

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [P&S-D]
) Docket No. 10-0296
H.D. Edwards)
)
Respondent) **Decision and Order**

Appearances:

Brian P. Sylvester, Esq. with the Office of the General Counsel (Trade Practices Division), United States Department of Agriculture, Washington, DC, for the Complainant (Packers and Stockyards); and

H.D. Edwards, an individual, the Respondent, representing himself (appearing *pro se*).

Decision Summary

1. For H.D. Edwards' failures to comply with the Packers and Stockyards Act, I impose cease and desist orders, which I conclude are the appropriate remedies. Packers and Stockyards requested also that civil penalties be imposed, but I conclude that civil penalties would not be just, considering the situation here. [This is an unusual situation.]

Parties and Allegations

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").

3. The Respondent is H.D. Edwards (herein frequently “H.D. Edwards” or “Respondent”), an individual, a part-time rancher, especially when there is rain.
4. The Complaint, filed on May 27, 2010, alleged there is reason to believe that the Respondent, H.D. Edwards, in 2009, 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, 9 C.F.R. § 201.1 *et seq.*
5. The Respondent, H.D. Edwards, filed his Answer on June 28, 2010. Of particular note is HD Edwards’ vehement denial, in his Answer, of the allegations of paragraph II of the Complaint that he had received notice to apply for registration as a dealer and to obtain a bond. H.D. Edwards has consistently denied receiving notice: in his Answer; in his testimony; and in his Response filed January 5, 2012.

Procedural History

6. The Hearing was held in Tucson, Arizona on December 5, 2011. The following witnesses testified: Stacey Schofield, Eva Norton, H.D. Edwards, Timothy Hansen, and John Barthel. The following exhibits were admitted into evidence: Packers and Stockyards exhibits CX 1, CX 2, CX 4a, and CX 5 through CX 22; and H.D. Edwards exhibit RX 1. I ruled from the bench (oral decision), indicating that I would put my decision in writing when I got back to the office, and that my decision would not be binding on H.D. Edwards until he received my written confirmation. Tr. 299-300. The transcript (Tr.) was filed with the Hearing Clerk on December 28, 2011.

7. Packers and Stockyards filed, post-hearing, its “Motion for Reconsideration of Tentative Bench Decision Regarding Civil Penalty”, on December 21, 2011. H.D. Edwards filed his Response on January 5, 2012.

Findings of Fact

8. Respondent H.D. Edwards is an individual whose business mailing address is a post office box in Marana, Arizona. H.D. Edwards is a part-time rancher. Tr. 157.

9. At the time of the hearing, H.D. Edwards had three pair (“three cows turned out with three baby calves on them”) Tr. 157. He had two horses. Tr. 266. And he had 29 other head of cattle at a different set of pens, that he was feeding for months until they got bigger. Tr. 266. H.D. Edwards would not be operating as a dealer under the Packers and Stockyards Act if he sold any of those livestock; they are part of H.D. Edwards’ producer activity. For H.D. Edwards’ dealer activity, both buying and selling, he is subject to the Packers and Stockyards Act requirements, even for as little as one head. There is no exemption, except for producer activity. Tr. 245-247.

10. Rain has been scarce; H.D. Edwards testified that he had not had a good season since 1992 (Tr. 157); that the last good rain he had on the ranch was 1993. Tr. 161. He testified that now that he receives social security checks, he is hopeful that he will not have to do so much part-time work hauling cattle for people and working at the sale barns. Tr. 157, 161, 163.

11. A letter of notice dated February 19, 2009 (CX-1), entitled Notice of Default, was sent to H.D. Edwards by certified mail. The letter was intended to inform the recipient that

in order to continue his livestock operations subject to the Packers and Stockyards Act, he must be registered as required and obtain an adequate bond or its equivalent.

12. The Notice of Default was picked up at the post office by Cheri Lewis on February 24, 2009. CX-1. Cheri Lewis is H.D. Edwards' girlfriend, and she lived at the same place he did.

13. H.D. Edwards did not receive CX-1 or the enclosure(s) that were supposed to be with it. He first saw a copy of CX-1 (but not the enclosures) when Stacey Schofield showed it to him during her audit of his records at the Marana Stockyards on June 16, 2009. Tr. 35, 139-40, 141-43, 144, 149-50, 166-67, 201, 264-65.

14. Stacey Schofield's audit was to document Packers and Stockyards Act violations that H.D Edwards had committed prior to her audit, prior to his having seen a copy of CX-1.

15. The audit confirmed that Respondent H.D. Edwards was previously, in April, May, and earlier in June, 2009:

- (a) operating as a dealer, buying and selling livestock in the interstate flow of commerce for his own account; within the jurisdiction of the Secretary of Agriculture, subject to the provisions of the Packers and Stockyards Act and the regulations promulgated thereunder;
 - (b) not registered, as required, as a dealer with the Secretary of Agriculture;
 - (c) making purchases of livestock for which payment was not timely made
- (all payments were made in full, but payment is required before the close of

the next business day; by that standard, H.D. Edwards' payments were sometimes two weeks, three weeks, even five weeks late, CX 4a, p. 2); and (d) failing to maintain an adequate bond or bond equivalent as required.

Conclusions

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

17. H.D. Edwards had for decades been involved in activity, buying and selling in three nearby auction markets, oblivious to the fact that he might have been engaging in dealer activity. He operated on a small scale, he had never been advised that he should be registered as a dealer, he was personally friends with the auction market owners and had payment arrangements with them, and he was certain (wrong, but certain) that he had never engaged in interstate commerce. Notice to him needed to get his attention, if he was going to be required to change his operation.

18. The attempt to give H.D. Edwards notice failed, in that he did not receive the Notice of Default (CX-1) that was delivered to Cheri Lewis on February 24, 2009.

19. Prior to his seeing a copy of CX-1, in April, May, and earlier in June, 2009: Respondent H.D. Edwards engaged in operations subject to the Packers and Stockyards Act, (a) making purchases of livestock for which payment was not timely made, thereby engaging in an "unfair practice" in violation of section 312(a) of the Act (7 U.S.C. §213(a)), and a violation of section 409(a) of the Act (7 U.S.C. §228b(a)); and

(b) without maintaining an adequate bond or bond equivalent, thereby engaging in an “unfair practice” in violation of section 312(a) of the Act (7 U.S.C. §213(a)); and section 201.29 of the regulations (9 C.F.R. § 201.29).

20. No civil penalties should be or will be imposed, because in this unusual case such a sanction would serve no remedial purpose and would be contrary to the just result sought by both parties. Cease and desist orders suffice here.

Order

21. Packers and Stockyards shall promptly mail to H.D. Edwards the packet of information, including an application, that Packers and Stockyards would normally provide to a person who may be interested in registering as a dealer under the Packers and Stockyards Act. Information identifying the appropriate website shall be included. A sample of required reports, including the year-end reports, and sample instructions shall be included.

22. Except as granted herein, Packers and Stockyards’ “Motion for Reconsideration of Tentative Bench Decision Regarding Civil Penalty” filed on December 21, 2011, is DENIED.

23. Respondent H.D. Edwards and his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall:

(a) cease and desist from failing to pay, when due, the full purchase price of livestock;

as required by section 409(a) of the Act (7 U.S.C. §228b(a)).

AND

(b) 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 promulgated thereunder, without maintaining an adequate bond or bond equivalent;

as required by section 201.29 of the regulations (9 C.F.R. § 201.29).

Finality

24. 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 shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 6th day of January 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building Room 1031
1400 Independence Avenue SW
Washington, D.C. 20250-9203
202-720-4443
Fax: 202-720-9776