

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Justin Harless,) P&S-D Docket No. 20-J-0122
)
)
Respondent.)

REC'D - USDA/OALJ/OHC
2020 SEP 1 AM 11:44

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Aaron D. Buzawa, 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 Justin Harless (“Respondent”) on April 30, 2020. The Complaint alleges that Respondent violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b, and 228b(a)) and section 201.43 of the Regulations (9 C.F.R. § 201.43).¹ Further, the Complaint requests:

1. That *unless Respondent fails to file an answer within the time allowed*, 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; and

¹ Complaint at 2.

2. 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; prohibiting Respondent, 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 3 (emphasis added).²

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).³

On June 10, 2020, Complainant filed a Motion for Adoption of Proposed Default Decision and Order (“Motion for Default”) and Proposed Default Decision and Order (“Proposed Decision”).⁴ Respondent has not filed any objections to Complainant’s Motion for Default or Proposed Decision.⁵

² In its Motion for Default (*see infra* note 4 and accompanying text), Complainant no longer requests that Respondent be suspended as a registrant under the Act or prohibited from engaging in business that requires registration or bonding under the Act. *See* Motion for Default at 3; Proposed Decision at 3.

³ United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on May 11, 2020. 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 June 1, 2020. Respondent has not filed an answer.

⁴ The Motion for Default states: “In order to deter Respondent and others similarly situated from committing violations of this nature in the future, Complainant believes prohibitions from conducting livestock transactions without making timely payment, and a civil penalty, are warranted and appropriate.” Motion for Default at 3.

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 August 1, 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,

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.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 an 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 Justin Harless, an individual, 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;
 - 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.
2. On February 28, 2018, the Grain Inspection, Packers & Stockyards Administration sent Respondent a Notice of Violation ("NOV") informing him that he had failed to make prompt payment for certain livestock purchases in December 2017. The NOV further informed

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 August 21, 2020. Respondent has not filed any objections.

⁶ 7 C.F.R. § 1.136(c).

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

Respondent that failure to pay for livestock by close of the next business day is a violation of the Act and Regulations and that failure to correct his business practices and bring them into statutory and regulatory compliance could subject him to disciplinary action. A second NOV was sent to Respondent on March 21, 2019, informing him that he had once again failed to make prompt payment for certain livestock purchases in January and February 2019.

Notwithstanding the NOVs, Respondent continued to engage in the business of buying livestock in commerce without paying, when due, the full purchase price of livestock, as required by the Act.

3. During the period from July 1, 2019 through August 31, 2019, in twenty-six transactions involving Livestock Producers Association, A.A.L.; East Mississippi Farmers Livestock Company; and Southeast Mississippi Livestock, A.A.L., Respondent purchased a total of 338 head of livestock for a total purchase price of \$105,892.33 but failed to pay, when due, the full purchase price of the livestock.

Conclusions

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

ORDER

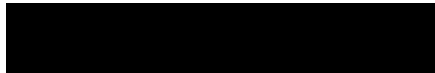
1. Complainant's Motion for Adoption of Proposed Default Decision and Order is GRANTED.
2. Respondent Justin Harless, his agents, successors, and assigns, directly or indirectly through any corporate or other device, shall cease and desist from failing to pay, when due, for livestock purchases, when acting as a dealer and/or market agency, in violation of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b).

3. In accordance with 7 U.S.C. § 213(b), Respondent is assessed a civil penalty in the amount of three-thousand dollars (\$3,000).

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 1st day of September 2020



Channing D. Strother
Chief Administrative Law Judge

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