

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0007

In re: James Emanuel Mowery
Respondent

Default Decision and Order

Preliminary Statement

This disciplinary proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181 et seq.) (Act), by a Complaint filed on October 1, 2012, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (Complainant), alleging that Respondent James Emanuel Mowery (Respondent) willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. §§ 201.1 et seq.) (Regulations).

On October 3, 2012, a copy of the Complaint was sent to Respondent by certified mail, and was returned to the Hearing Clerk marked “unclaimed” by the U.S. Postal Service. On November 20, 2012, the Hearing Clerk re-mailed the Complaint to Respondent using regular mail. Complainant’s attorney also sent a letter dated October 15, 2012 and a proposed Consent Decision to Respondent by certified mail. Respondent was informed in the letter that he could file an answer to the Complaint and request a hearing or that he could dispose of the matter by signing the proposed Consent Decision. The letter and proposed Consent Decision were also returned to Complainant’s attorney marked “unclaimed” by the U.S. Postal Service and were re-mailed to Respondent by regular mail on November 28, 2012.

In a letter dated December 14, 2012, Respondent was advised by the Hearing Clerk that he had not filed an answer within the time allotted by section 1.136 of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.136) (Rules of Practice) and that he would be informed of the proceedings in this matter. Respondent failed to file an Answer to the Complaint, and failed to respond to the December 14, 2012 letter from the Hearing Clerk or the letter and proposed Consent Decision sent by Complainant's attorney.

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. Respondent James Emanuel Mowery is an individual with a mailing address in Georgetown, Tennessee.
2. The Respondent is, and at all times material to the Complaint was:
 - (a) Engaged in the business of a dealer buying and selling livestock in commerce for his own account;
 - (b) Engaged in the business of a market agency buying livestock in commerce on a commission basis; and
 - (c) Registered with the Secretary of Agriculture as a dealer buying and selling livestock in commerce for his own account and as a market agency buying livestock in commerce on a commission basis until November 18, 2011, when Respondent was informed that his registration had expired pursuant to section 201.10(e) of the Regulations (9 C.F.R. § 201.10(e)) for failure to file his 2010

Annual Report of Dealer or Market Agency Buying on Commission. Respondent is not currently registered.

3. On August 17, 2009, a Decision Without Hearing By Reason of Default (Default Decision) was issued against Respondent in In re: James Emanuel Mowery, P&S Docket No. D-09-0093. The Default Decision became final and effective on October 30, 2009. The Default Decision ordered Respondent to cease and desist from engaging in business in any capacity for which bonding is required under the Act and the Regulations without filing and maintaining an adequate bond or bond equivalent as required by the Act and the Regulations.

4. In 2010 and part of 2011, Respondent was registered with the Secretary of Agriculture to engage in the business of a dealer buying and selling livestock in commerce and as a market agency buying livestock in commerce on a commission basis. Respondent failed to file a complete 2010 Annual Report of Dealer or Market Agency Buying on Commission by the due date of April 18, 2011. In a Notice of Default Annual Report letter dated September 7, 2011, and served on Respondent on September 13, 2011, the Packers and Stockyards Program (P&S Program) informed Respondent that page 3 of his 2010 Annual Report needed to be completed and signed by a registered officer. The P&S Program further informed Respondent that a correct and complete annual report was required to prevent his registration from expiring. Respondent still did not file a complete 2010 Annual Report and in a Registration Expiration Notice Letter dated November 16, 2011, and served on Respondent on November 18, 2011, the Atlanta, Georgia Regional Office of the P&S Program informed Respondent that his failure to file a complete 2010 Annual Report resulted in the expiration of his registration. The Atlanta, Georgia Regional Office also informed Respondent of his obligation to file a new application for registration and to submit the delinquent annual report if he wished to continue operating as a

dealer or market agency and that engaging in business in any capacity that is subject to the Act without complying with the registration provisions of the Act could subject him to disciplinary action. Respondent did not file a complete 2010 Annual Report until July 11, 2012, when he personally provided his 2010 Annual Report to a P&S Program representative.

5. In a letter dated March 10, 2010, and served on Respondent on March 18, 2010, the Atlanta, Georgia Regional Office of the P&S Program informed Respondent that his surety bond would expire on April 7, 2010, and that unless he obtained a new bond or bond equivalent on or before that date, he must discontinue all livestock operations for which bonding is required under the Act. The Atlanta, Georgia Regional Office further informed Respondent that operating as a dealer or market agency without an adequate bond or bond equivalent is a violation of section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.29 of the Regulations (9 C.F.R. § 201.29) and could subject him to disciplinary action.

6. Respondent filed a new Letter of Credit in the amount of \$15,000 on July 28, 2010. The effective date of the bond equivalent was June 25, 2010.

7. In a Notice of Default Registration/Bonding letter dated September 3, 2010, and served on Respondent on September 7, 2010, the Atlanta, Georgia Regional Office of the P&S Program informed Respondent that he needed to increase his bond coverage from \$15,000 to \$55,000. On February 3, 2011, a P&S Program representative called Respondent and informed him that the Atlanta, Georgia Regional Office had recalculated his bond and that Respondent only needed to increase the bond from \$15,000 to \$20,000.

8. After the Atlanta, Georgia Regional Office made repeated unsuccessful attempts to inform Respondent by letter that the Letter of Credit he maintained in connection with his Trust Agreement would expire on June 25, 2011, a P&S Program representative called Respondent on

June 24, 2011, and informed him that he must cease all livestock operations subject to the Act until he obtained a new Letter of Credit in the amount of \$20,000.

9. On July 25, 2011, a P&S Program representative spoke with Respondent while he was attending a sale at Athens Stockyard in Athens, Tennessee and reminded Respondent that he still needed to increase his Letter of Credit to \$20,000.

10. Respondent filed a new Trust Fund Agreement and Letter of Credit in the amount of \$15,000 on July 26, 2011. The effective date of the bond equivalent was July 25, 2011.

11. In a letter dated June 25, 2012, and served on Respondent on August 8, 2012, the Atlanta, Georgia Regional Office of the P&S Program informed Respondent that the Letter of Credit he maintained in connection with his Trust Agreement would expire on July 25, 2012, and that unless he obtained a replacement Letter of Credit, new bond, or bond equivalent on or before that date, he must discontinue all livestock operations for which bonding is required under the Act and the Regulations. The Atlanta, Georgia Regional Office of the P&S Program further informed Respondent that continuing livestock operations without filing an adequate bond or bond equivalent is a violation of section 312(a) of the Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30) and could subject him to disciplinary action.

12. On July 12, 2012, Respondent filed a new application for registration. On July 25, 2012, Respondent's Letter of Credit expired. On October 23, 2012, SouthEast Bank & Trust, the bank that held Respondent's Letter of Credit, faxed a request to the P&S Program to terminate Respondent's Trust Agreement because it had decided to neither renew nor replace the expired Letter of Credit. Accordingly, on October 25, 2012, the P&S Program sent a letter to Respondent informing him that his Trust Agreement would terminate on November 21, 2012,

and that he must discontinue all livestock operations for which bonding is required under the Act. On November 7, 2012, SouthEast Bank & Trust faxed a letter to the P&S Program informing the P&S Program that it had extended Respondent's \$15,000 Letter of Credit from July 25, 2012 through July 25, 2013. Accordingly, on November 14, 2012, the P&S Program sent a letter to SouthEast Bank & Trust acknowledging receipt of the Letter of Credit renewal and reinstatement of the Trust Agreement. As of the date of this filing, Respondent has not increased the Letter of Credit to \$20,000 nor has Respondent's application for registration been accepted.

13. Respondent, in the transaction set forth below, purchased livestock as a dealer at Crossville Stockyard, LLC, Crossville, Tennessee, a posted stockyard, and issued a check in payment for the livestock purchase, which check was returned unpaid by the bank upon which it was drawn because Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the check was drawn to pay the check when presented.

Seller	Purchase Date	Date Payment Due	No. of Head	Livestock Amount	Check No.	NSF Check Amount	Date Check Returned	Date Paid
Crossville Stockyard, LLC	03/10/12	03/12/12	10	\$6,393.11	2127	\$6,393.11	03/22/12	On or between 04/24/12 and 05/01/12 ¹

¹ Crossville Stockyard, LLC filed a bond claim for the \$6,393.11 on April 16, 2012. A P&S Program representative spoke with Respondent on April 24, 2012, and Respondent informed the representative that he would settle the account with the market. Crossville Stockyard, LLC's attorney sent a letter dated May 1, 2012 to the P&S Program informing it that Respondent had paid the outstanding debt. Therefore, payment was made on or between April 24, 2012 and May 1, 2012.

14. Respondent, in connection with his operations subject to the Act, in the transaction described in subparagraph (a) above, purchased livestock and failed to pay, when due, for the livestock purchase. Respondent paid for the livestock between approximately 43 and 50 days late.

15. Respondent, in a signed statement dated July 11, 2012, admitted that he had purchased

livestock at Crossville Stockyard, LLC and that the check he wrote was returned as unpaid because the bank took money out of his checking account for a monthly payment.

16. Respondent, on or about the dates and in the transactions set forth in Appendices B and C to the Complaint, which are attached hereto and incorporated herein by reference, engaged in the business of a dealer and a market agency without maintaining an adequate bond or bond equivalent. The transactions occurred at (1) Athens Stockyard, Athens, Tennessee; (2) East Tennessee Livestock Center, Inc., Sweetwater, Tennessee; and (3) Crossville Stockyard, LLC, Crossville, Tennessee, all posted stockyards. Respondent received commissions totaling approximately \$3,787.28 for these transactions.

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) by issuing an insufficient funds check and failing to pay, when due, for a livestock purchase.
3. Respondent willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30) by operating without an adequate bond or bond equivalent.

Order

1. Respondent James Emanuel Mowery, his agents and employees, directly or through any corporate or other device, in connection with his operations subject to the Act, shall cease and desist from:
 - a. Issuing checks in purported payment of livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which such checks are

drawn to pay such checks when presented;

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

c. Engaging in business in any capacity for which bonding is required under the Act and the Regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the Regulations, and without first becoming properly registered under the Act.

2. Respondent James Emanuel Mowery is prohibited from being registered to engage in any activities for which registration is required under the Act for a period of 30 days. After the expiration of this 30 day time period, Respondent may submit an application for registration to the P&S Program along with the required bond or bond equivalent in the amount of \$20,000. Pursuant to section 303 of the Act (7 U.S.C. § 203), Respondent is prohibited from engaging in business subject to the Act without being registered with the P&S Program.

3. Respondent is assessed a civil penalty in the amount of Four Thousand Dollars (\$4,000.00).

4. 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 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.

March 20, 2013

Peter M. Davenport
Chief Administrative Law Judge