

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P & S Docket No. D-07-0100
)
Berry & Sons, Rababeh Islamic)
Slaughterhouse, Inc.,)
)
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 and Notice of Hearing [hereinafter Complaint] on April 27, 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. §§ 201.1-.200) [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, during the period October 10, 2004, through February 6, 2005, Berry & Sons, Rababeh Islamic Slaughterhouse, Inc. [hereinafter Berry & Sons], willfully violated section 202(a) of the Packers and Stockyards Act (7 U.S.C. § 192(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, .30) by engaging in business as a packer without maintaining an adequate bond or bond equivalent (Compl. ¶¶ II-IV). The Hearing Clerk served Berry & Sons with the Complaint, the Rules of Practice, and a service letter on May 2, 2007.¹ Berry & Sons 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 Berry & Sons a letter dated May 23, 2007, stating Berry & Sons had not filed a timely response to the Complaint. Berry & Sons failed to file a response to the Hearing Clerk's May 23, 2007, letter.

On August 23, 2007, 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 [hereinafter Motion for Default Decision] and a proposed Decision Without Hearing by Reason of Default [hereinafter Proposed Default Decision]. The Hearing Clerk served Berry & Sons with the Deputy Administrator's Motion for Default Decision

¹United States Postal Service Domestic Return Receipt for Article Number 7004 2510 0003 7121 7084.

and the Deputy Administrator's Proposed Default Decision on August 27, 2007.²

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

On October 15, 2007, Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] issued a Decision and Order by Reason of Default [hereinafter Initial Decision]: (1) concluding Berry & Sons willfully violated section 202(a) of the Packers and Stockyards Act (7 U.S.C. § 192(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, .30) by engaging in business as a packer without maintaining an adequate bond or bond equivalent; (2) ordering Berry & Sons to cease and desist from engaging in business as a packer without maintaining an adequate bond or bond equivalent, as required by the Packers and Stockyards Act and the Regulations; and (3) assessing Berry & Sons a \$1,000 civil penalty (Initial Decision at 5).

On November 21, 2007, Berry & Sons filed an appeal petition and requested oral argument before the Judicial Officer. On December 27, 2007, the Deputy Administrator filed a response to Berry & Sons' appeal petition and request for oral argument. On December 31, 2007, the Hearing Clerk transmitted the record to the Judicial Officer for

²United States Postal Service Domestic Return Receipt for Article Number 7004 2510 0003 7023 1692.

consideration and decision. Based upon a careful review of the record, I affirm the ALJ's Initial Decision.

DECISION

Statement of the Case

Berry & Sons 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. Berry & Sons is a corporation organized and existing under the laws of the State of Michigan. Berry & Sons' mailing address is 2496 Orleans Street, Detroit, Michigan 48207.
2. Berry & Sons was, at all times material to this proceeding:

(a) Engaged in the business of buying livestock in commerce for purposes of slaughter; and

(b) A “packer” within the meaning of that term under the Packers and Stockyards Act and subject to the provisions of the Packers and Stockyards Act.

3. Berry & Sons was given due notice of the need to obtain a bond or bond equivalent:

(a) Berry & Sons was notified by letter on April 21, 2004, that the Packers and Stockyards Act required all packers whose average annual purchases exceeded \$500,000 to file and maintain a surety bond or bond equivalent, and that the Packers and Stockyards Program had information indicating Berry & Sons had been engaging in livestock operations subject to the Packers and Stockyards Act without obtaining an adequate bond or bond equivalent. The letter referenced 7 U.S.C. § 204 and notified Berry & Sons of its obligation to file proof of suitable bond or bond equivalent with the Packers and Stockyards Program before engaging in any operations subject to the Packers and Stockyards Act.

(b) Berry & Sons was notified by certified letter on July 9, 2004, that Berry & Sons had failed to furnish the requested bond coverage and that a continuation of livestock purchases as a packer would be in violation of the bonding requirements of the Packers and Stockyards Act and the Regulations. The letter notified Berry & Sons of its obligation to file proof of suitable bond or bond equivalent with the Packers and

Stockyards Program before engaging in any operations subject to the Packers and Stockyards Act.

(c) On March 3, 2005, a Packers and Stockyards Program representative personally instructed Berry & Sons to submit the required bonding information and to refrain from engaging in activities subject to the Packers and Stockyards Act until the bonding requirements had been met. Notwithstanding this notice and subsequent telephone inquiries, Berry & Sons continued to engage in the business as a packer without maintaining an adequate bond or bond equivalent, as required by the Packers and Stockyards Act and the Regulations.

4. Berry & Sons, on or about the dates and in the transactions set forth in this paragraph of the Findings of Fact, purchased livestock for the purpose of slaughter without maintaining an adequate bond or bond equivalent. The transactions occurred at United Producers, Inc., in Manchester, Michigan, a posted stockyard, and from G & S Lambs, a livestock dealer in Aplington, Iowa.

Date of Purchase	Name of Seller	Number of Head	Livestock Amount
1/2/2005	G & S Lambs	303	\$32,973.00
10/10/2004	G & S Lambs	309	\$28,312.90
10/17/2004	G & S Lambs	300	\$27,054.04
10/24/2004	G & S Lambs	318	\$32,273.90
11/7/2004	G & S Lambs	302	\$28,835.55
11/14/2004	G & S Lambs	292	\$28,918.20
11/21/2004	G & S Lambs	313	\$31,780.00
11/30/2004	G & S Lambs	394	\$42,742.23
12/5/2004	G & S Lambs	334	\$34,667.00
12/9/2004	United Producers, Inc.	47	\$4,330.29
12/12/2004	G & S Lambs	274	\$28,302.20
12/20/2004	United Producers, Inc.	133	\$13,069.85

12/23/2004	United Producers, Inc.	19	\$2,323.67
12/26/2004	G & S Lambs	223	\$22,825.77
12/27/2004	United Producers, Inc.	80	\$11,144.00
12/30/2004	United Producers, Inc.	121	\$15,832.60
1/3/2005	United Producers, Inc.	48	\$6,098.95
1/6/2005	United Producers, Inc.	31	\$3,769.41
1/9/2005	G & S Lambs	296	\$36,050.60
1/10/2005	United Producers, Inc.	248	\$32,046.50
1/13/2005	G & S Lambs	272	\$31,721.80
1/16/2005	G & S Lambs	274	\$33,357.75
1/17/2005	United Producers, Inc.	293	\$30,051.31
1/20/2005	G & S Lambs	306	\$37,381.95
1/20/2005	United Producers, Inc.	51	\$6,750.08
1/23/2005	G & S Lambs	225	\$27,684.85
1/24/2005	United Producers, Inc.	289	\$36,957.27
1/27/2005	United Producers, Inc.	77	\$7,952.50
2/6/2005	G & S Lambs	362	\$44,370.65
	Total	6,534	\$719,578.82

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. By reason of the facts found in the Findings of Fact, Berry & Sons willfully violated section 202(a) of the Packers and Stockyards Act (7 U.S.C. § 192(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, .30) by engaging in business as a packer without maintaining an adequate bond or bond equivalent, as required.

Berry & Sons' Request for Oral Argument

Berry & Sons requests oral argument before the Judicial Officer. Berry & Sons' request for oral argument before the Judicial Officer, which the Judicial Officer may

grant, refuse, or limit,³ is refused because the issues are not complex and oral argument would appear to serve no useful purpose.

Berry & Sons' Appeal Petition

Berry & Sons states, during its approximately 30 years in business, it was not required to obtain a bond or bond equivalent and, when contacted by the Packers and Stockyards Program, Berry & Sons perceived that a bond was optional, not mandatory. Berry & Sons also asserts, when it perceived that a bond was mandatory, it contacted its insurance agency in an attempt to obtain a bond. (Appeal Pet. Oral Argument Requested ¶ 1.)

I find Berry & Sons' appeal petition is merely an explanation for its violation of the Packers and Stockyards Act and the Regulations. Berry & Sons offers no basis for setting aside the default decision. Berry & Sons 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 May 22, 2007. The Hearing Clerk received Berry & Sons' first and only filing in this proceeding on November 21, 2007, 5 months 29 days after Berry & Sons was required to file an answer. As Berry & Sons failed to file a timely answer, Berry & Sons is deemed to have admitted the material allegations of the Complaint.

For the foregoing reasons, the following Order is issued.

³7 C.F.R. § 1.145(d).

ORDER

1. Berry & Sons, its agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall cease and desist from engaging in business as a packer without maintaining an adequate bond or bond equivalent, as required by 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 Berry & Sons.

2. Berry & Sons is assessed a \$1,000 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the United States Department of Agriculture and sent to:

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

Payment of the civil penalty shall be sent to the United States Department of Agriculture within 30 days after service of this Order on Berry & Sons. Berry & Sons shall state on the certified check or money order that payment is in reference to P & S Docket No. D-07-0100.

Done at Washington, DC

January 15, 2008

William G. Jenson
Judicial Officer