

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) [P&S-D]
Shane M. Lynch,)
d/b/a Lynch Cattle Company, LLC) Docket No. **19-0007**
)
Respondent.)

Decision and Order

Appearances:

Christopher P. Young, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington D.C. 20250, for the Complainant (“AMS”)¹; and

Respondent Shane M. Lynch, representing himself (appearing pro se).

Decision Summary

1. Respondent Shane M. Lynch (“Respondent Lynch”), doing business as Lynch Cattle Company, LLC, violated the Packers and Stockyards Act, 1921 as amended and supplemented (7 U.S.C. §§ 181 *et seq.*) (“Act”), and Regulations promulgated under the Act, during 2015 and 2016 as alleged in the Complaint filed on December 4, 2018. This Decision focuses on the nature of those violations and the appropriate penalty or remedy. Respondent Lynch has not been subject to prior sanction. The following sanction is ordered: cease and desist orders; plus a 5-year prohibition from engaging in operations subject to the Packers and Stockyards Act, and prohibition during that same 5 years from registering under the Act;

¹ The Complainant is the Acting Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture (“AMS”).

provided that, after having served 1 year of prohibition, Respondent Lynch may apply to AMS Fair Trade Practices Program, by showing payment-in-full of the unpaid amounts specified in the Complaint, to request a supplemental order terminating the prohibition early.

Procedural History

2. A Complaint filed with the USDA Hearing Clerk on December 4, 2018, initiated this proceeding regarding the Respondent Mr. Lynch (Docket No. 19-0007). The Complaint was signed by the Acting Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture (“AMS”).

3. The Complaint alleged that Respondent Lynch willfully violated

section 312(a) of the Act (7 U.S.C. § 213(a)),

section 409(a) of the Act (7 U.S.C. § 228b),

section 201.43(b)(2)(ii) of the Regulations (9 C.F.R. § 201.43(b)(2)(ii)), and

section 201.53 of the Regulations (9 C.F.R. § 201.53),

by 1) during 2015 and 2016, purchasing livestock from livestock sellers and failing to pay the full purchase price of such livestock in 4 transactions; 2) during 2016 issuing checks in 3 of those 4 transactions in payment for the full amount of the purchase invoice, which checks were returned due to insufficient funds; 3) during the period of April 2, 2016 through June 16, 2016, failing to pay, when due, the livestock purchase amount within the time period required by the Act in 6 transactions; and 4) during 2016, falsely representing ownership in livestock advertised for sale and accepting payment for falsely advertised cattle, then failing to deliver the promised cattle in 2 transactions.

4. Respondent Shane M. Lynch timely filed his Answer on January 28, 2019, denying all allegations contained in the Complaint and requesting a Hearing.
5. The Hearing was held by dial-in telephone conference on August 20 and 21, 2019. A transcript of the hearing was filed with the Hearing Clerk on September 4, 2019.
6. AMS filed Complainant's Brief and Proposed Decision and Order ("Complainant's Brief") on January 17, 2020. Complainant's Brief was served on Respondent Lynch by certified mail and was accompanied by a letter from the USDA Hearing Clerk directing Respondent Lynch: "In accordance with the applicable rules of practice, you will have 20 days after service of this letter to file an original and three copies of your response to the proposed decision."²
7. Respondent Lynch did not file a response or reply brief in this matter.

Findings of Fact

1. Shane M. Lynch, doing business as Lynch Cattle Company, LLC ("Respondent Mr. Lynch"), is an individual, doing business as a limited liability company organized and existing under the laws of the State of Oklahoma, with a principal place of business and mailing address of 10870 County Road 3470, Stratford, Oklahoma 74872. CX-1.

² United States Postal Service records reflect that Complainant's Brief was sent to Respondent Lynch via certified mail on and delivered on January 30, 2020. Respondent Lynch had twenty (20) days from the date of service to file a response. 7 C.F.R. § 1.143(d). 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 workday. 7 C.F.R. § 1.147(h). In this case, Respondent's response was due on or before February 19, 2020.

2. At all times material herein, the Respondent Mr. Lynch was:

a. engaged in the business of buying and selling livestock in commerce as a dealer and operating subject to the Act; and

b. not registered with the Secretary of Agriculture as a dealer, as that term is defined and used in the Act and the regulations promulgated thereunder.

3. Between September 2015 and June 2016, the Respondent Mr. Lynch purchased livestock from four livestock sellers and failed to pay the full purchase price of that livestock in the total amount of \$259,176.85, broken down as follows:

a. eighty-five (85) head on September 4, 2015 from Central Livestock Services, LLC in the amount of \$196,912.70 (CX-2 at 13, para. 3.3; CX-20);

b. twenty-three (23) head on June 20, 2016 from Atoka Livestock, LLC in the amount of \$20,083.55 (CX-2 at 13, para. 3.1; CX-17 at 1; CX-22 at 1-4);

c. thirty-seven (37) head on June 20, 2016 from Holdenville Livestock Market in the amount of \$39,980.60 (CX-18 at 1, 4); and

d. three (3) head on June 22, 2016 from Stilwell Livestock Auction, LLC in the amount of \$2,200.00 (CX-2 at 14, para. 3.8; CX-19).

As of the date of the hearing, some portions of these monies owed had been paid:

Holdenville Livestock Market was owed either \$4,438.30 (Tr. Vol. 1 at 56:19-57:3; Tr. Vol. 2 at 65:2-20) or \$2,935.00 (Tr. Vol. 2 at 23:14-15) or somewhere in between; and Atoka Livestock, LLC was owed \$19,583.55 at the time of the hearing (Tr. Vol. 2 at 64:11-21). As of the date of the hearing, a total of about \$223,134.55 was still owed to these livestock sellers, collectively.

4. Between April 2, 2016 and June 16, 2016, in six transactions involving the purchase of 169 head at Okmulgee Livestock Auction, Henryetta, Oklahoma, for a total purchase amount for livestock of \$193,417.15, the Respondent Mr. Lynch failed to pay, when due, the livestock purchase amount within the time period required by the Act (CX-8, 9, 13-16).

5. Between June 22, 2016 and June 27, 2016, the Respondent Mr. Lynch issued three checks to livestock sellers which were returned by the Respondent's bank because the Respondent did not have sufficient funds to cover the checks issued:

e. one to Holdenville Livestock Market of Holdenville, Oklahoma on June 22, 2016 in the amount of \$40,940.60 (CX-2 at 14, para. 3.5; CX-4, 18);

f. one to Stilwell Livestock Auction, LLC of Stilwell, Oklahoma on June 23, 2016 in the amount of \$2,200.00 (CX-2 at 14, para. 3.8; CX-4; CX-19 at 2); and

g. one to Atoka Livestock, LLC of Atoka, Oklahoma on June 27, 2016 in the amount of \$20,403.55 (CX-4; CX-17 at 1, 5-8; CX-22 at 5-9).

6. The Respondent Mr. Lynch represented ownership in livestock advertised for sale, accepted payment for the advertised cattle, and then failed to deliver the promised cattle in two separate transactions.

h. One occurred on June 21, 2016, wherein the Respondent accepted \$80,000.00 in payment from Danny Sprayberry (also spelled as Spraberry), doing business as Sprayberry Farms, Inc., for cattle that the Respondent did not own and could not and did not produce to any buyer subsequent to the sale (CX-2 at 14, para.3.7; CX-4, 41, 42).

- i. The other occurred on June 2, 2016, wherein the Respondent accepted \$48,750.00 from Shane Smith in payment for cattle that Respondent did not own and could not and did not produce to any buyer subsequent to the sale (CX-2 at 14, para. 3.6; CX-4, 41, 43).

Discussion

1. The purpose of the Packers and Stockyards Act (“Act”) is “to prevent economic harm to producers and consumers at the expense of middlemen.” *Glover Livestock Comm’n Co. v. Hardin*, 454 F.2d 109, 114 (8th Cir. 1972), *rev’d sub nom. Butz v. Glover Livestock Comm’n Co.*, 411 U.S. 182, (1973).

2. The Act defines “dealer” as “any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser.” 7 U.S.C. § 201(d).

3. The Act prohibits any dealer from engaging in or using “any unfair, unjustly discriminatory, or deceptive practice or device in connection with . . . the receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock.” 7 U.S.C. § 213(a).

4. The Act further requires prompt payment for the purchase of livestock by dealers, meaning delivery of payment “before the close of the next business day following the purchase of livestock and transfer of possession” unless otherwise waived by written agreement. *See* 7 U.S.C. § 228b.

5. The Regulations promulgated under the Act, 9 C.F.R. § 201.43(b)(2)(ii), prohibit a dealer from mailing a check for payment unless:

(A) the check is made available for actual delivery and the seller or his duly authorized representative is not present to receive payment, at the point of transfer of possession of such livestock, on or before the close of the next business day following the purchase of the livestock and transfer of possession thereof, or, in the case of a purchase on a “carcass” or “grade and yield” basis, on or before the close of the first business day following determination of the purchase price; or unless (B) the seller expressly agrees in writing before the transaction that payment may be made by such mailing of a check.

The Regulations, 9 C.F.R. § 201.53, also state that no dealer “shall knowingly make, issue, or circulate any false or misleading reports, records, or representation concerning the market conditions or the prices or sale of any livestock, meat, or live poultry.”

6. During the Hearing held on August 20 and 21, 2019, on behalf of AMS Fair Trade Practices Program, two witnesses testified: 1) Mr. Justin Ham, a Resident Agent for over ten years in eastern Oklahoma and representative of the Packers and Stockyards Division, Tr. Vol. 1 at 36:17-37:2; and 2) Mr. Timothy Hansen, Agency representative, Program Analyst with the Packers and Stockyard’s Division, Fair Trade Practices Program, who testified to provide sanction evidence. Mr. Hansen had by then worked with the Packers and Stockyard’s Division for thirty-three years. Tr. Vol. 2 at 109:7-110:10. Respondent Lynch was not assisted by counsel (appeared *pro se*), testified on his own behalf, and did not call any other witnesses to testify.

7. The Complaint alleged that Respondent Lynch violated the Act and Regulations and, in the process, caused harm to the following business in the following ways:
- j. he failed to pay, when due, within the time required by the Act, and failed to pay the full purchase price for livestock to Central Livestock Services, LLC;
 - k. he failed to pay, when due, within the time required by the Act, failed to pay the full purchase price for livestock, and issued a check to pay for livestock that did not have sufficient funds to cover the amount to Atoka Livestock, LLC;
 - l. he failed to pay, when due, within the time required by the Act, failed to pay the full purchase price for livestock, and issued a check to pay for livestock that did not have sufficient funds to cover the amount to Holdenville Livestock Market;
 - m. he failed to pay, when due, within the time required by the Act, failed to pay the full purchase prices for livestock, and issued a check to pay for livestock that did not have sufficient funds to cover the amount to Stilwell Livestock Auction, LLC.
 - n. he failed to pay, when due, the livestock purchase price within the time required by the Act to Okmulgee Livestock Auction;
 - o. he represented ownership of livestock advertised for sale, accepted payment, and then failed to deliver the promised livestock to Shane Smith; and
 - p. he represented ownership of livestock advertised for sale, accepted payment, and then failed to deliver the promised livestock to Danny Spraberry (also spelled Sprayberry).
8. These violations were serious and caused significant harm to the sellers as both Mr. Ham and Mr. Hansen testified.

AMS's Explanation of the Investigation and Harm to the Victims

9. Mr. Ham, Resident Agent stationed in eastern Oklahoma, testified that, during his investigation, Respondent Lynch admitted to dealing cattle for a number of years and explained that “[a]nyone that operates as a dealer which would be buying cattle for the sole purpose of resale under our definition is subject to our jurisdiction” Tr. Vol. 1 at 68:20-69:12, 93:18-95:8, 101-02; CX-4; CX-5 at 2; CX- 6-18; CX-22 at 9-16. *See also* Tr. Vol. 1 at 112:18-113:2 (Respondent Lynch admitting that he “never traded cattle like that before” and he “didn’t know [he] needed to do – have that stuff”). Mr. Ham testified that Respondent Lynch was not registered with the Packers and Stockyards Program and explained that registration is important for dealers because registrants “obtain the proper clause, financial instrument [or bond] that would secure obligations in case of a failure such as this.” *Id.* at 69:13-71:14.

10. Mr. Ham also testified that the damage done to a business when they receive a check that bounces due to insufficient funds is significant: “The market then has to put their own money into that account to cover the check that they pay to the consignors of that livestock.” Tr. Vol. 1 at 178:1-4. Mr. Ham testified that the “net affect” of giving a bad check is the same as not paying at all because the market has to cover the purchase with their own money one way or the other. *Id.* at 178:8-21. Mr. Ham explained that issuing a bad check, although the net effect is the same as non-payment, is really three violations: 1) not paying on time, 2) not paying, and 3) issuing the check with improper funds. *Id.* Mr. Timothy Hansen, representative for the Fair Trade Practices Program, Packers and Stockyards Division, added that, in addition, the market is subject to bank fees for bounced

checks. *Id.* at 180:10-181:1. Mr. Hansen explains that the bouncing of a check can be very disruptive to the market because often the market will try to deposit the bad check a second time “to make sure that the money that buyer owes is provided to the custodial account” and the fees can add up. *Id.*; *Id.* at 181:10-182:5. Mr. Hansen further explained that payment of those fees can become further disruptive to the market when there are issues with the accounts from which fees are taken. *Id.*

Respondent Lynch’s Admissions and Defenses

11. Respondent Lynch testified on his own behalf. Respondent Lynch admitted that he was not registered with the Secretary and did not know he should be registered or bonded. Tr. Vol. 2 at 28:7-29:10. He testified that he had been “buying and selling cattle for a lot of years” and that he usually “kept anywhere from 150 to 200 mama cows at home” but that he eventually got married and had kids. *Id.* at 15:21-18:10. He explained that “things kind of went in a whirlwind” because his assistant took another job and he did not have a secretary for a few months, then he hired another secretary and added her to all his accounts to take care of them for him because he “just couldn’t do it.” *Id.* Respondent Lynch testified that about two or three months later, around July 4, 2016, his secretary called him and said “Shane, you’re out of money” and he instructed her to “find out where the money is at and transfer it over” because he did not know what was in his accounts. *Id.* Respondent Lynch explained that he got in touch with his accountant and, a couple days later, he realized he was “in trouble.” He claims that he had always taken care of it before and always knew where his money was but that he had “just mentally stepped away.” *Id.* [REDACTED]

[REDACTED]

[REDACTED]

12. In his defense regarding the fraud allegation, Respondent Lynch argued that he did not “actually” commit fraud but that he had cattle “scattered all over the place” that he bought but due to “really horrible management” he failed to pick them up and have them delivered where they belonged. Tr. Vol. 1 at 33:11-34:6. Respondent Lynch testified that he wouldn’t have sold or taken someone’s money for cattle he didn’t have and stated “I just didn’t know exactly how many head of cattle I had, where they was at and I just -- I just didn’t know what was really going on at the time.” *Id.* Respondent Lynch also testified that, during Mr. Ham’s investigation, (b) (6) [REDACTED] from the Texas Southwest Cattle Raisers Association “kept on pushing” Respondent Lynch to admit to defrauding cattle purchasers and “got mad” when Respondent Lynch would not. *Id.* at 74:11-75:7. Respondent Lynch avers that the situation was, in fact, that he didn’t intend to defraud anyone but lost track of his money and how many cattle he owned and, as a result, sold cattle he did not in fact own. *Id.* at 79:5-83:5, 83:17-84:3. *See also* Tr. Vol. 2 at 36:8-38:21, 42:14-43:11, 50:21-51:20, 52:10-53:20, 58:19-59:20, 78:1-79:5

13. Respondent Lynch claims to have paid about \$40,000 back to Spraberry Farms and about “20 something thousand” to Shane Smith about a year before the hearing, and that he pays “\$650 a month to them as well” via Pontotac NADA Restitution. Tr. Vol. 1 at 58:9-60:4. Respondent Lynch further testified as follows:

JUDGE CLIFTON: I recall from our telephone discussions that there was some parcel of land that belonged to your father that was sold. If I'm right about that, tell me if that happened and where the proceeds went.

RESPONDENT LYNCH: My dad sold some land and that went to pay \$60,000.00 to Spraberry Farms and Shane Smith.

JUDGE CLIFTON: Did that money go through the District Attorney's office?

RESPONDENT LYNCH: Yes, ma'am.

JUDGE CLIFTON: That document that became RX-1, does that take into account that \$60,000.00 was already paid to bring down the money owed to them?

RESPONDENT LYNCH: Yes, ma'am, um-huh.

Tr. Vol. 2 at 21:13-22:6. RX-1 shows a remaining balance of \$22,809.40 owed to Shane Smith and a remaining balance of \$37,920.80 owed to Danny Spraberry.

14. Respondent Lynch also disputes the amount owed to Central Livestock Services, LLC as represented in CX-20 and the Complaint because he claims "they [Central Livestock Services, LLC] came and took cows and calves off my stock and then they came and took horses that were worth a lot of money and they took a horse trailer from the house just like that and never deducted it from what they say I own them." Tr. Vol. 1 at 145:8-19.

15. Respondent Lynch also avers that the amounts reflected in CX-21, the "Schedule of Failure to Pay for Livestock" prepared by Mr. Ham during his investigation, are not accurate

because Respondent has paid “on all of them but Stilwell.” *Id.* at 148:2-14. Respondent Lynch further testified as follows:

I owe \$2935.00 to Holdenville still. Central Livestock, they took the cows and calves and they took some horses and they took a trailer from me. They haven’t deducted that from the month I owe them. I’m in the middle of trying to figure out the value of the stuff that they took, and we are trying to get them to - my bankruptcy attorney is trying to get them to send us what they consider it being worth and this and that. They did send us some of the stuff on the horses and it was way off from what it should have been, but I don’t think I can do anything about it. I don’t know what to do on the figures, without letting my attorneys look at it on the bankruptcy side of it. I don’t know how that will work. Ultimately, I know I’ll have to pay whatever is left.

.....

I owe Atoka Sale Barn right at \$20,000, a little bit less. I sent him a check for \$500, I think, what it was. I’m sorry. I owe Stilwell, too, and that’s \$2200.

Tr. Vol. 2 at 23:14-24:8, 24:12-15.

16. Respondent Lynch stated: “I apologize for the hardships that I put on them families and businesses.” *Id.* at 105:5-7. As I told Respondent Lynch during the hearing, I appreciate his acknowledgment that his actions created a hardship for others, and I appreciate his remorse for his actions.

Sanction Recommended

17. Mr. Hansen testified that he, as a representative of the AMS Fair Trade Practices Program, Packers and Stockyard's Division, recommends that, as sanction for his violations of the Act, Respondent Lynch

be prohibited from engaging in operations that require a registration and bond under the Packers and Stockyards Act, and be prohibited from obtaining any such registration under the Packers and Stockyard's Act, for a period of five years. After one year of such prohibition, however, upon application to the Packers and Stockyard's Division for a registration, Respondent Lynch may apply for a supplemental order to be issued, terminating that prohibition from registration, after the one-year period, if at any time during those remaining four years, he shows that -- demonstrates to the satisfaction of the Packers and Stockyard's Division - - that all unpaid livestock sellers identified in the Complaint, have been paid in full.

Tr. Vol. 2 at 113:13-114:3. *See also* Complainant Brief. Mr. Hansen further acknowledged that due to any pending bankruptcy actions, any payments made for debts resulting as a violation of the Act would have to be made in accordance with the applicable bankruptcy rules, coded framework, or laws. *Id.* at 114:20-115:4.

18. As support for the recommended sanction, Mr. Hansen explained that "the purpose of the bond . . . is to protect the people the dealer's buying livestock from, in the event the dealer does not pay" and that if Respondent Lynch had at least tried to register as a dealer,

the Division would have ensured that he was also bonded to protect sellers; but his failure to do so was “sort of an aggravating factor here.” *Id.* at 116:7-10, 116:15-117:5.

19. Mr. Hansen also explained how failure to pay when due is a financial stress for the seller, especially if they need to pay the original producer from whom they acquired the livestock. *Id.* at 117;18-118:1. Mr. Hansen explained that, in the present case, Respondent Lynch’s failure to pay when due at the Auction Market likely caused a chain reaction, detrimental to the market. *Id.* at 118:11-121:3. Specifically, Mr. Hansen testified:

Okmulgee is a -- an Auction Market. They, in turn, are also subject to the Packers and Stockyard’s Regulations, and they have a custodial account that they have to use to channel money, basically, from the buyers, like Mr. Lynch, to the sellers, and, so, they require -- they have requirements they have to meet for maintenance of that custodial account. . . . [O]ne of the requirements is that if they have not received payment from the buyer by the close of business the seventh day following sale, they have to put their own money into the custodial account to cover what that buyer failed to -- owes them, at that point in time.

Now, in doing that, that means they have to take money out of their general account, or some other account, or borrow money, if need be, but get money and put it into the custodial account to cover that buyer, buyer’s purchases. That makes it harder for the market to meet its payroll, to pay its electrical bill, and its operating expenses. The more of that that happens, the more financially weak the market becomes, and ultimately

could lead to their failure, which, then means they could potentially fail to pay basically all the consigners to their recent sales.

Id. at 118:13-119:18. Mr. Hansen testified that there have been instances where such failures to pay have resulted in a market going out of business. *Id.* at 121:4-17. Here, Mr. Hansen explained, Respondent Lynch's failure to pay going back to 2016 caused the markets to have to come up with the money not paid, money that came from their operating funds or was borrowed with interest, to keep the custodial account funded. *Id.* at 124:2-21. Mr. Hansen testified that the failure to pay, as opposed to a failure to pay when due, is "more serious" as the market has to put their own money in to pay sellers "even though they never took ownership of the livestock." *Id.* at 125:8-12.

20. Mr. Hansen explained that paying by check with insufficient funds causes the same hardships on the market in addition to additional bank service fees "which can add up and be substantial" and must come out of an account other than the custodial account such as the general account or operating expenses. *Id.* at 126:7-128:3.

21. As to the fraud allegations, Mr. Hansen explained that:

the internet has become a major marketing tool in the livestock industry, and when you have someone go on the internet, and advertise livestock for sale, and then not be able to provide the livestock they said they had, for whatever reason, and then kind of have accepted the money and payment for it, and not be able to pay it back, that damages the faith in the integrity of the internet as a marketing tool, and it is such an important tool these days.

Id. at 131:3-12. Mr. Hansen avers that “to a broad extent . . . that could be very disruptive to the livestock industry.”

22. Mr. Hansen testified that he considered Agency policies, case precedent, the Act, and Regulations when formulating his recommended sanction. *Id.* at 137:10-138:1. Mr. Hansen explained that if Complainant was going to impose a civil penalty, it would need to consider “respondent’s ability to pay the civil penalties without being put out of business” and here:

because Mr. Lynch was not registered, he was not filing end reports, I had no balance sheets to look at, given the nature of the violations where he’s failed to pay, pay when due, NSF checks, that does not paint a picture that tells me he’s got the wherewithal to pay civil penalties readily. Also, he’s filed bankruptcy, which, again, doesn’t look like civil penalties will really be a viable sanction tool. The other thing is where we’ve got unpaid sellers that are still unpaid, it just looks inappropriate for the government to try go to the head of the line and collect money, when there are unpaid sellers. So, we did not want to look at civil penalties.

Id. at 138:11-139:3. Mr. Hansen stated that sanctions are used for deterrence and punishment, but “[t]he ultimate goal, though, is compliance” so “the penalties, or things of that nature, is what we would pursue to get compliance.” *Id.* at 139:4-11. Mr. Hansen went on to explain:

Here, our orientation was more towards trying to get Mr. Lynch to pause, and get his house in order, before he proceeds, and also, importantly, to

not have him continue operating as he is, building up more bad debts, in the meantime. . . . unfortunately, he wasn't registered, so we don't have a registration to suspend.

So, then, we turn to the prohibition from registering, which means, that in the time that he would be prohibited from registering, and there I -- there would be a seize and assist [sic] [cease and desist] order . . . not to operate without, you know, being in compliance with the act and regulations. He must not operate as a livestock dealer, buying for resale, which is one of the things he's been doing. He also mentioned being an order buyer in the past, which would be a market agency buying on commission. Registration covers both those activities, as well as selling on commission, which is -- other than his part ownership at a market, at some time in the past, he's not been doing recently, as far as I know, but it would -- prohibiting from registering would preclude those activities.

We're requesting that he be precluded from those activities, for a period of five years, during which time we would hope he would finalize getting, you know, sellers paid, and so forth, or if he can do this in a shorter period of time, at any point after one year, we would be willing to lift the prohibition, if he provides us verifiable information that he has, in fact, paid the unpaid sellers listed in the complaint, by whatever means, whether it's following the bankruptcy requirements, or whatever.

Our idea is to get him to give pause, to get his house in order, not incur more debt, bad debts in the near term, and then, as soon as possible, when he can, get right, and get registered and bonded, he's got people paid and so forth. He can, again, proceed with doing what he loves to do because he's not just filing bankruptcy and walking away. There is evidence he is trying to make payments. That rather indicates he does want to rebuild his integrity and be able to get back into the business. That does seem to be his goal. The sanction we're proposing looks to help him do that, but in an orderly way, so that, hopefully, the harm that's been done can be undone, and he can get right, and do things the right way, get registered and bonded, then, before he operates. So, even after one year, if he shows he's paid everyone, he would still have to register and obtain a bond before he could operate, but then he could do so.

Id. at 139:12-142:5. Mr. Hansen testified that he reviewed previous enforcement cases with similar facts and, although most were consent decisions, he concluded that a five-year prohibition from registration was well justified for the serious nature of these violations. *Id.* at 143:15-144:2.

Conclusions

1. The Secretary of Agriculture has jurisdiction over the parties and the subject matter.
2. During 2015 and 2016, Respondent Shane M. Lynch willfully violated sections 312(a) and 409(a) of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), and 228b); and

sections 201.43(b)(2)(ii) and 201.53 of the Regulations promulgated thereunder (9 C.F.R. §§ 201.43(b)(2)(ii), 201.53).

3. The sanction recommended by AMS is appropriate and aimed to bring Respondent Lynch into compliance. The sanction recommended gives Respondent Lynch the opportunity to re-enter the market as a registered and bonded dealer, more quickly if successful in paying those harmed.

4. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. Respondent Shane M. Lynch, 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 Packers and Stockyards Act without paying timely for each and every livestock transaction and purchase from sellers of livestock; and shall cease and desist from issuing checks without sufficient funds to pay those checks. Specifically, Respondent, 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

a. Purchasing livestock in commerce and failing to pay or failing to pay when due, the full purchase price of such livestock as required by sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b) and section 201.43 of the regulations (9 C.F.R. § 201.43);

b. Issuing checks for payment and failing to maintain sufficient funds on deposit and available in the account upon which payment checks are drawn to pay such checks when presented, as required by section 312(a) of the Act (7 U.S.C. §§ 213(a)); and

c. Representing ownership in livestock advertised for sale, accepting payment for that advertised cattle, and then failing to deliver the promised cattle.

2. Respondent Shane M. Lynch, operating individually or through any corporate or other device, is prohibited for 5 (five) years from when this Decision and Order becomes final from engaging in operations subject to the Packers and Stockyards Act; and from registering under the Packers and Stockyards Act as a dealer and as a market agency buying and selling consigned livestock in commerce on a commission basis. However, upon application to AMS, Packers and Stockyards Division, a supplemental order may be issued that shortens that 5-year prohibition. After 1 (one) year of prohibition, at any time, during those remaining 4 (four) years, if the Respondent shows that -- demonstrates to the satisfaction of the Packers and Stockyard's Division, that all unpaid livestock sellers, identified in the Complaint, have been paid in full, the prohibition could be terminated by supplemental order.

Finality

This Decision and Order becomes final and effective without further proceedings thirty-five (35) days after the date of service upon the Respondent, unless appealed to the Judicial Officer by a party to the proceeding by filing with the Hearing Clerk within thirty (30) days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145). See Appendix A.

Copies of this Decision and Order shall be sent by the Hearing Clerk to each of the parties. The Hearing Clerk will use both certified mail and regular mail for the Respondent Shane M. Lynch and as a courtesy will in addition email Respondent Shane M. Lynch at the email address he used to reach the Hearing Clerk.

Issued this 19th day of August 2020, at Washington, D.C.



Jill S. Clifton
Administrative Law Judge

Appendix A attached or enclosed

Hearing Clerk's Office
U.S. Department of Agriculture
Stop 9203, South Building, Room 1031
1400 Independence Avenue, SW
Washington, D.C. 20250-9203
Tel: 1-202-720-4443
Fax: 1-844-325-6940
SM.OHA.HearingClerks@USDA.GOV

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time

for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145