

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0169

In re: Bruce Medley d/b/a
B & M Livestock,

Respondent

Decision and Order

Preliminary Statement

This is a disciplinary proceeding brought pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*; hereinafter “Act”) and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 - 1.151; hereinafter “Rules of Practice”). Complainant, the Deputy Administrator, Grain Inspection, Packers and Stockyards Program, initiated this proceeding against Respondent Bruce Medley, doing business as B & M Livestock, (hereinafter “Respondent”) by filing a disciplinary complaint on January 10, 2012.

Copies of the Complaint and the Rules of Practices were served upon Respondent by certified mail. The Complaint alleged that Respondent failed to pay the full amount of the purchase price for livestock within the time period required by the Act, with the total amount remaining unpaid of \$59,610.47¹ as of January 10, 2012, in willful violation of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

On February 7, 2012, Respondent filed an Answer that admitted the jurisdictional allegations of the Complaint. (*See* Answer ¶¶ I, II.) The Answer also admitted the purchase of

¹ The Complainant later updated the alleged unpaid amount to \$43,555.66 owed to Peoples Stockyards.

livestock from Peoples Stockyards and Browing's Livestock Market. (Answer ¶ II(a).) However, the Answer did not admit or deny that Respondent continued to owe money for such livestock purchases. The Answer also denied that the failure to make payments to the sellers of the livestock was a willful violation of the Act.

During a conference call with Chief Administrative Law Judge Davenport on October 17, 2012, the parties agreed that there were no material facts in dispute, no hearing was necessary, and that the only issues to be resolved are whether Respondent acted willfully and what sanction would be appropriate. On October 25, 2012, the parties filed a Joint Stipulation Regarding Admissible Documentary Evidence, Facts, and Legal Conclusions. In the Joint Stipulation, the parties stipulated that Complainant's exhibits CX-1 through CX-21, which were pre-marked and exchanged, are admissible evidence and may be submitted into the record of this proceeding by Complainant. The parties also stipulated to the jurisdictional facts in the complaint and to the factual conclusions that Respondent failed to pay, when due, for all twelve livestock purchases stated in the complaint that there remains an unpaid balance to Peoples Stockyards for such livestock purchases. The parties further stipulated to the legal conclusions that Respondent violated sections 312(a) and 409 of the act for failing to pay and failing to pay, when due, the full purchase price for the livestock transactions listed in the Complaint. The parties agreed that the only remaining issues to be addressed are whether Respondent acted willfully and what sanction is appropriate under the Act. On November 15, 2012, Complainant filed a Motion for Decision without a Hearing, setting forth its position concerning the unresolved issues.

It is well-established that failing to make full payment for livestock purchases is a serious violation of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b). *E.g., In re Hines and Thurn Feedlot, Inc.*, 57 Agric Dec. 1408, 1428-29 (1998); *In re Syracuse Sales Co.*, 52 Agric.

Dec. 1511, 1524 (1993); *In re Palmer*, 50 Agric. Dec. 1762, 1772-73 (1991); *In re Hennessey*, 48 Agric. Dec. 320, 324 (1989), *In re Garver*, 45 Agric. Dec. 1090, 1094-95 (1986), *aff'd sub nom. Garver v. United States*, 846 F.2d 1029 (6th Cir. 1988), *cert. denied* 488 U.S. 820 (1988). Respondent has admitted that all twelve of the livestock purchases listed in the Complaint were not paid when due in accordance with the requirements of the Act, and Respondent has not raised a valid defense to the late payments. Respondent has also admitted that there remains an unpaid balance to Peoples Stockyards for such livestock purchases. Because Respondent has admitted that he has failed to pay, when due, for the livestock he purchased from Peoples Stockyards and Browning's Livestock Market, Respondent's actions are deemed to be unfair and deceptive practices in violation of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

Respondent's actions are also willful. A violation is willful under the Administrative Procedure Act (5 U.S.C. §558(c)) "if a prohibited act is done intentionally, irrespective of evil intent, or done with a careless disregard of statutory requirements." *In re Marysville Enterprises, Inc.*, 59 Agric. Dec. 299, 309 & n.5 (2000). In other words, "a violation is willful if a prohibited act is done intentionally, regardless of the violator's intent in committing those acts." *Hines and Thurn, supra* at 1414. Here, willfulness is established because of Respondent's decades of experience in the business, his violations of express provisions of the Act, the six-month span during which Respondent committed the violations, the number of Respondent's violative transactions, and the prior notice Respondent received in writing of the violations with opportunity to demonstrate or achieve compliance. *In re: Jeff Palmer*, 50 Agric. Dec. 1762, 1780 (1991).

The sanction policy of the Department is "to impose severe sanctions for violations of any of the regulatory programs administered by the Department that are repeated or that are

regarded . . . as serious, in order to serve as an effective deterrent not only to the Respondents but to other potential violators as well.” *In re Wooten*, 58 Agric. Dec. 944, 980 (1999); *see also Garver, supra* at 1100. In this case, Respondent has failed to pay, when due, two different markets on multiple occasions, and he still owes Peoples Stockyards \$43,555.66, making these violations both serious and repeated. When livestock sellers, such as Respondent, do not make full payment for their livestock purchases, the sellers are forced to finance the transaction. *See Van Wyk v. Bergland*, 570 F.2d 701, 704 (8th Cir. 1978); *In re Powell*, 46 Agric. Dec. 49, 53 (1985).

Complainant’s recommendation that Respondent be ordered to cease and desist from violating the Act and suspended as a registrant under the Act for five years is consistent with the sanctions regularly imposed in other cases involving failure to pay for livestock. *E.g., Marysville Enterprises, supra* at 321 & n.14, 323; *Hines and Thurn, supra* at 1429 & n.9.² The requested civil penalty is warranted, based on the circumstances this case, *In re: Middlebury Packing Co.*, 53 Agric. Dec. 639, 652 (1993). *Id.* The order and sanctions requested by Complainant are necessary to deter future violations and to prevent Respondent from continuing to purchase livestock while he is bankrupt and unable to pay for his purchases. *In re Holmes*, 62 Agric. Dec. 254, 259 (2003).

Findings of Fact

1. Respondent Bruce Medley, doing business as B & M Livestock, is an individual whose mailing address is in the State of Tennessee.
2. Respondent is and, at all times material herein, was:
 - (a) Engaged in the business of buying and selling livestock in commerce as a

² In determining the sanction, “appropriate weight” is to be given to the sanction “recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.” *In re S.S. Farms Linn County, Inc.*, 50 Agric Dec. 476, 497 (1991); *see also Marysville Enterprises, supra* at 318.

dealer for his own account;

- (b) Engaged in the business of a market agency buying livestock in commerce on a commission basis;
- (c) Registered with the Secretary of Agriculture as a livestock dealer to buy and sell livestock in commerce for his own account and as a market agency to buy livestock in commerce on a commission basis.

3. The amounts alleged not paid when due by Complainant and admitted not paid when due by Respondent are as follows:

Purchase Date	Seller	Purchase Amount
9/7/10	Peoples Stockyards	\$6,689.30
10/12/10	Peoples Stockyards	\$3,831.20
10/19/10	Peoples Stockyards	\$4,759.60
10/26/10	Peoples Stockyards	\$5,021.45
11/9/10	Peoples Stockyards	\$3,784.60
11/16/10	Peoples Stockyards	\$4,768.01
11/23/10	Peoples Stockyards	\$8,042.90
11/30/10	Peoples Stockyards	\$6,658.60
1/19/11	Browning's Livestock Market	\$12,016.45
2/2/11	Browning's Livestock Market	\$7,813.62
2/16/11	Browning's Livestock Market	\$9,569.06
3/2/11	Browning's Livestock Market	\$3,474.63

4. Respondent continues to owe \$43,555.66 to Peoples Stockyards for the purchases listed above.

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), 228b).

Order

1. Respondent Bruce Medley, doing business as B & M livestock, his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Act, shall cease and desist from failing to pay and failing to pay, when due, the full amount of the purchase price for livestock in accordance with the Act or in accordance with the terms of a credit agreement that complies with the requirements of the Act.

2. Respondent is hereby suspended as a registrant under the Act for a period of five (5) years and continuing thereafter until he demonstrates to the Packers and Stockyards Program that he is in full compliance with the Act and the regulations promulgated thereunder, including payment of the civil penalty.

3. Respondent is assessed a civil penalty of \$20,000. The civil penalty will become due and payable 365 days after the effective date of this Order. At Respondent's option, the civil penalty amount will be offset dollar-for-dollar by restitution payments to Peoples Stockyards. The civil penalty payment and proof of any offsetting restitution payments to Peoples Stockyards should be sent to S. Brett Offutt, Director of Policy and Litigation Division, Packers and Stockyards Program at the following address: 1400 Independence Ave., Washington, DC 20250-3646. Proof of restitution payments may include, but would not be limited to, a statement from the bank holding an account created by Respondent to pay Peoples Stockyards or an affidavit or declaration from Respondent or an administrator tasked with managing payments to Peoples Stockyards. Such statement, affidavit, or declaration should reflect the seller's name (Peoples Stockyards), the payment check numbers, the check amounts, and the dates that each check was cashed. The Packers and Stockyards Program shall have the option of verifying any restitution

payments claimed by Respondent and Respondent shall provide and execute any necessary document or release to allow such verification.

4. This Decision and Order shall become final 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.

January 30, 2013

Peter M. Davenport
Chief Administrative Law Judge