

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/OHC
2019 APR 17 AM 9:35

In re:)
)
Tony Bott, an individual,) P&S Docket No. D-18-0075
)
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearances:

Brian Hill, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250, for the Complainant, Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service ("AMS").

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act (7 U.S.C. §§ 181 et seq.) ("Act"), and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) ("Rules of Practice").

The Complainant, Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service ("AMS"), United States Department of Agriculture ("USDA"), initiated this proceeding against Respondent Tony Bott by filing a complaint on September 4, 2018. The Complaint alleged that, during the period from October 14, 2014 through February 3, 2015, in thirty (30) transactions involving 7 Rivers Livestock Commission, LLC, and Cattleman's Livestock Auction, Inc., Respondent purchased a total of 1,544 head of livestock for a total purchase price of \$2,127,806.17 and failed to pay, when due, the full purchase price of the livestock. Complainant requests that an order be issued requiring Respondent to cease and desist from the violations of the Act and the regulations found to exist; suspending Respondent as a registrant under the Act for a specified period and prohibiting Respondent, for that specified period, from engaging in business in any capacity for which registration and bonding are

required under the Act; and assessing such civil penalties against Respondent as are authorized by the Act and warranted by the facts and circumstances of this case.

Respondent was duly served with a copy of the Complaint and did not file an answer within the twenty-day period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).¹ On February 1, 2019 I issued an Order Extending Time for Respondent to Answer Complaint, based on good cause, extending the due date of Respondent's answer until February 21, 2019.

On March 13, 2019, Complainant filed a Motion for Decision Without Hearing by Reason of Default ("Motion for Default") and proposed Decision Without Hearing by Reason of Default ("Proposed Decision"). Respondent has not filed any objections to Complainant's Motion for Default or Proposed Decision.²

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision. 7 C.F.R. § 1.136(c). Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely filed answer where, as in the present case, no meritorious

¹ United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on September 24, 2018. Respondent had twenty days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent's answer was due on or before October 15, 2018. Respondent has not filed an answer in this matter.

² United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on March 27, 2019. Respondent had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal holidays shall not be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent's objections were due by April 16, 2019. Respondent has not filed any objections.

objections have been filed.³

As Respondent failed to answer the Complaint, and upon Complainant's motion for the issuance of a decision without hearing by reason of default, this Decision and Order is issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Tony Bott is an individual with a mailing address in [REDACTED]
2. At all times material to this Order, Tony Bott 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 to buy and sell livestock in commerce and as a market agency buying on a commission basis.
3. During the period from October 14, 2014 through February 3, 2015, in thirty (30) transactions involving 7 Rivers Livestock Commission, LLC, and Cattleman's Livestock Auction, Inc., Respondent purchased a total of 1,544 head of livestock for a total purchase price of \$2,127,806.17 and failed to pay, when due, the full purchase price of the livestock.

Conclusions of Law

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

³ 7 C.F.R. § 1.139; *see supra* note 2.

ORDER

1. Respondent, his agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Act, shall cease and desist from failing to pay, when due, the full purchase price of livestock.
2. In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent is assessed a civil penalty in the amount of thirty thousand dollars (\$30,000.00).

Respondent shall send a certified check or money order for thirty thousand dollars (\$30,000.00), made payable to "The Treasurer of the United States" to:

USDA AMS
PO Box 790335
St. Louis, Missouri 63179-0335

within thirty (30) days from the effective date of this Order. Respondent shall indicate on the certified check or money order that this payment is in reference to P&S Docket No. D-18-0075.

This Decision and Order shall be final and effective without further proceedings thirty-five (35) days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk 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 and 1.145).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties, with courtesy copies provided via email where available.

Done this 17th day of April 2019 at Washington, D.C.,



Channing D. Strother
Chief Administrative Law Judge

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