

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0168

In re: Michael Brent Wagner,
Respondent

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), by a Complaint filed on January 10, 2012, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that Michael Brent Wagner (Respondent) willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*) (regulations).

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) (Rules of Practice), were served upon the Respondent by certified mail on January 17, 2012. Respondent was informed in the letter of service that an Answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the Complaint.

Respondent failed to file an answer within the time period prescribed by the Rules of Practice (7 C.F.R. § 1.136), 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).

Findings of Fact

1. Michael Brent Wagner (Respondent) is an individual with a mailing address in the state of Texas.
2. Respondent, at all times material herein, was:
 - (a) Engaged in the business of buying livestock in commerce on a commission basis; and
 - (b) Not registered, as required, as a market agency buying livestock in commerce on a commission basis, with the Secretary of Agriculture.
3. In a certified Notice of Default Letter dated April 26, 2010, and received by Respondent on May 4, 2010, Respondent was informed that the Packers and Stockyards Program had information that he was buying and selling livestock in commerce and was therefore subject to the Act and the regulations. Respondent was further informed that in order to come into compliance with the Act and the regulations, he must complete and file an application for registration and obtain a condition 2 bond or bond equivalent. Respondent was informed that the amount of bond coverage must be based on the average amount of livestock purchased during a period equivalent to two business days, but in no case could the bond be less than \$10,000.00. Respondent was also informed that continuing to operate subject to the Act and the regulations without registering and/or filing the applicable bond or bond equivalent could result in a complaint being filed in a United States District Court or an administrative complaint being filed.
4. Notwithstanding such notice, Respondent continued to engage in the business of buying livestock in commerce on a commission basis without being registered as a market agency with

the Secretary and without maintaining an adequate bond or bond equivalent as required by the Act and the regulations from July 2010 to October 2010, in violation of the Act and regulations, as set forth below:

Purchase Date	No. of Head	Livestock Amount	Purchased From	Purchased For	Commission Amount
7/28/2010	12	\$6,568.75	Lampasas Cattle Auction	Scarmardo Cattle Co.	\$34.74
8/2/2010	16	\$8,847.93	Jordan Cattle Auction	Scarmardo Cattle Co.	\$48.93
8/16/2010	36	\$18,610.73			\$109.50
8/21/2010	49	\$22,703.45	Comanche Livestock Exchange	Scarmardo Cattle Co.	\$120.15
8/24/2010	24	\$12,617.40	Meridian Livestock	Scarmardo Cattle Co.	\$68.04
8/31/2010	43	\$22,597.75			\$129.60
9/7/2010	35	\$16,931.08			\$99.30
9/14/2010	46	\$23,316.30			\$135.48
9/1/2010	78	\$50,076.85	Lampasas Cattle Auction	Owen Cattle Company	\$236.21
9/8/2010	3	\$1,815.40			\$8.43
9/15/2010	33	\$20,971.71	Lampasas Cattle Auction	Joe Paul McCullough	\$130.41
9/22/2010	16	\$9,268.96	Lampasas Cattle Auction	Owen Cattle Company	\$48.23
9/29/2010	12	\$7,085.15			\$36.33
10/6/2010	5	\$2,977.40			\$17.68
10/13/2010	32	\$19,673.12	Lampasas Cattle Auction	Joe Paul McCullough	\$129.24
10/20/2010	11	\$5,267.25	Lampasas Cattle Auction	Larry Alexander	\$28.73

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent Michael Brent Wagner engaged in operations subject to the Act without being properly registered with the Secretary of Agriculture and without maintaining an adequate bond or bond equivalent, and has willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30).

Order

1. Respondent Michael Brent Wagner, his agents and employees, directly or indirectly through any corporate or other device, in connection with his operations subject to the Packers and Stockyards Act, shall 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, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations. Further, Respondent Michael Brent Wagner is prohibited from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act without first becoming properly registered under the Act.

2. In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent is hereby assessed a civil penalty in the amount of ten thousand dollars (\$10,000). Respondent shall send a certified check or money order in the amount of ten thousand dollars (\$10,000), payable to the Treasurer of the United States, to:

USDA—GIPSA
P.O. Box 790335
St. Louis, MO 63197-9000

The certified check or money order shall include the docket number of this proceeding.

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

Copies of this decision shall be served upon the parties.

March 27, 2012

Peter M. Davenport
Chief Administrative Law Judge