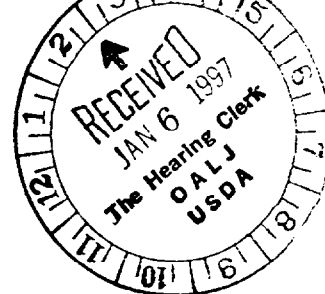


UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



In re:) P. & S. Docket No. D-96-31
John McIntyre d/b/a)
McIntyre Livestock)
Respondent)
)

DECISION WITHOUT HEARING
BY REASON OF DEFAULT

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (U.S.C. § 181 et seq.), herein referred to as the Act, instituted by a complaint filed by the Acting Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, charging that the respondent wilfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 et seq.).

Copies of the complaint and the Rules of Practice (7 C.F.R. § 1.130 et seq.) governing proceedings under the Packers and Stockyards Act were served upon respondent. Respondent filed a request for an extension of time, and an order was issued giving respondent until October 7, 1996, in which to file an answer.

Respondent has failed to file an answer within the time specified as prescribed in the Rules of Practice and the material facts alleged in the complaint, which are admitted by respondent's failure to file an answer, are adopted and set forth herein as findings of fact.

Findings of Fact

1. John McIntyre, hereinafter referred to as respondent, is an individual doing business as McIntyre Livestock, whose business mailing address is 4003 N. Walnut Grove Church Rd., South Fulton, TN 38257.

2. Respondent is, and at all times material herein was:

(a) Engaged in the business of buying and selling livestock in commerce for his own account or the accounts of others, and buying livestock in commerce on a commission basis; and

(b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account or the account of others, and as a market agency to buy livestock in commerce on a commission basis.

3. Respondent, on or about the dates and in the transactions set forth in paragraph II of the complaint, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

4. Respondent has failed to pay \$5,014.05 for livestock purchased in the transactions set forth in paragraph II of the complaint.

5. Respondent, failed to make timely and full payment for livestock purchased in the transactions set forth in paragraph II of the complaint despite having been placed on notice by certified mail received June 10, 1993, that his payment practices

were not in conformity with the requirements of section 409 of the Act (7 U.S.C. § 228b).

6. Respondent, in transactions set forth in paragraph II of the complaint, issued the five checks listed in paragraph III of the complaint in purported payment for livestock which were returned unpaid by the bank upon which they were drawn because respondent did not have sufficient funds on deposit and available in the accounts upon which such checks were drawn to pay such checks when presented.

Conclusion

By reason of facts found in Findings of Fact 3 through 6 above, respondent has wilfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

Order

Respondent John McIntyre, his agents and employees, directly, using the name McIntyre Livestock, or through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to pay, when due, the full purchase price of livestock;
 2. Failing to pay the full purchase service of livestock;
- and
3. Issuing checks in payment for livestock without having sufficient funds on deposit and available in the accounts upon which such checks are drawn to pay such checks when presented.

Respondent John McIntyre is suspended as a registrant under the Act for a period of five years. Provided, however, that upon application to Packers and Stockyards Programs, GIPSA, a supplemental order may be issued terminating the suspension of respondent at any time after the expiration of the initial 90 days of this suspension term upon demonstration by respondent that all livestock sellers identified in the complaint in this proceeding have been paid in full. Provided further that this order may be modified upon application to the Packers and Stockyards Programs, GIPSA, to permit the salaried employment of respondent by another registrant or packer after the initial 90 days of this suspension term upon demonstration of circumstances warranting modification of the order.

This decision shall become final and effective without further proceedings 35 days after the date of service upon the respondent, unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. §§ 1.145).

Copies hereof shall be served upon the parties.

Done at Washington, D.C.

this 6 day of January 1997


Administrative Law Judge