

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0144

In re: Nick Pesetsky and,
Pesetsky Land and Cattle, LLC,

Respondents

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 December 22, 2011 by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that Nick Pesetsky and Pesetsky Land and Cattle, LLC, herein referred to as Respondents, willfully violated the Act.

The Complaint and a copy of the Rules of Practice were served upon Respondents on February 28, 2012 pursuant to section 1.147 of the Rules of Practice. Respondents were 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 Respondents failed to file an Answer within the time period prescribed by the Rules of Practice (7 C.F.R. § 1.136), the following Finding 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 Nick Pesetsky is an individual who resides in the State of Oklahoma and who is the 100% owner of Respondent Pesetsky Land and Cattle, LLC, a corporation organized and existing under the laws of the state of Oklahoma.

2. Respondents, at all times material herein, were:

(a) Engaged in business as a dealer buying and selling livestock in commerce for its own account; and

(b) Not registered, as required, as a dealer to buy and sell livestock in commerce on a commission basis, with the Secretary of Agriculture.

3. On or about the dates and in the transactions set forth set forth in Appendix A, Respondents 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, Respondents engaged in the business of a dealer without maintaining an adequate bond or bond equivalent.

5. As of the date of the issuance of this Decision, Respondents continue to owe livestock sellers as follows:

(a) Respondents owe Decatur Livestock Auction in the amount of \$97,424.88;

(b) Respondents owe Stilwell Livestock Auction in the amount of \$74,315.36;

(c) Respondents owe Benton County Sale Barn in the amount of \$26,621.35.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Respondents willfully violated Sections 312(a) of the Act, 7 U.S.C. §213(a), and Section 201.29 of the Regulations, 9 C.F.R. §201.29.

Order

1. Respondents, their 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) engaging in the business of a dealer without maintaining an adequate bond or bond equivalent (9 C.F.R § 201.29).

2. Respondents are assessed a civil penalty of \$33,000.00.

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.

June 19, 2012

Peter M. Davenport
Chief Administrative Law Judge