

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0139

In re: Vernon Leroy Black,
Respondent

Decision and Order

Appearances: Charles E. Spicknall, Esquire, Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant

Vernon Leroy Black, pro se

Preliminary Statement

This is a disciplinary proceeding brought under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §181, *et seq.*) (Act), instituted by a Complaint filed on February 18, 2011 by Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture. The Complaint alleges that Vernon Leroy Black (Respondent) willfully violated section 312(a) of the Act, 7 U.S.C. §213(a) and sections 201.29 of the Regulations, 9 C.F.R. §201.29 by engaging in operations subject to the Act without maintaining a bond or bond equivalent for the protection of livestock sellers.

Copies of the Complaint were served upon the Respondents by certified mail on March 2, 2011. On March 21, 2011, a copy of a letter from Respondent to Charles E. Spicknall was filed as the Respondent's Answer. In the letter, Respondent denied

violating the Act, denied receiving prior correspondence from GIPSA, and denied that he was operating as a market agency subject to the Act.

An Exchange Order was entered on May 23, 2011 and following a teleconference with the parties on February 29, 2012, the matter was initially set for hearing in Riverton, Wyoming on May 14, 2011. Due to a conflict in my schedule and the availability of court space in Riverton, Wyoming, the matter was postponed and rescheduled for June 25, 2012.

At the hearing on June 25, 2012, the Government called two witnesses and introduced twenty-four exhibits (CX-1 through 24).¹ The Respondent, appearing without counsel, also testified. Both parties were invited to and have submitted post hearing briefs and the matter is now ready for disposition.²

Discussion

Nearly 90 years ago, Congress inserted a provision into Act through the 1924 annual appropriation bill for USDA which authorized the Secretary to require livestock dealers, market agencies, and packers to obtain reasonable bonds to secure their obligations under the Act. The bonding provision was made permanent in 1943 and codified at 7 U.S.C. §204 and the implementing regulations are contained in Part 201 of 9 C.F.R.

9 C.F.R. §201.29 provides in pertinent part:

§201.29 Market agencies, packers and dealers required to file and maintain bonds.

(a) Every market agency, packer, and dealer.....shall execute and maintain a reasonable bond on forms approved by the Administrator....applicable to the

¹ References to the transcript of the proceedings will be indicated as Tr. and the page number.

² Respondent filed a pleading titled Respondent's Reply as to Complainant's Proposed Findings of Fact, Conclusions of Law and Order and Brief.

activity or activities in which the person or persons propose to engage, to secure the performance of obligations incurred by such market agency, packer, or dealer. No market agency, packer, or dealer required to maintain a bond shall conduct his operations unless there is on file and in effect a bond complying with the regulations in this part.

(b) Every market agency buying on a commission basis and every dealer buying for his own account or for the accounts of others shall file and maintain a bond. If a registrant operates both as a market agency buying on a commission basis and as a dealer, only one bond to cover both buying operations need be filed.....

.....

The term “market agency” is defined at 7 U.S.C. §201(c) as:

(c) The term “market agency” means any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services.....

While the appearance of the word “commission” on an invoice does not conclusively establish that a cattle dealer was selling on a commission basis so as to render him a market agency, *Ferguson v. U.S. Dept of Agric.*, 911 F. 2d 1273 (8th Cir. 1990), the provision defining “marketing agency includes individuals who buy and sell livestock for customers for which service they charge commission. *Kelley v. U.S.* 202 F. 2d 838 (10th Cir. 1953).

Failing to obtain a bond or other acceptable financial instrument is an unfair and deceptive practice that violates section 312(a) of the Act, 7 U.S.C. §312(a). *See, In re Robert F. Johnson*, 47 Agric. Dec. 436,441 (1988); *In re Mark V. Porter*, 47 Agric. Dec. 656, 667 (1988); *In re Klemme Cattle Co., Inc.*, 45 Agric. Dec. 1108, 1110 (1986).

In addition to the evidence introduced at the hearing reflecting that at least since May 26, 2009 Respondent has been purchasing cattle on commission for a Nebraska based feedlot operator, Myers & Sons, and other individuals without being registered

with the Secretary or having the required bond or bond equivalent (CX-2 through 24), Respondent acknowledged that he continues to buy cattle for Myers & Sons. Tr. 38.

In Respondent's Reply as to Complainant's Proposed Findings of Fact, Conclusions of Law and Order and Brief, despite his admissions at the hearing (Tr. 38), he denies being a market agency as the term is defined in the Act, repeats his earlier belief that he has not violated the Act and asserts that the exhibits introduced at the hearing should not be allowed as evidence as he was not provided a copy of the transcript. His objection to the exhibits while novel, is untimely and without merit as the transcript could have been obtained by him by paying for the copy.

On the basis of the entire record, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Respondent Vernon Leroy Black is an individual residing in the State of Wyoming.
2. Respondent is, and at all times material herein, was:
 - a. Engaged in the business of buying livestock in commerce on a commission basis; and
 - b. Not registered with the Secretary of Agriculture.
3. On July 10, 2006, Respondent was notified by certified mail that GIPSA had information indicating that he was operating as a market agency without being registered with the Secretary or having a bond or bond equivalent and notified him of his obligation to register and to secure a bond or bond equivalent. CX-1.

5. Notwithstanding the above notice, Respondent continued to engage in the business of buying livestock in commerce on a commission basis without registering or maintaining an adequate bond as required by the Act. Between May 26, 2009 and August 11, 2009, Respondent purchased some 358 head of cattle from Riverton Livestock in Riverton, Wyoming and was paid commissions totaling \$1,221.11. CX-2 through CX-22. Tr. 16-18.

6. After being served with the Complaint, Respondent continued to purchase cattle on commission. CX-23-24; Tr. 19-22, 38.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent at all times material herein has bought livestock in commerce on a commission basis and is a market agency within the definition of the Act.
2. Respondent Vernon Leroy willfully violated section 312(a) of the Act, 7 U.S.C. §213(a) and sections 201.29 of the Regulations, 9 C.F.R. §201.29 by engaging in operations subject to the Act without obtaining and maintaining an adequate bond or bond equivalent.

Order

1. Respondent Vernon Leroy Black, his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Act, shall cease and desist from engaging in business in any capacity for which bonding is required without obtaining, filing or maintaining an adequate bond as required by the Act and its Regulations.

2. Respondent is prohibited from and shall cease and desist from engaging in any capacity for which bonding is required under the Act without first becoming properly registered with the Secretary.

3. Respondent is assessed a civil penalty in the amount of Four Thousand Dollars (\$4,000.00).

Payment shall be made to: US Department of Agriculture
USDA-GIPSA
P.O. Box 790335
St. Louis, Missouri 63179-0335

Respondent is further directed to note the Docket Number of this action on the payment instrument.

4. This Decision and Order shall become final and effective without further proceedings thirty-five days (35) after service on Respondent, unless appealed to the Judicial Officer by a party to the proceeding within thirty (30) days, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

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

August 23, 2012

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Charles E. Spicknall, Esquire
Vernon Leroy Black

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