

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/DALJ/DHC
2020 NOV 24 PM4:08

In re:)
)
Michael Tom Lindsey,) P&S-D Docket No. 20-J-0126
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Grace Anne Wilhelm, Esq., with the Office of the General Counsel, United States Department of Agriculture, Temple, TX, for the Complainant, Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service ("AMS").

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921 as amended and supplemented (7 U.S.C. §§ 181 *et seq.*) ("P&S Act") the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. §§ 201.1 *et seq.*) ("Regulations"); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) ("Rules of Practice").

The Complainant, Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service ("AMS"), United States Department of Agriculture, initiated this proceeding against Respondent Michael Tom Lindsey by filing a complaint on May 19, 2020. The Complaint alleged that on June 12, 2019, Respondent purchased a total of ninety (90) head of livestock from Delhi Livestock Auction, Inc. for a total purchase price of \$54,820.50 but failed to pay the full purchase price of the livestock. As of the filing date of the Complaint, Complainant alleged that Respondent had still failed to pay \$30,662.89 of the \$54,820.50 owed for these livestock purchases. The Complaint further alleged that that these actions were a willful

violation of sections 312 and 409 of the P&S Act (7 U.S.C. §§ 213(a) and 228(b)) and section 201.43 of the regulations (9 C.F.R. § 201.43). Complainant requested that an Administrative Law Judge issue such order or orders, including an order requiring that Respondent cease and desist from the violations of the P&S Act found to exist; assessing civil penalties against Respondent in accordance with the P&S Act; and prohibiting Respondent from engaging in business in any capacity for which registration is required under the P&S Act, for an appropriate period of time.

Respondent was duly served with a copy of the Complaint and did not file an answer within the twenty-day period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).¹

On September 9, 2020, Complainant filed a Motion for Decision Without Hearing by Reason of Default (“Motion for Default”) and Proposed Decision Without Hearing by Reason of Default (“Proposed Decision”). Respondent has not filed any objections to Complainant’s Motion for Default or Proposed Decision.²

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the

¹ United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on June 17, 2020. Respondent had twenty (20) days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following workday. 7 C.F.R. § 1.147(h). In this case, Respondent’s answer was due on or before July 7, 2020. Respondent has not filed an answer in this matter.

² United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on October 29, 2020. Respondent had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal holidays shall not be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following workday. 7 C.F.R. § 1.147(h). In this case, Respondent’s objections were due by November 18, 2020. Respondent has not filed any objections.

Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision. 7 C.F.R. § 1.136(c). Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely filed answer where, as in the present case, no meritorious objections have been filed.³

As Respondent failed to answer the Complaint, and upon Complainant's motion for the issuance of a decision without hearing by reason of default, this Decision and Order is issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent is an individual whose current address is in the State of Louisiana.
2. Respondent is, and at all times material herein was:
 - a. Engaged in the business of a dealer buying and selling livestock in commerce for his own account and for the accounts of others;
 - b. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce.
3. On June 12, 2019, Respondent purchased a total of ninety (90) head of livestock from Delhi Livestock Auction, Inc. for a total purchase price of \$54,820.50 but failed to pay the full purchase price of the livestock. Respondent still has failed to pay \$30,662.89 of the \$54,820.50 owed for these livestock purchases.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.

³ 7 C.F.R. § 1.139; *see supra* note 2.

2. Respondent has willfully violated sections 312(a) and 409 of the P&S Act (7 U.S.C. §§ 213(a) and 228b), and section 201.43 of the Regulations (9 C.F.R. § 201.43).

ORDER

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. 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 P&S Act without paying for such purchases in full and within the time allotted by the P&S Act.
3. Respondent is further assessed a civil penalty of \$28,061.00, to be paid immediately upon the final and effective date of this order. The payment shall be a check or money order payable to the United States Treasury and include the docket number of this proceeding in the memo line. The payment shall be sent to the following address:

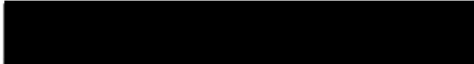
USDA, Fair Trade Practices Program
Packers and Stockyards Division
P.O. Box 979064
St. Louis, MO 63197-9000

4. Respondent is further suspended as a registrant from all livestock operations for five (5) years.

This Decision and Order shall be final and effective without further proceedings thirty-five (35) days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk 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 and 1.145).

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

Done at Washington, D.C.,
this 24th day of November 2020


Channing D. Strother
Chief Administrative Law Judge

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United States Department of Agriculture
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