

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

Joe Harper,	)	P&S Docket No. R-96-7
	)	
Complainant,	)	
	)	
v.	)	
	)	
Dane S. Fine,	)	
	)	
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 filed on June 7, 1995, alleging that respondent failed to pay the unpaid balance for two loads of livestock purchased on March 23, and April 2, 1995. The amount claimed was \$12,629.57.

A copy of the complaint and a copy of the 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 served on respondent with certified letter dated January 16, 1996. The return receipt card indicates that respondent received service on January 22, 1996. 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, Joe Harper (hereinafter "complainant"), is an individual whose address is Box 7, Seneca Rocks, West Virginia 26884.

2. Respondent, Dane S. Fine (hereinafter "respondent"), is an individual whose address is 104 Bentley Drive, Pittsburgh, Pennsylvania 15238.

3. On March 23, and April 2, 1995, respondent purchased from complainant two loads of livestock in the total amount of \$22,992.40.

4. Subsequently respondent paid complainant \$10,122.95 and complainant made a \$239.88 adjustment in the purchase price, leaving a balance of \$12,629.57 unpaid.

5. Respondent made no additional payments to complainant concerning these transactions.

6. The complaint was filed within 90 days of the transactions.

7. Respondent has failed to file an answer within the time allotted for that purpose.

### 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. 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 \$12,629.57 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. §210 (f), which provides for enforcement of such an order by court action begun by complainant.

1982 ED., APP. PG. 1068 ET CONSTITUTES "AN ORDER FOR PAYMENT OF MONEY"

WITHIN THE MEANING OF SECTION 369 (f) OF THE ACT, 7 U.S.C.

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 (9 C.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 Dane S. Fine shall pay to complainant Joe Harper \$12,629.57 together with interest thereon at the rate of ten per cent (10%) per annum from May 1, 1995 until paid.

Copies of this Order shall be served on the parties.

Done at Washington, D.C.

DEC 31 1996

**WILLIAM G. JENSON**

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Judicial Officer  
Office of the Secretary