

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Antonio Chavez a.k.a.) P&S-D Docket No. **21-J-0015**
Jose Antonio Chavez d/b/a)
Buffalo Cattle Company LLC)
The Cattle Finder LLC)
)
Respondent.)

**Decision and Order on the Written Record (Ruling GRANTING
Complainant AMS’s Motion for Decision Without Hearing)**

Appearances:

Britta Beckstead, Esq., with the Office of the General Counsel - Mountain Region, Denver Colorado Office, U.S. Department of Agriculture, 1617 Cole Blvd Suite 385E, Lakewood, Colorado 80401-3305; and

Christopher Young, Esq., with the Office of the General Counsel, U.S. Department of Agriculture, 1400 Independence Ave SW, Washington, DC 20250, for the Complainant, (“AMS”) ¹; and

the Respondent Antonio Chavez, also known as Jose Antonio Chavez, doing business as Buffalo Cattle Company LLC and The Cattle Finder LLC, representing himself (appearing pro se).

Decision Summary

The Respondent Antonio Chavez admitted material allegations necessary to establish willful violations of sections 312(a) and 409 of the Packers and Stockyards Act. 7 U.S.C. § 213(a). 7 U.S.C. § 228b. The Respondent Antonio Chavez operated as a dealer and failed to pay timely the full purchase price of livestock, with about \$482,374.72 still owed.

¹ The Complainant is the Deputy Administrator, Fair Trade Practices Program (this case arose in the, Packers and Stockyards Division), Agricultural Marketing Service, United States Department of Agriculture (“AMS” or Complainant).

Procedural History

1. This is a disciplinary proceeding under the Packers and Stockyards Act (“P&S Act”), 7 U.S.C. §§ 181 *et seq.*, 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”).
2. This case (Docket No. **21-J-0015**) was initiated by a Complaint filed with the USDA Hearing Clerk February 8, 2021, by the Deputy Administrator, Fair Trade Practices Program (this case arose in the Packers and Stockyards Division), Agricultural Marketing Service, United States Department of Agriculture (frequently “AMS” or Complainant).
3. AMS alleged that the Respondent Antonio Chavez, also known as Jose Antonio Chavez, doing business as Buffalo Cattle Company LLC and The Cattle Finder LLC, while engaged in the business of a dealer, had:
 - (a) failed to pay, when due, the full purchase price for livestock in 17 transactions totaling \$901,931.43 between November 2019 and January 2020. AMS alleged that \$579,232.27 remained unpaid as of the filing of the Complaint.
 - (b) failed to pay, when due, the full purchase price of such livestock on 91 occasions from about October 2019 through December 2019, from three to 22 days late.
 - (c) failed to have an active registration or an adequate bond (or bond equivalent) filed with the Secretary of Agriculture.
 - (d) had willfully violated sections 312(a) and 409 of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 213(a), 228b).

4. On March 22, 2021, the Respondent Antonio Chavez filed an Answer that did not deny, or affirmatively admitted, the Complaint's material allegations. The Respondent Antonio Chavez admits the following either by failing to deny or by affirmative admission: he operated as a dealer and failed to pay when due the full purchase price for livestock. The Complainant AMS moved for a decision without a hearing or further procedure pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). More than a *de minimis* amount is still owed to the livestock sellers listed in the Complaint. No oral testimony is required to decide this case, and a decision on the written record is appropriate.

5. The parties participated in several telephone conferences with the undersigned, the Administrative Law Judge assigned to hear and decide the issues. A Hearing was scheduled for September 2021. On June 4, 2021, Complainant AMS filed a Motion for Decision Without Hearing ("Motion"), proposed Decision and Order ("Proposed Decision"), and Declaration of (b) (6) ("Declaration"). On June 24, 2021, Respondent Chavez requested an extension due to illness to respond to Complainant's Motion, which was granted via order issued June 25, 2021. Respondent Chavez was provided an extension until July 26, 2021 to respond to Complainant AMS's Motion.

6. On July 23, 2021 the September 2021 Hearing was canceled at the request of the parties during a telephone conference on July 21, 2021 where the "parties agreed that rescheduling will be needed only if the issues are not otherwise resolved, through negotiation."² During the telephone conference on July 21, 2021 Respondent Chavez

² 2021 September 13 thru 17 HEARING CANCELLATION at ¶ 2.

confirmed that he intended to file a response by July 26, 2021 to Complainant's Motion and that he did not need an extension.

7. Respondent Chavez did not file a response to Complainant's Motion for Decision Without Hearing.

Authorities

8. The P&S Act requires any dealer purchasing livestock to deliver to the seller or the seller's representative the full amount of the purchase price before the close of the next business day following the purchase and transfer of possession of the livestock. 7 U.S.C. § 228b(a).

9. Congress provided for enforcement of the P&S Act by the Secretary of Agriculture. 7 U.S.C. § 228. This proceeding is under the Rules of Practice (7 C.F.R. §§ 1.130 through 1.151).

Discussion

10. In AMS's Motion for Decision, Complainant states that the need for a hearing is obviated because Respondent Chavez has admitted the Complaint's material allegations; and the Declaration of (b) (6), Marketing Specialist and Acting Branch Chief of the Enforcement Branch of the Division, attached to Complainant's Motion, "further demonstrates that the material facts are undisputed and more than a *de minimis* amount is still owed to the livestock sellers listed in the Complaint." Motion at 2.

11. Respondent Chavez failed to respond to Complainant AMS's Motion despite an extension of time to reply and courtesy reminders of the due date for response.

12. Issuance of a Decision and Order Without Hearing is appropriate in this case. The

Judicial Officer has consistently ruled that hearings are unnecessary where there is no factual dispute of substance or that would result in a different ruling.³

13. The failure to pay promptly and fully for the purchase price of livestock constitutes an unfair and deceptive practice in willful violation of sections 312(a) and 409 of the Act. *Id.* at § 228b(c).⁴ A violation is willful if a person intentionally or carelessly does an act prohibited by statute, even if the person does not know that the conduct is prohibited or did not intend to do anything wrong.⁵

14. As further discussed below, based on the Respondent Chavez's admissions, as well as the information provided in the [REDACTED] Declaration, it is undisputed that the Respondent operated as a dealer and failed to timely pay the full purchase price of livestock. It is also undisputed that more than a *de minimis* amount is still owed to the livestock sellers listed in the Complaint. Under these circumstances, a hearing is not required to determine that the Respondent engaged in willful violations of Sections 312(a) and 409 of the P&S Act and a decision without a hearing is appropriate.

The Respondent has admitted the facts necessary to prove that he failed to fully and timely pay the purchase price of livestock in violation of the P&S Act.

15. In his Answer, Respondent Chavez both admits some of, and does not specifically deny others of, the Complaint allegations. Specifically, Respondent Chavez admits that: 1) he is the registered agent, owner, and operator of Buffalo Cattle and The Cattle Finder LLC;

³ *Hardin Cnty Stockyards, Inc.*, 53 Agric. Dec. 654, 656 (U.S.D.A. 1994); *Blaser*, 45 Agric. Dec. 1727, 1728 (U.S.D.A. 1986).

⁴ *See also, e.g., E. Livestock Co., LLC*, 74 Agric. Dec. 166, 172 (U.S.D.A. 2015).

⁵ *D.W. Produce*, 53 Agric. Dec. 1672, 1678 (U.S.D.A. 1994); *Hardin County Stockyards, Inc.*, 53 Agric. Dec. 654, 656 (U.S.D.A. 1994).

2) Buffalo Cattle Company LLC was involved in the transactions set forth in the Complaint, paragraph II(a), that those transactions “are true” and “have not been paid in full”; and 3) neither Buffalo Cattle Company LLC nor The Cattle Finder LLC has an active registration or adequate bond.

16. Respondent Chavez disputes that: 1) he ever operated under the entity Buffalo Corp; 2) The Cattle Finder was “directly” involved in any of the purchases set forth in the Complaint, paragraph II(a); 3) the amounts listed as owed in the Complaint are accurate because some of the “people listed have been paid in full and some others have been receiving partial payments from Jose Antonio Chavez responding on behalf of Buffalo Cattle Company LLC”; and 4) Buffalo Cattle Company LLC violated the P&S Act by operating without an active registration or adequate bond because it was operating under an entity named “Vaquillas Marketing Co, LTD” (also known as “Vaquillas Marketing”) that was actively registered and adequately bonded. Lastly, in his Answer Respondent raises the following defenses: that both the Buffalo Cattle Company LLC and The Cattle Finder LLC ceased operation as of December 2019; and that “[t]here was very poor communication from USDA towards me, most of the communication was made with VAQUILLAS MARKETING CO LTD.” These disputes are not material to the findings of violations in this matter. *See supra* note 3.

17. The Respondent has admitted – both tacitly and expressly – the facts necessary to prove that he willfully violated sections 312(a) and 409 of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 213(a), 228b). In addition to the admissions in the Answer detailed above, the Answer does not deny that the Respondent

was engaged in the business of a dealer at all times material to the Complaint. It also does not deny that the Respondent failed to pay, when due, the full purchase price of such livestock on ninety-one (91) occasions from three (3) to twenty-two (22) days late from October 2019 to December 2019.

18. The failure to deny or otherwise respond to an allegation in the Complaint is deemed an admission of the Complaint's allegations. 7 C.F.R. § 1.136(c). Based on the Respondent's admissions, it is undisputed that the Respondent operated as a dealer and failed to timely pay the full purchase price of livestock in violation of 7 U.S.C. § 228b(a).

The undisputed amount still owed to livestock sellers is more than de minimis.

19. Unless the amount admittedly owed is *de minimis*, there is no basis for a hearing merely to determine the precise amount owed.⁶ USDA administrative "failure to pay" proceedings have clearly defined what constitutes a *de minimis* amount.⁷

20. On May 19, 2021, (b) (6) of the Division initiated a compliance check regarding the status of payments to livestock sellers listed in the Complaint. Declaration ¶2. (b) (6) reviewed a spreadsheet provided by Respondent Chavez and spoke with him regarding the status of payments. *Id.* at ¶¶2-7. The only difference between the spreadsheet provided by Respondent Chavez and the table of livestock purchases, sellers, and remaining amounts owed in the Complaint is the name of the first seller and the statement that six additional payments have been made to livestock sellers in the total

⁶ *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1985).

⁷ *See D.W. Produce, Inc.*, 53 Agric. Dec. 1672, 1678 (U.S.D.A.1994) (a finding of violations is appropriate when there is more than one violation of the Act or when the total amount due or owed exceeds \$5,000).

amount of \$96,857.56 *Id.* at ¶¶4, 7. Assuming, *arguendo*, that these payments were made, the Respondent still owed \$482,374.72 to the livestock sellers listed in the Complaint. *Id.* at ¶¶7-8. Respondent stated to [REDACTED] that he still owed \$482,374.72 to the livestock sellers on the spreadsheet he provided, which is nearly identical to the list of sellers in the Complaint, *id.* at ¶7, and a more than a *de minimis* amount.

The Respondent's violations justify a Cease and Desist Order and suspension.

21. The Secretary bases sanctions on the circumstances of each case with the objective of deterring the violator and others in the industry from engaging in violations of the Act.⁸ A decision regarding the appropriate sanctions must give “weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose [of the Act].” *Id.* Here, under the undisputed facts of this case, Respondent Chavez committed serious and willful violations of the Packers and Stockyards Act in multiple transactions, and a significant portion of the outstanding amounts owed to sellers remained unpaid as of the filing of the Complaint.

Findings of Fact

1) Respondent Antonio Chavez, also known as Jose Antonio Chavez, doing business as Buffalo Cattle Company LLC and The Cattle Finder LLC, while engaged in the business of a dealer, failed to pay, when due, the full purchase price for livestock in 17 transactions totaling \$901,931.43 between November 2019 and January 2020. AMS alleged that \$579,232.27 remained unpaid as of the filing of the Complaint.

⁸ *S.S. Farms Linn County, Inc.*, 50 Agric. Dec. 476 (U.S.D.A. 1991).

- 2) \$482,374.72 remains unpaid according to Respondent Antonio Chavez's acknowledgement of that amount and the Declaration of (b) (6).
- 3) Respondent Antonio Chavez failed to have an active registration or an adequate bond (or bond equivalent) filed with the Secretary of Agriculture.

Conclusions

- 1) The Secretary of Agriculture has jurisdiction over the parties and the subject matter.
- 2) Respondent Antonio Chavez admitted the Complaint's material allegations; there is no factual dispute that would affect the outcome here; and there is no need for oral testimony. A Decision and Order on the Written Record is appropriate.
- 3) Respondent Antonio Chavez's admissions, and the Declaration of (b) (6) attached to AMS's Motion for Decision Without Hearing, prove that Respondent Antonio Chavez, during the last 3 months of 2019 and January 2020, willfully violated sections 312(a) and 409 of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 213(a), 228b). See Findings of Fact above.
- 4) The following Order is authorized by the Packers and Stockyards Act and Regulations and warranted under the circumstances.

Order

- 1) Complainant's AMS's Motion for Decision Without Hearing is GRANTED.
- 2) Respondent Antonio Chavez, also known as Jose Antonio Chavez, doing business as Buffalo Cattle Company LLC and The Cattle Finder LLC, his agents and employees, directly or through any corporate or other device, in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from failing to pay, when due, the

full purchase price of livestock, as required by sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b), and the Regulations.

2) Pursuant to 7 U.S.C. § 204, Respondent Antonio Chavez, also known as Jose Antonio Chavez, doing business as Buffalo Cattle Company LLC and The Cattle Finder LLC is suspended as a registrant under the Packers and Stockyards Act for five (5) years from the effective date of this Decision and Order. During this suspension, Respondent Antonio Chavez is prohibited from operating in any capacity for which registration and bond is required under the Packers and Stockyards Act. This suspension may be reduced by those in authority within the Packers and Stockyards Division if Respondent Chavez submits to the Division proof of payment of all outstanding amounts owed to livestock sellers identified in the Complaint and this payment is verified by the Division.

Finality

This Decision and Order becomes final and effective thirty-five (35) days after service upon Respondent Chavez, unless appealed to the Judicial Officer by a party to the proceeding by filing with the Hearing Clerk within thirty (30) days, under section 1.145 of the Rules of Practice (7 C.F.R. § 1.145). See Appendix A.

Copies of this “Decision and Order on the Written Record (Ruling GRANTING Complainant AMS’s Motion for Decision Without Hearing)” shall be sent by the Hearing Clerk to each of the parties.

Issued this 29th day of September 2021, in Washington, D.C.

 Digitally signed by JILL
CLIFTON
Date: 2021.09.29
16:04:46 -04'00'

Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Enclosed: Appendix A

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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