

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Kyle Sorrels,) P&S-D Docket No. 19-J-0150
)
)
Respondent.)

REC'D - USA/DAL/JCH
2020 MAR 3 PM2:57

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Angela Boyd Matthews, 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” or “AMS”), initiated this proceeding by filing a complaint against Kyle Sorrels (“Respondent”) on September 18, 2019. The Complaint alleges that Respondent willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b).¹ Further, the Complaint requests:

That an order be issued requiring Respondent to cease and desist from the violations of the Act and 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

¹ Complaint at 3.

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 4.²

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 January 9, 2020, 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.⁴ On January 24, 2020, Complainant filed a Proposed Default Decision and Order (“Proposed Decision”) and Motion for Adoption of Proposed Default Decision and Order (“Motion for Default”). Complainant proposes that Respondent be ordered to cease and desist from violations of the Act and assessed a civil penalty in the amount of \$16,000.00.⁵

Complainant no longer requests that Respondent be suspended as a registrant under the Act or

² The Complaint also requests: “That *unless Respondent fails to 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[.]*” Complaint at 4 (emphasis added).

³ 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 November 8, 2019. 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 November 13, 2019. 7 C.F.R. § 1.147(c). Respondent had twenty (20) 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 December 5, 2019. Respondent has not filed an answer in this matter.

⁴ The Show Cause Order also directed: “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.

⁵ *See* Proposed Decision at 4.

that Respondent be prohibited from engaging in business for which registration and bonding are required under the Act.⁶ Respondent failed to respond to the Show Cause Order and has not filed any objections to Complainant's Motion for Default or Proposed Decision.⁷

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.⁸ 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.⁹

As Respondent failed to file a timely answer the Complaint, and upon Complainant's Motion for 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 Kyle Sorrels, 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;

⁶ See *id.*; see also Motion for Default at 4 (“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.”).

⁷ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on February 4, 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 February 24, 2020. Respondent has not filed any objections.

⁸ 7 C.F.R. § 1.136(c).

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

- 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 June 26, 2015, Respondent Kyle Sorrels entered into a Consent Decision with the Grain Inspection, Packers and Stockyards Administration,¹⁰ which ordered that Kyle Sorrels and KMS Cattle, Inc., cease and desist from failing to pay, when due, the full purchase price of livestock.¹¹ Notwithstanding the Order, Respondent continued to engage in the business of a market agency buying livestock on a commission basis and a dealer buying and selling livestock in commerce without paying, when due, the full purchase price of livestock, as required by the Act.
3. On or about the dates and in the transactions set forth below, Respondent Kyle Sorrels failed to pay, when due, the full purchase price of such livestock.

PURCHASE DATE	LIVESTOCK SELLER	NO. HEAD	INVOICE AMT	DUE DATE	DATE PAID	DAYS LATE
9/1/2015	Arkansas Cattle Auction Co.	12	\$16,340.85	9/2/2015	9/8/2015	6
9/8/2015	Arkansas Cattle Auction Co.	9	\$11,052.25	9/9/2015	9/15/2015	6

¹⁰ The Secretary of Agriculture subsequently eliminated the Grain Inspection, Packers and Stockyards Administration as a stand-alone agency, transferring enforcement of the Act to the Packers and Stockyards Division, Fair Trade Practices Program, Agricultural Marketing Service. *See* Revision of Delegations of 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 March 2, 2020).

¹¹ *See KMS Cattle, Inc.*, P&S-D Docket Nos. 15-0058, 15-0069, 2015 WL 8484471 (U.S.D.A. June 26, 2015) (Consent Decision).

9/15/2015	Arkansas Cattle Auction Co.	4	\$5,055.25	9/16/2015	9/22/2015	6
9/22/2015	Arkansas Cattle Auction Co.	14	\$17,537.65	9/23/2015	9/29/2015	6
10/6/2015	Arkansas Cattle Auction Co.	15	\$10,579.25	10/7/2015	10/13/2015	6
10/13/2015	Arkansas Cattle Auction Co.	14	\$11,720.65	10/14/2015	10/20/2015	6
10/20/2015	Arkansas Cattle Auction Co.	17	\$14,072.36	10/21/2015	10/27/2015	6
11/3/2015	Arkansas Cattle Auction Co.	18	\$17,826.31	11/4/2015	11/10/2015	6
11/10/2015	Arkansas Cattle Auction Co.	9	\$8,982.05	11/12/2015	11/17/2015	5
11/17/2015	Arkansas Cattle Auction Co.	12	\$8,955.25	11/18/2015	11/24/2015	6
11/24/2015	Arkansas Cattle Auction Co.	6	\$5,043.60	11/25/2015	12/1/2015	6
1/12/2016	Arkansas Cattle Auction Co.	5	\$3,707.75	1/13/2016	1/19/2016	6
1/26/2016	Arkansas Cattle Auction Co.	1	\$639.85	1/27/2016	2/2/2016	6
2/2/2016	Arkansas Cattle Auction Co.	3	\$1,608.00	2/3/2016	2/5/2016	2
8/6/2015	Benton Co Sale Barn, Inc.	19	\$22,452.63	8/7/2015	8/11/2015	4
8/27/2015	Benton Co Sale Barn, Inc.	14	\$12,292.88	8/28/2015	9/1/2015	4
9/3/2015	Benton Co Sale Barn, Inc.	12	\$11,111.75	9/4/2015	9/9/2015	5
10/7/2015	Cattlemen's LS Auction CLM, LLC	2	\$2,043.65	10/8/2015	10/14/2015	6
10/14/2014	Cattlemen's LS Auction CLM, LLC	3	\$3,109.95	10/15/2015	10/28/2015	13

10/21/2015	Cattlemen's LS Auction CLM, LLC	10	\$9,183.30	10/22/2015	10/28/2015	6
10/28/2015	Cattlemen's LS Auction CLM, LLC	11	\$9,415.05	10/29/2015	11/4/2015	6
11/18/2015	Cattlemen's LS Auction CLM, LLC	14	\$12,311.95	11/19/2015	11/23/2015	4
1/6/2016	Cattlemen's LS Auction CLM, LLC	4	\$2,537.45	1/7/2016	1/13/2016	6
1/27/2016	Cattlemen's LS Auction CLM, LLC	1	\$864.15	1/28/2016	2/1/2016	4
9/17/2015	I-40 LS Auction, Inc.	11	\$11,113.65	9/18/2015	9/22/2015	4

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Kyle Sorrels 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 Kyle Sorrels, 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 Kyle Sorrels is assessed a civil penalty in the amount of sixteen-thousand dollars (\$16,000.00).

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 the parties and counsel.

Done at Washington, D.C.,
this 3rd day of March 2020



Channing D. Strother
Chief Administrative Law Judge

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