

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
 Willis B. Gregory,) P&S-D Docket No. 20-J-0030
)
 Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Natalie Smittle, Esq., with the Office of the General Counsel, United States Department of Agriculture, Little Rock, AR, 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, 1921, 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 Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture (“Complainant”), initiated this proceeding by filing a complaint against Willis B. Gregory (“Respondent”) on January 28, 2020. The Complaint alleges that Respondent willfully violated section 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).¹

Further, the Complaint 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’s status as a registrant under the Act for a specified period; prohibiting Respondent

¹ Complaint at 4.

for a 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.

Complaint at 4-5 (footnote² omitted).³

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).⁴

On April 7, 2020, Complainant filed a Motion for Adoption of Proposed Default Decision and Order (“Motion for Default”) and proposed Decision and Order Without Hearing by Reason of Default (“Proposed Decision”). Respondent has not filed objections to the Motion for Default or Proposed Decision.⁵

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

² See *id.* at 5 n.2 (“The Respondent’s current status is inactive.”).

³ The Complaint also requests: “That *unless Respondent fails to file an answer within the time allotted*, or files an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in accordance with the Rules of Practice[.]” Complaint at 4 (emphasis added).

⁴ United States Postal Service records reflect that the Complaint was sent to Respondent’s attorney via certified mail but was returned to the Hearing Clerk’s Office as “unclaimed.” In accordance with the Rules of Practice, the Hearing Clerk re-mailed (*see* 7 C.F.R. § 1.142) the Complaint to the same address via ordinary mail on February 25, 2020. 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 March 16, 2020. Respondent has not filed an answer.

⁵ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on April 14, 2020. 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 on or before May 4, 2020. 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.⁶ 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.⁷

As Respondent failed to file a timely 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 Willis B. Gregory, an individual, is and at all times material herein was:
 - a. Engaged in the business of a market agency buying and selling livestock on a commission basis; and
 - b. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce until January 2014; all other purchases after this timeframe were done under an unregistered/inactive status.
2. From January 21, 2011 through January 26, 2014, Respondent was a registered dealer, buying and selling livestock in interstate commerce. A Trust Fund Agreement in the amount of \$20,000 was submitted to the Grain Inspection, Packers & Stockyards Administration, Packers & Stockyards Program ("GIPSA")⁸ in lieu of a bond, and Respondent was registered as number 19209.

⁶ 7 C.F.R. § 1.136(c).

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

⁸ GIPSA is now the Packers and Stockyards Division, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture. *See* Revision of Delegations of

3. By March 18, 2014, Respondent was employed by Prairie Livestock, LLC in West Point, Mississippi (“Prairie”), as evidenced by a form W-4, Withholding Allowing Certificate, and at about this time Respondent’s registration was made in active. In late 2016 or early 2017, Respondent’s employment with Prairie ceased.
4. Shortly after terminating employment with Prairie, market reviews in Alabama and Mississippi were conducted by GIPSA, and these disclosed that Respondent was purchasing livestock on/for the account of Brown Packing Company, Inc., located in Gaffney, South Carolina (“Brown”). On May 30, 2017, GIPSA sent Respondent a Notice of Default by certified mail reminding him of his obligation to secure a bond if he wished to engaged in the business of buying and selling livestock in interstate commerce. The Notice of Default also informed Respondent that engaging in business in any capacity that is subject to the Act without complying with the registration provisions of the Act and without filing an adequate bond or bond equivalent is a violation of the Act and Regulations and could subject him to disciplinary action. Notwithstanding the Notice of Default and no record of receipt by GIPSA of a new bond or registration, Respondent continued to engage in the business of buying livestock in commerce without maintaining an adequate bond or bond equivalent and without registration as required by the Act and Regulations.
5. On April 18, 2018, GIPSA Resident Agent Timothy Brennan met with Respondent at the Lipscomb Bros. Livestock Market, Inc. facility in Como, Mississippi (“Lipscomb”). Respondent was asked the status of his bond, to which he stated he had been unsuccessful at saving enough money for a certificate of deposit to fund a Trust Fund Agreement or unable

Authority, 83 Fed. Reg. 61309-01, 61310 (Nov. 28, 2018); Secretary’s Memorandum 1076-018 (Nov. 14, 2017), *available at* <https://www.ocio.usda.gov/document/secretarys-memorandum-1076-018> (last visited May 11, 2020).

to purchase a bond from a bonding company. When asked about his recent buying practices, Respondent stated his only order is buying slaughter for Brown, for which his commission is 0.50/cwt. He also stated he was paid for hauling livestock from Arab Livestock Market, Inc. in Arab, Alabama (“Arab”) to Lipscomb. During the Resident Agent’s investigation, it was revealed the Respondent is also paid for feed.

6. Respondent has willfully violated section 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).

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Willis B. Gregory willfully violated section 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).

ORDER

1. Complainant’s Motion for Adoption of Proposed Default Decision and Order is GRANTED.
2. Respondent Willis B. Gregory, his agents, successors, and assigns, directly or indirectly through and corporate or other device, shall cease and desist from operating without maintaining an adequate bond or bond equivalent, for livestock purchases, when acting as a dealer and/or market agency, in violation of section 312(a) of the Act (7 U.S.C. § 213(a)).
3. Respondent Willis B. Gregory shall be suspended as a registrant under the Act until such time that he has provided confirmation that he has secured a bond and an active registration.
4. In accordance with 7 U.S.C. § 213(b), Respondent Willis B. Gregory is assessed a civil penalty of \$4,000, which is commiserate with the facts and findings herein.

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 upon the parties and counsel by the Hearing Clerk.

Done at Washington, D.C.,
this 12th day of May 2020


Channing D. Strother
Chief Administrative Law Judge

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