

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0438

In re: Michael V. Bott, and
Tony Bott,

Respondents

Default Decision and Order

Preliminary Statement

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.) (“Act”), by a Complaint filed on September 27, 2011, by the Administrator, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging 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 *et seq.*) (Rules of Practice) were mailed to the Respondents. According to the delivery receipt, Respondents received this Complaint on October 12, 2011. Shortly thereafter, Respondents requested a 30 day extension, which was considered a request for an extension of time in which to file an answer. By Order dated November 2, 2011, Respondents were given until December 1, 2011 to file an answer. No answer was filed.

On January 6, 2012, the Chief Administrative Law Judge issued an Order to Show Cause why a default decision and order should not be entered. No response was made by Respondents;

the Complainant filed a Motion for Default.

As the Respondents failed to file an answer within the time period required by the Rules of Practice (7 C.F.R. § 1.136), the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Michael V. Bott is an individual residing in Rupert, Idaho.
2. At all times material to these proceedings, Michael V. Bott was:
 - a. Engaged in the business of a dealer, buying and selling livestock in commerce for his own account;
 - b. Engaged in the business of a market agency, buying livestock in commerce on a commission basis; and
 - c. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce, a market agency buying on commission, and a market agency providing clearing services.
3. Tony Bott is an individual residing in Rupert, Idaho.
4. At all times material to these proceedings, Tony Bott was:
 - a. Engaged in the business of a dealer, buying and selling livestock in commerce for his own account;
 - b. Engaged in the business of a market agency, buying livestock in commerce on a commission basis; and
 - c. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce.
5. During the period of March 2008 to October 2009, Michael V. Bott and Tony Bott

(Respondents), under the name “MB Livestock” and their own names, in connection with their operations subject to the Act, failed to pay, when due, the full amount of the purchase price for livestock within the time period required by section 409 of the Act and the Regulations promulgated thereunder at 9 C.F.R. § 201.43 in the transactions as identified generally in Attachment A to the Complaint by paying from one to 22 days late in over 50 transactions.

6. During the period of March 2008 through October 2009, Respondent Tony Bott issued seventeen checks, on the account of “MB Livestock” and Michael Bott and Doris Bott, in the total amount of \$1,182,982.90 to Cattleman’s Livestock Auction, Inc. d.b.a. Treasure Valley Livestock, of Caldwell, ID in purported payment for livestock purchases, that were returned unpaid by the bank upon which they were drawn. These checks were returned because Respondents did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay such checks when presented.

7. From the period of March 2008 to October 2009, Respondents did not maintain trucking or freight invoices or load make-up sheets.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondents willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b) and Respondents have failed to keep records that fully and correctly disclose all the transactions involved in their business, as required by section 401 of the Act (7 U.S.C. § 221) by failing to keep trucking or freight invoices and load make-up sheets.

Order

1. Respondents, their agents and employees, directly or through any corporate or other

device, in connection with their activities subject to the Act, shall cease and desist from failing to pay, when due, the full purchase price of livestock.

2. Respondents shall keep records that fully and correctly disclose all transactions involved in their business, as required by section 401 of the Act (7 U.S.C. § 221), including trucking or freight invoices and load make-up sheets.

3. In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondents are assessed, jointly and severally, a civil penalty in the amount of thirty-four thousand dollars (\$34,000).

4. This decision and order shall become final and effective without further proceedings (35) days after service on Respondent, unless appealed to the Judicial Office by a party to the proceeding within thirty (30) days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139, 1.145).

Copies of this decision shall be served upon the parties.

March 9, 2012

Peter M. Davenport
Chief Administrative Law Judge