

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-07-0190
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)
Timothy R. Baumert,)
)
)
Respondent) **Decision and Order**

PROCEDURAL HISTORY

Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on September 12, 2007. The Deputy Administrator instituted the proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act]; the regulations issued under the Packers and Stockyards Act (9 C.F.R. pt. 201) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Deputy Administrator alleges that Timothy R. Baumert: (1) purchased livestock and failed to pay the full purchase price of the livestock within the time period

required by the Packers and Stockyards Act, in willful violation of sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b) and (2) engaged in business as a dealer without maintaining an adequate bond or bond equivalent, in willful violation of section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)) and section 201.30(b) of the Regulations (9 C.F.R. § 201.30(b)) (Compl. ¶¶ II-IV).

The Hearing Clerk served Mr. Baumert with the Complaint, the Rules of Practice, and a service letter on September 15, 2007.¹ Mr. Baumert failed to file an answer to the Complaint within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). The Hearing Clerk sent Mr. Baumert a letter dated October 10, 2007, stating Mr. Baumert had not filed a timely response to the Complaint. Mr. Baumert failed to file a response to the Hearing Clerk's October 10, 2007, letter.

On May 2, 2008, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the Deputy Administrator filed a Motion for Decision Without Hearing By Reason of Default [hereinafter Motion for Default Decision] and a Proposed Decision. The Acting Hearing Clerk served Mr. Baumert with the Deputy Administrator's Motion for Default Decision and the Deputy Administrator's Proposed Decision on May 15, 2008.² Mr. Baumert failed to file objections to the Deputy

¹United States Postal Service Domestic Return Receipt for Article Number 7004 2510 0003 7023 1838.

²United States Postal Service Domestic Return Receipt for Article Number 7007 0710 0001 3858 9943.

Administrator's Motion for Default Decision and the Deputy Administrator's Proposed Decision within 20 days after service, as required by section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

On August 13, 2008, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued a Decision and Order [hereinafter Initial Decision]: (1) concluding Mr. Baumert purchased livestock and failed to pay the full purchase price of the livestock within the time period required by the Packers and Stockyards Act, in willful violation of sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b); (2) concluding Mr. Baumert engaged in business as a dealer without maintaining an adequate bond or bond equivalent, in willful violation of section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)) and section 201.30(b) of the Regulations (9 C.F.R. § 201.30(b)); (3) ordering Mr. Baumert to cease and desist from failing to pay the full purchase price of livestock within the time period required by the Packers and Stockyards Act and from purchasing livestock without an adequate bond or its equivalent; (4) assessing Mr. Baumert a \$9,000 civil penalty; and (5) suspending Mr. Baumert as a registrant under the Packers and Stockyards Act until he demonstrates that he has obtained and filed an adequate bond or its equivalent.

On September 18, 2008, Mr. Baumert filed a timely appeal petition. On October 6, 2008, the Deputy Administrator filed a response to Mr. Baumert's appeal petition. On October 17, 2008, the Hearing Clerk transmitted the record to the Judicial Officer for

consideration and decision. Based upon a careful review of the record, I affirm the ALJ's Initial Decision; except that, for the reason discussed in this Decision and Order, *supra*, I modify the ALJ's sanction to eliminate the suspension of Mr. Baumert as a registrant under the Packers and Stockyards Act.

DECISION

Statement of the Case

Mr. Baumert failed to file an answer to the Complaint within the time prescribed in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides the failure to file an answer within the time provided in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) shall be deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the failure to file an answer or the admission by the answer of all the material allegations of fact contained in the complaint, constitutes a waiver of hearing. Accordingly, the material allegations in the Complaint are adopted as findings of fact. This Decision and Order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Timothy R. Baumert is an individual whose business address is RR 1, Box 29, Dairy Road, Dalmatia, PA 17017.
2. Timothy R. Baumert is and at all times material to this proceeding was:

- (a) Engaged in the business of a dealer, buying and selling livestock for his own account; and
- (b) Registered with the Secretary of Agriculture as a dealer, buying and selling livestock for his own account.

3. Timothy R. Baumert, on or about the dates and in the transactions set forth below, purchased livestock and failed to pay, within the time period required by the Packers and Stockyards Act, the full purchase price of such livestock.

Livestock Seller	Purchase Date	Date Payment Due Per § 409(a)	No. of Head	Livestock Amount	Sales Invoice Amount*	Payment Check Amount	Date Issued	No. of Days Late
New Holland Sales Stables, Inc.	7/07/05 7/11/05	7/08/05 7/12/05	39 103	\$2,796.20 \$7,412.70	\$ 2,776.98 \$ 7,398.97 \$10,175.95	\$10,175.95	7/14/05	6 2
New Holland Sales Stables, Inc.	7/21/05 7/25/05 7/28/05	7/22/05 7/26/05 7/29/05	31 39 11	\$ 2,711.30 \$12,591.80 \$ 717.50	\$ 2,696.73 \$12,562.34 \$ 725.37 \$15,984.44	\$15,984.44	7/29/05	7 3 0
New Holland Sales Stables, Inc.	8/04/05 8/08/05	8/05/05 8/09/05	38 246	\$ 2,460.85 \$20,503.50	\$ 2,452.91 \$20,461.18 \$22,914.09	\$22,914.09	8/11/05	6 2
Beegle's Livestock	7/13/05 7/18/05 7/20/05	7/14/05 7/19/05 7/21/05	28 8 7	\$1,859.66 \$ 810.19 \$ 570.53	\$1,859.66 \$ 810.19 \$ 570.53 \$3,240.38	\$3,540.38	7/21/05	7 2 0
Beegle's Livestock	8/17/05	8/18/05	78	\$7,925.88	\$7,925.88	\$7,925.88	8/25/05	7
Shannon Banbury	7/13/05 7/19/05	7/14/05 7/20/05	544 38	\$41,584.23 \$ 2,246.30	\$42,128.23 \$ 2,284.30 \$44,412.53	\$20,000.00 \$24,412.53 \$44,412.53	7/21/05 7/21/05	7 1
Shannon Banbury	8/17/05	8/18/05	489	\$35,931.79	\$36,601.79	\$36,601.79	8/24/05	6
Doug Boehne	7/25/05	7/26/05	101	\$7,535.70	\$5,327.70	\$5,327.70	8/2/05	7
Doug Boehne	7/25/05 7/31/05	7/26/05 8/01/05	10 237	\$1,067.42 \$15,088.87	\$ 1,067.42 \$13,861.56 \$14,928.98	\$14,928.98	8/4/05	9 3

*Adjustments have been made on some of these sales invoices for freight and for lamb check off credits.

4. In a certified letter dated February 2, 1998, served upon Mr. Baumert on February 6, 1998, Lawrence D. Poss, acting regional supervisor of the Lancaster, Pennsylvania, regional office of the Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter GIPSA], informed Mr. Baumert that a recent investigation had disclosed that he was hand-delivering checks issued in payment for livestock purchases to a market 7 to 9 days after purchase instead of before the close of the next business day, as required by section 409 of the Packers and Stockyards Act (7 U.S.C. § 228b).

5. In a certified letter dated June 6, 2003, served upon Mr. Baumert on June 12, 2003, Creig F. Stephens, resident agent supervisor of the Atlanta, Georgia, regional office of GIPSA, informed Mr. Baumert that a recent investigation had disclosed that he was hand-delivering checks issued in payment for livestock purchases to a market up to 11 days after purchase instead of before the close of the next business day, as required by section 409 of the Packers and Stockyards Act (7 U.S.C. § 228b).

6. In a certified letter dated February 13, 2003, which was served on Mr. Baumert on February 21, 2003, Creig F. Stephens, resident agent supervisor of the Atlanta, Georgia, regional office of GIPSA, informed Mr. Baumert that a recent investigation of his records disclosed that his \$20,000 bond coverage needed to be increased to \$40,000.

7. In a certified letter dated January 4, 2004, served upon Mr. Baumert on January 10, 2004, John Rollins, Trade Practices supervisor of the Atlanta, Georgia, regional office of GIPSA, informed Mr. Baumert that, based upon the volume of business shown in his last annual report, which was filed for the year ending December 31, 2002, his \$20,000 bond coverage needed to be increased to \$40,000.

8. In a certified letter dated November 22, 2005, served upon Mr. Baumert on November 25, 2005, Herple A. Ellis, IV, Trade Practices supervisor of the Atlanta, Georgia, regional office of GIPSA, informed Mr. Baumert that, based upon the volume of business shown in his last annual report, which was filed for the year ending December 31, 2004, his \$20,000 bond coverage needed to be increased to \$45,000.

9. Despite the written notices described in Findings of Fact numbers 6 through 8, at the time of the filing of the Complaint, Mr. Baumert had not increased the amount of his bond coverage above \$20,000.

10. On April 14, 2006, Mr. Baumert signed an annual report for the year ending December 31, 2005, in which he reported making livestock purchases totaling \$4,922,860.57 as a dealer. A continuation of livestock purchases at this volume would require Mr. Baumert to file a \$40,000 bond or bond equivalent to comply with the Regulations.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. By reason of the facts found in Findings of Fact numbers 3 through 5,

Mr. Baumert willfully violated sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a), 228b).

3. By reason of the facts found in Findings of Fact numbers 6 through 10, Mr. Baumert willfully violated section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)), and section 201.30(b) of the Regulations (9 C.F.R. § 201.30(b)).

Mr. Baumert's Appeal Petition

Mr. Baumert argues on appeal that the ALJ erred because two facts, which Mr. Baumert asserted for the first time in his appeal petition, demonstrate that he did not willfully violate the Packers and Stockyards Act. Mr. Baumert was required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) to file an answer within 20 days after service of the Complaint; namely, no later than October 5, 2007. Mr. Baumert's assertion of facts in his appeal petition, filed September 18, 2008, 11 months 13 days after Mr. Baumert was required to file an answer comes far too late to be considered. As Mr. Baumert failed to file a timely answer, Mr. Baumert is deemed to have admitted the material allegations of the Complaint, and I reject his argument that the ALJ's conclusions are error.

Modification of the ALJ's Order

The ALJ suspended Mr. Baumert as a registrant under the Packers and Stockyards Act until he has demonstrated that he has obtained and filed a bond or approved bond equivalent in the full amount required under the Regulations (Initial Decision at 5). The Deputy Administrator asserts that he received a fully executed bond rider on the proper form from Mr. Baumert, after Mr. Baumert filed his appeal petition, and requests that I modify the ALJ's Initial Decision by eliminating the suspension of Mr. Baumert as a registrant under the Packers and Stockyards Act (Complainant's Opposition to Respondent's Appeal at 6-7). As the requested modification to the ALJ's Initial Decision benefits Mr. Baumert, I grant the Deputy Administrator's request without providing Mr. Baumert a prior opportunity to respond to the request. In the unlikely event that Mr. Baumert objects to this modification, he may, of course, raise that objection in any petition to reconsider.

For the foregoing reasons, the following Order is issued.

ORDER

1. Timothy R. Baumert, directly or through any corporate or other devise, in connection with his operations as a dealer, shall cease and desist from:
 - (a) Failing to pay, within the time period required by the Packers and Stockyards Act, the full purchase price of livestock; and

(b) Purchasing livestock without filing and maintaining a bond or its equivalent in the full amount determined to be adequate by GIPSA in accordance with the Packers and Stockyards Act and the Regulations.

Paragraph 1 of this Order shall become effective on the day after service of this Order on Mr. Baumert.

2. Timothy R. Baumert is assessed a \$9,000 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the "USDA-GIPSA" and sent to:

USDA-GIPSA
P.O. Box 790335
St. Louis, MO 63179-0335

Payment of the civil penalty shall be sent to the USDA-GIPSA within 30 days after service of this Order on Mr. Baumert. Mr. Baumert shall state on the certified check or money order that payment is in reference to P. & S. Docket No. D-07-0190.

Done at Washington, DC

October 22, 2008

William G. Jenson
Judicial Officer