

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

USDA
OALJ
MAR 18 11:57
RECEIVED

In re:)
)
Raymond Frank Christie,)
a/k/a Ray Christie,) P&S Docket No. 18-0020
d/b/a Christie Livestock,)
)
Respondent)
)

**DECISION AND ORDER AFFIRMING ALJ'S CORRECTED
DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT**

Summary of Relevant Procedural History

The relevant procedural history of this case is somewhat complex but has been fully set forth in Complainant's Response to Respondent's Appeal of Corrected Decision and Order Without Hearing by Reason of Default ("Complainant's Response") filed in the above-referenced proceeding on October 12, 2018 and is therefore adopted herein below.

Complainant's Response was filed in response to the letter dated September 28, 2018 that respondent Raymond Frank Christie, a/k/a Ray Christie, d/b/a Christie Livestock ("Respondent"), filed to appeal the Corrected Decision and Order Without Hearing by Reason of Default ("Corrected Decision and Order") that Administrative Law Judge ("ALJ") Jill S. Clifton ("Judge Clifton") issued in the above-captioned matter on behalf of then-Acting Chief ALJ Channing D. Strother ("Chief Judge Strother")¹ on August 30, 2018.

Complainant, the Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture, states in Complainant's Response

¹ Channing D. Strother was appointed to the position of Chief Administrative Law Judge by the Secretary of Agriculture on October 17, 2018.

as follows:²

1. On March 9, 2018, Complainant filed an administrative complaint alleging that Respondent willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181 *et seq.*) (“Act”), and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. §§ 201.1 *et seq.*). Specifically, the Complaint alleged that Respondent had committed multiple violations of sections 312(a) and 409 (7 U.S.C. §§ 213(a) and 228b) of the Act. Section 312(a) of the Act is a prohibition against unfair, unjustly discriminatory, or deceptive practices by dealers and market agencies who are subject to the Act.³ Violations of this section may result in the Secretary of Agriculture imposing a cease and desist order and a civil penalty of not more than \$11,000 per violation after notice and full hearing, pursuant to section 312(b) of the Act (7 U.S.C. § 213(b)).⁴

On March 12, 2018, the USDA Hearing Clerk mailed copies of the Complaint and copies of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 *et seq.*) (“Rules of Practice”) to Respondent at Respondent’s mailing address in (b) (6). The documents were sent to

² Complainant’s Response at 1-7.

³ *See* 7 U.S.C. § 213(a).

⁴ The Packers and Stockyards Act provides that the Secretary of Agriculture may assess a maximum civil penalty of \$10,000 for each violation of 7 U.S.C. § 192(a). 7 U.S.C. § 193(b). However, that maximum been increased several times under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), and various implementing regulations issued by the Secretary of Agriculture. When Respondent violated the Act in this case, the maximum civil penalty for each violation of 7 U.S.C. § 192(a) was \$11,000. *See* 7 C.F.R. § 3.91(b)(6)(i) (2010) (\$11,000 maximum civil penalty for violations occurring after May 7, 2010); *cf.* 7 C.F.R. § 3.91(b)(6)(i) (2017) (\$27,500 maximum civil penalty for violations occurring after December 5, 2017); 7 C.F.R. § 3.91(b)(1)(lvi) (2018) (\$28,061 maximum civil penalty for violations occurring after March 14, 2018).

Respondent by certified mail, return receipt requested,⁵ and by regular mail.

2. Pursuant to section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), Respondent was informed in the Complaint and in the Hearing Clerk's letter accompanying the Complaint that: (1) an answer should be filed with the Hearing Clerk within twenty days after service of the Complaint and (2) failure to file an answer within twenty days after service of the Complaint would constitute an admission of the allegations in the Complaint and a waiver of hearing. Pursuant to sections 1.136 and 1.139 of the Rules of Practice (7 C.F.R. §§ 1.136 and 1.139), the Hearing Clerk's letter further informed Respondent that his answer should admit or deny each allegation set forth in the Complaint and that filing an answer that did not deny the material allegations of the Complaint would constitute both an admission of those allegations and a waiver of his right to a hearing.⁶

United States Postal Service ("USPS") online tracking indicates that the Complaint was delivered to Respondent's address on March 17, 2018. Thus, Respondent's answer was due no later than April 6, 2018, twenty days after service of the Complaint.⁷ Respondent did not file an answer by April 6, 2018, and no answer has been filed as of this date.

3. On April 23, 2018, counsel for Complainant filed a motion for Decision Without Hearing by Reason of Default ("Motion") and proposed Decision Without Hearing by Reason of Default ("Proposed Default Decision") because Respondent had not filed an answer to the Complaint. The Motion correctly stated that Respondent had violated section 312(a) of the Act (7 U.S.C. § 213(a)), but the Proposed Default Decision inadvertently stated that Respondent had violated

⁵ USPS Tracking No. [REDACTED]

⁶ 7 C.F.R. §§ 1.136(b),(c); 7 C.F.R. § 1.139.

⁷ 7 C.F.R. § 1.136(a).

section 202(a) of the Act (7 U.S.C. § 192(a)) instead of section 312(a) and that Respondent should cease and desist from committing further violations of section 202(a) instead of section 312(a). The Proposed Default Decision also inadvertently stated that Respondent should be assessed a civil penalty of \$13,600 in accordance with section 203(b) of the Act (7 U.S.C. § 193(b)) instead of section 312(b) of the Act. Section 202(a) of the Act is a prohibition against unfair, unjustly discriminatory, or deceptive practices by packers who are subject to the Act,⁸ and violations of this section likewise may result in the Secretary of Agriculture imposing a cease and desist order and a civil penalty of not more than \$11,000 per violation after notice and full hearing,⁹ pursuant to sections 203(a) and (b) of the Act (7 U.S.C. §§ 193(a) and (b)).¹⁰

On April 23, 2018, the Hearing Clerk mailed copies of the Motion and Proposed Default Decision to Respondent at Respondent's mailing address in Arcata, California. These documents were sent to Respondent by certified mail.¹¹ Pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Respondent was informed in the Hearing Clerk's letter accompanying the Motion and Proposed Default Decision that he could file meritorious objections to the Motion and Proposed Default Decision with the Hearing Clerk within twenty days after service of those documents.

USPS online tracking indicates that the Motion and Proposed Default Decision were delivered to Respondent's address on April 30, 2018. Respondent's meritorious objections, if

⁸ See 7 U.S.C. § 192(a).

⁹ The notice and full hearing required by section 203(b) of the Act is provided under section 203(a) of the Act (7 U.S.C. § 193(a)).

¹⁰ See *supra* note 4.

¹¹ USPS Tracking No. [REDACTED]

any, were due no later than May 21, 2018, twenty days¹² after service of the Motion and Proposed Default Decision.¹³ Respondent did not file objections, meritorious or otherwise, by May 21, 2018.

4. On May 22, 2018, Chief Judge Strother issued a Decision and Order Without Hearing by Reason of Default (“Initial Default Decision”) that was based on the Proposed Default Decision and thus contained the inadvertent errors described in paragraph 3 above. On the same day, the Hearing Clerk mailed a copy of the Initial Default Decision to Respondent at Respondent’s mailing address in (b) (6). This document was sent to Respondent by certified mail.¹⁴ Pursuant to section 1.145(a) of the Rules of Practice (7 C.F.R. § 1.145(a)), Respondent was informed in the Hearing Clerk’s letter accompanying the Initial Default Decision that he could appeal the Initial Default Decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk within thirty days after service thereof. The letter further informed Respondent that, in accordance with section 1.142(c)(4) of the Rules of Practice (7 C.F.R. § 1.142(c)(4)), the Initial Default Decision would become final and effective thirty-five days after the date of service if he or Complainant failed to file an appeal petition with the Hearing Clerk within the time prescribed by section 1.145(a) of the Rules of Practice.

Despite that the Initial Default Decision was mailed to Respondent’s address in (b) (6) (b) (6) USPS online tracking indicates that it was delivered to an unspecified recipient in Eureka, California on May 29, 2018. Complainant subsequently had one of its agents execute

¹² The twentieth day after April 30, 2018 was May 20, 2018, a Sunday. Pursuant to section 1.147(h) of the Rules of Practice (7 C.F.R. § 1.147(h)), Respondent’s meritorious objections were due on or before Monday, May 21, 2018.

¹³ 7 C.F.R. § 1.139.

¹⁴ USPS Tracking No. [REDACTED]

personal service of the Initial Default Decision and the accompanying Hearing Clerk’s letter upon Respondent on July 11, 2018.¹⁵ Respondent’s appeal petition, if any, was due no later than August 10, 2018.¹⁶ Respondent did not file an appeal petition by August 10, 2018, and Complainant did not file an appeal petition; therefore, the Initial Default Decision became effective on August 15, 2018, thirty-five days after it was personally served on Respondent.¹⁷

5. On or about August 15, 2018, Complainant belatedly discovered the inadvertent errors that were in the Proposed Default Decision and thus carried over into the Initial Default Decision. On August 27, 2018, counsel for Complainant filed a Request for Technical Correction of Decision and Order Without Hearing by Reason of Default (“Correction Request”). The Correction Request stated in pertinent part:

Given that (1) the complaint and motion for Decision Without Hearing by Reason of Default cited the correct statutory provisions violated by respondent; (2) sections 312(a) and 202(a) of the Act prohibit the same kind of conduct by different entities that are subject to the Act; (3) sections 312(b) and 203(b) of the Act prescribe the same procedures for determining whether the conduct prohibited by sections 312(a) and 202(a) of the Act has occurred; (4) sections 312(b) and 203(b) of the Act pre-scribe the same remedies for the conduct prohibited by sections 312(a) and 202(a) of the Act; and (5) respondent was afforded the notice and opportunity for a full hearing in this proceeding pursuant to section 312(b) of the Act but failed to file an answer to the complaint, to file objections to the

¹⁵ See Complainant’s Response, Exhibit I (“Certificate of Service”); *see also* 7 C.F.R. § 1.147(c)(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 . . . [d]elivery 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[.]”).

¹⁶ See 7 C.F.R. § 1.145(a) (“Within 30 days after receiving service of the Judge’s decision . . . a party who disagrees with the decision . . . may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk.”). The thirtieth day after personal service was August 10, 2018.

¹⁷ See 7 C.F.R. § 1.139 (providing that a default decision “shall become final and effective without further proceedings 35 days after the date of service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to § 1.145”).

proposed decision, and to appeal the final decision, respondent was not denied any of his procedural rights in this proceeding or prejudiced in any way by the inadvertent errors in either the proposed decision or the final decision.

Correction Request at 2. It then requested the issuance of a corrected Decision and Order Without Hearing by Reason of Default that changed the Initial Default Decision's references to section 202(a) of the Act (7 U.S.C. § 192(a)) to section 312(a) of the Act (7 U.S.C. § 213(a)) and its reference to section 203(b) of the Act (7 U.S.C. § 193(b)) to section 312(b) of the Act ((7 U.S.C. § 213(b)).

6. On August 30, 2018, Judge Clifton, acting on behalf of Chief Judge Strother, issued an Order Reopening Case and Vacating Decision Issued May 22, 2018 ("Order Reopening Case and Vacating Decision"). On the same day, Judge Clifton also issued a Corrected Decision and Order Without Hearing by Reason of Default ("Corrected Default Decision") that reflected the changes proposed in Complainant's Correction Request. On August 31, 2018, the Hearing Clerk sent a copy of the documents to Respondent at Respondent's mailing address in (b) (6). These documents were sent to Respondent via certified mail.¹⁸ Pursuant to section 1.145(a) of the Rules of Practice (7 C.F.R. § 1.145(a)), Respondent was informed in the Hearing Clerk's letter accompanying the Corrected Default Decision that he could appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk within thirty days after service of the Corrected Default Decision. The letter further informed Respondent that, in accordance with section 1.142(c)(4) of the Rules of Practice (7 C.F.R. § 1.142(c)(4)), the Corrected Default Decision would become final and effective thirty-five days after the date of service if he or Complainant failed to file an appeal petition with the Hearing Clerk within the time prescribed by section 1.145(a) of the Rules of Practice.

¹⁸ USPS Tracking No. [REDACTED]

Due to the problems that occurred during the attempt to serve the Initial Default Decision by certified mail, Complainant again had one of its agents execute personal service of the Order Reopening Case and Vacating Decision, the Corrected Default Decision, and the accompanying Hearing Clerk's letter on Respondent on September 12, 2018.¹⁹ Respondent's appeal petition, if any, was due no later than October 12, 2018, thirty days after service of the Corrected Default Decision.²⁰

7. In a letter dated and filed on September 28, 2018, Respondent notified the Hearing Clerk that he was appealing the Corrected Default Decision. Per section 1.145(a) of the Rules of Practice (7 C.F.R. § 1.145(a)), Respondent's "Notice of Appeal" was timely filed. Apart from its heading, however, the letter merely provided:

Dear Disciplinary Person Hearing Officer.

This letter is to serve as my formal Notice of Appeal in this Default matter. Please accept and file this letter on my behalf to protect my appeal rights. I will provide more documents if needed.

I am acting as my own attorney in this matter to try to save costs and expenses to be able to resolve this matter without the need of trial.

I will continue to represent myself in this matter in the future.

Thank you.

Very truly:
RAYMOND CHRISTIE

Respondent's Notice of Appeal at 1.

¹⁹ See Complainant's Response, Exhibit II. USPS online tracking indicates that the Corrected Default Decision that had been sent to Respondent could not be delivered to Respondent on September 29, 2018 and was returned to the sender marked as unclaimed.

²⁰ See 7 C.F.R. § 1.145(a) ("Within 30 days after receiving service of the Judge's decision . . . a party who disagrees with the decision . . . may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk."). The thirtieth day after personal service was October 12, 2018.

Conclusion and Order

For the reasons discussed more fully herein below, Respondent's appeal of the Corrected Default Decision is **denied**. As noted above, Respondent was properly served with the Complaint, Motion and Proposed Default Decision, Initial Default Decision, and Corrected Default Decision. Further, each document was accompanied by a Hearing Clerk's letter that apprised Respondent of his deadlines for filing the appropriate response thereto. Despite being properly served and so apprised, Respondent did not file an answer to the Complaint or meritorious objections to the Motion and Proposed Default Decision. Respondent did not file an appeal petition until he had been served with the Corrected Default Decision.

Complainant acknowledges that Respondent's September 28, 2018 letter appealing the Corrected Default Decision was timely filed per section 1.145(a) of the Rules of Practice (7 C.F.R. § 1.145(a)); however, Complainant correctly points out that this action simply preserved Respondent's appeal rights to the Judicial Officer and did not change the underlying fact that Respondent failed to timely file an answer to the Complaint.²¹ Respondent's first and only filing in this matter was received 175 days after his answer was due.²² The Department's case law is very clear that a default decision and order is proper when an answer is not timely filed.²³

²¹ See Complainant's Response at 7.

²² United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on March 17, 2018. Respondent had twenty days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall not be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent's answer was due on or before April 6, 2018.

²³ See, e.g., *Zedric*, 46 Agric. Dec. 948, 956 (U.S.D.A. 1987) ("The Department gives fair warning to all respondents as to the consequences of failure to file an answer within the required 20 days. If good cause is shown as to the need for an extension of time, a motion filed before the expiration of the 20-day time period would generally be granted. But in view of the increasingly heavy workload of this Department, the budget constraints on hiring additional personnel, and

Having failed to timely file an answer that denied and/or raised defenses to some or all of the allegations set forth in the administrative Complaint, and having also failed to file meritorious objections to Complainant's Proposed Default Decision, Respondent is now precluded by the Rules of Practice and the Department's case law from doing so on appeal. Respondent's offer to "provide more documents if needed,"²⁴ raised for the first time on appeal, will not be considered because Respondent failed to preserve his right to enter documents into evidence by filing either an answer to the Complaint or meritorious objections to the Proposed Default Decision. Further, Judge Clifton's Order Reopening Case and Vacating Decision Issued May 22, 2018 did not re-open this matter for the purpose of taking and considering new evidence.

the importance of having administrative disciplinary cases decided promptly to effectuate the congressional purpose of the remedial statutes administered by this Department, it is necessary to take a hard-nosed approach as to answers filed late, following the letter of the rules of practice."); *Coblentz*, 61 Agric. Dec. 330, 342-44 (U.S.D.A. 2002) (default decision properly issued where response to complaint was filed seven months and eight days after answer was due and respondent is deemed, by his failure to file a timely answer, to have admitted violations of Packers and Stockyards Act), *aff'd sub nom. Coblentz v. U.S. Dep't of Agric.*, 89 F. App'x 484 (6th Cir. 2003); *Bejarano*, 46 Agric. Dec. 925, 929-31 (U.S.D.A. 1987) (default order proper where timely answer not filed); *A.W. Schmidt & Son, Inc.*, 46 Agric. Dec. 586, 593-94 (U.S.D.A. 1987) (default order proper where timely answer not filed); *Carter*, 46 Agric. Dec. 207, 213 (U.S.D.A. 1987) (default order proper where timely answer not filed); *McDaniel*, 45 Agric. Dec. 2255, 2260-61 (U.S.D.A. 1986) (default order proper where timely answer not filed); *Nw. Orient Airlines*, 45 Agric. Dec. 2190, 2194-95 (U.S.D.A. 1986) (default order proper where timely answer not filed); *Schwartz*, 45 Agric. Dec. 1473 (U.S.D.A. 1986) (default order proper where timely answer not filed); *Cuttone*, 44 Agric. Dec. 1573, 1576 (U.S.D.A. 1985) (default order proper where timely answer not filed), *aff'd per curiam*, 804 F.2d. 153 (D.C. Cir. 1986) (unpublished). *See also McCoy v. U.S. Dep't of Agric.*, No. 16-3482, slip op. at 4-5 (6th Cir. Aug. 21, 2017) (Order Den. Pet. for Review) (holding that the Judicial Officer properly granted default decision where respondent's answer was filed late due to delay in retaining counsel); *Morrow v. Dep't of Agric.*, No. 94-3793, 65 F.3d 168 (Table), 1995 WL 523336, at **2-3 (6th Cir. Sept. 5, 1995) (holding that default judgment was properly issued where respondent conceded that his answer was filed three days late and the Rules of Practice did not violate respondent's constitutional right to due process).

²⁴ Respondent's Notice of Appeal at 1.

For the foregoing reasons, Respondent's appeal is **DENIED**, and Judge Clifton's August 30, 2018 Corrected Decision and Order Without Hearing by Reason of Default is **AFFIRMED**. No change or modification of the Judge's Corrected Decision and Order is warranted; therefore, it is hereby adopted as the final order in this proceeding pursuant to the provisions of section 1.145(i) of the Rules of Practice (7 C.F.R. § 1.145(i)) for all purposes, including judicial review.²⁵

WHEREFORE, Respondent Raymond Frank Christie, a/k/a Ray Christie, d/b/a Christie Livestock, his agents and employees, directly or through any corporate or other device, shall cease and desist from failing to provide the full amount of the purchase price for livestock before the close of the next business day following each purchase of livestock, as required by sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b).

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent is hereby assessed a civil penalty in the amount of thirteen-thousand and six-hundred dollars (\$13,600.00). Respondent shall send a certified check or money order, payable to the U.S. Department of Agriculture, to USDA GIPSA, P.O. Box 790335, St. Louis, Missouri 63179-0035, within thirty (30) days from the effective date of this Order. Respondent shall indicate on the certified check or money order that the payment is in reference to P&S Docket No. 18-0020.

RIGHT TO JUDICIAL REVIEW

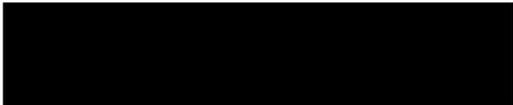
Raymond Frank Christie has the right to seek judicial review of the Order in this Decision and Order in the appropriate United States Court of Appeals in accordance with 28

²⁵ Respondent has the right to seek judicial review in the appropriate United States Court of Appeals, in accordance with 28 U.S.C. §§ 2341–2350. Respondent must seek judicial review within sixty days after entry of the Order in this Decision and Order.

U.S.C. §§ 2341–2350. Mr. Christie must seek judicial review within sixty (60) days after entry of the Order in this Decision and Order. The date of entry of the Order is March 18, 2019.

Copies of this Order shall be served by the Hearing Clerk upon each of the parties in each of the dockets identified herein above, with courtesy copies provided via email where available.

Done at Washington, D.C.
this 18th day of March 2019


Bobbie J. McCartney
Judicial Officer

Hearing Clerk's Office
U.S. Department of Agriculture
Stop 9203 South Building Room 1031
1400 Independence Ave. SW
Washington, DC 20250-9203
Phone: 202-720-4443
Fax: 202-720-9776
SM.OHA.HearingClerks@oha.usda.gov