

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-12-0204
)
Richard Hale,)
)
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 January 25, 2012. 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); 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, during the period June 9, 2010, through November 4, 2010, Richard Hale purchased livestock in approximately 55 transactions

from Burley Livestock Auction, LLC, of Burley, Idaho, and from Producers Livestock Marketing Association of Jerome, Idaho, and made payment between 5 and 21 days beyond the date payment was due, in willful violation of 7 U.S.C. §§ 213(a) and 228b.¹

The Hearing Clerk served Mr. Hale with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter on February 3, 2012.² Mr. Hale failed to file an answer to the Complaint within 20 days after the Hearing Clerk served him with the Complaint, as required by 7 C.F.R. § 1.136(a). The Hearing Clerk sent a letter, dated February 24, 2012, to Mr. Hale informing him that his answer to the Complaint had not been filed within the time prescribed by the Rules of Practice. Mr. Hale did not respond to the Hearing Clerk's letter dated February 24, 2012. On February 28, 2012, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] issued a Show Cause Order in which he provided the parties 15 days within which to show cause why a default decision should not be entered.

On March 7, 2012, Mr. Hale filed an answer to the Complaint. On March 14, 2012, the Deputy Administrator filed a response to the Chief ALJ's Show Cause Order in the form of a Motion for Decision Without Hearing by Reason of Default [hereinafter Motion for Default Decision] and a proposed Decision Without Hearing by Reason of Default [hereinafter Proposed Default Decision]. On March 19, 2012, the Hearing Clerk

¹Compl. ¶¶ III-IV.

²United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3862 7164.

served Mr. Hale with the Deputy Administrator's Motion for Default Decision and Proposed Default Decision and the Hearing Clerk's service letter.³

On March 27, 2012, the Chief ALJ, in accordance with 7 C.F.R. § 1.139, issued a Default Decision and Order: (1) concluding Mr. Hale willfully violated 7 U.S.C. §§ 213(a) and 228b, as alleged in the Complaint; (2) ordering Mr. Hale to cease and desist from failing to pay, when due, for livestock purchases; and (3) assessing Mr. Hale a \$20,000 civil penalty.⁴ On April 9, 2012, Mr. Hale filed a letter indicating disagreement with the Chief ALJ's Default Decision and Order. The Chief ALJ treated Mr. Hale's April 9, 2012, filing as a request for reconsideration of the Default Decision and Order and on May 10, 2012, issued an order denying Mr. Hale's request for reconsideration.

On May 23, 2012, Mr. Hale appealed the Chief ALJ's Default Decision and Order to the Judicial Officer. On June 14, 2012, the Deputy Administrator filed Response to Respondent's Letter of Appeal. On June 15, 2012, 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 Chief ALJ's Default Decision and Order as the final agency decision.

³United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3862 7454.

⁴Chief ALJ's Default Decision and Order at 2-3.

DECISION

Statement of the Case

Mr. Hale failed to file a timely answer to the Complaint. Pursuant to 7 C.F.R. § 1.136(c), the failure to file a timely answer 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.

Findings of Fact

1. Richard Hale is an individual whose mailing address is in Twin Falls, Idaho.
2. At all times material to this proceeding, Richard Hale was:
 - (a) A dealer engaged in the business of buying and selling in commerce livestock either on his own account or as the agent of the vendor or purchaser; and
 - (b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account and for the account of others.
3. The Chief ALJ entered a Decision Without Hearing by Reason of Consent in *In re Richard Hale, P. & S.* Docket No. D-10-0001 (May 20, 2010), in which the Chief

ALJ ordered Richard Hale to cease and desist from failing to pay, when due, the full purchase price of livestock, as required by 7 U.S.C. § 228b.

4. The provisions of the cease and desist order in *In re Richard Hale, P. & S.* Docket No. D-10-0001 (May 20, 2010), are still in effect.

5. During the period June 9, 2010, through November 4, 2010, Richard Hale purchased livestock in approximately 55 transactions from Burley Livestock Auction, LLC, of Burley, Idaho, and from Producers Livestock Marketing Association of Jerome, Idaho, and made payment between 5 and 21 days beyond the date payment was due.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Richard Hale willfully violated 7 U.S.C. §§ 213(a) and 228b.

Mr. Hale's Appeal Petition

Mr. Hale denies the allegations of the Complaint in his appeal petition.

The Hearing Clerk served Mr. Hale with the Complaint on February 3, 2012;⁵ therefore, Mr. Hale's answer to the Complaint was required to be filed with the Hearing Clerk no later than February 23, 2012. Mr. Hale filed his first response to the allegations of the Complaint on March 7, 2012, 13 days after his answer to the Complaint was due. The failure to file a timely answer to the Complaint is deemed, for the purposes of the proceeding, an admission of the allegations of the Complaint and constitutes a waiver of

⁵See note 2.

hearing.⁶ Therefore, Mr. Hale's denial of the allegations of the Complaint comes too late to be considered.

Mr. Hale's appeal petition also contains a request that I appoint counsel to represent him in this proceeding.

The Administrative Procedure Act provides that a party in an agency proceeding may appear by or with counsel, as follows:

§ 555. Ancillary matters

.....

(b) . . . A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding.

5 U.S.C. § 555(b). However, a respondent who desires assistance of counsel in an agency proceeding bears the responsibility of obtaining counsel. Moreover, a respondent who is unable to obtain counsel has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in a disciplinary administrative proceeding conducted under the Packers and

⁶7 C.F.R. §§ 1.136(c), .139, .141(a).

Stockyards Act.⁷ Therefore, I deny Mr. Hale's request that I appoint counsel to represent him in this proceeding.

Mr. Hale also indicates in his appeal petition that he wants "to go to court."

⁷See *In re Ray H. Mayer* (Decision as to Jim Doss), 43 Agric. Dec. 439, 442 (1984) (stating a disciplinary proceeding under the Packers and Stockyards Act is not a criminal proceeding and the respondent, even if he cannot afford counsel, has no constitutional right to have counsel provided by the government), *appeal dismissed*, No. 84-4316 (5th Cir. July 25, 1984). See also *Elliott v. SEC*, 36 F.3d 86, 88 (11th Cir. 1994) (per curiam) (rejecting petitioner's assertion of prejudice due to his lack of representation in an administrative proceeding before the Securities and Exchange Commission and stating there is no statutory or constitutional right to counsel in disciplinary administrative proceedings before the Securities and Exchange Commission); *Henry v. INS*, 8 F.3d 426, 440 (7th Cir. 1993) (stating it is well-settled that deportation hearings are in the nature of civil proceedings and aliens, therefore, have no constitutional right to counsel under the Sixth Amendment); *Alvarez v. Bowen*, 704 F. Supp. 49, 52 (S.D.N.Y. 1989) (stating the Secretary of Health and Human Services is not obligated to furnish a claimant with an attorney to represent the claimant in a social security disability proceeding); *In re Frank Craig*, 66 Agric. Dec. 353, 366-67 (2007) (stating a respondent who is unable to obtain counsel has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in an administrative disciplinary proceeding conducted under the Federal Meat Inspection Act and the Poultry Products Inspection Act); *In re Steven Bourk* (Decision as to Steven Bourk and Carmella Bourk), 61 Agric. Dec. 25, 50-51 (2002) (stating a respondent who is unable to afford an attorney has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in an administrative disciplinary proceeding conducted under the Animal Welfare Act); *In re Garland E. Samuel*, 57 Agric. Dec. 905, 911 (1998) (stating a respondent who is unable to afford an attorney has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in an administrative disciplinary proceeding conducted under the Swine Health Protection Act); *In re Steven M. Samek*, 57 Agric. Dec. 185, 188 (1998) (Ruling Denying Motion to Appoint Public Defender as to Steven M. Samek) (stating a respondent who is unable to afford an attorney has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in an administrative disciplinary proceeding conducted under the Animal Welfare Act).

The Rules of Practice provide that this Decision and Order is a final agency decision for the purposes of judicial review.⁸ Mr. Hale has the right to seek judicial review of this Decision and Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. § 2341-2350. Judicial review must be sought within 60 days after entry of the Order in this Decision and Order.⁹ The date of entry of the Order in this Decision and Order is June 18, 2012.

For the foregoing reasons, the following Order is issued.

ORDER

1. Richard Hale, his agents and employees, directly or indirectly through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall cease and desist from failing to pay, when due, for livestock purchases.

2. Richard Hale is assessed a \$20,000 civil penalty. 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

⁸7 C.F.R. § 1.145(i).

⁹28 U.S.C. § 2344.

Payment of the civil penalty shall be sent to, and received by, USDA-GIPSA within 60 days after service of this Order on Richard Hale. Richard Hale shall state on the certified check or money order that payment is in reference to P. & S. Docket No. D-12-0204.

Done at Washington, DC

June 18, 2012

William G. Jenson
Judicial Officer