

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0110

In re: Mark V. Porter
d/b/a MVP Farms and
MVP Livestock,

Respondent

Default Decision and Order

In this disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (the Act), a Notice to Show Cause was served upon Respondent, and Respondent has failed to file an answer within the time allowed. A copy of the Notice to Show Cause was mailed by the Hearing Clerk to Respondent by certified mail, and received by Respondent on December 28, 2010. The Hearing Clerk sent a cover letter with the Notice to Show Cause, enclosing the Rules of Practice governing the proceeding and the cover letter contained the following provision: “you have **10 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** ...Failure to file an answer...shall constitute an admission of [the] allegations [of the Notice to Show Cause] and a waiver of your right to an oral hearing.”

On January 12, 2011, Respondent contacted Counsel for Complainant by telephone to discuss the Notice to Show Cause. Respondent stated that he had received the Notice, and was told, *inter alia*, he must file an answer within the time allotted by the Rules of Practice. Complainant advised Respondent to file an answer that same day (Complainant had not yet

received a copy of the no-answer letter issued to Respondent by the Hearing Clerk, issued on January 13, 2011).

Despite receiving repeated instructions that an Answer must be filed in accordance with the Rules of Practice, Respondent has filed no answer and the Complainant has moved for the issuance of a Decision Without Hearing.

The Notice to Show Cause alleged that Respondent engaged in operations subject to the act without maintaining adequate bond or bond equivalent, and that Respondent was insolvent and operating while insolvent. Complainant requested that such order or orders be issued, finding that Respondent is unfit to be registered as a livestock dealer or market agency, and denying Respondent's application for registration.

As Respondent failed to answer the Notice to Show Cause, the Motion of the Complainant will be granted and the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Respondent is an individual whose mailing address is in Sunnyside, Washington.
2. Respondent is and, at all times material herein, was:
 - a). Engaged in the business of buying and selling livestock in commerce for his own account or buying livestock in commerce for the account of others; and
 - b). Operating as a livestock dealer and a market agency buying on commission for his own account and the accounts of others subject to the provisions of the Act.
3. By letter dated April 16, 2010, the Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA) notified Respondent that he had failed to file an annual report concerning his activities as a dealer and market agency for 2009, as

required by section 201.97 of the Regulations (9 C.F.R. § 201.97), and that his registration under the Act would terminate in thirty days. Respondent received the annual report default notice on May 5, 2010. Nevertheless, Respondent failed to file an annual report and was notified on June 11, 2010 that his registration to conduct business as a dealer or market agency under the Act had expired and that he was required to immediately cease operations as a dealer and/or market agency.

4. On June 14, 2010, Respondent filed his annual reports for 2008 and 2009. The 2008 report was filed 344 days late after receipt of a default notice, and the 2009 report was filed 9 days late after receipt of a default notice. Respondent filed both the 2008 and 2009 reports late despite having received notice of the filing requirements and a Consent Decree that was issued on November 15, 2000, in United States District Court, Eastern District of Washington, which assessed a penalty of \$50,000 against Respondent for failure to timely file his 1996, 1997, and 1998 annual reports. The Consent Decree expressly required Respondent to timely file all future reports.

5. After receiving Respondent's 2009 annual report and application for registration on June 14, 2010, GIPSA mistakenly notified Respondent that his registration had been restored as of June 28, 2010. The restoration of Respondent's registration was in error because the agency had reason to believe that he was unfit to be registered under the Act. Accordingly, by letter dated November 9, 2010, GIPSA advised Respondent of the error and notified him that his application for registration as a livestock dealer and market agency was being denied pursuant to section 201.10 of the Regulations (9 C.F.R. § 201.10). The letter informed Respondent of his right to a hearing for the purpose of showing cause why his registration should not be denied. Respondent received the November 9, 2010 letter on November 17, 2010.

6. By final order of the Secretary of Agriculture, issued on April 28, 1988, *In re: Mark V. Porter*, P&S Dkt No. 6538, Respondent was ordered, *inter alia*, to cease and desist from operating subject to the Act without maintaining adequate bond or bond equivalent.

7. By final order of the Secretary of Agriculture, issued on November 24, 1998, *In re: Mark V. Porter, d/b/a MVP Farms*, P&S Dkt No. D-98-0022, Defendant Mark V. Porter was ordered, *inter alia*, to cease and desist from operating subject to the Act without maintaining adequate bond or bond equivalent.

8. On June 24, 2005, Respondent obtained a “Trust Fund Agreement” in lieu of bond in the amount of \$10,000.

9. By letter dated December 19, 2007, GIPSA notified Respondent of the regulations under the Act requiring all market agencies, packers and dealers to file and maintain reasonable bonds (or bond equivalents), and notified Respondent that his \$10,000 Trust Fund Agreement was inadequate due to his volume of business, and needed to be increased to \$40,000 at that time. The letter also notified Respondent that failure to maintain adequate bond or bond equivalent was a violation of the Act which subjected him to possible administrative action and sanctions.

10. Respondent received the bonding notice of default on December 27, 2007.

11. On June 14, 2010, Respondent filed his annual report for 2008. The 2008 annual report indicated that Respondent’s volume of business still required a Trust Fund Agreement increase, and that Respondent continued to operate throughout the year 2008 without obtaining the required bond or bond equivalent increase. On June 14, 2010, Respondent also filed his annual report for 2009. The 2009 annual report indicated that Respondent’s volume of business

still required a Trust Fund Agreement increase, and that Respondent continued to operate throughout the year 2009 without obtaining the required bond or bond equivalent increase.

12. By letter dated August 2, 2010, GIPSA notified Respondent of the regulations under the Act requiring all market agencies, packers and dealers to file and maintain reasonable bonds (or bond equivalents), and notified Respondent that his \$10,000 Trust Fund Agreement was inadequate due to his volume of business, and needed to be increased to \$40,000 at that time. The letter also notified Respondent that failure to maintain adequate bond or bond equivalent was a violation of the Act which subjected him to possible administrative action and sanctions.

13. Respondent received the bonding notice of default on August 5, 2010.

14. To date, Respondent has failed to obtain the necessary bond or bond equivalent increase.

15. On June 14, 2010, Respondent submitted his 2008 annual report to GIPSA. The report indicated that as of December 31, 2008, Respondent was insolvent, with an excess of current liabilities over current assets in the amount of \$1,404,079.73.

16. On June 14, 2010, Respondent submitted his 2009 annual report to GIPSA. The report indicated that as of December 31, 2009, Respondent was insolvent, with an excess of current liabilities over current assets in the amount of \$1,410,509.89.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts above, Respondent is unfit to engage in the business of a livestock dealer or market agency under the Act because he has failed to file and maintain an adequate bond or bond equivalent as required by the Act and Regulations.

3. By reason of the facts above, Respondent is unfit to engage in the business of a livestock dealer or market agency under the Act because he has operated while insolvent.

Order

1. By virtue of the finding of unfitness, Respondent's application for registration is denied.¹

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 Default Decision and Order shall be served upon the parties.

June 16, 2011

Peter M. Davenport
Chief Administrative Law Judge

¹ Section 201.10 states, *inter alia*, that: “[i]f after... the application is denied, as soon as the issue(s) that formed the basis of the denial have been remedied, the applicant may file a new application for registration.”