

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	<b>P &amp; S Docket No. D-10-0151</b>
	)	
John Lundgren	)	
	)	<b>Decision and Order</b>
Respondent	)	<b>by Reason of Default</b>

1. The Complaint, filed on March 4, 2010, alleged that the Respondent, John Lundgren, in 2008, willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181, *et seq.*) (frequently herein the “Packers and Stockyards Act” or the “Act”), and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*) (frequently herein the “Regulations”).

Parties and Counsel

2. The Complainant is the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (frequently herein “Packers and Stockyards” or “Complainant”). Packers and Stockyards is represented by Delisle Warden, Esq. with the Office of the General Counsel (Trade Practices Division), United States Department of Agriculture, South Building, Room 2309, Stop 1413, 1400 Independence Avenue S.W., Washington, D.C. 20250-1413.

3. The Respondent John Lundgren (herein frequently “Respondent Lundgren” or “Respondent”) is an individual, who has failed to appear.

Procedural History

4. Packers and Stockyards' Motion for Decision Without Hearing by Reason of Default, filed May 20, 2010, is before me. Respondent Lundgren was served on June 1, 2010, with a copy of that Motion and a copy of the proposed Decision, and he has failed to respond to the Motion.

5. Respondent Lundgren was served with a copy of the Complaint on March 9, 2010. The Complaint was accompanied by the Hearing Clerk's letter of service 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, *et seq.*), hereinafter the "Rules of Practice." Respondent's answer was due to be filed within 20 days after service, according to section 1.136(a) of the Rules of Practice. 7 C.F.R. § 1.136(a). The time for filing an answer to the Complaint expired on March 29, 2010. To date, Respondent still has failed to file an answer. The Respondent is in default, pursuant to section 1.136(c) of the Rules of Practice. 7 C.F.R. § 1.136(c).

6. Further, I am informed that on April 10, 2010, Respondent received a letter from Packers and Stockyards, through counsel, which informed Respondent that if this matter were to go to hearing, Packers and Stockyards would seek a civil penalty of \$20,500.00.

7. Failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. §1.136(c). Failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. Accordingly, the material facts alleged in the Complaint, which are admitted by Respondent's default, 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. *See* 7 C.F.R. §1.130 *et seq.*

Findings of Fact

8. Respondent John Lundgren is an individual whose mailing address is a home address and is on file with the Hearing Clerk's Office, United States Department of Agriculture.

9. Respondent John Lundgren was, at all times material to this Decision, and particularly in 2008:

(a) engaged in the business of buying and selling livestock in commerce as a dealer for his own account;

(b) registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account.

10. Respondent Lundgren, in connection with his operations subject to the Packers and Stockyards Act, on or about the dates and in the transactions set forth below, failed to pay the full amount of the purchase price for livestock within the time period required by the Act:

<b>Seller</b>	<b>Purchase Date</b>	<b>Date Payment Due Per 409(a)</b>	<b>Payment Date</b>	<b>Days Late</b>	<b>Number of Head</b>	<b>Livestock Amount</b>
Chehalis Livestock Market	2/29/2008	3/3/2008	3/16/2008	13	15	\$18,700.00
Chehalis Livestock Market	3/7/2008	3/10/2008	3/21/2008	11	4	\$3,015.00

<b>Seller</b>	<b>Purchase Date</b>	<b>Date Payment Due Per 409(a)</b>	<b>Payment Date</b>	<b>Days Late</b>	<b>Number of Head</b>	<b>Livestock Amount</b>
Chehalis Livestock Market	3/8/2008	3/10/2008	3/12/2008	2	6	\$1,133.80
Chehalis Livestock Market	3/14/2008	3/17/2008	3/24/2008	7	4	\$5,275.00
Chehalis Livestock Market	3/21/2008	3/24/2008	3/30/2008	6	5	\$7,535.00
Chehalis Livestock Market	4/4/2008	4/7/2008	4/14/2008	7	5	\$4,545.50
Chehalis Livestock Market	4/11/2008	4/14/2008	4/21/2008	7	12	\$9,503.20
Chehalis Livestock Market	4/18/2008	4/21/2008	4/28/2008	7	8	\$10,900.00
Chehalis Livestock Market	4/25/2008	4/28/2008	5/6/2008	8	8	\$7,704.75
Chehalis Livestock Market	5/2/2008	5/5/2008	5/29/2008	24	6	\$8,195.00
Chehalis Livestock Market	5/16/2008	5/19/2008	5/28/2008	9	6	\$7,082.20
Chehalis Livestock Market	5/23/2008	5/27/2008	6/6/2008	10	4	\$2,566.90
Chehalis Livestock Market	5/30/2008	6/2/2008	6/10/2008	8	7	\$6,855.95
Chehalis Livestock Market	6/6/2008	6/9/2008	6/16/2008	7	5	\$3,992.60

<b>Seller</b>	<b>Purchase Date</b>	<b>Date Payment Due Per 409(a)</b>	<b>Payment Date</b>	<b>Days Late</b>	<b>Number of Head</b>	<b>Livestock Amount</b>
Chehalis Livestock Market	6/13/2008	6/16/2008	6/26/2008	10	7	\$5,054.30
Chehalis Livestock Market	6/20/2008	6/23/2008	7/9/2008	16	9	\$6,707.23
Chehalis Livestock Market	6/27/2008	6/30/2008	7/18/2008	18	2	\$2,425.00
Chehalis Livestock Market	7/11/2008	7/14/2008	7/22/2008	8	12	\$13,335.00

11. On or about the dates and in the transactions set forth below, Respondent Lundgren issued checks in payment for livestock purchases and said checks were returned because Respondent failed to maintain sufficient funds on deposit at the relevant financial institution:

<b>Seller</b>	<b>Purchase Date</b>	<b>Number of Head</b>	<b>Check Date</b>	<b>Check Number</b>	<b>Check Amount</b>	<b>Date Returned</b>
Chehalis Livestock Market	3/28/2008	9	4/7/2008	3561	\$8,449.00	4/11/2008
Chehalis Livestock Market	7/18/2008	17	7/28/2008	3602	\$22,151.65	8/7/2008

### Conclusions

12. The Secretary of Agriculture has jurisdiction over the parties and the subject matter.

13. By reason of the facts found in paragraphs 9, 10, and 11, Respondent Lundgren has willfully violated sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b).

Order

14. Respondent John Lundgren, and his agents and employees, directly or indirectly through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall cease and desist from:

(a) failing to pay, when due, for livestock purchases; and

(b) issuing checks in purported payment of livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented.

15. Respondent Lundgren is assessed a **\$20,500.00** civil penalty, pursuant to section 312(b) of the Act (7 U.S.C. § 213(b)). The civil penalty payment instrument(s) shall be made payable to the order of the **United States Department of Agriculture**, marked with **PS-D-10-0151**, and sent to:

USDA-GIPSA  
P.O. Box 790335  
St. Louis, Missouri 63179-0335

Payment shall be made within 60 days from the date this Order is final and effective (*see*

next paragraph).

Finality

16. This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix A).

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

Done at Washington, D.C.

this 21<sup>st</sup> day of July 2010

s/ Jill S. Clifton

Jill S. Clifton

Administrative Law Judge

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