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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re: Edward Sekerak, d/b/a SEK Livestock Marketing, Respondent.	P&S-D Docket No. 24-J-0066

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Rupa Chilukuri, Esq., Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service ("AMS")

This is a 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.*); 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 ("AMS"), United States Department of Agriculture ("Complainant"), initiated this proceeding by filing a complaint against Edward Sekerak, doing business as SEK Livestock Marketing ("Respondent"), on June 20, 2024. The Complaint alleged that Respondent willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a)) and 228b) and section 201.32 of the Regulations (9 C.F.R. § 201.43) on multiple occasions by failing to pay the full purchase price for livestock when due and by issuing checks for payment for livestock without sufficient funds in the account upon which the checks were drawn.[1] Further, the Complaint requested:

[1] Complaint at 2-3.

1. That *unless Respondent fails to file an answer in 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

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's registration 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 and any other relief as authorized by the Act and warranted by the facts and circumstances of this case.

Complaint at 4 (emphasis added).

Respondent was duly served with a copy of the Complaint and did not file an answer within the 20-day period as prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), nor has Respondent filed such an answer since that deadline.[2]

On August 13, 2024, I issued an order directing the parties to show cause ("Show Cause Order"), not later than 20 days after that date, why default should not be entered against Respondent.[3]

On August 30, 2024, Complainant filed a response to the Show Cause Order and motion for decision without hearing by reason of default ("Motion for Default"), as well as a proposed decision and order ("Proposed Decision"), pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Complainant now requests an order (1) requiring Respondent to cease and desist

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[2] United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on July 2, 2024. Respondent had 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 22, 2024. Respondent has not filed an answer.

[3] The Show Cause Order also directed: "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 and order in accordance with the provisions of 7 C.F.R. § 1.139." Show Cause Order at 2.

from violations of the Act and (2) "suspending Respondent's registration under the Act for a period of five years, provided that such suspension shall end if Respondent submits proof to PSD establishing that the livestock sellers listed in the Complaint have been paid in full."[4] I note that Complainant no longer seeks the assessment of civil penalties.[5]

Respondent did not respond to the Show Cause Order and has not filed any objections to Complainant's Motion for Default or Proposed Decision. [6]

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] Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely answer where, as in the present case, no meritorious objections have been filed.[8]

Sanctions

As previously noted, Complainant requests an order (1) directing Respondent to cease and desist from violating the Act and (2) suspending Respondent's registration for five years, provided that such suspension shall end if Respondent submits proof to the Packers and Stockyards Division

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[4] Motion for Default at 5.

[5] *See* Motion for Default at 5; Proposed Decision at 5.

[6] United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on September 7, 2024. Respondent had 20 days from the date of service to file objections thereto. 7 C.F.R. § 1.139. 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 objections were due on or before September 27, 2024. Respondent has not filed any objections.

[7] 7 C.F.R. § 1.136(c).

[8] *See supra* note 6 and accompanying text.

establishing that the livestock sellers listed in the Complaint have been paid in full.[9] The Act provides for both of these sanctions; section 312(b) specifically authorizes the Secretary to, among other things, issue an order requiring a registrant to cease and desist from violating the Act and to suspend a registrant "for a reasonable period" for his or her violations.[10] With regard to sanction determinations, the Judicial Officer has explained:

> [T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendation of the administrative officials charged with the responsibility for achieving the congressional purpose.

S.S. Farms Linn Cnty., Inc., 50 Agric. Dec. 476, 497 (U.S.D.A. 1991) (Decision as to James Joseph Hickey & Shannon Hansen), *aff'd*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under the 9th Circuit Rule 36-3)).

Complainant submits that Respondent's "serious and willful violations" of the Act and Regulations justify a cease-and-desist order and suspension.[11] In support thereof, Complainant states:

> [The Packers and Stockyards Division] has considered the gravity of Respondent's violations. Based on its findings that Respondent has failed to pay, when due, the purchase price of livestock to various livestock sellers and his issuance of "insufficient funds checks" and furthermore, in consideration of the outstanding debt still owed to various livestock sellers, . . . *the gravity of Respondent's repeated violation of the Act is significant in nature*.

Motion for Default at 5-6 (emphasis added). I agree with Complainant's conclusions that Respondent's violations of the Act are significant—especially considering "Respondent has yet to pay the amounts owed to various livestock sellers"—and that Complainant's "recommended

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[9] Motion for Default at 5.

[10] 7 U.S.C. § 213(b).

[11] Motion for Default at 5.

sanctions are reasonable and necessary to effectuate the Secretary's policy of deterrence."[12] As the Judicial Officer has held:

> The issuance of checks in connection with transactions under the Act, which are dishonored because of insufficient funds on deposit and available in the account on which such checks are drawn, is an unfair and deceptive practice and constitutes willful violations of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).
>
> Failure to pay, when due, the full purchase price of livestock is also a very serious violation of the Act and constitutes an unfair and deceptive practice, in willful violation of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

Palmer, 50 Agric. Dec. 1762, 1773 (U.S.D.A. 1991) (internal citations omitted).

Having considered the required statutory factors, and in accordance with the Department's sanction policy,[13] I find Complainant's sanction recommendations to be reasonable and appropriate under the facts and circumstances of this case.

As Respondent failed to file an answer to the Complaint, and upon Complainant's motion for the issuance of a decision without hearing, 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 Edward Sekerak, doing business as SEK Livestock Marketing, is an individual whose business mailing address is 4615 Blue Eye Road, Columbus, Pennsylvania 16405.
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; and

[12] Motion for Default at 6.

[13] *See S.S. Farms Linn Cnty., Inc.*, 50 Agric. Dec. 476, 497 (U.S.D.A. 1991) (Decision as to James Joseph Hickey & Shannon Hansen), *aff'd*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under the 9th Circuit Rule 36-3)).

b. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce.

3. On or about the dates and in the transactions set forth below, Respondent failed to pay, when due, the full purchase price of such livestock.

PURCHASE DATE	LIVESTOCK SELLER	# HEAD	INVOICE AMOUNT	DATE PAYMENT DUE	DATE PAID
04/07/22	Empire Livestock Marketing, LLC	16	$8,320.79	04/08/22	Unpaid
04/09/22	Empire Livestock Marketing, LLC	66	$46,389.96	04/11/22	Unpaid
04/21/22	Empire Livestock Marketing, LLC	25	$6,857.65	04/22/22	Unpaid
04/18/22	Dewart Livestock Marketing, Inc.	149	$62,075.39	04/19/22	Unpaid
05/02/22	Union City Livestock Auction	9	$10,713.10	05/03/22	7/14/22 via check #90224706 after a bond claim was filed
TOTAL			$134,357.69		$123,643.79 UNPAID

4. As of the filing date of the Complaint, Respondent still had failed to pay $123,643.79 of the $134,357.69 in total livestock purchases referenced in Finding of Fact No. 3, above.

5. 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.

PURCHASE DATE	LIVESTOCK SELLER/PAYEE	# HEAD	INVOICE AMOUNT	CHECK #	DATE PAYMENT DUE	DATE PAID	DATE CHECK RETURNED
04/18/22	Dewart Livestock Marketing, Inc.	149	$62,075.39	5054	04/19/22	4/18/22 (remains UNPAID)	04/29/22
TOTAL			$62,075.39				

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Edward Sekerak, doing business as SEK Livestock Marketing, willfully violated sections 312(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 213(a) and 228b) by failing to pay and failing to pay when due, the full purchase price of livestock and by issuing insufficient funds checks in payment for livestock.

ORDER

1. Complainant's Motion for Default is GRANTED.
2. Respondent Edward Sekerak, doing business as SEK Livestock Marketing, and Respondent's agents, employees, successors, and assigns, directly or indirectly through any corporate or other device, in connection with Respondent's activities subject to the Packers and Stockyards Act, shall cease and desist from:
    a. Issuing checks in payment for the livestock purchases which checks are returned unpaid by the bank upon which they are drawn because Respondent does not have and maintain sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented; and
    b. Failing to pay, when due, the full purchase price of livestock; and
    c. Failing to pay the full purchase price of livestock.
3. Respondent's registration under the Act is suspended for a period of five (5) years from the date of this Decision and Order, provided that such suspension shall end if Respondent submits

proof to the Packers and Stockyards Division that the livestock sellers listed in the Complaint have been paid in full.

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 17th day of October 2024,

CHANNING STROTHER

Digitally signed by CHANNING STROTHER
Date: 2024.10.17 11:10:54 -04'00'

Channing D. Strother
Chief Administrative Law Judge

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