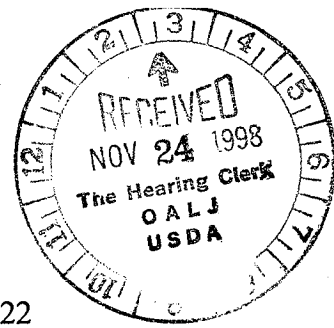


UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



In re:) P. & S. Docket No. D-98-0022
Mark V. Porter d/b/a)
MVP Farms,)
)
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 complainant filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, charging that the respondent wilfully 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 certified mail on May 28, 1998. Respondent was 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. Respondent was required by section 1.136(a) of the Rules of Practice to file an answer by June 17, 1998. Respondent failed to file an answer by this date or request an extension of time in which to file an answer. On July 6, 1998, respondent submitted by FAX a letter dated June 20, 1998, in which respondent states in response to the complaint "At this time I have chosen not to fight Packers and Stockyards in this case. I do admit some of the violations submitted in the complaint." Although respondent goes on to assert

that his presence in the marketplace adds competition and to claim that “the Sale Yards you listed in the complaint are confident and satisfied with me,” respondent neither denies any of the material allegations of the complaint or requests the holding of a hearing by this letter.

Respondent has 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 respondent's failure to file an answer, are adopted and set forth herein as finding 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. Mark V. Porter, hereinafter referred to as the respondent, is an individual doing business as MVP Farms whose business mailing address is P.O. Box 864, Sunnyside, Washington 98944.
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, 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, 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 below, purchased livestock from Marysville Livestock Auction, Inc. and failed to pay, when due, the full purchase price of such livestock.

Purchase Date	Purchased Under Names	No Hd	Livestock Amounts	Invoice Amounts	Payments & (Dates Paid)	Livestock Amount Unpaid
06-Feb-96	MVP and/or RJ	14	\$ 4,459.90	\$ 4,465.50		
13-Feb-96	MVP and/or RJ	24	10,521.17	10,544.27		
20-Feb-96	MVP and/or RJ	28	6,511.76	6,511.76		
27-Feb-96	MVP and/or RJ	22	8,690.48	8,690.48		
05-Mar-96	MVP and/or RJ	56	<u>14,116.86</u>	<u>14,179.86</u>		
					\$20,000.00 (30-Sep-96)	
					10,000.00 (23-Oct-96)	
					5,000.00 (07-Feb-97)	
					<u>2,000.00</u> (22-Aug-97)	
TOTAL:			\$44,300.17	\$44,391.87	\$37,000.00	\$7,300.17 ¹

¹ This figure assumes that payments received paid all non livestock charges, including \$63.00 assessed in connection with the livestock purchases made on March 5, 1996.

4. Respondent, on or about the dates and in the transactions set forth below, purchased livestock from Ellensburg Livestock Exchange, Inc. and failed to pay, when due, the full purchase price of such livestock.

Purchase Date	Purchased Under Names	No Hd	Livestock Amounts	Invoice Amounts	Payments & (Dates Paid)	Livestock Amount Unpaid
05-Sep-97	MVP	27	\$12,811.86	\$12,811.86		\$12,811.86
31-Oct-97	MVP	1	255.20	255.20		255.20
07-Nov-97	S & L	3	1,580.40	1,595.40		1,580.40
14-Nov-97	BPI	11	4,932.34	4,962.98		4,932.34
21-Nov-97	S & L	27	11,486.07	11,486.07		11,486.07
21-Nov-97	BPI	12	3,751.67	3,827.35		3,827.35
05-Dec-97	BPI	31	11,755.17	11,896.57		11,755.17
05-Dec-97	Baxley	30	10,344.22	10,434.97		10,344.22
12-Dec-97	Baxley	32	14,161.19	14,277.12		14,161.19
12-Dec-97	BPI	7	2,661.57	2,693.36		2,661.57
23-Jan-98	MVP	10	3,714.49	3,714.49		3,714.49
06-Feb-98	MVP	13	5,446.71	5,446.71		5,446.71
TOTAL:						\$82,900.89

5. As of March 25, 1998, respondent's unpaid livestock purchases from Marysville Livestock Auction, Inc. and Ellensburg Livestock Exchange, Inc. total \$90,201.06.

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

Purchase Date	Purchased From	No Hd	Purchase Amount	Payment Due per § 409	Check Date	No. of Days Late
03-May-96	Sunnyside Livestock Market, Inc	22	\$ 2,884.65	06-May-96	10-May-96	4
06-May-96		10	1,454.51	07-May-96	10-May-96	3
10-May-96		11	9,347.08	13-May-96	17-May-96	4
18-May-96		25	5,330.11	20-May-96	05-Jun-96	16
20-May-96		68	24,607.67	21-May-96	05-Jun-96	15
20-Jul-96		48	8,341.11	22-Jul-96	12-Aug-96	21
22-Jul-96		46	14,722.89	23-Jul-96	12-Aug-96	20
27-Jul-96		10	1,105.74	29-Jul-96	12-Aug-96	14
29-Jul-96		76	14,125.61	30-Jul-96	12-Aug-96	13
05-Aug-96		46	11,668.02	06-Aug-96	12-Aug-96	6
30-May-96	Toppenish Livestock Comm.	77	24,989.94	31-May-96	11-Jun-96	11
06-Jun-96		96	34,860.42	07-Jun-96	18-Jun-96 21-Jun-96 24-Jun-96	11 14 17
18-Jul-96		65	19,498.07	19-Jul-96	12-Aug-96	24
25-Jul-96		85	26,500.55	26-Jul-96	12-Aug-96	17

6. Respondent, on or about the dates and in the transactions set forth below, purchased livestock and held checks issued in payment for such livestock for a number of days after the check date to unlawfully delay respondent's payments of the full purchase price of such livestock, thereby failing to pay, when due, the full purchase price of livestock.

Purchase Date	Purchased From	Purchase Amount	Payment Due per § 409	Check Date	Delivery and Deposit	Days Late
17-Feb-95	Ellensburg Livestock Exchange, Inc.	\$ 8,540.84	21-Feb-95	03-Mar-95	06-Mar-96	13
17-Feb-95		16,091.54	21-Feb-95	20-Feb-95	28-Feb-96	7
24-Jan-95 31-Jan-95 07-Feb-95	Marysville Livestock Auction, Inc.	30,0117.65	25-Jan-95 01-Feb-95 08-Feb-95	17-Feb-95	01-Mar-95	28 to 31
14-Jan-95 16-Jan-95	Sunnyside Livestock Market, Inc.	58,701.29	17-Jan-95 17-Jan-95	20-Jan-95	23-Jan-95	6
21-Jan-95 23-Jan-95		58,511.30	23-Jan-95 24-Jan-95	25-Jan-95	30-Jan-95	6 to 7
03-Mar-95 04-Mar-95		66,100.45	06-Mar-95 06-Mar-95	10-Mar-95	13-Mar-95	7
05-May-95 06-May-95 08-May-95		56,607.14	08-May-95 08-May-95 09-May-95	11-May-95	15-May-95	6 to 7
19-May-95 20-May-95 22-May-95		23,629.79	22-May-95 22-May-95 23-May-95	24-May-95	30-May-95	7 to 8
02-Jun-95 03-Jun-95 05-Jun-95		55,802.81	05-Jun-95 05-Jun-95 06-Jun-95	07-Jun-95	12-Jun-95	6 to 7
10-Jun-95 12-Jun-95		45,075.33	12-Jun-95 13-Jun-95	15-Jun-95	19-Jun-95	6 to 7

7. Respondent, in the transactions set forth below, issued checks 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.

Check Date	Check No.	Livestock Seller Payee	Livestock Purchase Dates	Check Amount	Date Returned
25-Feb-98	6174	Ellensberg Livestock Exchange, Inc.	08-Aug-97 to 06-Feb-97	\$86,509.78 ¹	05-Mar-98
08-Jul-96 (date check completed)	3784	Marysville Livestock Auction, Inc.	06-Feb-96 to 05-Mar-96	54,484.25 ²	09-Jul-96
01-Apr-96	4365	Sunnyside Livestock Market, Inc.	23-Mar-96 and 25-Mar-96	40,049.83	04-Apr-96
22-May-96	4453		18-May-96 and 20-May-96	29,937.78	30-May-96
01-Jun-96	4459	Toppenish Livestock Comm.	30-May-96	24,989.94	07-Jun-96
09-Jun-96	4546		06-Jun-96	34,860.42	14-Jun-96
01-Jun-96	4542	Quincy Livestock Market	15-May-96 to 29-May-96	21,053.25	17-Jun-96
17-Jun-96	4555		05-Jun-96	23,808.17	28-Jun-96
17-Jun-96	4556		12-Jun-96	10,741.46	02-Jul-96
24-Jun-96	4559		15-May-96 to 19-Jun-96	38,643.43	11-July-96
02-Jul-96	4621		15-May-96 to 26-Jun-96	23,521.77	16-Jul-96

Check Date	Check No.	Livestock Seller Payee	Livestock Purchase Dates	Check Amount	Date Returned
08-Jul-96	4623		15-May-96 to 03-Jul-96	59,384.90	19-Jul-96
11-Jul-96	3892		15-May-96 to 10-Jul-96	56,621.98	31-Jul-96

¹ This check was for \$84,537.54 in livestock charges (including a \$7,965.00 balance owed as of August 8, 1997) and \$1,972.24 in non livestock charges.

² This check was for \$44,300.17 in livestock charges, and \$91.70 in related non livestock charges during these dates, and an additional amount required to fully pay off respondent's account as of July 8, 1996.

8. Respondent was notified by certified mail received August 28, 1995, to increase the amount of bond coverage that respondent maintained to secure his livestock purchase obligations under the Act from \$75,000.00 to \$80,000.00. Respondent was notified by certified mail received October 18, 1995, that his \$5,000 deposit to his trust fund agreement account does not satisfy his bond requirement unless he submits a rider to his trust fund agreement. Notwithstanding such notice, and a prior order of the Secretary requiring respondent to cease and desist engaging in business without maintaining a reasonable bond or its equivalent, respondent has continued to engage in the business of a dealer and a market agency buying on commission without completing and submitting the rider required for an adequate bond or its equivalent.

Conclusions

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

By reason of the facts found in Finding of Fact 7 above, respondent has wilfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), and sections 201.29 and 201.30 of the regulations (9C.F.R. §§201.29, 201.30).

Order

Respondent Mark V. Porter, his agents and employees, directly or through any corporate or other device, shall cease and desist from:

1. Failing to pay the full purchase price of livestock;
2. Failing to pay, when due, the full purchase price of livestock;
3. Issuing checks in payment for livestock and holding such checks after the date of issuance before delivering such checks to the livestock sellers;
4. Issuing checks in payment for livestock without having and maintaining sufficient funds on deposit and available in the bank accounts upon which they are drawn to pay such checks when presented; and
5. Engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations.

Respondent Mark V. Porter is suspended as a registrant under the Act for a period of 5 years and thereafter until he demonstrates that he is in full compliance with such bonding requirements, provided, that when respondent demonstrates that all unpaid livestock sellers have been paid in full, and that he is in full compliance with the bonding requirements, a supplemental order will be issued in this proceeding terminating this suspension after respondent has served at least 150 days of the suspension.

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 of this decision shall be served upon the parties.

Done at Washington, D.C.

this 24th day of November, 1998

David A. Baker
Administrative Law Judge