

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0335

In re: Cheryl Slover and
Johnny Slover,

Respondents

Default Decision and Order

Preliminary Statement

This disciplinary proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (Act) and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*) (Regulations), by a Notice to Show Cause filed on August 4, 2011, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (Complainant) against Respondents Cheryl Slover and Johnny Slover.

On August 5, 2011, copies of the Notice to Show Cause were mailed by the Hearing Clerk to Respondents by certified mail. The Hearing Clerk sent a cover letter with the Notice to Show Cause along with a copy of the Rules of Practice governing the proceeding. The cover letter stated that Respondents had 10 days from the receipt of the Notice to Show Cause in which to file an answer and that failure to file an answer would constitute an admission of the material allegations in the Notice to Show Cause and a waiver of Respondents' right to an oral hearing. On August 10, 2011, the Hearing Clerk sent a second cover letter to Respondents informing them that they had 20 days from the receipt of the Notice to Show Cause in which to file an answer.

The Notice to Show Cause was returned to the Hearing Clerk's Office as "unclaimed" on September 14, 2011, and was remailed on the same day to Respondents by regular mail. Under section 1.147(c)(1) of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.147(c)(1)) (Rules of Practice), when the Notice to Show Cause was returned as "unclaimed" after being mailed by certified mail, "it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address." 7 C.F.R. § 1.147(c)(1). Therefore, pursuant to section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)), Respondents were served with the Notice to Show Cause on September 14, 2011.

On or about September 29, 2011, Respondent Johnny Slover contacted Complainant's attorney and informed her that he had just received the Notice to Show Cause and wanted more time to respond. Complainant informed Respondent Johnny Slover that he must file a motion requesting an extension of time with the Hearing Clerk immediately to prevent a default decision and order from being issued and that Complainant would not oppose a 20 day extension. On or about October 5, 2011, Respondent Johnny Slover filed a request for an extension of time. On October 27, 2011, the Administrative Law Judge issued an Order Extending Time giving Respondents until November 11, 2011, in which to file an answer.¹

On or about November 15, 2011, Respondents filed a second request for an extension of time. On November 16, 2011, the Administrative Law Judge issued an Order granting an extension of 10 days. The Order informed Respondents that they "shall file an Answer **no later**

¹ Complainant's attorney was contacted by the Office of the Administrative Law Judges on October 5, 2011, regarding Respondent Johnny Slover's request for an extension of time and informed the Office of the Administrative Law Judges that Complainant would not oppose a 20 day extension. Due to a delay in the processing of Respondent Johnny Slover's request for an extension of time, Complainant's attorney spoke with the Office of the Administrative Law Judges on October 27, 2011, and agreed to allow Respondents until November 11, 2011, in which to file an answer.

than² November 21, 2011 or a default decision and order will be entered.” Despite the multiple extensions of time and notification that an answer must be filed in accordance with the Rules of Practice, Respondents failed to file an answer on or before the deadline of November 21, 2011, and Complainant has moved for the issuance of a Decision Without Hearing By Reason of Default.

Accordingly, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Respondents Cheryl Slover and Johnny Slover are individuals whose mailing address is in the state of Texas.
2. Respondent Cheryl Slover is and, at all times material to the Notice to Show Cause, was:
 - (a) Not registered with the Secretary of Agriculture; and
 - (b) Never has been registered with the Secretary of Agriculture.
3. Respondent Johnny Slover is and, at all times material to the Notice to Show Cause, was:
 - (a) Engaged in the business of buying livestock in commerce on a commission basis for the accounts of others;
 - (b) Operating as a market agency buying on commission for the accounts of others subject to the provisions of the Act; and
 - (c) Not registered with the Secretary of Agriculture.
4. By final order of the Secretary of Agriculture, issued on August 17, 2009, *In re Johnny Slover*, P&S Docket No. D-08-0192, Respondent Johnny Slover was ordered, *inter alia*, to cease and desist from engaging in business in any capacity for which bonding is required under the Act

² Emphasis in original Order.

and the Regulations without filing and maintaining an adequate bond or its equivalent. The order became final and effective on October 26, 2009.

5. On April 16, 2010, GIPSA sent Respondent Johnny Slover a Notice of Default – Annual Report notifying him that he had failed to file his 2009 Annual Report by the due date of April 16, 2010.³ Respondent Johnny Slover received the notice on May 17, 2010. The notice of default notified Respondent Johnny Slover that 30 days from the receipt of the notice, if he failed to file his 2009 Annual Report, his registration would expire as provided in section 201.10 of the Regulations (9 C.F.R. § 201.10). Respondent Johnny Slover was further notified that if he continued to operate and failed to renew his registration that he would be subject to civil penalties.

6. Despite the notice of default, Respondent Johnny Slover failed to file his 2009 Annual Report within the 30 days and was notified by certified letter dated July 23, 2010, and served on him on August 11, 2010, that his registration to lawfully conduct business under the Act had expired due to his failure to comply with federal regulations.⁴ Respondent Johnny Slover was further notified that he must immediately cease his activities subject to the Act and that failure to do so could result in the filing of a complaint against him in which civil penalties would be sought. Respondent Johnny Slover was also notified that if he wished to continue operating as a

³ Pursuant to section 201.97 of the Regulations (9 C.F.R. § 201.97), every market agency and dealer operating subject to the Act is required to file an annual report with GIPSA. Section 402 of the Act (7 U.S.C. § 222) incorporates, by reference, sections 6, 8, 9, and 10 of the Federal Trade Commission Act (15 U.S.C. §§ 46, 48-50). These sections of the Federal Trade Commission Act are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of the Act and to any person subject to the provisions of that Act, whether or not a corporation. 7 U.S.C. § 222. The annual report is a mandatory report to GIPSA made under the authority of section 6(b) of the Federal Trade Commission Act (15 U.S.C. § 46(b)).

⁴ Section 303 of the Act (7 U.S.C. § 203) authorizes the Secretary of Agriculture to require registration of all market agencies and dealers as defined by section 301 of the Act (7 U.S.C. § 201) in such manner as the Secretary may prescribe. Section 201.10 of the Regulations (9 C.F.R. § 201.10) requires all market agencies and dealers operating subject to the Act to register and indicates that if a registrant does not file its required annual report that its registration will expire and any continued operation without a valid registration is a violation of section 303 of the Act (7 U.S.C. § 203).

dealer and a market agency that he must submit a new application for registration along with any delinquent annual reports.

7. In October 2010, a Packers and Stockyards Program auditor collected records pertaining to Respondent Johnny Slover's business activities after his registration expired. The auditor found that Respondent Johnny Slover, on nine occasions from September 13, 2010, through October 15, 2010, operated as a market agency as defined by the Act (7 U.S.C. § 201(c)) without being registered.

8. On October 14, 2010, the Packers and Stockyards Program auditor faxed Respondent Johnny Slover an application for registration and an annual report form instructing Respondent Johnny Slover to complete them in their entirety and return them to the auditor. On October 29, 2010, Respondent Johnny Slover called the auditor informing him that the paperwork would be ready to fax on November 3, 2010; Respondent Johnny Slover did not fax the documents on this date.

9. As of November 23, 2011, Respondent Johnny Solver's 2009 Annual Report was 525 days late. Pursuant to section 10 of the Federal Trade Commission Act (15 U.S.C. § 50)⁵ as incorporated into the Act by section 402 (7 U.S.C. § 222), on July 7, 2011, the Packers and Stockyards Program requested the Department of Justice to institute civil proceedings against Respondent Johnny Slover for failing to file his 2009 Annual Report.

⁵ Section 10 of the Federal Trade Commission Act, states, *inter alia*, that:

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$110 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business.

15 U.S.C. § 50. The penalty was amended under section 402 of the Packers and Stockyards Act (7 U.S.C. § 222) by 7 C.F.R. § 3.91 (effective Sept. 2, 1997) as directed by acts of Congress (Pub. L. Nos. 101-410 and 104-134). The original penalty in the Federal Trade Commission Act was \$100.00.

10. Respondent Johnny Slover's registration expired when he failed to file his 2009 Annual Report. Respondent Johnny Slover was notified of the expiration of his registration by certified letter dated July 23, 2010, and served on him on August 11, 2010. Notwithstanding the notice, Respondent Johnny Slover, on nine occasions from September 13, 2010, through October 15, 2010, operated as a market agency as defined by the Act (7 U.S.C. § 201(c)) without being registered. Based on information and belief, Respondent Johnny Slover continues to operate while his current application for registration is pending. Pursuant to section 303 of the Act (7 U.S.C. § 203),⁶ on July 7, 2011, the Packers and Stockyards Program requested the Department of Justice to institute civil proceedings against Respondent Johnny Slover for operating without a registration.

11. On December 13, 2010, Respondents submitted an application for registration, along with the required bond, as a partnership to GIPSA to operate as a dealer buying and selling livestock and as a market agency buying on commission. By letter dated April 22, 2011, and personally served on Respondent Johnny Slover on May 13, 2011, GIPSA's Administrator informed Respondents that GIPSA believes that Respondent Johnny Slover is currently operating in violation of the Act and as a result, GIPSA has determined that there is reason to believe that Respondents' partnership is unfit to engage in the business of a dealer or market agency. The letter further informed Respondents of their right to a hearing for the purpose of showing cause why their registration should not be denied.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

⁶ Section 303 of the Act (7 U.S.C. § 203) provides specified penalties for operating without a registration consisting "of not more than \$750 for each such offense and not more than \$37.50 for each day it continues." The penalty has been amended several times by 7 C.F.R. § 3.91(b)(6)(ii). The penalty of \$750.00 is effective for violations that occurred beginning on May 7, 2010. The penalty of \$37.50 for each day the offense continues is effective for violations that occurred beginning on June 23, 2005.

2. Respondents' partnership is unfit to engage in the business of a dealer or market agency under the Act because Respondent Johnny Slover failed to file his 2009 Annual Report.

3. Respondents' partnership is unfit to engage in the business of a livestock dealer or market agency under the Act because Respondent Johnny Slover operated subject to the Act without a registration.

4. Respondents' partnership is unfit to engage in the business of a livestock dealer or market agency under the Act because Respondent Johnny Slover previously violated the Act and the Regulations by operating subject to the Act and the Regulations without filing and maintaining an adequate bond or bond equivalent.

Order

1. Having been found unfit to engage in the business of a livestock dealer or market agency under the Act, Respondents' application for registration is denied and Respondents shall cease and desist from engaging in business in any capacity for which registration and bonding is required under the Act and the Regulations without first registering and filing and maintaining an adequate bond or bond equivalent pursuant to the Act and the Regulations.⁷

2. This decision shall become final and effective without further proceedings 35 days after the date of service upon Respondents, 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).

⁷ Section 201.10 states, *inter alia*, that "[i]f after . . . the application is denied, as soon as the issue(s) that formed the basis of the denial have been remedied, the applicant may file a new application for registration."

Copies of this Default Decision and Order shall be served upon the parties.

March 27, 2012

Peter M. Davenport
Chief Administrative Law Judge