

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-07-0152
)
Billy Mike Gentry,)
) **Order Dismissing Purported**
) **Appeal Petition**
Respondent)

On October 7, 2008, Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] issued a Decision and Order by Reason of Default: (1) concluding Billy Mike Gentry willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act] and the regulations issued under the Packers and Stockyards Act (9 C.F.R. pt. 201) [hereinafter the Regulations]; (2) ordering Mr. Gentry to cease and desist from violating the Packers and Stockyards Act and the Regulations; and (3) suspending Mr. Gentry as a registrant under the Packers and Stockyards Act.

On February 2, 2009, Timothy J. Brennan, an employee of the United States Department of Agriculture [hereinafter USDA], personally served Mr. Gentry with the ALJ's Decision and Order by Reason of Default. On February 24, 2009, Mr. Gentry filed a letter with the Hearing Clerk which states, as follows:

Dear Mr. Paul:

I am in receipt of the Decision and Order by Reason fo [sic] Default concerning the above referenced case. I received this paper work on February 2, 2009. I hereby request an appeal of said Decision and Order.

By copy of this letter, I am forward [sic] same to Judge Jill S. Clifton requesting an appeal.

Thank you for your attention, I am

Sincerely,

/s/

BILLY MIKE GENTRY

On March 16, 2009, the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, USDA, filed a response to Mr. Gentry's February 24, 2009, letter. On March 17, 2009, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

Section 1.145(a) of the rules of practice applicable to the instant proceeding¹ sets forth the requirements for an appeal petition, as follows:

§ 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

¹Rules 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].

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.

7 C.F.R. § 1.145(a). Mr. Gentry's February 24, 2009, letter does not identify any purported error by the ALJ, does not identify any portion of the ALJ's decision or any ruling by the ALJ with which he disagrees, and does not allege any deprivation of rights. In short, Mr. Gentry's letter does not remotely conform to the requirements of 7 C.F.R. § 1.145(a). I have long held that purported appeal petitions which do not remotely conform to the requirements of the Rules of Practice are dismissed.² Since no appeal has been filed which remotely conforms to the requirements of the Rules of Practice (7 C.F.R. § 1.145(a)) and it is now too late to file an appeal (7 C.F.R. §§ 1.139, .145(a)), the ALJ's October 7, 2008, Decision and Order by Reason of Default became final and effective 35 days after February 2, 2009, when Mr. Gentry was personally served with the Decision and Order by Reason of Default.

For the foregoing reasons, the following Order is issued.

²*In re Kermit Breed* (Order Dismissing Purported Appeal), 50 Agric. Dec. 675, 676 (1991); *In re Bihari Lall* (Order Dismissing Purported Appeal), 49 Agric. Dec. 895 (1990).

ORDER

Billy Mike Gentry's purported appeal from the ALJ's October 7, 2008, Decision and Order by Reason of Default is dismissed. The ALJ's October 7, 2008, Decision and Order by Reason of Default became final and effective March 9, 2009.

Done at Washington, DC

March 18, 2009

William G. Jenson
Judicial Officer