

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0550

In re: David Byrd,
d/b/a DB Cattle Co
d/b/a AD Byrd Cattle,

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.), by a Complaint filed on July 26, 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 herein willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. §§ 201.1 et seq.).

On July 27, 2012, a copy of the Complaint was sent to Respondent by certified mail.¹ The certified mail was returned to the Hearing Clerk's Office as "unclaimed." On October 2, 2012, consistent with Section 1.147(c)(1) of the Rules of Practice, the Complaint was resent to Respondent via ordinary first-class mail and was deemed to be received by Respondent and served on him on that date. On October 22, 2012, the Hearing Clerk sent a letter to Respondent to inform him that he had not filed an Answer within the time allotted in Section 1.136 of the Rules of Practice.

¹ USPS Certified Mail # 70051160000278368132

On November 5, 2012, I issued a Show Cause Order to the parties directing them to show cause no later than fifteen days from the date of that Order why a Default Decision and Order should not be entered. Pursuant to said Order, on November 20, 2012, Complainant filed a Motion for Adoption of Proposed Default Decision and Order and filed therewith an accompanying Proposed Default Decision and Order.

As Respondent failed to file an answer within the time period prescribed by the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (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 David Byrd is an resident of the State of Oklahoma who does business as DB Cattle Co. and as AD Byrd Cattle.
2. Respondent Byrd, doing business as DB Cattle Co., and also doing business as AD Byrd Cattle, at all times material herein was:
 - a. Engaged in the business of a dealer buying and selling livestock in commerce;
 - b. Engaged in the business of a market agency buying livestock in commerce on a commission basis;
 - c. A dealer within the meaning of and subject to the provisions of the Act;
 - d. A market agency within the meaning of and subject to the provisions of the Act;and
 - e. Not registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce nor as a market agency to buy livestock in commerce on a commission basis.

3. On or about July 1, 2009, the Grain Inspection, Packers and Stockyards Administration (GIPSA) sent Respondent a Notice of Default (NOD). The NOD was personally served on Respondent on July 15, 2010. The NOD stated that GIPSA had information indicating that Byrd was engaged in the business of buying and selling livestock in commerce. The NOD informed Respondent that buying and selling livestock in commerce without being properly registered with GIPSA and without filing a bond or bond equivalent are violations of the Act and regulations issued thereunder. The NOD stated that failure to comply with the registration and bonding requirements would result in appropriate disciplinary action.

4. On or about the dates and in the transactions set forth in Appendix A appended to the Complaint and incorporated herein by reference, Respondent issued checks in payment for livestock purchases which were returned unpaid by the bank upon which they were drawn because Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay them when presented. As of April 30, 2011, approximately \$229,337.77 remained unpaid by Respondent for livestock purchases.

5. On or about the dates and in the transactions described in Appendices A and B appended to the Complaint and incorporated herein by reference, Respondent engaged in the business of a market agency buying livestock in commerce on a commission basis without properly being registered with the Secretary and without maintaining a bond or bond equivalent as required by the Act and regulations.

6. On or about the dates and in the transactions described in Appendix C appended to the Complaint and incorporated herein by reference, Respondent engaged in the business of a dealer buying and selling livestock in commerce without properly being registered with the Secretary and without maintaining a bond or bond equivalent as required by the Act and regulations.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent willfully violated sections 312(a) (7 U.S.C. § 213(a)) and 409 (7 U.S.C. § 228b) of the Act, and sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29 and 201.30).

Order

1. Respondent, 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:
 - a. Failing to pay and failing to pay, when due, the full purchase price of livestock as required by section 409 of the Act (7 U.S.C. § 228b);
 - b. Failing to have and maintain sufficient funds on deposit and available in the account upon which checks for livestock purchases are drawn to pay them when presented;
 - c. Buying and selling livestock in commerce without maintaining an adequate bond or bond equivalent; and
 - d. Engaging in any business subject to the Act without being registered with the Packers and Stockyards Program.
2. Respondent is prohibited from engaging in business subject to the Act without being registered with the Packers and Stockyards Program.
3. Respondent is assessed a civil penalty in the amount of fifty thousand nine hundred and twenty-five dollars (\$50,925.00). Within ten (10) days of service of this Decision and Order, the Respondent shall send a certified check or money order, payable to the Treasurer of the United

States and marked with the docket number of this proceeding, and totaling in the amount of fifty thousand nine hundred and twenty-five dollars (\$50,925.00) to:

USDA – GIPSA
P.O. Box 790335
St. Louis, MO 63179-0335

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 21, 2013

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge