

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

Docket No. 14-0182 P&S

In re:

DANIEL AULT, doing business as
DWAULT LIVESTOCK,

Respondent.

Appearances:

DECISION WITHOUT HEARING BY REASON OF DEFAULT

I. Preliminary Statement

The instant matter involves allegations by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration (“GIPSA”) of the United States Department of Agriculture (“USDA”; “Complainant”) that Daniel Ault, d/b/a Dwault Livestock (“Respondent”) violated provisions of the Packers & Stockyards Act, 1921, as amended and supplemented, 7 U.S.C. §181 et seq. (“the Act”).

II. Issues

1. Whether a hearing is necessary in this matter;
2. Whether Respondent willfully violated the Act;
3. Whether the sanctions recommended by Complainant should be imposed.

III. Procedural and Factual History

On September 4, 2014, Complainant filed a complaint with the Hearing Clerk, Office of Administrative Law Judges (“OALJ”; “Hearing Clerk”). On September 10, 2014, the Hearing Clerk sent the complaint to Respondent by certified mail, and informed Respondent that an Answer should be filed pursuant to the Rules of Practice Governing Formal Adjudications before the Secretary of USDA (“the Rules”). The certified mail was returned as unclaimed.

On September 19, 2014, an employee of GIPSA personally served the complaint and other correspondence initiated by GIPSA upon Respondent's place of business.

On December 30, 2014, Complainant filed a motion for a decision on the record by reason of default, which the Hearing Clerk mailed to Respondent by certified mail. The mail was not returned. Respondent did not file a response to the motion. On January 27, 2015, I issued an Order to show Cause why a Decision by reason of Default should not be entered. That document was sent to Respondent by regular mail, which was not returned as undeliverable.

On March 2, 2015, Respondent filed correspondence that addressed the allegations in the complaint. Although Respondent's response was not timely, it directly disputed the complaint's allegations. Therefore, on May 12, 2015, I held a telephone conference with Respondent and Complainant's counsel to discuss the content of Respondent's filing. By Order issued May 12, 2015, I allowed additional time for Respondent to produce evidence to support the contentions asserted in his response.

On June 30, 2015, Complainant's counsel filed a supplemental motion for Decision. In the motion, counsel directed my attention to issues that involve Respondent's duties under other USDA regulated programs, which are tangential to the issues in the instant matter. I give little probative weight to the allegations in the supplemental motion that do not pertain to the Act and prevailing Regulations.

Respondent has failed to produce the information that he asserted demonstrated that he was in compliance with the Act and Regulations.

IV. Regulatory Authority

Pursuant to the Rules of Practice, a respondent is required to file an Answer within twenty (20) days after service of a Complaint. 7 C.F.R. § 1.136(a). The Rules of Practice also provide that an Answer "shall . . . [c]learly admit, deny, or explain each of the allegations of the

Complaint and shall clearly set forth any defense asserted by the respondent.” 7 C.F.R. § 1.136(b)(1). The failure to timely file an Answer or failure to deny or otherwise respond to an allegation proffered in the Complaint shall be deemed admission of all the material allegations in the Complaint; in such situation, default shall be appropriate. 7 C.F.R. § 1.136(c).

Additionally, the Rules of Practice prescribe that, when computing the time permitted for a party to file a document or other paper, Saturdays, Sundays, and Federal holidays are to be included except when the time expires on one of those days; should such situation occur, the time period shall be extended to include the next business day. 7 C.F.R. § 1.147(h). The Rules of Practice also state that a document sent by the Hearing Clerk “shall be deemed to be received by any party to a proceeding . . . on the date of delivery by certified or registered mail. . .” 7 C.F.R. § 1.147(c)(1).

The Rules of Practice further provide that “[t]he failure to file an answer . . . shall constitute a waiver of the hearing. Upon such . . . failure to file, complainant shall file a proposed decision along... Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto.” 7 C.F.R. § 1.139.

V. Discussion

1. Whether Entry of Decision by Reason of Admissions Without Hearing Is Appropriate

The record here reflects that the complaint was personally served to Respondent at his place of business on September 19, 2014, and the certified mailing from the Hearing Clerk was returned as unclaimed. Respondent was sent Complainant’s motion by certified mail to Respondent’s known address, which was not claimed. I issued an Order which was mailed to Respondent by regular mail, and which was not returned as undeliverable. No answer was filed by Respondent until March 3, 2015, which far exceeds the period of time allowed by the Rules.

Despite the untimely nature of the complaint, I found good cause to allow Respondent to supplement his response with evidence that he had attained compliance with the Act.

Respondent failed to submit documentation of his compliance.

Pursuant to 7 C.F.R. § 1.136(c), Respondent is deemed to have admitted the allegations set forth in the Complaint, and entry of decision without hearing is appropriate. See 7 C.F.R. §§ 1.136(c), 1.139. A hearing in this matter is not needed, and the material allegations of the Complaint are thus adopted as findings of fact. I find it appropriate to enter a decision on the record by reason of admissions. This Decision and Order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

2. Sanctions

The Department's sanction policy is set forth in *S.S. Farms Linn County, Inc.*, (Decision as to James Joseph Hickey & Shannon Hansen), 50 Agric. Dec. 476 (U.S.D.A. 1991), *aff'd*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3), and provides that appropriate weight should be given to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose of the Act. *S.S. Farms Linn County, Inc.*, 50 Agric. Dec. at 497. "In assessing penalties, the Secretary is required to give due consideration to the size of the business involved, the gravity of the violation, the person's good faith, and the history of previous violations". *Roach*, 51 Agric. Dec. 252, 264 (U.S.D.A. 1992); 7 U.S.C. § 213(b). The purpose of assessing sanctions is not to punish violators but to deter future similar behavior by the violator and others. *Zimmerman*, 57 Agric. Dec. 1038, 1998 WL 799196, at *16 (U.S.D.A. 1998).

By failing to file a timely answer to the complaint, and by failing to supplement his pleadings as required by my Order of May 12, 2015, Respondent is deemed to have admitted to

the allegations of the complaint. Accordingly, I find that Complainant's proposed sanctions in this case are warranted.

VI. Findings of Fact

1. Respondent Daniel Ault, doing business as Dwault Livestock, is an individual with a business mailing address in the State of Indiana.
2. At all times material to the allegations raised here, Respondent was engaged in the business of a dealer buying and selling livestock in commerce on his own account.
3. At all times material herein, Respondent was registered with the Secretary of Agriculture as a dealer buying and selling livestock in commerce for his own account and the account of others.
4. On or about July 27, 2012, Respondent failed to pay Hamilton County 4-H Council for livestock in the amount of \$11,604.87.
5. On or about March 15, 2013, Respondent entered into a payment plan with the Hamilton County 4-H Council.
6. From July, 2012 through January, 2013, Respondent purchased livestock in seven (7) transactions and failed to pay for the purchases within the time required by the Act.
7. In some of the transactions referenced in ¶ 6, supra, Respondent issued checks in payment for livestock purchases which were returned unpaid by the bank upon which they were drawn when presented for payment, because Respondent did not have and maintain sufficient funds on deposit and available in the accounts upon which such checks were drawn.
8. Respondent failed to keep adequate records to fully and correctly identify all transactions involved in business regulated by the Act, including failed to provide bank statements and failed to provide purchase invoices and proof of payment for livestock.

VII. Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent willfully violated the Act and Regulations by failing to pay for transactions when due.
3. Respondent willfully violated the Act and Regulations by failing to maintain adequate funds on deposit to pay checks written for payment of livestock and presented to Respondent's bank for payment.
4. Respondent willfully violated the Act and Regulations by failing to maintain records as required by the Act and Regulations.
5. Respondent's violations of sections 312(a), 401, and 409 of the Act (7 U.S.C. §§ 213(a), 221, and 228b(a) and of the regulations set forth at 9 C.F.R. §§ 201.43 and 203.4 support the imposition of sanctions.

ORDER

Respondent Daniel Ault, his agents, and employees, directly or indirectly through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Issuing checks in purported payment for livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which checks are drawn to pay such checks when presented;
2. from failing to pay for livestock before the close of the next business day following each purchase of livestock, as required by the Act and Regulations; and
3. from failing to pay the full amount of the purchase price for livestock, as required by the Act and Regulations.

Respondent is hereby suspended as a registrant under the Act for a period of eighteen (18) months. Upon consideration that Respondent has paid for each transaction identified in the complaint in full, Respondent's business suspension may be vacated, and his registration may be reinstated upon application to the Packers and Stockyards Program.

Respondent shall maintain all records to fully and correctly disclose and document all transactions conducted as a livestock dealer, including bank statements, invoices, and proof of payment in compliance with Section 401 of the Act (7 U.S.C. § 221) and the regulations set forth at 9 C.F.R. § 203.4.

This Order shall have the same effect as if entered after a full hearing.

Pursuant to the Rules, this Decision and Order 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 thirty (30) days after service, pursuant to the Rules, 7 C.F.R. §§1.139 and 1.145.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk.

So ORDERED this 15th day of October, 2015, at Washington, D.C.



Janice K. Bullard
Administrative Law Judge