16522
		45	\$18356.04	TN Lvstk Prod #29	\$101.65		
		35	\$18599.15	TN Lvstk Prod #49	\$109.10		
01/23/08	LCS	39	\$18281.90	Riley Livestock	\$111.78	\$356.84	16629
		16	\$6821.00	J. Lewis	\$34.40		
		52	\$22939.83	TN Lvstk Prod #29	\$123.33		
		28	\$15360.70	TN Lvstk Prod #49	\$87.33		
02/06/08	LCS	3	\$1881.25	Cherry Cattle Co.	\$8.75	\$243.21	16804
		20	\$9886.45	J. Lewis	\$45.83		
		62	\$34620.15	Riley Livestock	\$182.73		
		2	\$1231.85	TN Lvstk Prod #29	\$5.90		
02/13/08	LCS	22	\$13615.85	Cherry Hill Farm	\$63.03	\$612.06	16916
		120	\$62207.78	Riley Livestock	\$341.13		
		11	\$6532.28	TN Lvstk Prod #29	\$32.40		
		54	\$32109.78	TN Lvstk Prod #49	\$175.50		

02/27/08	LCS	26	\$14909.63	Riley Livestock	\$68.73	\$132.93	17206
		20	\$11718.25	TN Lvstk Prod #29	\$64.20		
03/12/08	LCS	62	\$31215.85	Riley Livestock	\$142.73	\$432.73	17539
		68	\$33400.70	TN Lvstk Prod #29	\$191.95		
		27	\$15487.65	TN Lvstk Prod #49	\$98.05		
03/26/08	LCS	23	\$11488.70	Riley Livestock	\$67.85	\$355.63	17780
		71	\$26432.13	TN Lvstk Prod #29	\$130.70		
		45	\$25455.13	TN Lvstk Prod #49	\$157.08		
04/01/08	TLP	1	\$336.00	B. Turner	\$5.60	\$420.93	59047
		75	\$36860.35	Riley Livestock	\$197.58		
		34	\$18867.59	TLP/POB#3	\$13.25		
		30	\$16220.95	TLP/POB#2	\$96.70		
		29	\$18386.74	TLP/POB	\$107.80		
04/02/08	LCS	89	\$43093.35	Riley Livestock	\$259.05	\$384.36	17879
		7	\$3919.25	TN Lvstk Prod #49	\$27.48		
		37	\$17681.70	TN Lvstk Prod #29	\$97.83		
04/08/08	TLP	97	\$43903.94	Riley Livestock	\$235.90	\$391.98	59163
		46	\$24959.38	TLP/POB#1	\$156.08		
04/15/08	TLP	36	\$17949.08	Riley Livestock	\$97.53	\$129.51	59292
		12	\$5641.25	TLP/POB#1	\$31.98		
04/16/08	LCS	22	\$10253.55	Riley Livestock	\$54.55	\$158.78	18125
		12	\$4986.35	J. Lewis	\$25.60		
		8	\$3661.90	TN Lvstk Prod #29	\$20.25		
		17	\$9939.74	TN Lvstk Prod #49	\$58.38		
04/22/08	TLP	58	\$33220.53	Riley Livestock	\$182.75	\$182.75	59441
		20	\$11764.64	TLP/POB#1	\$67.68	\$283.71	59448
		26	\$13594.14	TLP Order Buying	\$76.03		
04/29/08	TLP	13	\$6953.84	Riley Livestock	\$38.13	\$301.76	59544

		9	\$5004.98	TLP/POB#2	\$30.18		
		64	\$36208.08	TLP Order Buying	\$183.45		
TOTALS		1,864	\$941,238.39		\$5,145.11	\$5,335.11	

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts alleged in paragraph 4, by failing to secure a bond or bond equivalent before engaging in business subject to the Act, Respondent willfully violated Sections 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. §§ 201.27, 201.29, 201.30).

Order

1. Respondent Ricky Fisher, his agents and employees, 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, as amended and supplemented, and the regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations. Respondent is assessed a civil penalty in the amount of \$12,500.00.
2. 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 and Order shall be served upon the parties by the Hearing
Clerk.

Done at Washington, DC
July 7, 2010

PETER M. DAVENPORT
Chief Administrative Law Judge