

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY

Docket No. 12-0034

In re:

MICHAEL T. GODBERSON,

Respondent.

**DECISION AND ORDER ON THE RECORD**

I. INTRODUCTION

This matter is before me pursuant to a complaint filed by Complainant United States Department of Agriculture (“USDA”; “Complainant”) against Michael T. Godberson (“Respondent”), alleging violations of the Packers and Stockyards Act of 1921, as amended, 7 U.S.C. § 181 et seq. (“the Act”). The Complaint alleges that Respondent failed to comply with the Act and its implementing regulations, administered by the Packers and Stockyards Program, Grain Inspection Service, Packers and Stockyards Administration (“GIPSA”).

II. ISSUES

1. Whether a hearing is necessary in this matter;
2. Whether Respondent failed to timely pay sellers for the purchase of livestock in willful violation of the Act;
3. Whether Respondent failed to register with GIPSA;
4. Whether Respondent operated as a “dealer” subject to the Act without a bond; and
5. If Respondent willfully violated the Act, whether the sanctions recommended by Complainant should be imposed.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### A. Procedural History

On October 19, 2011, Complainant filed a complaint against Respondent with the Hearing Clerk for the Office of Administrative Law Judges (“OALJ”; “Hearing Clerk”). On November 8, 2011, Respondent filed an Answer with the Hearing Clerk, acting *pro se*. References to the Answer in this Decision and Order shall be denoted as “RX-1”. On April 2, 2012, I issued an Order setting deadlines for the parties’ submissions in advance of setting a hearing date.

On May 7, 2012, Complainant timely filed pre-hearing submissions in accordance with my Order. Respondent did not file any pre-hearing submissions, and on July 5, 2012, I issued an Order to Respondent to show cause why a Decision and Order on the Record should not be entered. Respondent did not respond in writing as directed. On July 25, 2012, Complainant filed Proposed Findings of Fact, Conclusions of Law, Order and Brief (“Proposed Findings”), as well as evidence hereby identified as CX-1 through CX-7. On that date Complainant also filed Declarations by Justin K. Ham and Peter Jackson, which are hereby identified respectively as CX-8 and CX-9.

On August 21, 2012, Respondent filed correspondence, hereby identified as RX-2. Respondent asked for “additional time”, asserting that he did not know that he was expected “to respond unless [he] had a dispute to [Complainant’s] evidence” and expressing concern about Complainant’s request for a cease and desist Order and the imposition of penalties. Respondent also asked for help in understanding this matter.

I find that no good cause has been established to allow additional time to Respondent to file any evidence. Respondent did not deny any aspect of the allegations charged against him in the complaint. Respondent's initial answer stated in the entirety, verbatim:

I Mike Godberson am writing this response in regards to docket #12-0034. I have been inactive in my position as a livestock dealer since Dec. 2010. Cattle purchased in 2010 for grazing purposes. I am auctioneer at two auction barns currently and I graze cattle and pre-condition cattle with a partner. Thank you, Mike Godberson (signature).

RX-1. Respondent failed to file submissions in response to two Orders that I issued. Although it is regrettable that Respondent does not completely understand the instant proceeding, he has had since the date he was served notice of the Complaint, in October 2011, to consult counsel or another knowledgeable individual to help him. Respondent took no action to get help and he did not comply with two Orders that I issued that directed him to take actions. Accordingly, his motion for an extension is hereby DENIED.

All of the evidence is hereby admitted to the record. The matter is ripe for adjudication and the record is closed.

B. Statutory and Regulatory Authority

7 C.F.R. § 1.1.39 provides, in pertinent part:

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 day after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing...

7 C.F.R. § 1.1.39.

Livestock dealers, market agencies and packers operating subject to the Act are required to obtain reasonable bonds to secure their obligations to livestock sellers. 7 U.S.C. § 704. The Secretary has issued regulations requiring parties subject to the bond requirements to file bonds or bond equivalents with GIPSA, in an amount set forth by 9 C.F.R. § 201.30. See, 9 C.F.R. § 201.29.

Livestock buyers are required to make prompt payment for livestock purchases that are governed by the Act. 7 U.S.C. § 228(b). Specifically, livestock buyers must make full payment to the seller's account by the close of the next business day following the purchase and transfer of possession of livestock by paying by check to the seller or authorized representative at the point where the livestock is transferred or by paying through a wire transfer. Id. The deadline for making payment in full by the next business day can only be circumvented by express written agreement between the buyer and the seller. Id. Failing to pay for livestock purchases when due, as established by the Act, is considered an unfair and deceptive practice that violates 7 U.S.C. § 192(a).

The Act allows for the assessment of civil money penalties in an amount of up to \$11,000.00 per violation for violations of the Act. 7 U.S.C. § 193(b). Cease and desist orders are routinely issued in cases under the Act even where the violator is no longer engaged in business regulated by the Act and regulations. In re: Wilkes County Stock Yard, Inc., 48 Agric. Dec. 1015, 1025 (1989).

### C. Summary of the Facts

On August 23, 2007, GIPSA notified Respondent by certified mail that the agency had placed his registration in inactive status, effective August 22, 2007, based upon information provided by Respondent in the annual report he had filed with GIPSA on December 21, 2006.

CX-1. Respondent was advised that he was no longer required to maintain Trust Agreement No. OK-183 in the amount of \$10,000.00; however, if he decided to operate under the Act in the future, he would need to apply for a registration and a bond or its equivalent. CX-1.

An investigation conducted by GIPSA Resident Agent Justin Ham (“Agent Ham”) in September, 2010 revealed that Respondent had been dealing in livestock without a bond and had outstanding debts to livestock sellers. CX-8. Agent Ham’s investigation concluded that Respondent consistently failed to pay for livestock purchases when payment was due. CX 6 through CX-8. The owner of Ouachita Livestock Market, Mark Wedel, confirmed that Respondent regularly bought livestock on commission at that market. CX-2. Sales invoices and other documents from the period from February 2010 through September 2010 reflect that Respondent had purchased livestock on commission at Ouachita Livestock Market and sold livestock at other auction markets. CX-4 through CX-7. The chart at CX-6 shows seventeen (17) instances of Respondent’s failure to timely pay for purchases during this period. See, Attachment “A”, hereto.

In a statement given to Agent Ham on September 10, 2010, Respondent Godberson admitted that he had been operating without a dealers’ license or a bonding instrument when he purchased cattle at Ouachita Livestock in Louisiana and Covington Sale Barn in Oklahoma. CX-3. Respondent admitted that he owed Darrel Clark of Welch Stockyard approximately \$7,000.00. Id. In his Answer, Respondent advised that he has not actively engaged in livestock dealing since December, 2010, but has purchased cattle for his own use. RX-1. Respondent’s answer did not address the issues of registration with GIPSA or failing to secure a bond or equivalent.

Peter Jackson is an auditor for GIPSA, who gave a declaration dated July 25, 2012, in which he described his duties reviewing investigative files. CX-9, ¶1. Mr. Jackson reviews between 40 and 60 investigative files annually and makes recommendations regarding the type and amount, if any, of sanctions that GIPSA should impose in those cases. Id. Mr. Jackson reviewed the circumstances involved in the instant cause of action and concluded that Respondent willfully violated the Act by failing to pay within the time period required for livestock purchases. In addition, it was found that Respondent operated under the Act without a bond or equivalent financial security. Mr. Jackson recommended that a civil penalty of \$42,250.00 be assessed against Respondent and that Respondent be Ordered to cease and desist violations of the Act. He further recommended the imposition of a thirty (30) day period of prohibition from registering to engage in business subject to the Act.

#### Discussion

Respondent has failed to file affirmative defenses denying the allegations raised by the Complaint served against him. Respondent did not respond to my Order to show cause why a Decision on the record should not be entered. He filed a letter in response to Complainant's Proposed Findings, in which he stated that he was uncertain what to do about the case, but was concerned about the recommended sanction. In a statement given to APHIS' investigator, Respondent admitted that he did not timely pay people or have proper bonds. I find that Respondent Michael Godberson has admitted the allegations underlying this cause of action, and therefore good cause lies to issue this Decision and Order on the record, pursuant to 7 C.F.R. §1.139.

The record is undisputed that Respondent engaged in activities regulated under the Act without the requisite bond or equivalent required by 9 C.F.R. § 201.29. The requirement to

obtain a bond or equivalent surety is to protect livestock sellers, not buyers. In re: Edward Tiemann, 47 Agric. Dec. 1573, 1585 (1988). Respondent had specific notice from GIPSA by certified mail on August 23, 2007 that he would need to file an application for registration with GIPSA and secure a bond or equivalent if he once again engaged in transactions covered by the Act. Respondent admitted to GIPSA Investigator Ham that he had operated under the Act without a dealers' license or a bonding instrument when he purchased cattle at Ouachita Livestock. His activities were corroborated by owners of auction markets where Respondent bought livestock on commission without a bond after receiving the notice explaining terms of compliance with the Act.

Respondent's failure to obtain a bond or other financial instrument to act as surety while continuing to buy livestock on commission constitutes an unfair and deceptive practice that violates 7 U.S.C. § 312(a). See, In re: Robert F. John, 47 Agric. Dec. 436, 441 (1998). Further, Respondent has failed to register with the agency. These actions constitute willful violations of the Act. GIPSA's recommended sanctions are appropriate for Respondent's willful violations of the Act. See, In re: Wilkes County Stock Yard, Inc., 48 Agric. Dec. 1015, 1025 (1989).

In addition, the record establishes that Respondent failed to make timely payments for livestock purchases as required by the Act and prevailing regulations. Mr. Godberson admitted to Agent Ham that he owed people money, and records of transactions at various livestock auctions corroborate that admission. I accord substantial weight to the findings of Agent Ham, who regularly conducts investigations involving compliance with the Act. I conclude that the information he reviewed established that Respondent acted in violations of the Act.

The Secretary has concluded that the failure to pay the full amount of the purchase price within the time period required by the Act constitutes an unfair and deceptive practice in willful

violation of the Act. In re: Great American Veal, Inc., 48 Agric. Dec. 183, 202-203 (1989). The Secretary further has concluded that a Respondent who admits to the allegations in a complaint is in willful violation of the Act, even if the violation was the result of circumstances beyond the control of Respondents. In re: Hardin County Stockyards, Inc., 53 Agric. Dec. 654, 656 (1994). Although Respondent did not make any overt admission in his filings regarding the instant adjudication, he admitted to an official representing GIPSA that he had failed to fully pay for purchases that were subject to the Act.

I find that Respondent willfully violated the Act by failing to make payments when due. Respondent withheld payments in a number of actions, and I find that his practice of making partial and late payments constitutes substantial evidence of willfulness. I note that in his filed correspondence, Respondent has made statements that are not entirely supported by the evidence. Respondent maintained that he has not operated as a dealer subject to the Act since 2010, and moreover asserted that livestock purchases he made in 2010 were for his use. However, the evidence disclosed by Agent Ham's investigation demonstrates that Respondent acted as a dealer from February 2010 through September 2010.

I credit Mr. Jackson's recommendations for sanctions, but note that Mr. Jackson's statements supporting his proposal for a civil money penalty in the amount of \$42,450.00 are conclusory. Although similar penalties have been assessed in other cases, the imposition of sanctions in each case should be considered with the purpose of effectuating the remedial purposes of the Act. See, In re: S.S. Farms Linn County, 50 Agric. Dec. 476 (1991). The recommendations of administrative officials responsible for enforcing a statute are entitled to great weight, but are not controlling, and the sanction imposed may be considerably less or different from that recommended. In re: Marilyn Shepherd, 57 Agric. Dec. 242 (1998).

Mr. Jackson's rationale for recommending such a severe penalty is that it will serve as a deterrent. I find that it is not necessary to impose such a burdensome penalty to effectuate that goal. Although Respondent has made seemingly contradictory statements about his business activities in 2010, I accord Respondent the benefit of the doubt and conclude that he stopped operated as a dealer after September 2010, and purchases made thereafter were for his own use. Therefore, I find it appropriate to suspend imposition of the recommended penalty of \$42,250.00 until such time as Respondent may once again engage in conduct that violates the Act.

Since Respondent engaged in activities that violated the Act despite having notice of requirements for compliance, it is appropriate to Order him to cease and desist violating the Act and regulations. His conduct also supports the imposition of a specific period prohibiting him from engaging in covered activity. Respondent shall be suspended from registering as a dealer under the Act for a period of thirty (30) days from the date this Decision and Order becomes final.

Further, should Respondent wish to engage in conduct covered by the Act at any time in the future, he must complete the terms of registration with GIPSA. He shall also need to substantiate that he has secured a bond or equivalent financial instrument at that time. In addition, he must establish that he has made full payment to the sellers of livestock who received only partial payments from Respondent in the transactions documented herein.

#### D. Findings of Fact

1. Respondent Michael Godberson is an individual whose business address is his home address in the State of Oklahoma.

2. At times material herein, Respondent was engaged in the business of buying livestock in commerce on a commission basis, and was not registered with GIPSA.
3. On or about August 23, 2007, Respondent was notified by certified mail that GIPSA had placed his registration in inactive status as of August 22, 2007, pursuant to information gleaned from Respondent's annual report filed with GIPSA on December 21, 2006.
4. Respondent was also advised that since he was no longer active, he did not need to maintain Trust Agreement No. OK-183 in the amount of \$10,000.00.
5. Respondent was further advised that if he decided to engage in activities subject to the Act in the future, he would be required to file an application for registration and a bond or its equivalent with GIPSA.
6. An investigation conducted by GIPSA disclosed that Respondent had engaged in the business of a dealer without a bond or equivalent during the period from February 2010 through September 2010. See, Attachment "A".
7. In addition, with respect to the transactions that he undertook in that period, Respondent failed to pay when due the full purchase price of livestock. See, Attachment "A".

E. Conclusions of Law

1. Respondent Michael Godberson willfully violated 7 U.S.C. § 213(a) and 9 C.F.R. §§ 201.29, 201.30, by engaging in operations subject to the Act without maintaining an adequate bond or bond equivalent.
2. Respondent Michael Godberson operated in willful violation of the Act and its implementing regulations by failing to register with the Secretary of Agriculture, pursuant to 9 C.F.R. § 201.10.

3. Respondent Michael Godberson operated in willful violation of the Act and its implementing regulations by failing to register with the Secretary of Agriculture.
4. Respondents willfully violated 7 U.S.C. § 213(a) and 228b(a) by failing to pay the full amount of the purchase price for livestock within the time period required by the Act.
5. Sanctions are appropriate to deter Respondent and others from willfully failing to register; from willfully failing to secure a bond or equivalent; and from willfully failing to make prompt payments as required by the Act and regulations..

#### ORDER

Respondent Michael Godberson, his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall cease and desist from engaging in business in any capacity for which bonding is required without filing and maintaining an adequate bond or its equivalent as required by the Act and prevailing regulations..

Further, Respondent is prohibited from registering to engage in business subject to the Act for a period of thirty (30) days from the date this Order becomes final. Pursuant to 7 U.S.C. § 203, Respondent is prohibited from engaging in business subject to the Act without being registered with GIPSA and acquiring proper bond or equivalent.

After expiration of this thirty (30) day period, Respondent may engage in business subject to the Act after submitting an application for registration to GIPSA along with the required bond or bond equivalent; EXCEPT that Respondent shall not be registered unless he provides proof of payment in full to any seller of livestock who did not receive full payment in the transactions that are the subject of this adjudication.

Pursuant to 7 U.S.C. § 213(b), Respondent is assessed a civil penalty in the amount of \$42,250.00, EXCEPT that payment of that penalty is suspended for so long as Respondent remains in compliance with the Act and prevailing regulations. Should Respondent engage in activities covered by the Act without fulfilling the obligations set forth by this Order, the penalty shall become immediately due.

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 for the U.S. Department of Agriculture by a party to the proceeding within thirty (30) days after service, pursuant to 7 C.F.R. §§ 1.139, 1.145.

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

So ORDERED this 30th day of August, 2012 in Washington, D.C.

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Janice K. Bullard  
Administrative Law Judge