

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/HCO'
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In re:)
)
James B. Cristel; and) P&S-D Docket No. 21-J-0040
Dixie Harr, d/b/a Edwardsville Livestock,) P&S-D Docket No. 21-J-0041
)
Respondents.)

**DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT
AS TO RESPONDENT JAMES B. CRISTEL**

Appearances:

Peter B. Jurgeleit, Esq., with the Office of the General Counsel, United States Department of Agriculture, Milwaukee, WI, for the Complainant, Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service (“AMS”)

Respondent James B. Cristel, pro se

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 James B. Cristel (“Respondent Cristel”) on June 23, 2021.¹ The Complaint alleges that Respondent Cristel willfully violated sections 312(a), 401, and 409 of the

¹ Dixie Harr, doing business as Edwardsville Livestock (Docket No. 21-J-0041), was also named as a respondent in the Complaint. This Decision and Order applies only to Respondent James B. Cristel (Docket No. 21-J-0040).

Act (7 U.S.C. §§ 213(a), 221, 228b) and section 201.43 of the Regulations (9 C.F.R. § 201.43).²

Further, the Complaint requests:

1. That *unless . . . Respondent Cristel . . . fail[s] to file an answer within the time allowed*, or file[s] answers admitting all the material allegations of this complaint, this proceeding be set for oral hearing in accordance with the Rules of Practice; and
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; prohibiting Respondent[] from engaging in business in any capacity for which registration and bonding are required under the Act; and requiring Respondent[] to keep all accounts, records and memoranda as will fully and correctly disclose all transactions involved in [his] business.

Complaint at 6 (emphasis added).

Respondent Cristel 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 August 31, 2021, 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

² Complaint at 5.

³ United States Postal Service records reflect that the Complaint was sent to Respondent Cristel via certified mail and delivered on July 22, 2021. Respondent Cristel 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 Cristel’s answer was due on or before August 11, 2021. Respondent Cristel has not filed an answer.

Respondent Cristel.⁴

On September 16, 2021, Complainant filed (1) a response to the Show Cause Order and request for decision without hearing by reason of admissions (“Motion for Default”) and (2) a proposed decision without hearing by reason of admissions (“Proposed Decision”) pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Complainant now requests

. . . that Respondent be: (a) ordered to cease and desist from (i) failing to pay when due, the full purchase price of livestock within the time period required by the Act, (ii) 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 the Act, and (iii) failing to keep accounts and maintain accurate transaction records which fully and correctly disclose all the transactions involved in his business as required by the Act; and (b) suspended as a registrant from all livestock operations for five (5) years.

Motion for Default at 6. Respondent Cristel failed to respond to the Show Cause Order and has not filed any objections to Complainant’s Motion for Default or Proposed Decision.⁵

On September 24, 2021, Respondent Cristel filed a copy of the July 9, 2019 order entered by a United States bankruptcy judge that closed Respondent Cristel’s Chapter 7 bankruptcy

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 and order in accordance with the provisions of 7 C.F.R. § 1.139.” Show Cause Order at 2.

⁵ United States Postal Service records reflect that Complainant’s Motion for Default and Proposed Decision were sent to Respondent Cristel via certified mail and delivered on October 5, 2021. Respondent Cristel 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 Cristel’s objections were due on or before October 25, 2021. Respondent Cristel has not filed any objections.

case.⁶ This document, however, is neither an answer to the Complaint nor an objection to the Motion for Default.⁷ As Complainant correctly notes, Respondent Cristel's bankruptcy discharge does not relieve Respondent Cristel's duty to admit or deny the allegations of the Complaint and does not bar Complainant from seeking the relief requested.⁸

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.⁹ Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely answer where, as in the present case, no meritorious objections have been filed.¹⁰

As Respondent Cristel failed to an answer to the Complaint, and upon Complainant's motion for the issuance of a decision without hearing, 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).

⁶ *In re: James Cristel*, No. 19-30325-lkg (Bankr. S.D. Ill. July 9, 2019) (Order Closing Case).

⁷ See 7 C.F.R. § 1.136(b) (“*Contents*. The answer shall: (1) Clearly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defenses asserted by the respondent; or (2) State that the respondent admits all the facts alleged in the complaint; or (3) State that the respondent admits the jurisdictional allegations of the complaint and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.”); 7 C.F.R. § 1.139.

⁸ See Motion for Default at 2-3; *In re: Farmers & Ranchers Livestock Auction, Inc.*, 46 B.R. 781, 792 (Bankr. E.D. Ark. 1984); *Bluegrass Packing Co.*, 42 Agric. Dec. 1464, 1469 (U.S.D.A. 1983).

⁹ 7 C.F.R. § 1.136(c).

¹⁰ See *supra* note 5 and accompanying text.

Findings of Fact

1. Respondent James B. Cristel is an individual whose current address is in the State of Illinois. His address will not be stated in this Decision and Order to protect his privacy but will be maintained with the Hearing Clerk, United States Department of Agriculture, for the purpose of service of this Decision and Order.
2. Respondent Cristel 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 and for the accounts of others; and
 - b. Registered with the Secretary of Agriculture as a market agency buying on commission and dealer buying and selling livestock in commerce.
3. From April 6, 2018 through November 2, 2018, in eight transactions involving 172 head of livestock, Respondent Cristel failed to pay \$95,875.38 in total livestock purchases.
4. Between August 22, 2018 and October 19, 2018, in six transactions involving 188 head of livestock, Respondent Cristel failed to pay, when due, the full purchase price of such livestock. Over these six transactions, Respondent Cristel was late in paying his sellers (between four and 161 days late).
5. In connection with ten livestock purchases, one occurring one each of April 6, 2018; June 4, 2018; June 18, 2018; August 22, 2018; September 17, 2018; September 21, 2018; October 5, 2018; October 12, 2018; October 19, 2018; and October 26, 2018, Respondent Cristel issued checks for which he did not have and maintain sufficient funds on deposit to pay such checks when presented. Accordingly, Respondent Cristel failed to pay, when due, the full purchase

price of the livestock. As of the date Complainant filed the Motion for Default, Respondent Cristel had still failed to pay \$95,875.38 for these livestock purchases.

6. In connection with his operations subject to the Act, Respondent Cristel failed to keep and maintain records that fully and correctly disclosed all the transactions involved in his business as a market agency buying on commission and a dealer buying and selling livestock as required under section 401 of the Act (7 U.S.C. § 221). Specifically, Respondent Cristel failed to keep and maintain copies of livestock dealer records, including but not limited to livestock invoices for purchases and sales, check registers, and bank statements on accounts used to purchase livestock.
7. Respondent Cristel filed for Chapter 7 bankruptcy protection on March 20, 2019, in *In re: James Cristel*, No. 19-30325-lkg (Bankr. S.D. Ill.). In his Schedule E/F: Creditors Who Have Unsecured Claims, which Respondent Cristel filed on the same day, Respondent Cristel disclosed and admitted that as of the petition date, he owed a total of \$97,505.00 to two of the three unpaid sellers identified in the Complaint.¹¹
8. Respondent Cristel received a bankruptcy discharge on June 24, 2019.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.

¹¹ Official notice is taken of Respondent Cristel's bankruptcy proceeding and Schedule E/F. *See* 7 C.F.R. § 1.141(h)(6).

2. Respondent James B. Cristel has willfully violated sections 312(a), 401, and 409 of the Act (7 U.S.C. §§ 213(a), 221, and 228b) and section 201.43 of the Regulations (9 C.F.R. § 201.43).
3. Complainant has brought this action to enforce the Act, pursuant to the jurisdiction and authorities granted to it under the Act, and not to collect a debt. Accordingly, Respondent Cristel's bankruptcy discharge does not bar the Packers & Stockyards Division from initiating the instant disciplinary proceeding, nor does it bar the undersigned from granting Complainant the relief requested.¹²

ORDER

1. Complainant's Motion for Decision Without Hearing is GRANTED.
2. Respondent James B. Cristel shall cease and desist from:
 - a. Failing to pay, and failing to pay when due, the full purchase price of livestock within the time period required as prescribed 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);

¹² See 11 U.S.C. §§ 524(a)(2), 727(b); *In re: Farmers & Ranchers Livestock Auction, Inc.*, 46 B.R. 781, 792 (Bankr. E.D. Ark. 1984) (Memorandum Opinion) (holding that initiation of administrative proceeding under the Act is a "legitimate exercise[] of th[e] agency's police or regulatory powers"); *Bluegrass Packing Co.*, 42 Agric. Dec. 1464, 1469 (U.S.D.A. 1983) (actions initiated by the Packers & Stockyards Division are "disciplinary proceeding[s] . . . to ensure compliance with the regulatory scheme established by the Packers and Stockyards Act" and "enforce it's [sic] regulatory power").

- b. 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 sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b); and
 - c. Failing to keep accounts and maintain accurate transaction records that fully and correctly disclose all the transactions involved in his business as required by section 401 of the Act (7 U.S.C. § 221).
3. Respondent James B. Cristel is suspended as a registrant from all livestock operations for five (5) years, during which time he shall be prohibited from being employed by any entity where he would engage in activities subject to the Act. After three (3) years of the suspension period, Respondent Cristel may request that a supplemental order be issued terminating the suspension if he demonstrates to the satisfaction of the Packers and Stockyards Division that all unpaid livestock sellers identified in the Complaint have been paid in full.

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 2nd day of November 2021

**CHANNING
STROTHER**

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Channing D. Strother
Chief Administrative Law Judge

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