

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/OHC  
2020 JAN 9 PM 2:39

In re: )  
)  
Mark Robinson, ) P&S Docket No. 19-J-0122  
d/b/a Robinson Livestock, )  
)  
Respondent. )

**DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT**

Appearance:

*Charles L. Kendall, 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 proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181 *et seq.*) ("Act"); the regulations promulgated thereunder (9 C.F.R. §§ 201.1) ("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 Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture ("Complainant" or "AMS"), initiated this proceeding by filing a complaint against Mark Robinson, an individual doing business as Robinson Livestock ("Respondent"), on July 19, 2019. The Complaint alleges that Respondent violated sections 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 and 201.30).<sup>1</sup> The Complaint also requests "[t]hat such order or

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<sup>1</sup> Complaint at 3.

orders be issued, including an order requiring Respondent to cease and desist from violations found to exist, and assessing such penalties as are authorized by the Act and warranted in the premises.”<sup>2</sup>

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).<sup>3</sup>

On October 28, 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.<sup>4</sup> On November 19, 2019, Complainant filed a Motion for a Decision Without Hearing by Reason of Default (“Motion for Default”) and proposed Decision Without Hearing by Reason of Default (“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

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<sup>2</sup> *Id.* at 4.

<sup>3</sup> United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail but was returned to the Hearing Clerk’s Office as “unclaimed” on August 12, 2019. In accordance with the Rules of Practice, the Hearing Clerk re-mailed (*see* 7 C.F.R. § 1.142) the Complaint via ordinary mail to Respondent on August 20, 2019. 7 C.F.R. § 1.147(c). 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 September 9, 2019. In addition to be served via mail, the Complaint was “personally delivered” to Respondent by an employee of the United States Department of Agriculture on September 11, 2019. *See* “Certificate of Service Number IA-1488019,” filed by Complainant on September 13, 2019. Nevertheless, Respondent has not filed an answer in this matter.

<sup>4</sup> The Show Cause Order also provided: “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 of 7 C.F.R. § 1.139.” Show Cause Order at 2.

Decision.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

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. Respondent Mark Robinson is an individual doing business as Robinson Livestock.

Respondent's mailing address was not stated in the Complaint to protect Respondent's privacy but was provided to the Hearing Clerk's Office for purposes of service.

2. At all times material herein, Respondent was:

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<sup>5</sup> United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail but were returned to the Hearing Clerk's Office as "unclaimed" on December 16, 2019. In accordance with the Rules of Practice, the Hearing Clerk re-mailed (*see* 7 C.F.R. § 1.142) the Motion for Default and Proposed Decision to the same address via ordinary mail on December 18, 2019. 7 C.F.R. § 1.147(c). 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 January 7, 2020. Respondent has not filed any objections.

<sup>6</sup> 7 C.F.R. § 1.136(c).

<sup>7</sup> 7 C.F.R. § 1.139; *see supra* note 5 and accompanying text.

- a. Engaged in the business of a dealer and as a market agency buying on a commission basis; and
  - b. Registered with the Secretary of Agriculture as a dealer and as a market agency buying on a commission basis.
3. From on or about February 3, 2016 through April 12, 2016, Respondent engaged in the business of a market agency buying livestock on a commission basis without maintaining an adequate bond or equivalent. Specifically, Respondent bought 625 head of cattle on a commission basis in forty-nine transactions on seventeen separate sale dates.

### **Conclusions**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. By engaging in the business of a market agency buying livestock on a commission basis without maintaining an adequate bond or bond equivalent, Respondent Mark Robinson has willfully violated section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29 and 201.30).

### **ORDER**

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. Respondent Mark Robinson, 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 the business of a market agency buying livestock on a commission basis without maintaining an adequate bond or bond equivalent.
3. In accordance with 7 U.S.C. § 204, the registration of Respondent Mark Robinson is suspended for a period of thirty (30) days and thereafter until Respondent obtains and files an adequate bond to secure his operations subject to the Act.

4. In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent Mark Robinson is assessed a civil penalty in the amount of seventeen-thousand dollars (\$17,000.00).

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 at Washington, D.C.,  
this 9th day of January 2020



Channing D. Strother  
Chief Administrative Law Judge

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