

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) Docket No. 11-0213
)
Richard L. Reece,)
)
Respondent) **Decision and Order**

PROCEDURAL HISTORY

Alan R. Christian, Deputy Administrator, Packers and Stockyards Programs, 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 April 29, 2011. 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]; 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, during the period May 16, 2009, through December 7, 2009, Richard L. Reece failed to pay, within the time period required by the Packers and Stockyards Act, for livestock, in violation of 7 U.S.C. §§ 213(a) and 228b.¹

The Hearing Clerk served Mr. Reece with the Complaint on June 1, 2011.² Mr. Reece failed to file an answer to the Complaint within 20 days after service, as required by 7 C.F.R. § 1.136(a). On June 22, 2011, Administrative Law Judge Janice K. Bullard [hereinafter the ALJ] issued an Order To Show Cause Why Default Should Not Be Entered [hereinafter Order to Show Cause] and provided Mr. Reece and the Deputy Administrator 20 days after the date of the Order to Show Cause within which to respond to the Order to Show Cause.

On June 23, 2011, Mr. Reece filed a letter, dated June 21, 2011, in response to the Complaint [hereinafter Answer]. Mr. Reece's Answer did not deny the allegations of the Complaint, but, instead, stated he "got behind" in his payments for livestock because three people owed him \$421,302.33, plus interest on the amount owed.

On July 11, 2011, the Deputy Administrator filed a response to the ALJ's Order to Show Cause. Mr. Reece did not file a response to the ALJ's Order to Show Cause. On July 19, 2011, the ALJ, in accordance with 7 C.F.R. § 1.139, issued a Decision Without Hearing By Entry Of Default Against Respondent [hereinafter Default Decision] in which

¹Compl. ¶¶ II-III.

²Memorandum to the File, dated June 1, 2011, and signed by L. Eugene Whitfield, Hearing Clerk.

the ALJ: (1) concluded that Mr. Reece willfully violated 7 U.S.C. §§ 213(a) and 228b(a), as alleged in the Complaint; (2) ordered Mr. Reece to cease and desist from failing to pay, when due, the full purchase price of livestock; (3) ordered Mr. Reece to cease and desist from failing to pay the full purchase price of livestock; and (4) assessed Mr. Reece a \$40,625 civil penalty.

On September 14, 2011, Mr. Reece appealed the ALJ's Default Decision to, and requested an opportunity to present oral argument before, the Judicial Officer. On September 22, 2011, the Deputy Administrator filed Complainant's Opposition to Respondent's Appeal Petition. On September 27, 2011, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision. Based upon a careful review of the record, I adopt, with minor changes, the ALJ's Default Decision as the final agency decision.

DECISION

Statement of the Case

Mr. Reece failed to file an answer to the Complaint within the time prescribed in 7 C.F.R. § 1.136(a). Pursuant to 7 C.F.R. § 1.136(c), the failure to file an answer within the time provided in 7 C.F.R. § 1.136(a) is deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to 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, and I issue this Decision and Order pursuant to 7 C.F.R. § 1.139.

Discussion

On June 23, 2011, Mr. Reece filed an Answer with the Hearing Clerk 2 days after the date within which an answer was due pursuant to 7 C.F.R. § 1.136(a). Although Mr. Reece's Answer is dated June 21, 2011, Mr. Reece used facsimile to file his Answer, and the date of the facsimile is June 23, 2011. The time for filing an answer to a complaint may be extended when there is good reason for the extension.³ Mr. Reece stated in his Answer that he received the Complaint on June 6, 2011. Mr. Reece provided no reason for failing to meet the deadline of June 21, 2011. As Mr. Reece failed to file a timely answer, default is appropriate.

Even if I were to find Mr. Reece's Answer to have been filed timely, the content of Mr. Reece's Answer admits the allegations in the Complaint. The Complaint alleged that Mr. Reece failed to pay the full purchase price timely to Colfax Livestock Sales for livestock purchases that transpired during the period May 16, 2009, through November 28, 2009.⁴ In addition, the Complaint alleged that Mr. Reece failed to pay the full purchase timely to Waverly Sales Co. for a livestock purchase that transpired on

³7 C.F.R. § 1.147(f).

⁴Compl. ¶ II.

December 7, 2009.⁵ Mr. Reece stated in his Answer that he made arrangements with Shawn Cogley at Colfax Livestock Sales and with Ron Dean at Waverly Sales Co. to make payments. Mr. Reece asserts as a defense that he fell behind in his payments to Colfax Livestock Sales and Waverly Sales Co. because he in turn was owed \$421,302.33, plus interest on the amount owed, by three people;⁶ however, Mr. Reece is not absolved of his obligation to pay for livestock in accordance with the Packers and Stockyards Act merely because he is owed money by others.

In addition, I find Mr. Reece's Answer lacks the specificity required of an answer by 7 C.F.R. § 1.136(b) and further find that Mr. Reece admitted to the violations of the Packers and Stockyards Act alleged in the Complaint by failing to specifically deny the allegations. Accordingly, pursuant to 7 C.F.R. § 1.136(c), default is appropriate. Mr. Reece's admissions and failure to specifically deny the allegations in the Complaint constitute a waiver of a hearing under 7 C.F.R. § 1.139.

Findings of Fact

1. Richard L. Reece is an individual whose mailing address is in Adel, Iowa.
2. At all times material to the instant proceeding, Mr. Reece was:

⁵Compl. ¶ II.

⁶Attached to Mr. Reece's Answer is a copy of a letter from Mr. Reece's attorney to Brothers Quality, LLC, that indicates that Brothers Quality, LLC, allegedly failed to pay Mr. Reece for sales during the period from 2008 through 2010.

a. Engaged in the business of buying and selling livestock in commerce for his own account as a dealer and as a market agency buying on commission; and

b. Registered with the Secretary of Agriculture as a dealer within the meaning of, and subject to, the Packers and Stockyards Act.

3. On or about the dates and in the transactions set forth in Appendix A attached to this Decision and Order, Mr. Reece purchased livestock and failed to pay, within the time period required by the Packers and Stockyards Act, the full purchase price of the livestock.

4. As of March 31, 2011, Mr. Reece owed Colfax Livestock Sales approximately \$46,000 of the amount involved in the May 30, 2009, and November 28, 2009, livestock transactions referenced in Appendix A attached to this Decision and Order.

5. As of March 31, 2011, Mr. Reece owed Waverly Sales Co. approximately \$1,900 for the December 7, 2009, livestock transaction referenced in Appendix A attached to this Decision and Order.

6. Mr. Reece admits in his Answer outstanding payments due to the Colfax Livestock Sales and Waverly Sales Co. for livestock purchases.

Conclusions of Law

By reason of the Findings of Fact in this Decision and Order, Mr. Reece has willfully violated 7 U.S.C. §§ 213(a) and 228b(a).

Mr. Reece's Request for Oral Argument

Mr. Reece's request for oral argument (Appeal Pet. at 2 ¶ 5), which the Judicial Officer may grant, refuse, or limit,⁷ is refused because the issues are not complex and oral argument would serve no useful purpose.

Mr. Reece's Appeal Petition

Mr. Reece raises six issues in his Appeal Petition. First, Mr. Reece asserts his violations of 7 U.S.C. §§ 213(a) and 228b(a) were not willful (Appeal Pet. at 1 ¶ 1).

A violation is willful under the Administrative Procedure Act (5 U.S.C. § 558(c)) if a prohibited act is done intentionally, irrespective of evil intent, or done with careless disregard of statutory requirements.⁸ The Packers and Stockyards Act explicitly requires each dealer and market agency purchasing livestock, before the close of the next business day following the purchase of the livestock and the transfer of possession of the livestock, to pay the full amount of the purchase price.⁹ Mr. Reece knew, or should have known,

⁷7 C.F.R. § 1.145(d).

⁸See, e.g., *Toney v. Glickman*, 101 F.3d 1236, 1241 (8th Cir. 1996); *Cox v. U.S. Dep't of Agric.*, 925 F.2d 1102, 1105 (8th Cir.), *cert. denied*, 502 U.S. 860 (1991); *In re Hines and Thurn Feedlot, Inc.*, 57 Agric. Dec. 1408, 1414 (1998); *In re Samuel J. Dalessio, Jr.* (Decision as to Samuel J. Dalessio, Jr., and Douglas S. Dalessio, d/b/a Indiana Farmers Livestock Market, Inc.), 54 Agric. Dec. 590, 607 (1995), *aff'd*, 79 F.3d 1137 (3d Cir. 1996) (Table); *In re Hardin County Stockyards, Inc.* (Decision as to Hardin County Stockyards, Inc., and Rex Lineberry), 53 Agric. Dec. 654, 658 (1994); *In re Syracuse Sales Co.* (Decision as to John Knopp), 52 Agric. Dec. 1511, 1529 (1993), *appeal dismissed*, No. 94-9505 (10th Cir. Apr. 29, 1994).

⁹7 U.S.C. § 228b(a).

that he had the duty under the Packers and Stockyards Act to pay, when due, the full purchase price for livestock. Mr. Reece's willfulness is reflected by his violations of express provisions of the Packers and Stockyards Act and the length of time during which Mr. Reece committed the violations and the dollar amount and number of Mr. Reece's violative transactions. Therefore, I reject Mr. Reece's contention that the ALJ's conclusion that Mr. Reece willfully violated the Packers and Stockyards Act, is error.

Second, Mr. Reece asserts he did not timely receive the Complaint (Appeal Pet. at 1 ¶ 2).

The Hearing Clerk served Mr. Reece with the Complaint on June 1, 2011.¹⁰ Mr. Reece asserts he received the Complaint on June 6, 2011.¹¹ The Rules of Practice require that a response to a complaint must be filed with the Hearing Clerk within 20 days after service.¹² Thus, Mr. Reece's response to the Complaint was required to be filed with the Hearing Clerk no later than June 21, 2011, 14 days after Mr. Reece asserts he received the Complaint. Mr. Reece dated each page of his Answer and the attachment to his Answer "6-21 2011;" thereby indicating he completed preparing his Answer on June 21, 2011. Nonetheless, Mr. Reece sent the Answer to the Hearing Clerk by facsimile on June 23, 2011, 2 days after his Answer was required to be filed with the

¹⁰See note 2.

¹¹Answer at 1.

¹²7 C.F.R. § 1.136(a).

Hearing Clerk. Therefore, I reject Mr. Reece's contention that he had insufficient time within which to respond to the Complaint.

Third, Mr. Reece asserts he did not timely receive the ALJ's Order to Show Cause (Appeal Pet. at 1 ¶ 2).

The ALJ's Order to Show Cause is dated June 22, 2011. The ALJ directed Mr. Reece and the Deputy Administrator to respond to the Order to Show Cause not more than 20 days after the date of the Order to Show Cause; namely, no later than July 12, 2011. The Hearing Clerk sent the Order to Show Cause to Mr. Reece by regular mail on June 23, 2011.¹³ The record does not indicate when Mr. Reece received the ALJ's Order to Show Cause. If Mr. Reece required additional time to file his response to the Order to Show Cause, he could have filed a motion for an extension of time.¹⁴ Mr. Reece did not file such a request for an extension of time and it is far too late for Mr. Reece to raise the issue of the amount of time he had to file a response to the ALJ's Order to Show Cause.

Fourth, Mr. Reece asserts the Hearing Clerk did not send him the ALJ's Default Decision until August 16, 2011 (Appeal Pet. at 1 ¶ 2). In support of this assertion, Mr. Reece attached to his Appeal Petition a copy of an envelope addressed to Mr. Reece,

¹³Office of Administrative Law Judges, Hearing Clerk's Office Document Distribution Form showing the Hearing Clerk sent the ALJ's Order to Show Cause to Mr. Reece by regular mail on June 23, 2011.

¹⁴7 C.F.R. § 1.147(f).

which purportedly contained the ALJ's Default Decision. This envelope is postmarked August 16, 2011.

The record reveals that the Hearing Clerk mailed the ALJ's Default Decision to Mr. Reece by certified mail on July 19, 2011.¹⁵ The United States Postal Service returned the ALJ's Default Decision marked "Unclaimed Unable to Forward" to the Hearing Clerk,¹⁶ and on August 16, 2011, the Hearing Clerk remailed the ALJ's Default Decision to Mr. Reece by ordinary mail.¹⁷ Pursuant to 7 C.F.R. § 1.147(c)(1), the Hearing Clerk served Mr. Reece with the ALJ's Default Decision on August 16, 2011, and Mr. Reece's appeal of the ALJ's Default Decision was required to be filed with the Hearing Clerk no later than September 15, 2011.¹⁸ Therefore, I conclude Mr. Reece's Appeal Petition, filed September 14, 2011, was timely filed.

Fifth, Mr. Reece denies the allegations in the Complaint and requests an opportunity to be heard on the merits in accordance with the due process clause of the Constitution of the United States (Appeal Pet. at 1 ¶ 3).

¹⁵Hearing Clerk's service letter to Mr. Reece dated July 19, 2011, and the companion Office of Administrative Law Judges, Hearing Clerk's Office Document Distribution Form.

¹⁶Envelope marked United States Postal Service Domestic Return Receipt article number 7009 1680 0001 9852 2985.

¹⁷Memorandum to the File dated August 16, 2011, and signed by Fe C. Angeles, Legal Technician.

¹⁸7 C.F.R. § 1.145(a).

Mr. Reece's denial of the allegations in the Complaint comes too late to be considered. The Hearing Clerk served Mr. Reece with the Complaint on June 1, 2011. In accordance with 7 C.F.R. § 1.136(a), Mr. Reece's Answer was due 20 days after service of the Complaint; namely, June 21, 2011. Mr. Reece filed his Answer with the Hearing Clerk on June 23, 2011, 2 days after Mr. Reece's Answer was due. Mr. Reece is deemed, by his failure to file a timely answer, to have admitted the allegations in the Complaint. Moreover, I agree with the ALJ that Mr. Reece's Answer admits the allegations of the Complaint by failing to specifically deny the allegations. Therefore, Mr. Reece has waived the opportunity for a hearing and the ALJ's issuance of the Default Decision was proper. The application of the default provisions of the Rules of Practice does not deprive Mr. Reece of his rights under the due process clause of the Fifth Amendment to the Constitution of the United States.¹⁹

¹⁹*See United States v. Hulings*, 484 F. Supp. 562, 567-68 (D. Kan. 1980) (concluding a hearing was not required under the Fifth Amendment to the Constitution of the United States where the respondent was notified that failure to deny the allegations in the complaint would constitute an admission of those allegations under the Rules of Practice and the respondent failed to specifically deny the allegations). *See also Father & Sons Lumber and Building Supplies, Inc. v. NLRB*, 931 F.2d 1093, 1096 (6th Cir. 1991) (stating due process generally does not entitle parties to an evidentiary hearing where the National Labor Relations Board has properly determined that a default summary judgment is appropriate due to a party's failure to file a timely response); *Kirk v. INS*, 927 F.2d 1106, 1108 (9th Cir. 1991) (rejecting the contention that the administrative law judge erred by issuing a default judgment based on a party's failure to file a timely answer).

Sixth, Mr. Reece asserts he has paid or has entered into payment plans with the two livestock sellers named in the Complaint, Colfax Livestock Sales and Waverly Sales Co. (Appeal Pet. at 1 ¶ 4).

The Packers and Stockyards Act explicitly requires market agencies and dealers purchasing livestock to pay the full amount of the purchase price before the close of the next business day following the purchase of the livestock and the transfer of possession of the livestock.²⁰ Mr. Reece's payments to Colfax Livestock Sales and Waverly Sales Co. after the time when payment was due and Mr. Reece's entry into payment plans with Colfax Livestock Sales and Waverly Sales Co. do not comply with 7 U.S.C. § 228b(a). Moreover, Mr. Reece's failures to pay for livestock and failures to pay for livestock when due constitute unfair and deceptive practices, in violation of 7 U.S.C. § 213(a). Therefore, I reject Mr. Reece's suggestion that the ALJ's Default Decision should be set aside based upon Mr. Reece's payment plans which he purportedly entered into with Colfax Livestock Sales and Waverly Sales Co. and Mr. Reece's late payments made to Colfax Livestock Sales and Waverly Sales Co.

For the foregoing reasons, the following Order is issued.

²⁰7 U.S.C. § 228b(a).

ORDER

1. Mr. Reece, his agents and employees, directly or through any corporate or other device, in connection with the activities subject to the Packers and Stockyards Act shall cease and desist from:

- a. Failing to pay, when due, the full purchase price of livestock; and
- b. Failing to pay the full purchase price of livestock.

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

2. Mr. Reece is assessed a civil penalty of \$40,625. The civil penalty shall be paid by certified check or money order made payable to the “Treasurer of the United States” and sent to:

USDA-GIPSA
P.O. Box 790335
St. Louis, MO 63197-0335

Payment of the civil penalty shall be sent to, and received by, the USDA-GIPSA within 60 days after service of this Order on Mr. Reece. Mr. Reece shall state on the certified check or money order that payment is in reference to Docket No. 11-0213.

Done at Washington, DC

October 17, 2011

William G. Jenson
Judicial Officer

Appendix A

Purchase Date	Livestock Seller	No. of Head	Purchase and Payment Amount	Date Payment Due per § 409(a)	Deposit Date	Payment Amount	Number of Days Late
5/16/09	Colfax Livestock Sales	233	\$23,090.57	5/18/09	6/4/09	\$23,090.57	17
5/30/09	Colfax Livestock Sales	405	\$38,134.63	6/1/09	8/1/10 - 3/31/11	\$13,942.15*	427 - 669
6/27/09	Colfax Livestock Sales	393	\$38,445.13	6/29/09	7/11/09	\$27,834.75	12
					7/18/09	\$6,735.81	19
					8/1/10 - 3/31/11	\$3,874.57**	398 - 640
					Total	\$38,445.13	
7/25/09	Colfax Livestock Sales	513	\$52,392.72	7/27/09	7/30/09	\$20,000.00	3
					8/1/09	\$12,392.72	5
					8/6/09	\$15,000.00	10
					8/1/10 - 3/31/11	\$5,000**	371 - 613
					TOTAL	\$52,392.72	
9/19/09	Colfax Livestock Sales	515	\$54,433.17	9/21/09	9/28/09	\$6,433.17	7
					9/29/09	\$32,000.00	8
					9/30/09	\$16,000.00	9
					TOTAL	\$54,433.17	
9/26/09	Colfax Livestock Sales	506	\$56,510.00	9/28/09	10/3/09	\$16,510.00	5
					10/7/09	\$20,000.00	9
					10/10/09	\$20,000.00	12

					TOTAL	\$56,510.00	
10/3/09	Colfax Livestock Sales	413	\$41,450.21	10/5/09	10/10/09	\$1,450.21	5
					10/14/09	\$25,000.00	9
					10/17/09	\$5,000.00	12
					10/30/09	\$10,000.00	25
					TOTAL	\$41,450.21	
10/10/09	Colfax Livestock Sales	503	\$53,139.08	10/13/09	10/15/09	\$35,139.08	2
					10/20/09	\$6,000.00	7
					10/30/09	\$11,000.00	17
					10/31/09	\$1,000.00	18
					TOTAL	\$53,139.08	
10/17/09	Colfax Livestock Sales	312	\$31,347.35	10/19/09	10/30/09	\$6,347.35	11
					10/31/09	\$25,000.00	12
					TOTAL	\$31,347.35	
10/24/09	Colfax Livestock Sales	306	\$29,014.87	10/26/09	10/30/09	\$10,000.00	4
					11/7/09	\$17,014.87	12
					11/9/09	\$1,000.00	14
					11/19/09	\$1,000.00	24
					TOTAL	\$29,014.87	
10/31/09	Colfax Livestock Sales	234	\$22,869.49	11/2/09	11/19/09	\$22,869.49	17
11/7/09	Colfax Livestock Sales	170	\$17,150.28	11/9/09	11/19/09	\$17,150.28	10
11/14/09	Colfax Livestock Sales	260	\$24,448.20	11/16/09	11/27/09	\$24,448.20	11

11/21/09	Colfax Livestock Sales	245	\$24,010.58	11/23/09	12/4/09	\$24,010.58	11
11/28/09	Colfax Livestock Sales	337	\$35,749.67	11/30/09	8/1/10 - 3/31/11	\$13,942.15*	245 - 487
12/7/09	Waverly Sales Co.	309	\$32,178.82	12/8/09	12/21/09	\$5,178.82	13
					12/23/09	\$11,000.00	15
					1/15/10	\$1,000.00	38
					1/21/10	\$1,000.00	44
					1/29/10	\$500.00	52
					8/1/10 - 3/31/11	\$16,778.82**	237 - 479
					TOTAL	\$30,278.82	

* Mr. Reece has made and continues to make weekly installment payments on these transactions.

** Mr. Reece made weekly installment payments on these transactions during the period of August 1, 2010, through March 31, 2011.