

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: )  
 )  
Michael J. Rogers, ) P&S-D Docket No. 19-J-0097  
 )  
Respondent. )

REC'D - USDA/DALJ/DHC  
2020 JUL 28 AM 10:30

**DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT**

Appearance:

*Jonathan D. Gordy, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, 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.*) ("Act"); the regulations promulgated thereunder (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 Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture ("Complainant"), initiated this proceeding by filing a complaint against Michael J. Rogers ("Respondent") on June 4, 2019. The Complaint alleges that Respondent violated sections 312(a), 401, and 409 of the Act (7 U.S.C. §§ 213(a), 221, and 228b).<sup>1</sup> Further, the Complaint requests:

1. That *unless Respondent fails to file an answer within the time allowed*, or files an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in accordance with the Rules of Practice; and

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<sup>1</sup> Complaint at 4.

2. That an order be issued requiring Respondent to cease and desist from the violations of the Act and the regulations found to exist; suspending Respondent as a registrant under the Act for a specified period; prohibiting Respondent, for a specified period, from engaging in business in any capacity for which registration and bonding are required under the Act; and assessing such civil penalties against Respondent as are authorized by the Act and warranted by the facts and circumstances of this case.

Complaint at 5 (emphasis added).

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).<sup>2</sup>

On August 14, 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.<sup>3</sup> On October 18, 2019, Complainant filed a Motion for Decision without Hearing Based on Admissions (“Motion for Default”) and Proposed Decision without Hearing Based on Admissions (“Proposed Decision”). Respondent failed to respond to the Show Cause Order and has not filed any objections to Complainant’s Motion for Default or Proposed Decision.<sup>4</sup>

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<sup>2</sup> United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail but was returned to the Hearing Clerk’s Office as “unclaimed” on July 10, 2019. In accordance with the Rules of Practice, the Hearing Clerk re-mailed (*see* 7 C.F.R. § 1.132) the Complaint via ordinary mail to Respondent on July 10, 2019. 7 C.F.R. § 1.147(c)(1). 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 July 30, 2019. Respondent has not filed an answer.

<sup>3</sup> The Show Cause Order also provided: “Unless the parties have agreed to a consent decision, Complainant’s response shall be accompanied by: (1) a proposed decision and order and (2) a motion for adoption of that proposed decision in accordance with the provisions of 7 C.F.R. § 1.139.” Show Cause Order at 2.

<sup>4</sup> United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on July 6, 2020. Respondent had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal

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.<sup>5</sup> Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an unfiled answer where, as in the present case, no meritorious objections have been filed.<sup>6</sup>

As Respondent failed to file a timely 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 Michael J. Rogers is an individual whose current address is in the [REDACTED]. His address will not be stated in this Decision to protect his privacy but will be maintained with the Hearing Clerk, United States Department of Agriculture, for the purpose of service of this Decision.

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

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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 objections were due on or before July 27, 2020. Respondent has not filed any objections.

<sup>5</sup> 7 C.F.R. § 1.136(c).

<sup>6</sup> 7 C.F.R. § 1.139; *see supra* note 4 and accompanying text.

- c. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce and as a market agency to buy livestock on a commission basis.
3. On September 29, 2016, the Grain Inspection, Packers & Stockyards Administration sent Respondent a Notice of Violation (“NOV”) informing him that he had failed to make prompt payment for certain livestock purchases in July of 2016. The NOV further informed Respondent that failure to pay for livestock by close of the next business day is a violation of the Act and Regulations and that failure to correct his business practices and bring them into statutory and regulatory compliance could subject him to disciplinary action.
- Notwithstanding the NOV, Respondent continued to engage in the business of a market agency selling livestock on a commission basis or a dealer buying and selling livestock in commerce without paying, when due, the full purchase price of the livestock, as required by the Act
4. On or about the dates and in the transactions set forth below, Respondent issued checks in payment for livestock purchases, which checks were returned unpaid by the bank upon which they were drawn because Respondent did not have and maintain sufficient funds on deposit and available in the accounts upon which such checks were drawn to pay such checks when presented.

<b>PURCHASE DATE</b>	<b>LIVESTOCK SELLER</b>	<b># HEAD</b>	<b>INVOICE AMOUNT</b>	<b>DATE PAYMENT DUE</b>	<b>NSF CHECK DATE</b>
7/14/2017	Caruso Cattle Company, Inc.	6	\$8,132.16	7/17/2017	N/A
7/19/2017	Caruso Cattle Company, Inc.	10	\$12,529.34	7/20/2017	8/1/2017
8/8/2017	Empire Livestock Marketing, LLC Bath, New York	2	\$120.00	8/9/2017	9/5/2017
8/10/2017	Empire Livestock Marketing, LLC Bath, New York	3	\$2,511.20	8/11/2017	9/5/2017

8/17/2017	Empire Livestock Marketing, LLC Bath, New York	17	\$9,097.68	8/18/2017	9/5/2017
8/24/2017	Empire Livestock Marketing, LLC Bath, New York	9	\$6,471.62	8/25/2017	9/5/2017
8/31/2017	Empire Livestock Marketing, LLC Bath, New York	9	\$1,623.16	9/1/2017	9/5/2017
8/7/2017	Empire Livestock Marketing, LLC Dryden, New York	74	\$1,377.25	8/8/2017	9/5/2017
8/9/2017	Empire Livestock Marketing, LLC Dryden, New York	12	\$1,392.28	8/10/2017	9/4/2017
8/14/2017	Empire Livestock Marketing, LLC Dryden, New York	8	\$603.92	8/15/2017	9/4/2017
8/14/2017	Empire Livestock Marketing, LLC Dryden, New York	28	\$2,912.48	8/15/2017	9/4/2017
8/16/2017	Empire Livestock Marketing, LLC Dryden, New York	9	\$840.30	8/17/2017	9/4/2017
8/21/2017	Empire Livestock Marketing, LLC Dryden, New York	118	\$14,730.43	8/22/2017	9/4/2017
8/23/2017	Empire Livestock Marketing, LLC Dryden, New York	48	\$10,545.59	8/29/2017	9/4/2017
8/28/2017	Empire Livestock Marketing, LLC Dryden, New York	58	\$4,481.30	8/29/2017	9/4/2017
8/30/2017	Empire Livestock Marketing, LLC Dryden, New York	22	\$4,201.24	8/31/2017	9/4/2017

5. By issuing insufficient checks in the transactions referenced in paragraph 4, Respondent failed to pay, when due, the full purchase price of the livestock.
6. On November 3, 2017, Respondent filed a Voluntary Petition pursuant to Chapter 12 of the Bankruptcy Code (11 U.S.C. §§ 1101 *et seq.*) in the United States Bankruptcy Court, Western District of New York. Respondent's petition was designated Case No. 2-17-21187-PRW. Section 1.141(h)(6) of the Rules of Practice (7 C.F.R. § 1.141(h)(6)) provides that "[o]fficial notice shall be taken of such matters as are judicially noticed by the courts of the

United States.”<sup>7</sup> Federal courts “may take judicial notice of official court records, including bankruptcy pleadings.”<sup>8</sup> Accordingly, Respondent admits in his bankruptcy Schedule F that Caruso Cattle Company, Inc., listed in paragraph III of the Complaint, held an unsecured claim for \$20,661.50 for livestock and therefore failed to pay, when due, at least that amount.

7. Respondent failed to keep and maintain records sufficient to fully and correctly disclose all transactions involved in his business in that he failed to maintain banking records, inventory records, purchase invoices, and sales invoices.

### **Conclusions**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Michael J. Rogers has willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), section 409 of the Act (7 U.S.C. § 228b), and section 201.43(b)(2)(ii) of the Regulations promulgated thereunder (9 C.F.R. § 201.43(b)(2)(ii)).
3. Respondent has failed to keep and maintain records as required by section 401 of the Act (7 U.S.C. § 221).

### **ORDER**

1. Complainant’s Motion for Decision Without Hearing is GRANTED.
2. Respondent Michael J. Rogers, his agents and employees, directly or through any corporate or other device, in connection with the operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in operations subject to the Act without paying timely

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<sup>7</sup> 7 C.F.R. § 1.147(h)(6).

<sup>8</sup> *Veg-Mix, Inc. v. U.S. Dep’t of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987) (citing *Freshman v. Atkins*, 269 U.S. 121, 123-24 (1925); *In re Aughenbaugh*, 125 F.2d 887, 890 (3d Cir. 1942); *In re Eagleson Corp.*, 37 B.R. 471, 479-80 (Bankr. E.D. Pa. 1984).

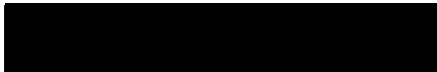
for each and every livestock transaction and purchase from sellers of livestock and shall cease and desist from issuing checks without sufficient funds to pay those checks.

3. Pursuant to section 401 of the Act (7 U.S.C. § 221), Respondent shall keep and maintain records sufficient to fully and correctly disclose all transactions involved in his business, including but not limited to banking records, inventory records, purchase invoices, and sales invoices.
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 upon the parties and counsel by the Hearing Clerk.

Done at Washington, D.C.,  
this 28th day of July 2020

  
Channing D. Strother  
Chief Administrative Law Judge

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