

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0133

In re: Rick Shannon

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 December 21, 2011, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (Complainant), alleging that Respondent Rick Shannon (Respondent) willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.) (Regulations).

On December 22, 2011, a copy of the Complaint was sent to Respondent by certified mail, and was returned to the Hearing Clerk marked “unclaimed” by the U.S. Postal Service. On January 26, 2012, the Hearing Clerk re-mailed the Complaint to Respondent using regular mail. Complainant’s attorney also sent a letter dated January 5, 2012, and a proposed consent decision to Respondent by certified mail. Respondent was informed in the letter that he could file an answer to the Complaint and request a hearing or that he could dispose of the matter by signing the proposed consent decision. The proposed consent decision ordered Respondent to cease and desist from the violations of the Act and the Regulations alleged in the Complaint. The proposed

consent decision also prohibited Respondent from registering to engage in business subject to the Act for a period of 30 days and assessed a civil penalty in the amount of Three Thousand Seven Hundred Fifty Dollars (\$3,750.00). The letter and proposed consent decision were returned to Complainant's attorney marked "unclaimed" by the U.S. Postal Service on February 9, 2012, and were re-mailed to Respondent by regular mail on February 10, 2012.

In a letter dated February 21, 2012, Respondent was advised by the Hearing Clerk that he had not filed an answer within the time allotted by section 1.36 of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.136) (Rules of Practice) and that he would be informed of any further actions taken in this matter. Respondent did not file an answer to the Complaint nor did he respond to the letter and proposed consent decision sent by Complainant's attorney, or the February 21, 2012 letter from the Hearing Clerk.

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. Respondent Rick Shannon is an individual with a mailing address in Blocker, Oklahoma.
2. At all times material to the Complaint, Respondent was:
 - (a) Engaged in the business of a market agency buying livestock in commerce on a commission basis or engaged in the business of a dealer buying livestock in commerce for the account of others;
 - (b) Not registered with the Secretary of Agriculture as a market agency to buy livestock in commerce on a commission basis or a dealer; and

(c) Operating subject to the Act and the Regulations within the jurisdiction of the Secretary.

3. In a Notice of Default letter dated July 8, 2010, and personally served on Respondent by a representative of the Packers and Stockyards (P&S) Program on July 17, 2010, Respondent was informed that the Packers and Stockyards Program had information indicating that Respondent was buying and selling livestock in commerce. Respondent was further informed that because his operations were in commerce, he was subject to the Act and the Regulations. Along with the Notice of Default letter, Respondent was served with copies of the registration, bond, and bond equivalent forms along with the instructions, and was directed in the Notice to Default letter to complete the registration form and the applicable bond or bond equivalent forms and return them to the Western Regional Office. Respondent was further instructed that the amount of bond coverage he must obtain was based on the average amount of livestock he purchased during a period equivalent to two business days, but in no case was to be less than Ten Thousand Dollars (\$10,000.00). Respondent was also informed that if he continued to operate subject to the Act and the Regulations without registering and without obtaining a bond or bond equivalent that a civil or administrative complaint may be filed against him and that he may be subject to civil penalties.

4. Notwithstanding the notice letter, Respondent engaged in the business of a market agency buying livestock in commerce on a commission basis or a dealer buying livestock in commerce for the account of others without filing and maintaining an adequate bond or bond equivalent as required by the Act and the Regulations.

5. Respondent, commencing on or about August 28, 2010, and continuing through December 11, 2010, in 15 transactions on 10 separate days, engaged in the business of a market

agency or a dealer, by purchasing 495 head of livestock totaling approximately \$248,717.90, without filing and maintaining an adequate bond or bond equivalent. Respondent purchased the livestock from MCCS Livestock Inc., d/b/a Leflore County Livestock Auction, Wister Oklahoma, a posted stockyard. Respondent received buyer commission/hauling checks totaling approximately \$4,989.55 for these purchases from the market.

6. In a sworn affidavit signed by Respondent on March 15, 2011, Respondent admitted that a Packers and Stockyards Program representative found him purchasing livestock for other individuals at Leflore County Livestock Auction and Stilwel Livestock Auction. Respondent further admitted in the affidavit that he places all the fees for the services that he provides under “hauling” on the invoices and that he collects a check from the market for these fees. Respondent also admitted in the affidavit that the individuals he buys cattle for pay the market for the cattle and the hauling fee.

7. Respondent, in connection with his operations subject to the Act, failed to keep and maintain records which fully and correctly disclosed all the transactions involved in his business subject to the Act as required by section 401 of the Act (7 U.S.C. § 221). Specifically, Respondent failed to keep and maintain purchase invoices and copies of his buyer commission/hauling checks from the markets.

8. In the sworn affidavit signed by Respondent on March 15, 2011, Respondent admitted that he “do[es] not keep complete records pertaining to [his] buying activities.”

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent 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).

3. Respondent willfully violated section 401 of the Act (7 U.S.C. § 221), by failing to keep and maintain records that fully and correctly disclosed all transactions involved in his business.

Order

1. Respondent Rick Shannon, his agents and employees, directly or through any corporate or other device, in connection with his operations subject to the Act, shall cease and desist from engaging in business in any capacity for which bonding is required under the Act and the Regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the Regulations, and without first becoming properly registered under the Act.

2. Respondent shall keep and maintain accounts, records, and memoranda, which fully and correctly disclose the true nature of all transactions involved in his business subject to the Act as required by section 401 of the Act (7 U.S.C. § 221), including, but not limited to, purchase invoices and copies of his buyer commission/hauling checks from the markets

3. Respondent is prohibited from registering to engage in business subject to the Act for a period of 30 days from the date of issuance of this Order. After the expiration of this 30 day time period, Respondent may submit an application for registration to the Packers and Stockyards Program along with the required bond or bond equivalent. Pursuant to section 303 of the Act (7 U.S.C. § 203), Respondent is prohibited from engaging in business subject to the Act without being registered with the Packers and Stockyards Program.

4. In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent is assessed a civil penalty in the amount of Three Thousand Seven Hundred Fifty Dollars (\$3,750.00).

5. This Decision and Order shall become final and effective without further proceedings thirty-five (35) days after service on Respondent, unless appealed to the Judicial Officer 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 and Order shall be served upon the parties.

April 24, 2012

Peter M. Davenport
Chief Administrative Law Judge