

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0184

In re: Gary N. Shifflett, Jr.
d/b/a Nelson Shifflett Livestock,

Respondent

Default Decision and Order

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.), herein referred to as the Act, instituted by a Complaint filed on January 19, 2012 by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that Gary N. Shifflett, Jr. d.b.a. Nelson Shifflett Livestock, herein referred to as Respondent, willfully violated the Act.

The Complaint and a copy of the Rules of Practice were served upon Respondent on February 14, 2012 pursuant to section 1.147 of the Rules of Practice. 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.

As Respondent failed to file an Answer within the time period prescribed by the Rules of Practice (7 C.F.R. § 1.136), 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. The Respondent, Gary N. Shifflett, Jr. d.b.a. Nelson Shifflett Livestock, is an individual residing in Grottoes, Virginia.
2. Respondent, at all times material herein, was:
 - (a) Engaged in business as a dealer, buying and selling livestock in commerce for his own account; and
 - (b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for its own account.
3. On or about the dates and in the transactions set forth set forth in Appendix A attached to the Complaint herein, Respondent both failed to pay the full purchase price of such livestock and failed to pay, when due, for such livestock purchases.
4. On or about the dates and in the transactions set forth in Appendix B attached to the Complaint herein, Respondent issued a check in partial payment for livestock purchases which was returned by the bank upon which it was drawn; this check was returned because Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the check was drawn to pay such check when presented.
5. As of the date of the filing of this Decision, Respondent continues to owe South Branch Valley Livestock in the amount of \$12,834.28 for livestock purchases.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Respondent willfully violated sections 312(a) and 409 of the Act, 7 U.S.C. § 213(a) and 228.

Order

1. Respondent, his agents and employees, directly or through any corporate or other device, in connection with activities subject to the Act, shall cease and desist from:
 - a) failing to pay the full purchase of livestock as required by section 409 of the Act (7 U.S.C. §228b);
 - b) failing to pay, when due, the full purchase of livestock as required by section 409 of the Act (7 U.S.C. §228b); and
 - c) issuing checks in payment for livestock purchases with insufficient funds in violation of section 409 of the Act (7 U.S.C. §228b).
2. Respondent is assessed a civil penalty of \$35,834.28.
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 and Order shall be served upon the parties.

May 18, 2012

Peter M. Davenport
Chief Administrative Law Judge