

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 10-0234

In re: Lonnie and Karen Martin,

Respondents

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.*)(the Act), instituted by a Complaint and Notice of Hearing filed on April 16, 2010, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection Packers and Stockyards Administration (GIPSA), United States Department of Agriculture. The Complaint alleged that Lonnie and Karen Martin (Respondents) purchased livestock and failed to pay the purchase price, in a total amount of \$236,946.02, to four (4) sellers in 34 transactions; issued five (5) checks in payment for livestock purchases which were returned unpaid by the bank upon which they were drawn because Respondents did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay them when presented; and notwithstanding the notices they received, continued to engage in the business of buying livestock in commerce for purposes of slaughter without maintaining an adequate bond or bond equivalent as required by the Act and the Regulations.

A copy of the Complaint was mailed to Respondents by certified mail at their last known mailing address and was received by Respondents on May 10, 2010. Complainant, by counsel, mailed a letter to Respondents by certified mail at their last known mailing address on August 27, 2010, advising Respondents to file an answer if they had not already done so, describing the

sanctions that Complainant would seek if the case went to hearing, and describing the potential benefits of obtaining counsel. Respondents signed for delivery of the letter on September 7, 2010.

Respondents were served with the Complaint, but failed to answer the Complaint. The time for filing an answer has expired, and the Complainant has filed a motion for the issuance of a Default Order. Accordingly, the motion will be granted and the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Finding of Fact

1. Respondents Lonnie and Karen Martin are individuals residing and doing business in East Earl, Pennsylvania.

2. Respondents, at all times material herein, were:

(a) Engaged in the business of buying livestock in commerce for purposes of slaughter;

(b) Engaged in the business of slaughtering hogs and manufacturing or preparing meat or meat products for sale or shipment in commerce; and

(c) A packer within the meaning of and subject to the Act.

3. Respondents were notified by letter of April 9, 2007, that the Packers and Stockyards Act requires all packers who purchase livestock valued in excess of \$500,000 annually must file and maintain a surety bond or bond equivalent. The letter included a copy of the Act, and a special report Form P&SP-1400: Packer Inquiry, requesting information on the Martins' packers' operation pursuant to section 6(b) of the Federal Trade Commission Act, made applicable to the jurisdiction, powers, and duties of the Secretary of Agriculture by section 402 of the Packers and Stockyards Act (7 U.S.C. § 222).

4. On April 8, 2008, Respondents were issued a Notice of Default, notifying them that they had failed to provide the special report demanded by the letter of April 9, 2007. The Notice of Default included another copy of the special report Form P&SP-1400: Packer Inquiry, and instructed Respondents that they must complete and return the enclosed form. The Notice of Default was received and signed for by Karen Martin on April 14, 2008.

5. By letter dated June 17, 2008, personally delivered to Lonnie Martin on June 19, 2008, the Martins were notified that, based on P&SP's investigation of the Martins' packer operation, a \$10,000 packer bond was required. The letter was accompanied by another copy of the special report Form P&SP-1400: Packer Inquiry.

6. Notwithstanding the notices they received, Respondents continued to engage in the business of buying livestock in commerce for purposes of slaughter without maintaining an adequate bond or bond equivalent as required by the Act and the regulations.

7. Respondents, during the period of June 20, 2007 through August 20, 2008, purchased livestock and failed to pay the purchase price, in a total amount of \$236,946.02, to four (4) sellers in 34 transactions. In regard to three (3) of these transactions, Respondents issued five (5) checks in payment for livestock purchases which were returned unpaid by the bank upon which they were drawn because Respondents did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay them when presented.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. By failing to pay for livestock purchases, Respondents have willfully violated sections 202(a) and 409 of the Act (7 U.S.C. §§ 2192(a) and 228b).

3. By engaging in the business of buying livestock in commerce for purposes of slaughter without maintaining an adequate bond or bond equivalent as required by the Act and the Regulations, notwithstanding having received notices of their need for such a bond or bond equivalent, Respondents willfully violated section 202(a) of the Act (7 U.S.C. § 192(a)) and section 201.29 of the regulations (9 C.F.R. § 201.29).

Order

1. Respondents Lonnie and Karen Martin, their 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:

a. Failing to pay the full purchase price of livestock; and

b. Buying livestock in commerce for purposes of slaughter without maintaining an adequate bond or bond equivalent as required by the Act and the Regulations

2. In accordance with section 203(b) of the Act (7 U.S.C. § 193(b)), Respondents Lonnie and Karen Martin jointly and severally are assessed a civil penalty in the amount of Fifteen Thousand Dollars (\$15,000.00).

3. Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (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.

March 10, 2011

PETER M. DAVENPORT
Chief Administrative Law Judge