



UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P & S Docket No. D-96-43
)
Tom B. Rutherford and Burrel)
Rutherford d/b/a Warsaw)
Auction Co.)
)
Respondents)

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 (7 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 respondents willfully violated the Act.

Copies of the complaint and the Rules of Practice (7 C.F.R. § 1.130 *et seq.*) governing proceedings under the Act were served upon respondent by regular mail after an attempt to serve respondent by certified mail was unsuccessful. Respondents were informed in a letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the complaint.

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

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Tom B. Rutherford and Burrel Rutherford, d/b/a Warsaw Auction Co., hereinafter referred to as respondents, are individuals whose mailing address is P.O. Box 490, Warsaw, Missouri 65355.

2. Respondents were at all times material herein:

(a) Engaged in the business of a market agency selling livestock on a commission basis and engaged in the business of a dealer buying and selling livestock in commerce for their own accounts or the accounts of others; and

(b) Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis.

3. Respondents, in connection with their operations subject to the Act, on or about the date and in the transaction set forth in paragraph II(a) of the complaint, purchased livestock and in purported payment issued a check which was returned unpaid by the bank upon which it was drawn because respondents did not have sufficient funds on deposit and available in the account upon which such check was drawn to pay such check when presented.

4. Respondents, in connection with their operations subject to the Act, purchased livestock and failed to pay the full purchase price of such livestock on or about the date and in the transaction set forth in paragraph II(b) of the complaint.

5. As of June 5, 1996, there remained unpaid a total of \$25,631.41 for respondents' livestock purchases.

Conclusions

By reason of the facts found in Findings of Fact 3, 4, and 5 herein, respondent has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) & 228b).

Order

Respondents Tom B. Rutherford and Burrel Rutherford, their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Packers and Stockyards Act, shall cease and desist from:

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

Respondents Tom B. Rutherford and Burrel Rutherford are suspended as registrants under the Act for a period of five (5) years. Provided, however, that upon application to the Packers and Stockyards Programs, GIPSA, a supplemental order may be issued terminating the suspension of Tom B. Rutherford and Burrel Rutherford at any time after the expiration of the initial 120 days of this suspension term upon demonstration by the respondents that all livestock sellers identified 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 respondents Tom B. Rutherford and Burrel Rutherford by another registrant or packer after the expiration of the initial 120 days of this suspension term and upon demonstration of circumstances warranting modification of the order.

The provisions of this order shall become effective on the sixth day after service of this order on the respondents.

Copies of this decision shall be served upon the parties.

Done at Washington, D.C.

this 12th day of June 1947



Administrative Law Judge