

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-09-0034
)
Terry Livestock, 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 on November 21, 2008. 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 that Terry Livestock, Inc., purchased livestock as a dealer in commerce without maintaining an adequate bond or bond equivalent, in

willful violation of section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29-.30) (Compl. ¶¶ III-IV).

The Hearing Clerk sent Terry Livestock, Inc., the Complaint, the Rules of Practice, and a service letter by certified mail on November 24, 2008.¹ The United States Postal Service marked the November 24, 2008, mailing unclaimed and returned the mailing to the Hearing Clerk. In accordance with section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)), the Hearing Clerk remailed the Complaint, the Rules of Practice, and a service letter by ordinary mail to Terry Livestock, Inc., on December 1, 2008. Terry Livestock, Inc., 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 Terry Livestock, Inc., a letter dated January 26, 2009, stating Terry Livestock, Inc., had not filed a timely response to the Complaint. Terry Livestock, Inc., failed to file a response to the Hearing Clerk's January 26, 2009, letter.

On February 6, 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 by Reason of Default [hereinafter Motion for Default Decision] and a proposed Decision Without Hearing by Reason of Default [hereinafter Proposed Default Decision].

¹United States Postal Service Domestic Return Receipt for article number 7004 2510 0003 7022 8241.

The Hearing Clerk sent Terry Livestock, Inc., the Deputy Administrator's Motion for Default Decision, the Deputy Administrator's Proposed Default Decision, and a service letter by certified mail on February 6, 2009.² The United States Postal Service marked the February 6, 2009, mailing unclaimed and returned the mailing to the Hearing Clerk. In accordance with section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)), the Hearing Clerk remailed the Deputy Administrator's Motion for Default Decision, the Deputy Administrator's Proposed Default Decision, and the service letter by ordinary mail to Terry Livestock, Inc., on March 17, 2009. Terry Livestock, Inc., 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 Hearing Clerk sent Terry Livestock, Inc., a letter dated April 6, 2009, stating Terry Livestock, Inc., had not filed timely objections to the Deputy Administrator's Motion for Default Decision. Terry Livestock, Inc., failed to file a response to the Hearing Clerk's April 6, 2009, letter.

On May 5, 2009, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued a Default Decision and Order [hereinafter the ALJ's Decision]:

(1) concluding Terry Livestock, Inc., willfully violated the Packers and Stockyards Act and the Regulations, as alleged in the Complaint; (2) ordering Terry Livestock, Inc., to

²United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3859 2363.

cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act and the Regulations, without filing and maintaining an adequate bond or its equivalent; and (3) assessing Terry Livestock, Inc., a \$13,200 civil penalty. The Hearing Clerk sent Terry Livestock, Inc., the ALJ's Decision and a service letter by certified mail on May 6, 2009.³ The United States Postal Service returned the mailing to the Hearing Clerk.⁴ On June 24, 2009, Julie M. Shamblin, an employee of the United States Department of Agriculture, personally served the ALJ's Decision and the Hearing Clerk's May 6, 2009, service letter on Terry Livestock, Inc., in accordance with section 1.147(c)(3)(i) of the Rules of Practice (7 C.F.R. § 1.147(c)(3)(i)).⁵

On July 14, 2009, Terry Livestock, Inc., appealed to the Judicial Officer. On July 30, 2009, the Deputy Administrator filed a response to Terry Livestock, Inc.'s appeal petition. On August 3, 2009, 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 Decision.

³United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3862 8369.

⁴Hearing Clerk's Notice of Returned Mail dated May 19, 2009.

⁵Certificate of Service filed July 9, 2009.

DECISION

Statement of the Case

Terry Livestock, Inc., 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. Terry Livestock, Inc., is a business incorporated in the State of Texas with a mailing address of P.O. Box 258, Hargill, Texas 78549.
2. At all times material to the instant proceeding, Terry Livestock, Inc., was:
 - (a) Engaged in the business of a dealer buying and selling livestock in commerce for its own account; and

(b) Registered with the Secretary of Agriculture as a dealer to buy or sell livestock in commerce.

3. Terry Livestock, Inc., was notified by certified letter delivered on July 17, 2007, that the surety bond then maintained by Terry Livestock, Inc., would terminate on August 30, 2007. Terry Livestock, Inc., was notified that operation after August 30, 2007, without acquiring a new bond or bond equivalent would be a violation of the Packers and Stockyards Act and could subject Terry Livestock, Inc., to disciplinary action. Terry Livestock, Inc., did not obtain a new bond or bond equivalent.

4. Terry Livestock, Inc., on or about the dates and in the transactions set forth in this Finding of Fact number 4, purchased livestock as a dealer in commerce without maintaining an adequate bond or bond equivalent.

Purchase Date	Seller	No. of Head	Total Cost
Sep. 29, 2007	Edinburg Livestock Auction, Inc.	11	\$5,638.55
Oct. 5, 2007	R. Y. Livestock Sales, Inc.	10	\$4,621.43
Oct. 6, 2007	Edinburg Livestock Auction, Inc.	6	\$2,502.03
Oct. 12, 2007	R. Y. Livestock Sales, Inc.	2	\$398.50
Nov. 9, 2007	Luling Livestock Auction	3	\$1,900.00
Nov. 9, 2007	Flatonía Livestock Comm. Co.	7	\$3,404.53
Nov. 14, 2007	Seguin Cattle Company	4	\$2,460.00
Nov. 16, 2007	Luling Livestock Auction	1	\$551.00
Dec. 14, 2007	Luling Livestock Auction	12	\$8,296.80
Dec. 15, 2007	Gonzales Livestock Market, Inc.	2	\$1,400.00
TOTALS		58	\$31,172.84

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction over this matter.
2. By reason of the facts found in Findings of Fact numbers 3 and 4, Terry Livestock, Inc., willfully violated section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29-.30).

Terry Livestock, Inc.'s Appeal Petition

On July 14, 2009, Terry Livestock, Inc., filed a 1-page letter stating that the letter is an appeal of “the findings by L. Eugene Whitfield, Hearing Clerk and signed by administrative Law Judge, Peter M. Davenport.” I find Terry Livestock, Inc.’s letter to be an appeal of the ALJ’s May 5, 2009, Decision.

Terry Livestock, Inc., denies that it purchased livestock as a dealer without an adequate bond or its equivalent during the period September 29, 2007, through December 15, 2007, as alleged in the Complaint and found by the ALJ. Terry Livestock, Inc., states it ceased doing business as a livestock dealer in August 2007. (Appeal Pet. at 1.)

Terry Livestock, Inc.’s denial of the allegations in the Complaint comes too late to be considered. The Hearing Clerk served Terry Livestock, Inc., with the Complaint on December 1, 2008. In accordance with the Rules of Practice, Terry Livestock, Inc.’s

answer was due 20 days after service of the Complaint; namely, December 22, 2008.⁶

Terry Livestock, Inc.'s first and only filing in this proceeding is its appeal petition filed July 14, 2009, 6 months 22 days after Terry Livestock, Inc.'s answer was due. Terry Livestock, Inc., is deemed, by its failure to file a timely answer, to have admitted the allegations in the Complaint.⁷ Therefore, I reject Terry Livestock, Inc.'s late-filed denial of the allegations in the Complaint, and I find the ALJ's Decision, concluding that Terry Livestock, Inc., violated the Packers and Stockyards Act and the Regulations, as alleged in the Complaint, was properly issued.

Terry Livestock, Inc., also asks why the ALJ's Decision was "hand delivered to the proper address" (Appeal Pet. at 1). Under the Rules of Practice, a party who disagrees with the decision or any ruling by the administrative law judge or who alleges any deprivation of rights, may appeal to the Judicial Officer.⁸ Terry Livestock, Inc.'s inquiry as to the reason for the hand-delivery of the ALJ's Decision to its address does not indicate that Terry Livestock, Inc., disagrees with the ALJ's Decision or any ruling by the ALJ and does not contain an allegation that Terry Livestock, Inc., suffered a deprivation of any right. Nonetheless, I note the Rules of Practice specifically provide that

⁶7 C.F.R. § 1.136(a).

⁷7 C.F.R. § 1.136(c).

⁸7 C.F.R. § 1.145(a).

documents or papers, authorized or required under the Rules of Practice, may be served other than by mail, as follows:

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

....

(c) *Service on party other than the Secretary.* . . .

....

(3) Any document or paper served other than by mail, on any party to a proceeding, other than the Secretary or agent thereof, shall be deemed to be received by such party on the date of:

(i) Delivery to any responsible individual at, or leaving in a conspicuous place at, the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, or

(ii) Delivery to such party if an individual, to an officer or director of such party if a corporation, or to a member of such party if a partnership, at any location.

7 C.F.R. § 1.147(c)(3). Therefore, I find Ms. Shamblin's hand-delivery of the ALJ's Decision to Terry Livestock, Inc., was in accordance with the Rules of Practice.

For the foregoing reasons, the following Order is issued.

ORDER

1. Terry Livestock, Inc., its agents and employees, directly or indirectly through any corporate or other device, in connection with its activities subject to the Packers and Stockyards Act, shall cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act and the Regulations, without filing and maintaining an adequate bond or its 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 Terry Livestock, Inc.

2. Terry Livestock, Inc., is assessed a \$13,200 civil penalty. The civil penalty shall be paid by certified check or money order made payable to “USDA-GIPSA” and sent to:

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

Payment of the civil penalty shall be sent to USDA-GIPSA within 30 days after service of this Order on Terry Livestock, Inc. Terry Livestock, Inc., shall state on the certified check or money order that payment is in reference to P. & S. Docket No. D-09-0034.

Done at Washington, DC

August 25, 2009

William G. Jenson
Judicial Officer