

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

Docket No. 12-0100

In re: GARDEN HALAL MEAT LLC,
MOHAMED CHITAOUI and
FEDAL LAHSANE,

Respondents.

ORDER GRANTING JUDGMENT BY ENTRY OF DEFAULT

On December 9, 2011, the United States Department of Agriculture (“Complainant”) filed a Complaint against Garden Halal Meat LLC, Mohamed Chitaou and Fedal Lahsane, (“Respondents”) under the Packers and Stockyards Act, 7 U.S.C. § 181 et seq. The Hearing Clerk for the Office of Administrative Law Judges (“OALJ”) for the United States Department of Agriculture (“Hearing Clerk”) sent notice of the complaint to Respondents by certified mail on December 9, 2011. No Answer was filed by Respondents.

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (“Rules of Practice”), set forth at 7 C.F.R. § 1.130 et seq., apply to the adjudication of the instant matter. Pursuant to the Rules of Practice, Respondents are required to file an answer within twenty days after the service of a complaint. 7 C.F.R. §1.136(a). Failure to file a timely answer or failure to deny or otherwise respond to an allegation in the Complaint shall be deemed admission of all the material allegations in the Complaint, and default shall be appropriate. 7 C.F.R. § 1.136(c). The Rules provide that Saturdays, Sundays and Federal holidays shall be included in computing the time allowed for filing of any document or paper, except when the time expires on those dates, the period shall be extended to include the next business day. 7 C.F.R. §1.147(h.).

By Order issued March 23, 2012, I Ordered the parties to show cause why default should not be entered pursuant to 7 C.F.R. § 1.136(c). On March 28, 2012, Complainant filed a motion for a Decision on the Record by reason of default. Respondents did not reply within the time permitted pursuant to 7 C.F.R. § 1.143. However, on April 24, 2012, Respondents, through counsel, filed an objection to the entry of Decision by reason of default and an Answer to the Complaint. Respondents attributed the delay in filing an Answer to the Complaint, and by implication, to my Order of March 23, 2012, on difficulty obtaining counsel.

Despite Respondents' contentions, I find it appropriate to GRANT Complainant's motion. Respondents did not file a motion to extend the time within which to file an Answer to the Complaint or my Order, or in any other way, timely respond to the Complaint. Nor do I find grounds to apply the doctrine of equitable tolling, which allows for consideration of whether good cause exists to consider pleadings regardless of non-compliance with a time limitation. Equitable tolling is generally reserved for situations "where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the [party] has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass." Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96 (1990).

Pursuant to 7 C.F.R. § 1.136(c) the allegations set forth in the Complaint are deemed admitted, and a Decision by reason of Default is hereby entered.

FINDINGS OF FACT

1. Respondent Garden Halal Meat Market, LLC is a Massachusetts limited liability company with a mailing address of 96A Blackstone Street, Boston, MA 02109.
2. Respondent Garden Halal Meat Market, LLC at all times material herein was:

(a) Engaged in the business of purchasing livestock in commerce for purposes of slaughter; and

(b) A packer within the meaning of and subject to the provisions of the Act.

3. Respondent Mohamed Chitaoui and Respondent Fedal Lahsane are individuals who share the mailing address of Respondent Garden Halal Meat Market, LLC.
4. Respondent Mohamed Chitaoui and Respondent Fedal Lahsane, at all times material herein, collectively owned 100% of Respondent Garden Halal Meat Market, LLC, were members of its board of directors, were responsible for the management, direction, and control of Respondent Garden Halal Meat Market, LLC, and were packers within the meaning of and subject to the provisions of the Act.
5. Respondent Garden Halal Meat Market, LLC, under the direction, management, and control of the Respondents Chitaoui and Lahsane, in connection with its operations subject to the Act, in the transactions set forth below, purchased livestock and failed to pay the full amount of the purchase price for such livestock within the time period required by the Act. As of the date of this Decision and Order, approximately \$49,792.04 remains unpaid for purchases from Shannon Banbury, Westerville, Ohio:, on the following dates, in the following amounts:

230 head in the amount of \$19,695.01 on 11/5/07
195 head in the amount of \$17,568.15 on 11/26/07
137 head in the amount of \$12,245.68 on 12/3/07
184 head in the amount of \$15,558.12 on 11/11/07
110 head in the amount of \$9,521.60 on 11/26/07
165 head in the amount of \$15,687.77 on 11/29/07

The total of the transactions amounted to \$99,276.33 of which \$49,792.04 remains outstanding.

6. Respondent Garden Halal Meat Market, LLC, under the direction, management and control of the Respondents Chitaoui and Lahsane, in connection with its operations subject to the Act, failed to keep and maintain records which fully and correctly disclosed all the transactions involved in its business as a packer as required by section 401 of the Act (7 U.S.C. § 221). Specifically, Respondents failed to keep and maintain corporate records, all purchase invoices, documents permitting the tracing of livestock from purchase through slaughter, and documents permitting the tracing of all payments made for livestock purchases.

CONCLUSIONS OF LAW

1. By reason of the facts set forth in ¶ 5, Respondents have willfully violated sections 202(a) and 409 of the Act (7 U.S.C. §§192(a); 228b).
2. By reason of the facts set forth in ¶ 6, Respondents have failed to keep records as required by section 401 of the Act (7 U.S.C. § 221).

ORDER

Respondent Garden Halal Meat Market, LLC, Respondent Chitaoui, and Respondent Lahsane, their agents and employees, directly or indirectly through any corporate or other device, in connection with their operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to pay, when due, the full purchase price of livestock; and
2. Failing to pay the full purchase price of livestock.

Respondent Garden Halal Meat Market, LLC, Respondent Chitaoui, and Respondent Lahsane, their agents and employees, shall keep such accounts, records, and memoranda that fully and correctly disclose all transactions involved in their business as packer as required by

section 401 of the Act (7 U.S.C. § 221), including but not limited to, all purchase invoices, documents permitting the tracing of livestock from purchase through slaughter, and documents permitting the tracing of all payments made for livestock purchases.

Pursuant to 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 fifteen thousand dollars (\$15,000.00). Within ten (10) days of service of this Decision and Order, the Respondents shall send a certified check or money order, marked with the docket number of this proceeding, in the amount of fifteen thousand dollars (\$15,000.00) payable to the Treasurer of the United States to:

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

This Decision and Order shall become final and effective without further proceedings thirty-five (35) days after the date of service upon the Respondents unless it is appealed to the Judicial Officer by a party to the proceeding pursuant to 7 C.F.R. § 1.145.

The Hearing Clerk shall service copies of this Decision and Order upon the parties and counsel.

So ORDERED this 25th day of April, 2012 at Washington, D.C.

Janice K. Bullard
Administrative Law Judge