

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) P. & S. Docket No. D-09-0097  
)  
Meadowbrook Farms )  
Cooperative, )  
)  
Respondent ) **Order Denying Appeal Petition**

**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 on April 16, 2009. 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-.151) [hereinafter the Rules of Practice]. The Deputy Administrator alleges Meadowbrook Farms Cooperative willfully violated sections 202(a), 409, and

409(b) of the Packers and Stockyards Act (7 U.S.C. §§ 192(a), 228b, 228b(b)) and sections 201.99(b) and 201.200 of the Regulations (9 C.F.R. §§ 201.99(b), .200) (Compl. ¶¶ II-V).

The Hearing Clerk served Meadowbrook Farms Cooperative with the Complaint and Notice of Hearing, the Rules of Practice, and a service letter by certified mail on April 23, 2009.<sup>1</sup> Meadowbrook Farms Cooperative failed to file an answer to the Complaint and Notice of Hearing within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Instead, on May 5, 2009, Meadowbrook Farms Cooperative, through its bankruptcy attorney, Edward J. Karfeld, filed a “Limited Entry of Appearance to Suggest the Bankruptcy of Respondent.” Meadowbrook Farms Cooperative suggested that its petition in bankruptcy operates as an automatic stay of the instant proceeding pursuant to the Bankruptcy Act. (See 11 U.S.C. § 362(a)(1).) The Deputy Administrator filed a “Response to Suggestion” stating the instant proceeding falls within the exceptions to the automatic stay provision in the Bankruptcy Act. On May 12, 2009, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued an Order: (1) finding the instant proceeding falls within the exceptions to the automatic stay provision of the Bankruptcy Act; (2) ordering that Meadowbrook Farms Cooperative’s Limited Entry of Appearance to Suggest the

---

<sup>1</sup>United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3862 8321.

Bankruptcy of Respondent “be considered nugatory and of no force”; and (3) ordering that the instant action proceed. The Hearing Clerk served Mr. Karfeld with the ALJ’s May 12, 2009, Order by certified mail.<sup>2</sup>

The Hearing Clerk sent Meadowbrook Farms Cooperative a letter dated May 14, 2009, stating Meadowbrook Farms Cooperative had not filed a timely response to the Complaint and Notice of Hearing. Meadowbrook Farms Cooperative failed to file a response to the Hearing Clerk’s May 14, 2009, letter.

On June 24, 2009, 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 Based on Default [hereinafter Motion for Default Decision] and a Proposed Decision Without Hearing Based on Default [hereinafter Proposed Default Decision]. The Hearing Clerk served Meadowbrook Farms Cooperative with the Deputy Administrator’s Motion for Default Decision, the Deputy Administrator’s Proposed Default Decision, and a service letter by certified mail on June 29, 2009.<sup>3</sup> Meadowbrook Farms Cooperative 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.

---

<sup>2</sup>United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3862 8925.

<sup>3</sup>United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3862 5627.

§ 1.139). The Hearing Clerk sent Meadowbrook Farms Cooperative a letter dated July 21, 2009, stating Meadowbrook Farms Cooperative had not filed timely objections to the Deputy Administrator's Motion for Default Decision. Meadowbrook Farms Cooperative failed to file a response to the Hearing Clerk's July 21, 2009, letter.

On August 4, 2009, the ALJ issued a Default Decision and Order [hereinafter the ALJ's Decision]: (1) concluding Meadowbrook Farms Cooperative willfully violated the Packers and Stockyards Act and the Regulations, as alleged in the Complaint and Notice of Hearing; and (2) ordering Meadowbrook Farms Cooperative to cease and desist violations of the Packers and Stockyards Act and the Regulations. The Hearing Clerk served Meadowbrook Farms Cooperative with the ALJ's Decision and a service letter by certified mail.<sup>4</sup>

On September 8, 2009, Laura K. Grandy, Trustee of the Chapter 7 Bankruptcy Estate of Meadowbrook Farms Cooperative [hereinafter the Trustee], appealed to, and requested oral argument before, the Judicial Officer. On September 28, 2009, the Deputy Administrator filed a response to the Trustee's appeal petition arguing the Trustee's appeal petition should be denied because the Trustee is not a party to the instant proceeding and has no right to intervene in the instant proceeding. On September 30, 2009, the Hearing Clerk transmitted the record to the Judicial Officer for consideration

---

<sup>4</sup>United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3862 5283.

and decision. Based upon a careful review of the record, I agree with the Deputy Administrator that the Trustee is not a party to the instant proceeding and has no basis for intervention in the instant proceeding; therefore, the Trustee's September 8, 2009, appeal petition must be denied.

## CONCLUSIONS BY THE JUDICIAL OFFICER

### The Trustee's Appeal Petition

The Rules of Practice provide that only a party in a proceeding may appeal an administrative law judge's decision, as follows:

#### § 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk.

7 C.F.R. § 1.145(a).<sup>5</sup> The parties in the instant proceeding are Meadowbrook Farms Cooperative and the Deputy Administrator, and, under the Rules of Practice, only Meadowbrook Farms Cooperative and the Deputy Administrator had the opportunity to appeal the ALJ's August 4, 2009, Decision. Therefore, the Trustee's appeal petition is denied on the ground that the Trustee is not a party in the instant proceeding.

---

<sup>5</sup>See also *In re Wayne Edwards*, \_\_\_ Agric. Dec. \_\_\_, slip op. at 4-5 (June 22, 2009).

The Trustee argues the Packers and Stockyards Act allows her to intervene in the instant proceeding. The Packers and Stockyards Act provides that any person, for good cause shown, may be allowed to intervene, as follows:

**§ 193. Procedure before Secretary for violations**

**(a) Complaint; hearing; intervention**

Whenever the Secretary has reason to believe that any packer . . . has violated or is violating any provision of this subchapter, he shall cause a complaint in writing to be served on the packer . . . , stating his charges in that respect, and requiring the packer . . . to attend and testify at a hearing at a time and place designated therein, at least thirty days after the service of such complaint; and at such time and place there shall be afforded the packer . . . a reasonable opportunity to be informed as to the evidence introduced against him (including the right to cross-examination), and to be heard in person or by counsel and through witnesses, under such regulations as the Secretary may prescribe. Any person for good cause shown may on application be allowed by the Secretary to intervene in such proceeding, and appear in person or by counsel.

7 U.S.C. § 193(a).

The Rules of Practice make no provision for intervention in a disciplinary proceeding, which is a matter solely between the respondent (in the instant proceeding Meadowbrook Farms Cooperative) and the complainant (in the instant proceeding the

Deputy Administrator).<sup>6</sup> Moreover, I do not find the Trustee has shown good cause to allow her to intervene in the instant proceeding.

### **The Trustee's Request For Oral Argument**

The Rules of Practice provide that only a party bringing an appeal may request oral argument before the Judicial Officer.<sup>7</sup> The parties in the instant proceeding are Meadowbrook Farms Cooperative and the Deputy Administrator, and, under the Rules of Practice, only Meadowbrook Farms Cooperative and the Deputy Administrator may request the opportunity for oral argument before the Judicial Officer. Therefore, the Trustee's request for oral argument before the Judicial Officer must be denied.

For the foregoing reasons, the following Order is issued.

### **ORDER**

1. The Trustee's September 8, 2009, request for oral argument before the Judicial Officer is denied.
2. The Trustee's September 8, 2009, appeal petition is denied.

---

<sup>6</sup>*In re Syracuse Sales Co.* (Decision as to John Knopp), 52 Agric. Dec. 1511, 1513 (1993) (denying intervention of a group of investors composed of creditors and members of the local business community in a disciplinary proceeding instituted under the Rules of Practice), *appeal dismissed*, No. 94-9505 (10th Cir. Apr. 29, 1994); *In re Bananas, Inc.* (Order Denying Intervention), 42 Agric. Dec. 426 (1983) (denying intervention of a creditor in a disciplinary proceeding instituted under the Rules of Practice).

<sup>7</sup>7 C.F.R. § 1.145(d).

3. This Order shall become effective upon service on the Trustee and Meadowbrook Farms Cooperative.

Done at Washington, DC

October 5, 2009

---

William G. Jenson  
Judicial Officer