

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) P. & S. Docket No. D-07-0042  
)  
Dane Fine, d/b/a Dane Fine )  
Meat Packing, )  
)  
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 December 14, 2006. 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 Dane Fine willfully violated sections 202(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 192(a), 228b) during the period

May 25, 2005, through December 11, 2005, by purchasing livestock and failing to pay, when due, the full purchase price of the livestock (Compl. ¶¶ II-III). The Hearing Clerk served Mr. Fine with the Complaint, the Rules of Practice, and a service letter on December 19, 2006.<sup>1</sup> Mr. Fine 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 Mr. Fine a letter dated January 11, 2007, informing him that he had not filed a timely response to the Complaint. Mr. Fine failed to file a response to the Hearing Clerk's January 11, 2007, letter.

On March 22, 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 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 Dane Fine with the Deputy Administrator's Motion for Default Decision and the Deputy Administrator's Proposed Default Decision on April 18, 2007.<sup>2</sup> Mr. Fine 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). The

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<sup>1</sup>United States Postal Service Domestic Return Receipt for Article Number 7004 1160 0004 4085 8547.

<sup>2</sup>Memorandum to the File, dated April 18, 2007, signed by Leslie E. Whitfield, Legal Technician, Office of the Hearing Clerk.

Hearing Clerk sent Mr. Fine a letter dated May 8, 2007, informing him that he had not filed timely objections to the Deputy Administrator's Motion for Default Decision.

Mr. Fine failed to file a response to the Hearing Clerk's May 8, 2007, letter.

On June 12, 2007, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued a Default Decision and Order [hereinafter Initial Decision]: (1) concluding Dane Fine willfully violated sections 202(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 192(a), 228b) during the period May 26, 2005, through June 27, 2005; (2) ordering Mr. Fine to cease and desist from failing to pay, when due, the full purchase price of livestock; and (3) assessing Mr. Fine a \$1,500 civil penalty (Initial Decision at 2).

On August 2, 2007, Dane Fine filed three documents: (1) an invoice from the United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, for the \$1,500 civil penalty assessed by the ALJ; (2) page 2 of the ALJ's Initial Decision; and (3) a document showing details of four purchases of livestock and meat by Dane Fine Meat Packing during the period May 26, 2005, through June 27, 2005. In response to Mr. Fine's August 2, 2007, filing, Administrative Law Judge Jill S. Clifton issued a document entitled "Fine Letter Acknowledgment" stating Mr. Fine's documents had been received and advising Mr. Fine of his opportunity to appeal the ALJ's Initial Decision to the Judicial Officer.

On September 14, 2007, Dane Fine appealed the ALJ's Initial Decision to the Judicial Officer. On October 5, 2007, the Deputy Administrator filed a response to

Mr. Fine's appeal petition. On October 9, 2007, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision. Based upon a careful review of the record, I affirm the ALJ's Initial Decision, except, for the reason discussed in this Decision and Order, *infra*, I conclude Mr. Fine willfully violated the Packers and Stockyards Act during the period May 25, 2005, through December 11, 2005.

## **DECISION**

### **Statement of the Case**

Dane Fine 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. Dane Fine is an individual doing business in the Commonwealth of Pennsylvania as Dane Fine Meat Packing.

2. Dane Fine's mailing address is 1080 Butler Road, Saxonburg, Pennsylvania 16056.

3. Dane Fine, at all times material to this proceeding, was engaged in the business of buying livestock in commerce for the purpose of slaughter.

4. Dane Fine, at all times material to this proceeding, was a packer within the meaning of, and subject to the provisions of, the Packers and Stockyards Act.

5. Dane Fine, during the period May 25, 2005, through December 11, 2005, purchased 611 head of livestock and failed to pay, when due, \$105,885.46 associated with these livestock purchases.

#### **Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Dane Fine willfully violated sections 202(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 192(a), 228b).

#### **Dane Fine's Appeal Petition**

Dane Fine raises two issues in his September 14, 2007, filing [hereinafter Appeal Petition]. First, Mr. Fine indicates the ALJ erroneously found Dane Fine's violations of the Packers and Stockyards Act occurred during the period May 26, 2005, through June 27, 2005 (Appeal Pet. and Attachments).

The ALJ found Dane Fine violated the Packers and Stockyards Act during the period May 26, 2005, through June 27, 2005 (Initial Decision at 2). The Deputy

Administrator alleges Dane Fine violated the Packers and Stockyards Act during the period May 25, 2005, through December 11, 2005 (Compl. ¶ II). The ALJ offers no explanation for his conclusion that Dane Fine violated the Packers and Stockyards Act only during the period May 26, 2005, through June 27, 2005. Dane Fine is deemed by his failure to file a timely answer to have admitted the violations in the Complaint; therefore, I reject the ALJ's finding that Dane Fine violated the Packers and Stockyards Act only during the period May 26, 2005, through June 27, 2005. I find Dane Fine's violations of the Packers and Stockyards Act occurred during the period May 25, 2005, through December 11, 2005, as alleged in the Complaint.

Second, Dane Fine indicates he was not served with the Complaint (Appeal Pet.).

The Rules of Practice provide that a certified mail receipt returned by the United States Postal Service with a signature showing service is deemed to be accurate.<sup>3</sup> The record contains a United States Postal Service Domestic Return Receipt, which was attached to the envelope containing the Complaint, signed by Mr. Fine and indicating the United States Postal Service delivered the Complaint to Mr. Fine's mailing address on December 19, 2006. Under these circumstances, I must conclude the Hearing Clerk served Mr. Fine with the Complaint on December 19, 2006. Mr. Fine 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 January 8, 2007. The

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<sup>3</sup>7 C.F.R. § 1.147(e).

Hearing Clerk received Mr. Fine's first filing in this proceeding on August 2, 2007, 6 months 3 weeks 4 days after Mr. Fine was required to file an answer. As Mr. Fine has failed to file a timely answer, he is deemed to have admitted the material allegations of the Complaint.

For the foregoing reasons, the following Order is issued.

### **ORDER**

1. Dane Fine, his agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall cease and desist from failing to pay, when due, the full purchase price of livestock, in violation of the Packers and Stockyards Act.

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

2. Dane Fine is assessed a \$1,500 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:

Assistant General Counsel  
United States Department of Agriculture  
Office of the General Counsel  
Trade Practices Division  
1400 Independence Avenue, SW  
Room 2309 South Building  
Washington, DC 20250

Payment of the civil penalty shall be sent to the Assistant General Counsel within 60 days after service of this Order on Mr. Fine. Mr. Fine shall state on the certified check or money order that payment is in reference to P. & S. Docket No. D-07-0042.

Done at Washington, DC

October 30, 2007

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William G. Jenson  
Judicial Officer