

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Alan Adelman)	P&S Docket No. R-96-12
)	
Complainant,)	
)	
v.)	
)	
William F. Eustice)	
)	
Respondent.)	Default Decision and Order

This is a reparation proceeding under the Packers and Stockyards Act, 1921, (hereinafter "Act"), as amended and supplemented, begun by a complaint file on May 10, 1995, alleging respondent misrepresented the quality, condition, and status of pregnancy of 38 registered Holstein heifers sold to complainant on February 12, 1995, and also alleging failure of respondent to deliver two of the 38 head purchased and causing complainant additional registration, legal, medication and miscellaneous expense. The amount claimed was \$8,851.04.

A copy of the complaint and investigative report prepared by the Grain Inspection, Packers and Stockyards Administration of this Department and filed in this proceeding under the Rules of Practice were mailed to respondent by certified mail on March 22, 1996. These documents were returned by the Post Department on April 19, 1996, marked "Refused" (by respondent). In accordance with Rule 5 (f) of the Rules of Practice (9CFR 202.105(f)). The documents were remailed to respondent by regular mail on April 22, 1996, and were deemed to be received by respondent on that date. A copy of the investigative report was also served on complainant. Respondent failed to file an answer to the complaint.

Findings of Fact

1. Complainant, Alan Adelman (hereinafter "complainant") is an individual whose address is Box 84, Bellingham, Minnesota 56212.
2. Respondent William F. Eustice (hereinafter "respondent") is an individual whose address is 16456 County Road 7, Hutchinson, Minnesota 55350.
3. On about January 20, 1995, respondent sold to complainant 38 pregnant registered Holstein heifers.
4. On February 12, 1995, respondent delivered to complainant 36 of the heifers.
5. Respondent did not deliver to complainant two of the 38 heifers purchased but compensated complainant for these two animals.
6. Respondent misrepresented the quality, condition, and status of pregnancy, of some of the heifers.
7. Respondent did not deliver to complainant all of the matching registration certificates for the heifers actually received by complainant from respondent.
8. The complaint was filed within 90 days of the transaction.
9. Respondent failed to file an answer to the complaint.

Conclusions

Based upon respondent's failure to file an answer in this matter, we find the respondent in default. Under Rule 6 (d) of the rules of practice (9 C.F.R. § 202.106 (d)), a respondent who fails to file an answer is deemed to have admitted all of the allegations of the complaint, and to have consented to the issuance of a final order in the proceeding. However, complainant is responsible

for proving damages and improper damages will not be awarded. Complainant claims \$1,200 for six heifers allegedly substituted by respondent which were of low quality. Complainant does not explain the basis for his claim of damages of \$200 per animal and gives no basis for his discount. This amount will be disallowed. Complainant claims \$300 per head for 12 head that were short bred and did not calve within 3 months. The \$300 per head figure is the same as that agreed to between the parties on 3 other head of cattle in similar condition and will be allowed.

Complainant claims \$1,350 per head for 3 head that had to be sold due to poor condition. One thousand, three hundred fifty dollars is invoice price and complainant reduces this claim by the amount the 3 head brought at auction for a claim of \$3,147.00. This claim will be allowed.

Complainant will also be allowed the \$404 for feed of the three low quality head and that amount will be offset by the amount complainant realized from the sale of the 3 calves (\$400).

Complainant claims \$100 for medication, \$500 for unspecified miscellaneous expenses and \$300 for legal expenses. The \$500 for miscellaneous expenses is unsupported and undocumented and is disallowed. The \$300 in legal expenses is unsubstantiated and is likewise disallowed. The \$100 claim for medical expenses will be allowed in light of the alleged (and unrebutted) poor state of the cows on arrival. Complainants total damages are therefore:

	\$3,600.00
	3,147.00
	4.00
	<u>100.00</u>
for a total of	\$6,851.00

Therefore, based on the facts of this matter as found above, we hold that respondent is liable to complainant for reparation in the amount of \$6,851.00 with interest.

This decision and order is the same as a decision and order issued by the Secretary of Agriculture, being issued pursuant to the delegated authority, 7 C.F.R. §2.35, as authorized by the Act of April 4, 1940, 54 Stat. 81, 7 U.S.C. 450c-450g. See also Reorganization Plan No. 2 of 1953, 5 U.S.C. 1982 Ed., App. Pg. 1068. It constitutes "an order for payment of money" within the meaning of Section 309 (f) of the Act, 7 U.S.C. §210 (f), which provides for enforcement of such an order by court action begun by complainant.

It is requested that, if the construction of the Act, or the jurisdiction to issue this order, becomes an issue in any such action, prompt notice of such fact be given to the Office of the General Counsel, USDA, Washington, D.C. 20250-1400. On a petition to rehear or reargue a proceeding, or to reconsider an order, see Rule 17 of the Rules of Practice (9C.F.R. §202.117).

On a complainant's right to judicial review of such an order, see 5 U.S.C. §702-3 and United States v. I.C.C., 337 U.S. 426 (1949). On a respondent's right to judicial review of such an order, see Maly Livestock Commission v. Hardin et al. 446 F.2d 4, 30 Agric. 1063 (8th Cir. 1971); and Fort Scott Sale Co., Inc. v. Hardy, 570 F. Supp 1144, 42 Agric. 1079 (D. Kan. 1983).

Order

Within 30 days of the date of this order, respondent William F. Eustice shall pay to complainant Alan Adelman \$6,851.00 together with interest thereon at the rate of ten per cent (10%) per annum from June 1, 1995 until paid.

Copies of this Order shall be served on the parties

Done at Washington, D.C.

JUN 13 1997

WILLIAM G. JENSON

Judicial Officer
Office of the Secretary