

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-01-0013
)
Wayne W. Coblentz, d/b/a)
Coblentz & Sons Livestock,)
)
Respondent) **Order Lifting Stay Order**

PROCEDURAL HISTORY

On May 30, 2002, I issued a Decision and Order concluding Wayne W. Coblentz, d/b/a Coblentz & Sons Livestock [hereinafter Respondent], violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229).¹

On July 23, 2002, Respondent requested a stay of the Order in *In re Wayne W. Coblentz*, 61 Agric. Dec. 330 (2002), pending the outcome of proceedings for judicial review, and on July 29, 2002, I granted Respondent's request for a stay.²

On December 18, 2003, the United States Court of Appeals for the Sixth Circuit affirmed *In re Wayne W. Coblentz*, 61 Agric. Dec. 330 (2002).³ On December 21, 2004,

¹*In re Wayne W. Coblentz*, 61 Agric. Dec. 330 (2002).

²*In re Wayne W. Coblentz*, 61 Agric. Dec. 786 (2002) (Stay Order).

³*Coblentz v. United States Dep't of Agric.*, 89 Fed. Appx. 484, 2003 WL 23156647 (6th Cir. 2003).

the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter Complainant], filed a motion to lift the July 29, 2002, Stay Order on the ground that proceedings for judicial review have been concluded.⁴ On March 14, 2005, Respondent filed a response to Complainant's Motion to Lift Stay.⁵ On March 16, 2005, the Hearing Clerk transmitted the record of the proceeding to the Judicial Officer for a ruling on Complainant's Motion to Lift Stay.

CONCLUSIONS BY THE JUDICIAL OFFICER

Respondent states in an affidavit accompanying his response to Complainant's Motion to Lift Stay that for at least 150 days from December 18, 2003, until the present, he has not bought or sold livestock in commerce either as a dealer for his own account or as a market agency buying livestock on a commission basis. Based on these facts, Respondent requests that I credit him with having served 150 days of the 5-year suspension as a registrant under the Packers and Stockyards Act imposed in *In re Wayne W. Coblentz*, 61 Agric. Dec. 330, 345 (2002).

A stay order issued by the Judicial Officer pending the outcome of judicial review is not automatically lifted upon the conclusion of judicial review. Instead, action must be

⁴Complainant's Motion to Lift Stay.

⁵Respondent's Reply to Complainant's 'Motion to Lift Stay'.

taken to lift a stay order.⁶ Moreover, the July 29, 2002, Stay Order specifically states “[t]his Stay Order shall remain in effect until it is lifted by the Judicial Officer or vacated by a court of competent jurisdiction.”⁷ The July 29, 2002, Stay Order has not previously been lifted by the Judicial Officer and has not been vacated by a court of competent jurisdiction. Therefore, I deny Respondent’s request that I credit him with having served 150 days of the 5-year suspension as a registrant under the Packers and Stockyards Act imposed in *In re Wayne W. Coblentz*, 61 Agric. Dec. 330, 345 (2002).

I issued the July 29, 2002, Stay Order to postpone the effective date of the Order issued in *In re Wayne W. Coblentz*, 61 Agric. Dec. 330 (2002), pending the outcome of proceedings for judicial review. Proceedings for judicial review are concluded and the time for filing further requests for judicial review has expired.

For the foregoing reasons, Complainant’s Motion to Lift Stay is granted; the July 29, 2002, Stay Order is lifted; and the Order issued in *In re Wayne W. Coblentz*, 61 Agric. Dec. 330 (2002), is effective, as set forth in the following Order.

⁶*In re Darrall S. McCulloch*, 63 Agric. Dec. ____ , slip op. at 3 (Mar. 2, 2004) (Order Lifting Stay as to Phillip Trimble); *In re Cecil Jordan*, 56 Agric. Dec. 758, 760 (1997) (Order on Recons. of Order Lifting Stay Order); *In re Jackie McConnell*, 55 Agric. Dec. 336, 339 (1996) (Order Modifying Order Lifting Stay Order).

⁷*In re Wayne W. Coblentz*, 61 Agric. Dec. 786, 787 (2002) (Stay Order).

ORDER

Paragraph I

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

1. Issuing checks in payment for livestock purchases without maintaining sufficient funds on deposit and available in the account upon which the checks are drawn to pay the checks when presented;
2. Failing to pay, when due, the full purchase price of livestock; and
3. Failing to pay the full purchase price of livestock.

The cease and desist provisions of this Order shall become effective on the day after service of this Order on Respondent.

Paragraph II

Respondent is suspended as a registrant under the Packers and Stockyards Act for a period of 5 years; *Provided, however*, That, upon application to the Packers and Stockyards Programs, a supplemental order may be issued terminating the suspension of Respondent as a registrant under the Packers and Stockyards Act at any time after the expiration of the initial 150 days of the 5-year period of suspension upon demonstration by Respondent that the livestock sellers identified in the Complaint have been paid in full; *And provided further*, That this Order may be modified upon application to the Packers and Stockyards Programs to permit Respondent's salaried employment by

another registrant or a packer after the expiration of the initial 150 days of the 5-year period of suspension and upon demonstration of circumstances warranting modification of the Order, such as a reasonable and current schedule of restitution.

The registration-suspension provisions of this Order shall become effective on the 60th day after service of this Order on Respondent.

Done at Washington, DC

March 22, 2005

William G. Jenson
Judicial Officer