

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/OHC
2019 JUN 25 AM 11:37

In re:)
)
Tommy Bradley Welch, d/b/a TBW Cattle,) P&S Docket No. D-19-J-0054
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Christopher P. Young, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Acting Deputy Administrator of the Agricultural Marketing Service, Fair Trade Practices Program, Packers and Stockyards Division ("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.*) (the "Act"); the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. §§ 201.1 *et seq.*); 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, the Acting Deputy Administrator of the Agricultural Marketing Service, Fair Trade Practices Program, Packers and Stockyards Division, United States Department of Agriculture ("AMS"), initiated this proceeding against Respondent Tommy Bradley Welch, d/b/a TBW Cattle, by filing a Complaint on March 5, 2019. The Complaint alleged that, in violation of section 312(a) of the Act (7 U.S.C. § 213(a)), section 409(a) of the Act (7 U.S.C. § 228- b), and section 201.43(b)(2)(ii) of the regulations promulgated thereunder (9 C.F.R. §201.43(b)(2)(ii)), between October 2016 and March 2017, Respondent purchased from four (4) livestock sellers \$3,023,887.98 worth of livestock in thirty-eight (38) transactions

and failed to pay, when due, the full purchase price of such livestock within the time period required by the Act and the regulations promulgated thereunder; and that Respondent further issued a check for 169 head of livestock in the amount of \$93,462.83 without sufficient funds in its bank account to pay for that check.

Complainant requested that an Administrative Law Judge issue such order or orders, including an order that requiring that Respondent cease and desist from the violations of the Act found to exist, assessing civil penalties against Respondent in accordance with the Act;¹ suspending Respondent's registration for an appropriate period of time; and such other and further relief as warranted under the Act and the surrounding circumstances.

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).²

On May 8, 2019, I issued an order directing the parties to show cause ("Show Cause Order"), not later than twenty days after that date, why default should not be entered against Respondent. On May 28, 2019, Complainant filed a Response to Show Cause Order and Request for Decision Without Hearing by Reason of Default ("Motion for Default") and proposed Decision Without Hearing by Reason of Default ("Proposed Decision"). Respondent failed to

¹ The Act currently provides for a civil penalty of up to \$28,061 for each violation of the Act. 7 U.S.C. § 213; 7 C.F.R. § 3.91.


² United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on March 25, 2019. Respondent had twenty 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 work day. 7 C.F.R. § 1.147(h). In this case, Respondent's answer was due on or before April 15, 2019. Respondent has not filed an answer in this matter.

respond to the Show Cause Order³ and has not filed any objections to Complainant's Motion for Default or Proposed Decision.⁴

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the 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.⁵

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 principal place of business and mailing address is or was 
2. At all times material herein, Respondent engaged in the business of a dealer under the Act and registered with the Secretary of Agriculture as a dealer.

³ The Show Cause Order was issued on May 8, 2019; therefore, the parties were required to respond on or before May 28, 2019. As of this date, Respondent has not filed a response.

⁴ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on June 4, 2019. 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 work day. 7 C.F.R. § 1.147(h). In this case, Respondent's objections were due by June 24, 2019. Respondent has not filed any objections.

⁵ 7 C.F.R. § 1.139; *see supra* note 4.

3. On June 23, 2016, Respondent entered into a Consent Decision with Complainant (USDA Docket No. 16-0099), wherein Respondent agreed, inter alia, to cease and desist from failing to pay, when due, the full purchase price of such livestock within the time period required by the Act and the regulations
4. Notwithstanding the June 23, 2016 Consent Decision and Order, Respondent engaged in the business of a dealer between October 2016 and March 2017 and purchased from four (4) livestock sellers \$3,023,887.98 worth of livestock and failed to pay, when due, the full purchase price of such livestock within the time period required by the Act and the regulations promulgated thereunder. Respondent further issued a check for 169 head of livestock in the amount of \$93,462.83 without sufficient funds in its bank account to pay for that check.

Legal Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent has willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), section 409(a) of the Act (7 U.S.C. § 228b), and section 201.43(b)(2)(ii) of the regulations promulgated thereunder.

ORDER

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. Respondent Tommy Bradley Welch, d/b/a TBW Cattle 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 Act without paying timely for each and every livestock transaction and purchase from sellers of livestock, and shall cease and desist from issuing checks without sufficient funds to pay those checks.

3. Respondent is assessed a civil penalty of \$39,000.00, to be paid immediately upon the final and effective date of this order. The payment shall be sent to the following address:

USDA, Fair Trade Practices Program, Packers and Stockyards Division
P.O. Box 790335
St. Louis, MO 63179-0335

4. Respondent is further suspended as a registrant from all livestock operations as a dealer for a period of ninety (90) days.

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 25th day of June 2019


Channing D. Strother
Chief Administrative Law Judge

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