

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

P. & S. Docket No. D-09-0137

In re: TIM REECE,
d/b/a TIM REECE CATTLE COMPANY,

Respondent

DEFAULT DECISION AND ORDER

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.)(the “Act”), instituted by a Complaint filed on June 18, 2009 by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondent Tim Reece d/b/a Tim Reece Cattle Company (hereinafter “Respondent”) violated the Act. The Complaint alleged that between March 2008 and April 2008 Respondent engaged in operations subject to the Act without maintaining adequate bond or bond equivalent.

A copy of the Complaint was mailed by the Hearing Clerk to Respondent by certified mail in June of 2009, and was received by Respondent on July 7, 2009. Respondent was therefore served with the Complaint pursuant to Section 1.147 of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By The Secretary (7 C.F.R. § 1.147, hereinafter referred to as the "Rules of Practice), as of that date. The Hearing Clerk sent a cover letter with the Complaint, which stated that the Rules of Practice governing the proceeding were enclosed, and more specifically stated: “you have **20 days from the receipt of this letter to file with the Hearing Clerk an original and three (3) copies of your written and signed answer to the**

Complaint...Failure to file an answer...shall constitute an admission of [the] allegations [of the Complaint] and a waiver of your right to an oral hearing.”

On July 7, 2009, Respondent telephoned Jason Lopez, Senior Marketing Specialist with the Grain Inspection, Packers and Stockyards Administration, to discuss the Complaint. Respondent was told that since a Complaint had been filed, discussions relating to the Complaint should be directed to the Office of the General Counsel. Respondent was also told that he must file an answer within the time allotted by the Rules of Practice.

Respondent’s answer was due to be filed with the Hearing Clerk on or before July 27, 2009. Respondent did not file an answer within that time period and on July 29, 2009, the Hearing Clerk sent the Respondent a letter informing him that an answer to the Complaint had not been filed within the allotted time. In response to the “no answer” letter¹, Respondent sent to the Hearing Clerk a letter dated August 6, 2009, wherein Respondent, while denying that Reece Cattle Co. was doing any dealer business, admitted that he had not been bonded while working for GW Cattle Co. and also admitted that any answer had not been filed within the 20 time period prescribed by the Rules of Practice. In his penultimate paragraph, Mr. Reece indicates that he has no money for a fine “and will not pay a fine” suggesting that if the agency wants “to waste taxpayer dollar on my case, go ahead.”

Despite receiving repeated instructions that an Answer must be filed in accordance with the Rules of Practice, Respondent failed to file an answer to the Complaint within the 20 day time period prescribed by Section 1.136 of the Rules of Practice. Accordingly, Complainant moved for the issuance of a Decision Without Hearing.

¹ In the August 6, 2009 letter, Respondent specifically states that he is writing in response to the Hearing Clerk’s July 29, 2009 “no answer” letter. The letter also fails to meet the specific content requirements of an Answer as set forth in 7 C.F.R. § 1.136(b).

Since Respondent failed to answer the Complaint within the 20 day time period prescribed by the Rules of Practice, and upon the motion of the Complainant for the issuance of a Default Order, the following Default Decision and Order will be entered pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent is an individual residing in Overbrook, KS 66524.
2. At all times material herein, Respondent engaged in the business of a dealer purchasing livestock in commerce for the account of others.
3. Respondent registered with the Secretary of Agriculture as a dealer on May 15, 1985. On September, 5, 2007, Respondent stated that he had discontinued livestock operations, and his registration was made inactive.
4. On August 16, 2007, the Packers and Stockyards Program received notice from the CNA Surety Company of Sioux Falls, South Dakota, that Respondent's bond was cancelled, effective September 27, 2007.
5. On August 24, 2007, Respondent was notified that his bond terminated on September 27, 2007, and that unless Respondent secured a new bond or bond equivalent securing the performance of his dealer obligations, Respondent must discontinue dealer operations for which bonding is required under the Packers and Stockyards Act. Respondent was also notified that continuing operations without proof of adequate bond was a violation of 7 U.S.C. §§ 204 and 213(a) and 9 C.F.R. §§ 201.29 and 201.30.
6. Respondent, between March 2008 and April 2008, engaged in the business of purchasing livestock in commerce without maintaining an adequate bond or bond equivalent.

Respondent purchased 1084 head of livestock as a dealer for the account of others at five separate posted stockyards in 41 separate transactions between March 2008 and April 2008, in the total amount of approximately \$695,699.00.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts above, Respondent willfully violated section 312(a) of the Act (7 U.S.C. §§ 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30).

Order

1. Respondent, his agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in operations subject to the act without maintaining adequate bond or bond equivalent. Respondent's registration shall be suspended unless and until Respondent demonstrates to the Grain Inspection, Packers and Stockyards Administration, Packers and Stockyards Program that he has secured an adequate bond or bond equivalent, in the amount determined as necessary by the Grain Inspection, Packers and Stockyards Administration, Packers and Stockyards Program.
2. This decision shall become final and effective without further proceedings 35 days after the date of service upon Respondent, unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to Section 1.145 of the Rules of Practice (7 C.F.R § 1.145).

Copies of this decision shall be served upon the parties by the Hearing Clerk.

Done at Washington, DC
March 1, 2010

PETER M. DAVENPORT
Acting Chief Administrative Law Judge