

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/OHC
2019 DEC 18 PM 2:54

In re:)
)
John B. Hagler,) P&S-D Docket No. 19-J-0078
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Jonathan D. Gordy, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, Agricultural Marketing Service ("AMS").

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. §§ 181 *et seq.*) ("Act"); the regulations promulgated thereunder (9 C.F.R. §§ 201.1 *et seq.*) ("Regulations"); 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 matter initiated with a complaint filed on May 17, 2019 by the Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture ("AMS" or "Complainant"), against John B. Hagler ("Respondent"). The Complaint alleged that Respondent violated sections 312 and 401 of the Act (7 U.S.C. §§ 213, 221) and sections 201.44 and 201.53 of the Regulations (9 C.F.R. §§ 201.44, 201.53).¹ The Complaint also requested:

That such order or orders be issued, including an order requiring Respondent to cease and desist from the violations of the Act and the Regulations found to exist, an order requiring Respondent to keep and maintain all accounts, records, memoranda that fully and accurately disclose all transactions involved in their

¹ See Complaint at 3 ¶ IV.

business, suspending Respondent as a registrant under the Act for a specified period of time, and assessing such civil penalties against Respondent as are authorized by the Act and warranted under the circumstances.

Complaint at 4.

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).²

On October 1, 2019, I issued an order directing the parties to show cause (“Show Cause Order”), not later than twenty days after that date, why default should not be entered against Respondent.³ On October 24, 2019, Complainant filed a Motion for Decision Without Hearing Based on Admissions (“Motion for Default”) and Proposed Decision Without Hearing Based on Admissions (“Proposed Decision”). Respondent failed to respond to the Show Cause Order and has not filed any objections to Complainant’s Motion for Default or Proposed Decision.⁴

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the

² United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on July 24, 2019. 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 August 13, 2019. Respondent has not filed an answer.

³ The Show Cause Order also instructed: “Unless the parties have agreed to a consent decision, Complainant’s response shall be accompanied by: (1) a proposed decision and order and (2) a motion for adoption of that proposed decision in accordance with the provisions in 7 C.F.R. § 1.139.” Show Cause Order at 2.

⁴ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on November 13, 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 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 December 3, 2019. Respondent has not filed any objections.

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.⁵ Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an unfiled answer where, as in the present case, no meritorious objections have been filed.⁶

As Respondent failed to answer the Complaint, and upon Complainant's motion for the issuance of a decision without hearing, 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. Respondent John B. Hagler is an individual whose current address is in the [REDACTED]. His address will not be provided in this Decision to protect his privacy but will be maintained with the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture, for the purpose of serving this Decision.
2. Respondent John B. Hagler is and at all times material herein was:
 - a. Engaged in the business of a dealer buying and selling livestock in commerce for his own account and for the accounts of others;
 - b. Engaged in the business of a market agency buying livestock 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 to buy livestock on a commission basis.
3. From October 6, 2015 through October 27, 2015, in approximately three transactions involving fifteen head of livestock, Respondent John B. Hagler purchased livestock for his

⁵ 7 C.F.R. § 1.136(c).

⁶ 7 C.F.R. § 1.139; *see supra* note 4.

principal, Joe Howard of Wright City Meat Company, where he falsified purchase prices and took undisclosed profits. Specifically, Respondent coordinated with his wife, an employee of Interstate Regional Stockyards, to have manual entries entered on invoices to show purchase prices when Respondent had purchased the livestock for lower prices at Interstate Regional Stockyards. Accordingly:

- a. Respondent induced the creation of invoices that showed purchase prices to Joe Howard for fifteen livestock that were not the result of open bidding at auction;
- b. Respondent induced the creation of three invoices issued to Joe Howard that did not clearly show that those purchases did not result from open bidding during the sale at Interstate Regional Stockyards; and
- c. Respondent took a profit of approximately \$3,948.10 for the increase in prices on these transactions.

4. From August 25, 2015 through October 20, 2015, in approximately four transactions involving 173 head of livestock, Respondent John B. Hagler purchased livestock on a commission basis for his principal, the University of Missouri, where he falsified purchase prices and took undisclosed profits. Specifically, Respondent coordinated with his wife, an employee of Interstate Regional Stockyards, to have manual entries entered on invoices to show inflated purchase prices when Respondent had purchased the livestock for lower prices at Interstate Regional Stockyards, Salem Livestock Auction, Farmington Livestock, and other locations. Accordingly:

- a. Respondent induced the creation of invoices that showed purchase prices charged to the University of Missouri for 173 livestock that were not the result of open bidding at auction;

- b. Respondent induced the creation of four invoices to the University of Missouri that did not clearly show that the invoices had been altered to add livestock not purchased through open bidding at Interstate Livestock; and
 - c. Respondent took a profit in the approximate amount of \$15,386.86 for the increase in prices on these transactions.
5. Respondent John B. Hagler failed to keep and maintain records sufficient to fully and correctly disclose all transactions involved in his business in that he failed to maintain accurate sales invoices.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent John B. Hagler has willfully violated section 312 of the Act (7 U.S.C. § 213) and sections 201.44 and 201.53 of the Regulations (9 C.F.R. §§ 201.44, 201.53).
3. Respondent John B. Hagler has failed to keep and maintain records as required by section 401 of the Act (7 U.S.C. § 221).

ORDER

1. Complainant's Motion for Decision Without Hearing is GRANTED.
2. Respondent John B. Hagler, his agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in operations subject to the Act without accurately representing the purchases in transactions where he is a market agency buying or selling livestock in commerce and shall cease and desist from falsification of invoices to show false price or weight.

3. Pursuant to section 401 of the Act (7 U.S.C. § 221), Respondent John B. Hagler shall keep and maintain records sufficient to fully and correctly disclose all transactions involved in his business, including but not limited to purchase invoices and sales invoices.
4. Respondent John B. Hagler is assessed a civil penalty of \$25,000 to be paid immediately upon the final and effective date of this Order. The payment shall be made by check or money order payable to the United States Treasury and shall include the docket number of this proceeding in the memo line. The payment shall be sent to the following address:
5. Respondent John B. Hagler is suspended as a registrant from all livestock operations for 180 days.

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.

Done at Washington, D.C.,
this 18th day of December 2019



Channing D. Strother
Chief Administrative Law Judge

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