

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0131

In re: Sammy Simmons and
Wendy Simmons, d/b/a
People's Livestock of Cartersville,

Respondents

Default Decision and Order

Preliminary Statement

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.) (“Act”), by a Complaint filed on May 4, 2011, by the Administrator, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that the Respondents willfully violated the Act. The Complaint and a copy 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) were mailed to the Respondents via certified mail on December 22, 2012; however the mail was initially returned as not deliverable as addressed. A new address was provided and that certified mail was returned as “unclaimed.” On January 25, 2012, the Complaint was remailed by ordinary mail, as permitted by section 1.147(c)(1) of the Rules of Practice.

On February 27, 2012, the Hearing Clerk notified the Respondents that an Answer had not been received within the time allotted by Section 1.136 of the Rules of Practice, 7 C.F.R. §1.136 and that they would be informed of subsequent proceedings. On March 27,

2012, a Show Cause Order was entered directing the parties to show cause, if any there be, why a Default Decision and Order should not be entered.

On April 12, 2012, the Complainant filed its Motion for Decision Without Hearing by Reason of Default. By letter dated May 2, 2012, the Respondents responded that the Motion for Default was the first communication that they had received,¹ that they were no longer in the business of selling livestock on a commission basis and that they were unable to pay the penalty requested.

As Respondents failed to file an answer within the time period required by the Rules of Practice (7 C.F.R. § 1.136), the following Findings of Fact, Conclusions of Law 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 Sammy Simmons is a an individual residing in Cartersville, Georgia
2. At all times material to this Decision, Respondent Sammy Simmons:
 - a. was a 51% owner and operator in the general partnership of People’s Livestock of Cartersville;
 - b. was registered, with Respondent Wendy Simmons, with the Department Agriculture as a market agency selling livestock on commission;
 - c. was responsible, with Respondent Wendy Simmons, for the day-to-day management, operation, and control of People’s Livestock of Cartersville;
 - d. purchased and sold livestock;
 - e. sold livestock on commission;

¹ As the address used for mailing the Motion for Default Decision is that used for all mailing after the new address was provided, it is difficult to afford much credibility to the claim of lack of notice.

f. was a market agency and dealer within the meaning of the Act and regulations.

3. Respondent Wendy Simmons is an individual residing in Cartersville, Georgia.

4. At all times material to this complaint, Respondent Wendy Simmons:

a. was a 49% owner and office manager in the general partnership of People's Livestock of Cartersville;

b. was registered, with Respondent Sammy Simmons, with the Department Agriculture as a market agency selling livestock on commission;

c. was responsible, with Respondent Sammy Simmons, for the day-to-day management, operation, and control of People's Livestock of Cartersville;

d. was a market agency within the meaning of the Act and regulations.

5. On April 18, 2007, in *In re: Sammy and Wendy Simmons, d/b/a Peoples Livestock of Cartersville*, P&S Docket No. D-05-0018, Respondents were ordered to cease and desist from:

a. issuing checks to consignors or shippers of livestock that are returned unpaid by the bank upon which they were drawn because Respondents did not have or maintain sufficient funds on deposit and available in the account upon which the checks were drawn when presented, and

b. failing to remit the full amount of the net proceeds due from the sale price of livestock on a commission basis within the time period required by section 201.43 of the regulations.

6. From the period of December 1, 2008 to January 31, 2009, Respondents sold livestock on a commission basis and in purported payment of the net proceeds thereof issued at least 50 checks to consignors for livestock consigned to their market for sale which checks were returned unpaid by the bank upon which they were drawn because Respondents did not have an maintain sufficient funds on deposit and available in the accounts upon which those checks were drawn to pay the checks when presented.

7. Respondent, in the transactions described in the paragraph above, failed to timely remit, when due, the net proceeds due from the sale price of those livestock on a commission basis.

8. As of January 31, 2009, Respondents had outstanding checks drawn on its custodial account in the amount of \$125,019.33, and had to offset those checks, a balance in its custodial account of negative \$3,205.13, proceeds receivable of \$8,485.75, and Deposits in Transit in the amount of \$15,028.60 resulting in a deficiency of \$104,710.11.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondents willfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213(a)), and sections 201.42 and 201.43 of the Regulations (9 C.F.R. §§ 201.42-.43).

Order

1. Respondents, their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Act, shall cease and desist from:

- a. paying the full amount of the net proceeds due from the sale price of livestock

on a commission basis, within the time period required by Section 201.43 of the regulations (9 C.F.R. § 201.43);

b. issuing checks to consignors or shippers of such livestock which are returned unpaid by the bank upon which they were drawn because Respondents failed to have or maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented; and

c. failing to otherwise maintain their Custodial Account for Shippers' Proceeds in strict conformity with the provisions of Section 201.42 of the regulations (9 C.F.R. § 201.42.)

2. Respondents are suspended as registrants under the Act for 5 years.
3. Respondents are assessed a civil penalty in the amount of fifty-eight thousand dollars (\$58,000).
4. This Decision and Order shall become final and effective without further proceedings thirty-five (35) days after service on Respondents, unless appealed to the Judicial Officer by a party to the proceeding within thirty (30) days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139, 1.145).

Copies of this Decision and Order will be served upon the parties by the Hearing Clerk.

May 30, 2012

Peter M. Davenport
Chief Administrative Law Judge