

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P & S Docket No. D-11-0406
)
Robert Morales Cattle Company,)
d/b/a K-M Cattle, and Robert)
Morales,)
)
Respondents) **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 15, 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]; 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. §§ 1.130-1.151) [hereinafter the Rules of Practice].

The Deputy Administrator alleges: (1) during the period on or about June 3, 2008, through July 31, 2008, in approximately 23 transactions, Robert Morales Cattle Company, under the direction, management, and control of Robert Morales, purchased livestock in the total amount of approximately \$293,211 and failed to pay, when due, the full purchase price of the livestock, in violation of 7 U.S.C. §§ 213(a) and 228b; (2) Robert Morales Cattle Company, under the direction, management, and control of Mr. Morales, failed to keep and maintain records which fully and correctly disclosed all the transactions involved in its business as a dealer and market agency, as required by 7 U.S.C. § 221; and (3) Robert Morales Cattle Company, under the direction, management, and control of Mr. Morales, failed to issue scale tickets in conformity with the requirements of 9 C.F.R. §§ 201.49 and 201.73-1.¹

The Hearing Clerk served Robert Morales Cattle Company and Mr. Morales with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter on September 19, 2011.² Neither Robert Morales Cattle Company nor Mr. Morales filed an answer to the Complaint within 20 days after service, as required by 7 C.F.R. § 1.136(a). The Assistant Hearing Clerk sent Robert Morales Cattle Company and Mr. Morales a letter dated October 13, 2011, informing them that they had failed to file a timely

¹Compl. at 3-4 ¶¶ III-V.

²United States Postal Service Domestic Return Receipt for article number 7009 1680 0001 9852 3852.

response to the Complaint. Neither Robert Morales Cattle Company nor Mr. Morales responded to the Assistant Hearing Clerk's October 13, 2011, letter.

On October 14, 2011, 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. Neither Robert Morales Cattle Company nor Mr. Morales filed a response to the Chief ALJ's Show Cause Order. On October 26, 2011, the Deputy Administrator filed Complainant's Response to Show Cause Order and 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]. The Hearing Clerk served Robert Morales Cattle Company and Mr. Morales with the Deputy Administrator's Motion for Default Decision and Proposed Default Decision and the Hearing Clerk's service letter on October 29, 2011.³ On November 21, 2011, Robert Morales Cattle Company and Mr. Morales filed a response to the Deputy Administrator's Motion for Default Decision and Proposed Default Decision.

On December 27, 2011, the Chief ALJ, in accordance with 7 C.F.R. § 1.139, issued a Default Decision and Order in which the Chief ALJ: (1) concluded that Robert Morales Cattle Company and Mr. Morales willfully violated 7 U.S.C. §§ 213(a), 221, and 228b and 9 C.F.R. §§ 201.49 and 201.73-1, as alleged in the Complaint; (2) ordered

³United States Postal Service Domestic Return Receipt for article number 7005 1160 0002 7835 8676.

Robert Morales Cattle Company and Mr. Morales to cease and desist from failing to pay, when due, the full purchase price of livestock; (3) ordered Robert Morales Cattle Company and Mr. Morales to cease and desist from failing to issue scale tickets in conformity with 9 C.F.R. §§ 201.49 and 201.73-1; (4) ordered Robert Morales Cattle Company and Mr. Morales to keep and maintain records which fully and correctly disclose the true nature of all transactions involved in their business subject to the Packers and Stockyards Act, as required by 7 U.S.C. § 221; and (5) assessed Robert Morales Cattle Company and Mr. Morales, jointly and severally, a \$16,500 civil penalty.

On January 31, 2012, Robert Morales Cattle Company and Mr. Morales appealed the Chief ALJ's Default Decision and Order to, and requested an opportunity to present oral argument before, the Judicial Officer. On February 14, 2012, the Deputy Administrator filed Complainant's Opposition To Respondents' Appeal Petition. On February 22, 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.

DECISION

Statement of the Case

Robert Morales Cattle Company and Mr. Morales 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.

Findings of Fact

1. Robert Morales Cattle Company was a corporation organized and existing under the laws of the State of Utah. Robert Morales Cattle Company's corporate status expired on or about July 6, 2010, due to its failure to file a renewal. Robert Morales Cattle Company's current mailing address is in care of its registered agent, Robert Morales, in the State of Utah.

2. At all times material to this proceeding, Robert Morales Cattle Company was:

(a) Engaged in the business of buying and selling livestock, in commerce, as a dealer for its own account or for the account of others;

(b) Engaged in the business of a market agency buying livestock, in commerce, on a commission basis;

(c) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock, in commerce, for its own account or for the account of others; and

(d) Registered with the Secretary of Agriculture as a market agency to buy livestock, in commerce, on a commission basis.

3. Mr. Morales is an individual residing in the State of Utah.

4. At all times material to this proceeding, Mr. Morales was:

(a) President of Robert Morales Cattle Company;

(b) Director of Robert Morales Cattle Company;

(c) One hundred percent owner of Robert Morales Cattle Company;

(d) Registered agent of Robert Morales Cattle Company; and

(e) Responsible for the direction, management, and control of Robert

Morales Cattle Company.

5. On April 1, 2008, the Western Regional Office, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, mailed Mr. Morales a Notice of Violation letter. Mr. Morales was served with the Notice of Violation letter on April 3, 2008. In the Notice of Violation letter, Mr. Morales was notified that he had failed to:

(a) Pay for livestock in a timely manner, in violation of 7 U.S.C. § 228b;

(b) Maintain a means to trace his dealer transactions from purchase to sale by failing to maintain all purchase and sales invoices, load make-up sheets, and trucking records, as required by 7 U.S.C. § 221; and

(c) Zero balance his scale, print scale tickets when the scale was zero balanced, identify the name of the buyer on his scale tickets, use serially numbered scale tickets, and keep copies of executed or voided scale tickets, in violation of 7 U.S.C. § 213(a) and 9 C.F.R. §§ 201.49 and 201.73-1.

6. Robert Morales Cattle Company, under the direction, management, and control of Mr. Morales, in connection with its operations subject to the Packers and Stockyards Act, commencing on or about June 3, 2008, and continuing through July 31, 2008, in approximately 23 transactions, purchased livestock in the total amount of approximately \$293,211 and failed to pay, when due, the full purchase price of such livestock. Robert Morales Cattle Company's payments were made between approximately 1 day and 160 days late. Robert Morales Cattle Company purchased livestock from the following sellers: (1) Producers Livestock Marketing Association, Jerome, Idaho; (2) Twin Falls Livestock Commission Co., Twin Falls, Idaho; (3) Burley Livestock Auction, LLC, Burley, Idaho; (4) Blackfoot Livestock Commission Co., Blackfoot, Idaho; (5) Dale T. Smith & Sons Meat Packing Co., Draper, Utah; (6) The Stockman's Market, Inc., Visalia, California; and (7) Shasta Livestock Auction Yard, Cottonwood, California.

7. Robert Morales Cattle Company, under the direction, management, and control of Mr. Morales, in connection with its operations subject to the Packers and Stockyards Act, failed to keep and maintain records which fully and correctly disclosed

all the transactions involved in its business as a dealer and market agency, as required by 7 U.S.C. § 221. Specifically, Robert Morales Cattle Company failed to keep and maintain load make-up sheets, all purchase and sales invoices, all scale tickets, and all bank statements.

8. Robert Morales Cattle Company, under the direction, management, and control of Mr. Morales, in connection with its operations subject to the Packers and Stockyards Act, failed to issue scale tickets in conformity with the requirements of 9 C.F.R. §§ 201.49 and 201.73-1. Specifically, Robert Morales Cattle Company issued scale tickets that were not serially numbered, did not identify the buyer of the livestock, did not identify the name, initials, or number of the person who weighed the livestock, and contained no record of zero balancing, as required by 9 C.F.R. § 201.73-1.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Mr. Morales is the alter ego of Robert Morales Cattle Company.
3. By reason of the findings of fact in this Decision and Order, Robert Morales Cattle Company and Mr. Morales willfully violated 7 U.S.C. §§ 213(a), 221, and 228b and 9 C.F.R. §§ 201.49 and 201.73-1.

**Robert Morales Cattle Company and
Mr. Morales' Request for Oral Argument**

Robert Morales Cattle Company and Mr. Morales' request for oral argument, which the Judicial Officer may grant, refuse, or limit,⁴ is refused because the issues are not complex and oral argument would serve no useful purpose.

**Robert Morales Cattle Company and
Mr. Morales' Appeal Petition**

Robert Morales Cattle Company and Mr. Morales raise 12 issues in their appeal of the Chief ALJ's December 27, 2011, Default Decision and Order. First, Robert Morales Cattle Company and Mr. Morales, quoting their November 21, 2011, filing, assert they requested a hearing and the Chief ALJ erroneously failed to schedule a hearing. Robert Morales Cattle Company and Mr. Morales request that I set aside the Chief ALJ's December 27, 2011, Default Decision and Order and remand the proceeding to the Chief ALJ for hearing. (Appeal Pet. at 2-3 ¶¶ 4, 7, 17.)

Robert Morales Cattle Company and Mr. Morales state in their November 21, 2011, filing: "I hope there is something we can do to work out this problem. My cell phone number is . . . and would love to talk to someone about the trouble I am in." I do not find that Mr. Morales' suggestion that someone call his cell phone and talk to him constitutes a request for a hearing. Moreover, even if I were to find Robert Morales Cattle Company and Mr. Morales requested a hearing in their November 21, 2011, filing,

⁴7 C.F.R. § 1.145(d).

the request was made far too late to be considered. The Hearing Clerk served Robert Morales Cattle Company and Mr. Morales with the Complaint on September 19, 2011.⁵ Robert Morales Cattle Company and Mr. Morales failed to file a response to the Complaint within 20 days after the Hearing Clerk served them with the Complaint, as required by 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 constitutes a waiver of hearing. Therefore, Robert Morales Cattle Company and Mr. Morales waived the opportunity for a hearing long before their November 21, 2011, filing, and I reject their request that I set aside the Chief ALJ's December 27, 2011, Default Decision and Order and remand the proceeding to the Chief ALJ for hearing.

Second, Robert Morales Cattle Company and Mr. Morales assert their November 21, 2011, filing is a timely response to the Deputy Administrator's Motion for Default Decision and Proposed Default Decision (Appeal Pet. at 2 ¶¶ 5, 8).

The Hearing Clerk served Robert Morales Cattle Company and Mr. Morales with the Deputy Administrator's Motion for Default Decision and Proposed Default Decision on October 29, 2011.⁶ Robert Morales Cattle Company and Mr. Morales were required to

⁵See note 2.

⁶See note 3.

file objections to the Deputy Administrator's Motion for Default Decision and Proposed Default Decision no later than 20 days after service;⁷ namely, no later than November 18, 2011. Robert Morales Cattle Company and Mr. Morales filed their objections to the Deputy Administrator's Motion for Default Decision and Proposed Default Decision on November 21, 2011; therefore, I reject Robert Morales Cattle Company and Mr. Morales' contention that their objections to the Deputy Administrator's Motion for Default Decision and Proposed Default Decision were timely filed.

Third, Robert Morales Cattle Company and Mr. Morales assert the Deputy Administrator did not respond to the letter they filed on November 21, 2011 (Appeal Pet. at 2 ¶ 6).

Robert Morales Cattle Company and Mr. Morales variously characterize their November 21, 2011, filing as an answer to part of the Complaint (Appeal Pet. at 2 ¶¶ 8, 11) and objections to the Deputy Administrator's Motion for Default Decision and Proposed Default Decision (Appeal Pet. at 2 ¶¶ 5, 8). The Rules of Practice do not require that an opposing party respond to an answer, objections to a motion for a default decision, or objections to a proposed default decision.⁸ Therefore, I do not find the Deputy Administrator's failure to respond to Robert Morales Cattle Company and Mr. Morales' November 21, 2011, filing relevant to this proceeding.

⁷See 7 C.F.R. § 1.139.

⁸7 C.F.R. §§ 1.136 and 1.139.

Fourth, Robert Morales Cattle Company and Mr. Morales assert their November 21, 2011, filing is a timely answer to part of the Complaint (Appeal Pet. at 2 ¶ 8).

The Hearing Clerk served Robert Morales Cattle Company and Mr. Morales with the Complaint on September 19, 2011.⁹ Robert Morales Cattle Company and Mr. Morales were required to file a response to the Complaint no later than 20 days after service;¹⁰ namely, no later than October 11, 2011.¹¹ Robert Morales Cattle Company and Mr. Morales filed their answer to part of the Complaint on November 21, 2011; therefore, I reject Robert Morales Cattle Company and Mr. Morales' contention that their answer to part of the Complaint was timely filed.

⁹See note 2.

¹⁰7 C.F.R. § 1.136(a).

¹¹Twenty days after the date the Hearing Clerk served Robert Morales Cattle Company and Mr. Morales with the Complaint was Sunday, October 9, 2011. The Rules of Practice provide, when the time for filing a document or paper expires on a Sunday, the time for filing shall be extended to the next business day, as follows:

§ 1.147 Filing; service; extensions of time; and computation of time.

.....

(h) *Computation of time.* Saturdays, Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided*, That, when such time expires on a Saturday, Sunday, or Federal holiday, such period shall be extended to include the next following business day.

7 C.F.R. § 1.147(h). Monday, October 10, 2011, was a federal holiday. The next business day after Sunday, October 9, 2011, was Tuesday, October 11, 2011.

Fifth, Robert Morales Cattle Company and Mr. Morales assert they did not receive the Hearing Clerk's letter dated October 13, 2011 (Appeal Pet. at 2 ¶ 9).

The Assistant Hearing Clerk sent Robert Morales Cattle Company and Mr. Morales a letter dated October 13, 2011, informing them that they failed to file a timely response to the Complaint, as follows:

Your answer to the complaint has not been filed in the above-captioned proceeding within the allotted time as noted in § 1.136 of the Rules of Practice. Please note that you will be informed of any further actions in this matter.

The Rules of Practice do not require that the Hearing Clerk inform parties to a proceeding that a timely answer has not been filed; therefore, the fact that Robert Morales Cattle Company and Mr. Morales did not receive the Assistant Hearing Clerk's October 13, 2011, letter is not relevant to this proceeding.

Sixth, Robert Morales Cattle Company and Mr. Morales assert the Deputy Administrator failed to provide evidence which supports findings of fact numbers 5 through 8 in the Chief ALJ's December 27, 2011, Default Decision and Order (Appeal Pet. at 2 ¶ 10).

Robert Morales Cattle Company and Mr. Morales failed to file a timely answer to the Complaint; therefore, Robert Morales Cattle Company and Mr. Morales are deemed to have admitted the allegations of the Complaint.¹² The Chief ALJ adopted the allegations in paragraphs II through IV of the Complaint as findings of fact numbers 5

¹²7 C.F.R. § 1.136(c).

through 8 in his December 27, 2011, Default Decision and Order. As the Chief ALJ's findings of fact numbers 5 through 8 are based upon admissions, I find no error. The Deputy Administrator is not required to present evidence in support of allegations of the Complaint that are deemed to have been admitted.

Seventh, Robert Morales Cattle Company and Mr. Morales assert the Chief ALJ erroneously states in the December 27, 2011, Default Decision and Order that they admitted the untimely payments alleged in the Complaint in their November 21, 2011, filing (Appeal Pet. at 2 ¶ 11).

The Chief ALJ, referring to Robert Morales Cattle Company and Mr. Morales' November 21, 2011, filing, states: "The Respondents filed an untimely response which admits in part the untimely payments alleged in the Complaint." (Default Decision and Order at 2.) Robert Morales Cattle Company and Mr. Morales' November 21, 2011, filing does not contain an admission that they failed to pay the full purchase price of livestock when due, as alleged in the Complaint. Therefore, I agree with Robert Morales Cattle Company and Mr. Morales that the Chief ALJ's statement is error, and I do not adopt that statement in this Decision and Order. However, Robert Morales Cattle Company and Mr. Morales failed to file a timely answer to the Complaint and are deemed to have admitted the untimely payments alleged in the Complaint. Under these circumstances, I find the Chief ALJ's error harmless.

Eighth, Robert Morales Cattle Company and Mr. Morales contend the Chief ALJ's conclusion that they willfully violated the Packers and Stockyards Act, is error (Appeal Pet. at 2 ¶ 12).

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.¹³ Robert Morales Cattle Company and Mr. Morales are within the jurisdiction of the United States Court of Appeals for the Tenth Circuit which has adopted a more stringent standard for willfulness under 5 U.S.C. § 558(c) than the standard adopted by the United States Department of Agriculture: willfulness must be demonstrated by an intentional misdeed or such gross neglect of a known duty as to be the equivalent of an intentional misdeed.¹⁴

¹³See, e.g., *In re Richard L. Reece*, ___ Agric. Dec. ___, slip op. at 7 (Oct. 17, 2011); *In re Marysville Enterprises, Inc.*, 59 Agric. Dec. 299, 309-12, (2000); *In re Hines and Thurn Feedlot, Inc.*, 57 Agric. Dec. 1408, 1414, 1423 (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); *In re Red River Livestock Auction, Inc.*, 30 Agric. Dec. 898, 904 (1971); *In re Rayville Livestock Auction, Inc.*, 30 Agric. Dec. 886, 896 (1971).

¹⁴*United States v. New Mexico Landscaping, Inc.*, 785 F.2d 843, 847 (10th Cir. 1986); *Diamond Ring Ranch, Inc. v. Morton*, 531 F.2d 1397, 1405 (10th Cir. 1976); *Capitol Packing Co. v. United States*, 350 F.2d 67, 78-79 (10th Cir. 1965).

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 price¹⁵ and explicitly requires each dealer and market agency to keep such records, accounts, and memoranda as fully and correctly disclose all transactions involved in the business.¹⁶ Moreover, the Regulations explicitly state the information that is required to be on scale tickets.¹⁷ Mr. Morales was put on prior notice for precisely the same types of violations that Robert Morales Cattle Company and Mr. Morales are found to have committed in this proceeding.¹⁸ Robert Morales Cattle Company and Mr. Morales knew their duties under the Packers and Stockyards Act and the Regulations. Robert Morales Cattle Company and Mr. Morales' willfulness is reflected by their violations of express provisions of the Packers and Stockyards Act and the Regulations, the length of time during which Robert Morales Cattle Company and Mr. Morales committed the violations, and the dollar amount and number of the violative transactions. I find Robert Morales Cattle Company and Mr. Morales engaged in such gross neglect of known duties that their violations of the Packers and Stockyards Act and the Regulations

¹⁵7 U.S.C. § 228b(a).

¹⁶7 U.S.C. § 221.

¹⁷9 C.F.R. §§ 201.49 and 201.73-1.

¹⁸See Decision and Order, *supra*, at finding of fact number 5.

were the equivalent of intentional violations and that Robert Morales Cattle Company and Mr. Morales' violations were willful, both under the standard for willfulness applied by the United States Department of Agriculture and under the standard for willfulness applied by the United States Court of Appeals for the Tenth Circuit. Therefore, I reject Robert Morales Cattle Company and Mr. Morales' contention that the Chief ALJ erroneously concluded that they willfully violated the Packers and Stockyards Act.

Ninth, Mr. Morales asserts he was not required to renew Robert Morales Cattle Company with the State of Utah after July 6, 2010, as he no longer owns or operates Robert Morales Cattle Company (Appeal Pet. at 3 ¶ 13).

State of Utah requirements concerning renewal of Robert Morales Cattle Company are not relevant to this proceeding, which is limited to the issue of Robert Morales Cattle Company and Mr. Morales' violations of the Packers and Stockyards Act and the Regulations.

Tenth, Robert Morales Cattle Company and Mr. Morales assert they no longer purchase livestock; therefore, the Chief ALJ's order that they cease and desist from violations of the Packers and Stockyards Act and comply with 7 U.S.C. § 221 are not applicable to them (Appeal Pet. at 3 ¶ 14).

Nothing prohibits Robert Morales Cattle Company or Mr. Morales from resuming operations under the Packers and Stockyards Act at any time; therefore, I find the Chief

ALJ's cease and desist order and order to comply with 7 U.S.C. § 221 applicable to both Robert Morales Cattle Company and Mr. Morales.

Eleventh, Robert Morales Cattle Company and Mr. Morales "object to the calculation of a civil penalty in the amount of Sixteen Thousand Five Hundred Dollars (\$16,500)." (Appeal Pet. at 3 ¶ 15.)

The Secretary of Agriculture's sanction policy is as follows:

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

In re S.S. Farms Linn County, Inc. (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), *aff'd*, 991 F.2d 803 (9th Cir. 1993). Pursuant to 7 U.S.C. § 213(b), the Secretary of Agriculture must also consider "the gravity of the offense, the size of the business involved, and the effect of the penalty on the person's ability to continue in business." The maximum civil penalty that the Secretary of Agriculture may assess for each of Robert Morales Cattle Company and Mr. Morales' violations of the Packers and Stockyards Act is \$11,000.¹⁹

¹⁹The Packers and Stockyards Act provides that the maximum civil penalty that the Secretary of Agriculture may assess for each violation of 7 U.S.C. § 213(a) is \$10,000 (7 U.S.C. § 213(b)). However, the maximum civil penalty that the Secretary of Agriculture may assess for each violation of 7 U.S.C. § 213(a) has been modified under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), and various implementing regulations issued by the Secretary of Agriculture. In 2008, when Robert Morales Cattle Company and Mr. Morales violated the Packers and
(continued...)

Robert Morales Cattle Company and Mr. Morales, commencing on or about June 3, 2008, and continuing through July 31, 2008, in approximately 23 transactions, purchased livestock in the total amount of approximately \$293,211 and failed to pay, when due, the full purchase price of such livestock. Robert Morales Cattle Company and Mr. Morales also failed to keep and maintain records which fully and correctly disclosed all the transactions involved in their business as a dealer and market agency, as required by 7 U.S.C. § 221, and failed to issue scale tickets in conformity with the requirements of 9 C.F.R. §§ 201.49 and 201.73-1.

The purposes of the Packers and Stockyards Act are varied; however, one of the primary purposes of the Packers and Stockyards Act is “to assure fair trade practices in the livestock marketing . . . industry in order to safeguard farmers and ranchers against receiving less than the true market value of their livestock.” *Bruhn’s Freezer Meats v. U.S. Dep’t of Agric.*, 438 F.2d 1332, 1337 (8th Cir. 1971), *cited in Van Wyk v. Bergland*, 570 F.2d 701, 704 (8th Cir. 1978). The requirement that a livestock purchaser make timely payment effectively prevents livestock sellers from being forced to finance transactions.²⁰ Robert Morales Cattle Company and Mr. Morales contravened the

¹⁹(...continued)

Stockyards Act, the maximum civil penalty for each violation of 7 U.S.C. § 213(a) was \$11,000 (7 C.F.R. § 3.91(b)(6)(iv) (2010)).

²⁰*See Van Wyk v. Bergland*, 570 F.2d 701, 704 (8th Cir. 1978) (stating timely payment in a livestock purchase prevents the seller from being forced, in effect, to finance the transaction); *In re Richard L. Reece* (Order Denying Pet. to Reconsider), ___ Agric.

(continued...)

timely-payment requirement and their violations directly thwart one of the primary purposes of the Packers and Stockyards Act.²¹ In addition, Robert Morales Cattle Company and Mr. Morales failed to keep and maintain records which fully and correctly disclosed all the transactions involved in their business as a dealer and market agency, as required by 7 U.S.C. § 221, and failed to issue scale tickets in conformity with the requirements of 9 C.F.R. §§ 201.49 and 201.73-1. Keeping complete and accurate records is one of the important and essential means in accomplishment of the purposes of the Packers and Stockyards Act.²²

Robert Morales Cattle Company and Mr. Morales' violations of the Packers and Stockyards Act and the Regulations warrant a severe sanction. Further, I give weight to the sanction recommendations of administrative officials, and the Deputy Administrator recommended assessment of a \$16,500 civil penalty. Therefore, I reject Robert Morales

²⁰(...continued)

Dec. ____, slip op. at 7 (Nov. 4, 2011) (stating the requirement that a purchaser make timely payment effectively prevents the seller from being forced to finance the transaction); *In re Hines and Thurn Feedlot, Inc.*, 57 Agric. Dec. 1408, 1429 (1998) (same).

²¹*See Mahon v. Stowers*, 416 U.S. 100, 111, (1974) (per curiam) (dictum) (stating that regulation requiring prompt payment supports policy to ensure that packers do not take unnecessary advantage of cattle sellers by holding funds for their own purposes); *Bowman v. U.S. Dep't of Agric.*, 363 F.2d 81, 85 (5th Cir. 1966) (stating one of the purposes of the Packers and Stockyards Act is to ensure prompt payment).

²²*Hyatt v United States*, 276 F.2d 308, 312 (10th Cir. 1960).

Cattle Company and Mr. Morales' objection to the Chief ALJ's assessing a \$16,500 civil penalty.

Twelfth, Robert Morales Cattle Company and Mr. Morales contend the Chief ALJ's findings of fact are error (Appeal Pet. at 3 ¶ 16).

Robert Morales Cattle Company and Mr. Morales failed to file a timely answer to the Complaint; therefore, Robert Morales Cattle Company and Mr. Morales are deemed to have admitted the allegations of the Complaint.²³ The Chief ALJ adopted the allegations of the Complaint as the findings of fact in the December 27, 2011, Default Decision and Order; therefore, I reject Robert Morales Cattle Company and Mr. Morales' contention that the Chief ALJ's findings of fact are error.

For the foregoing reasons, the following Order is issued.

ORDER

1. Robert Morales Cattle Company and Mr. Morales, their agents and employees, directly or indirectly through any corporate or other device, in connection with their operations 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 issue scale tickets in conformity with the requirements of 9 C.F.R. §§ 201.49 and 201.73-1.

²³7 C.F.R. § 1.136(c).

2. Robert Morales Cattle Company and Mr. Morales shall keep and maintain accounts, records, and memoranda which fully and correctly disclose the true nature of all transactions involved in their business subject to the Packers and Stockyards Act, as required by 7 U.S.C. § 221, including, but not limited to, load make-up sheets, all purchase and sales invoices, all scale tickets, and all bank statements.

3. Robert Morales Cattle Company and Mr. Morales are assessed, jointly and severally, a \$16,500 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

Payment of the civil penalty shall be sent to, and received by, USDA-GIPSA within 60 days after service of this Order on Robert Morales Cattle Company and Mr. Morales. Robert Morales Cattle Company and Mr. Morales shall state on the certified check or money order that payment is in reference to P & S Docket No. D-11-0406.

Done at Washington, DC

March 6, 2012

William G. Jenson
Judicial Officer