

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0121

In re: Tony E. Lyon, d/b/a Lyon Farms,

Respondent

Default Decision and Order

Preliminary Statement

This disciplinary proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.), by a Complaint filed on December 12, 2012, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (Complainant), alleging that respondent herein willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.).

On December 14, 2012, copies of the Complaint were sent to Respondent by certified mail. Respondent signed for the certified mail on December 17, 2012.¹ The letter accompanying the Complaint and the Rules of Practice (which were sent to respondent with the complaint), as well as the Complaint itself all indicated to Respondent that he had twenty days from the date of service to file a timely Answer.

On January 7, 2013, the date an Answer was due, the Hearing Clerk's Office sent Respondent a letter indicating that he had not filed a timely answer.

On January 4, 2013, three days prior to the date the Answer was due to be filed,

¹ USPS Certified Mail # 70051160000278364974

Respondent had placed an Answer into the U.S. Postal Service which due to the screening required for security purposes was not received by the Hearing Clerk's Office until January 17, 2013. In his Answer Respondent admitted to some of the allegations, denied other allegations, stated that he was unable to admit or deny one allegation as he was uncertain as to what it referred to, and failed to admit, deny or otherwise address the remainder of the allegations.

On January 23, 2013, a Show Cause Order was entered directing the parties to show cause no later than fifteen days from the date of that Order why a Default Decision and Order should not be entered. Pursuant to said Order, on February 7, 2013, Complainant filed a Motion for Adoption of Proposed Default Decision and Order and filed therewith an accompanying Proposed Default Decision and Order which seeks a cease and desist order and a civil penalty of \$153,000.

On March 1, 2013, the Hearing Clerk's Office received a facsimile transmission consisting of a cover sheet and two pages originating from the PJRB Law Office on behalf of Respondent. That document entitled Objections to Hearing asserting that his Answer had been placed into the U.S. Postal Service prior to the due date for the Answer, that he was entitled to a hearing, and denying any allegations of unpaid items. On March 7, 2013, Complainant filed a Reply to Respondent's Objections.

By Order dated March 21, 2013, I deferred ruling on the Motion for Adoption of Proposed Default Decision and Order and directed the Complainant to file with the Hearing Clerk **copies of any exhibits and/or affidavits** establishing the allegations contained in the Complaint and its Appendices and to deposit for next day business day delivery to the Respondent, by commercial carrier such as Fed Ex, UPS or other comparable service, all documents filed with the Hearing Clerk (Emphasis added). The Respondent was also directed to

file with the Hearing Clerk and serve upon Counsel for the Complainant any exhibits or affidavits relied upon in refuting the allegations of the Complaint. Due to the delay experienced in security screening at USDA, all documents were to be sent for next day business day delivery by commercial carrier such as Fed Ex, UPS or other comparable service.

Rather than filing copies of any exhibits and/or affidavits establishing the allegations contained in the Complaint and its Appendices as had been directed, Complainant on April 17, 2013 filed Lists of Complainant's proposed witnesses and exhibits and certified that the same and the exhibits had been served upon Respondent. Respondent appears to have ignored the Order and failed to file any materials with the Hearing Clerk. On May 21, 2013, Complainant filed a Notice of Failure of Respondent to file lists of proposed exhibits and witnesses² and Notice of Failure of Respondent to send Proposed Exhibits to Complainant's Counsel.

In light of Respondent's failure to file a timely Answer³ and subsequent total and complete disregard of the Order of March 21, 2013, I will *sua sponte* reconsider my earlier deferral of the Motion for Adoption of Proposed Default Decision and Order and will enter the following Findings of Fact, Conclusions of Law, and Order pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Tony E. Lyon is an individual doing business as Lyon Farms and who has a mailing address in Perrin, Texas.
2. At all times material to the Complaint, Respondent was:
 - a. Engaged in the business of a dealer buying and selling livestock in commerce;

² Counsel apparently mistakenly believed that the Order requiring the filing of lists.

³ Respondent's reliance upon the mailbox rule is misplaced. *In re William J. Reinhart Stables*, 59 Agric. Dec. 721, 742 (2000); *In re Bodie S. Knapp*, 64 Agric. Dec. 253, 302 (2005).

b. Engaged in the business of a market agency buying and selling livestock in commerce on a commission basis;

c. A dealer within the meaning of and subject to the provisions of the Act;

d. A market agency within the meaning of and subject to the provisions of the Act;

e. Not registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce nor as a market agency to buy and sell livestock in commerce on a commission basis.

3. On or about September 6, 2011, a Grain Inspection, Packers and Stockyards Administration (GIPSA) agent personally delivered to Respondent a Notice of Default (NOD). The NOD indicated that Respondent was engaged in the business of buying and selling livestock in commerce. The NOD informed Respondent that buying and selling livestock in commerce without being properly registered with GIPSA and without filing a bond or bond equivalent were violations of the Act and its Regulations. The NOD further informed Respondent that failure to comply with registration and bonding requirements would result in appropriate disciplinary action.

4. On or about the dates and in the transactions enumerated in Appendix A to the Complaint in this action, Respondent purchased livestock and failed to pay when due the full purchase price of such livestock. As of December 12, 2012, \$67,795.98 remained unpaid by Respondent for those livestock purchases.

5. On or about the dates and in the transactions enumerated in Appendix B to the Complaint in this action, Respondent issued checks in payment of livestock purchases which were returned by the bank upon which they had been drawn because Respondent did not have and maintain sufficient funds on deposit to honor the checks when presented.

6. On or about the dates and in the transactions enumerated in Appendix A, B, and C to the Complaint in this action and in other transactions and on other dates, Respondent engaged in the business of a market agency buying and selling livestock in commerce on a commission basis and as a dealer buying and selling livestock in commerce without being properly registered with the Secretary and without maintaining a bond or bond equivalent.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent willfully violated Sections 312(a) and 409 of the Act (7 U.S.C. § 213(a) and 228b) and Sections 201.29, 201.30 and 201.43 of the Regulations (9 C.F.R. § 201.29, 201.30 and 201.43).

Order

1. Respondent Tony E. Lyon, his agents and employees, directly or through any corporate or other device, in connection with his operations subject to the Act, shall cease and desist from:
 - a. Failing to pay and failing to pay when due the full purchase price of livestock purchased in commerce;
 - b. Failing to have and maintain sufficient funds on deposit and available in the account upon which checks for the purchase of livestock are drawn to pay such checks when presented;
 - c. Buying and selling livestock in commerce without being properly registered with GIPSA; and
 - d. Buying and selling livestock in commerce without maintaining an adequate bond or bond equivalent.
2. Respondent is prohibited from engaging in business in business without being properly

registered under the Act.

3. Respondent is assessed a civil penalty in the amount of One Hundred Fifty-Three Thousand Dollars (\$153,000.00). Within ten (10) days of service of this Decision and Order, Respondent shall remit the above amount by certified check or money order, payable to the Treasurer of the United States to:

USDA-GIPSA
P.O. Box 790335
St. Louis, MO 63179-0335

The remittance shall include reference to the Docket Number in this case (Docket No. 13-0121).

4. This Decision and Order shall become final and effective without further proceedings thirty-five (35) days after service on Respondent, 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 shall be served upon the parties by the Hearing Clerk.

May 30, 2013

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge