

1003
07-23-03
2003-07-23

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P & S Docket No. D-03-0016
Jerry Hayes Meats, Inc., and)
Jerome A. Hayes)
)
) **Decision Without Hearing**
) **by Reason of Default**
Respondents)

Preliminary Statement

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*) by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondents willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*). The complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*), hereinafter "Rules of Practice," were mailed to the Respondents via certified mail on July 22, 2003.

As indicated by the return date stamped on the return receipt card, Jerry Hayes Meats, Inc. (hereinafter the "Corporate Respondent"), received a copy of the complaint on July 25, 2003, and the return receipt card was signed by Jerome A. Hayes, also known as Jerry Hayes (hereinafter the "Individual Respondent"). The answer for the Corporate Respondent was due on August 14, 2003, or 20 days after service as specified in section 1.136(a) the Rules of Practice (7 C.F.R. §

C.F.R. § 1.136(a)). The copy of the complaint sent to the residence of the Individual Respondent was returned to the Office of the Hearing Clerk marked "unclaimed." The Hearing Clerk re-sent the complaint to the Individual Respondent by First Class U.S. Mail on August 15, 2003.

Pursuant to section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)), if a complaint sent to the last known residence of a Respondent is returned marked by the postal service as unclaimed, the complaint is deemed to have been received by Respondent upon the date of re-mailing by ordinary mail to the same address. Service having been effected upon the Individual Respondent on August 15, 2003, the Individual Respondent's answer was due on September 4, 2003.

Accompanying each complaint was a cover letter informing the Respondent that an answer must be filed within twenty (20) days of service, and that failure to file an answer would constitute an admission of all of the material allegations in the complaint and a waiver of the right to an oral hearing. On September 23, 2003, the Hearing Clerk sent a letter to each of the Respondents indicating that each of them had failed to file an answer within the prescribed time.

Respondents have failed to file an answer within the time period prescribed by the Rules of Practice (7 C.F.R. §1.136), and this Decision Without Hearing by Reason of Default is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. §1.139). 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.

Findings of Fact

1. Jerry Hayes Meats, Inc., the Corporate Respondent, is a corporation, incorporated under the laws of the State of New York, the business mailing address of which is R.D. #1, Stratton Road, Newark Valley, New York 13811.

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

(a) Engaged in the business of purchasing livestock in commerce for the purpose of slaughter; and

(b) A packer within the meaning of that term as defined in the Act and subject to the provisions of the Act.

3. Respondent Jerome A. Hayes, also known as Jerry Hayes, the Individual Respondent, is, and at all times material herein was:

(a) An individual whose address is 829 Taylor Road, Vestal, New York 13850;

(b) The president and 100% stockholder of the Corporate Respondent;

(c) Responsible for the direction, management and control of all business activities of the Corporate Respondent;

(d) Engaged in the business of a packer buyer; and

(e) Registered with the Secretary of Agriculture as a packer buyer.

4. On April 19, 1995, Respondents entered into a consent order in a disciplinary action against Respondents. The order, captioned P & S Docket No. D-95-12, requires that the Respondents cease and desist from: (a) operating without bond, (b) issuing insufficient funds checks for livestock, (c) failing to pay for livestock purchases, (d) failing to pay, when due for

livestock purchases, and (e) failing to maintain adequate records. The Respondents were also assessed a \$10,500.00 civil penalty, jointly and severally.

5. The Corporate Respondent, under the direction, management and control of the Individual Respondent, was notified by certified mail, received December 18, 2000, that the surety bond maintained in connection with the livestock purchases of Jerry Hayes Meats, Inc. would terminate on January 14, 2001. Further, Respondents were notified that, if livestock operations under the Act were continued after that date without providing adequate bond coverage or its equivalent, Respondents would be in violation of the Act and regulations. Notwithstanding such notice, Respondents have continued to engage in the business of a packer without maintaining an adequate bond or its equivalent as required by the Act and the regulations.

6. The Corporate Respondent, under the direction, management and control of the Individual Respondent, in connection with its operations subject to the Act, issued nineteen (19) checks in payment for livestock purchases which were returned by the bank upon which they were drawn because the Corporate Respondent did not have and maintain sufficient funds on deposit and available in the accounts upon which such checks were drawn to pay such checks when presented.

7. The Corporate Respondent, under the direction, management and control of the Individual Respondent, in connection with its operations subject to the Act, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

8. The Corporate Respondent, under the direction, management and control of the Individual Respondent, in connection with its operations subject to the Act, failed to make and

keep such accounts, records and memoranda which fully and correctly disclose all transactions in its business as a packer under the Act. Specifically, the Corporate Respondent failed to make and keep the following records:

- (a) Kill sheets;
- (b) Accounts receivable records;
- (c) Sales invoices;
- (d) Accounts payable records;
- (e) Purchase invoices for all livestock purchases;
- (f) Cash disbursements and cash receipts journals;
- (g) Check registers, check copies or check stubs showing date, payee and amount of all checks written; and
- (h) Notices received from bank when checks are returned.

Conclusions of Law

By reason of the facts in Findings of Fact 1 - 3 herein, the Individual Respondent is the alter ego of the Corporate Respondent.

By reason of the facts in Finding of Fact 5 herein, the Respondents have willfully violated sections 202(a) of the Act (7 U.S.C. § 192(a)) and sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29, 201.30).

By reason of the facts in Findings of Fact 6 and 7 herein, the Respondents have willfully violated sections 202(a) and 409 of the Act (7 U.S.C. §§ 192(a), 228b).

By reason of the facts in Finding of Fact 8 herein, the Respondents have willfully violated sections 202(a) and 401 of the Act (7 U.S.C. §§ 192(a), 221).

Order

Respondents Jerry Hayes Meats, Inc., and Jerome A. Hayes, and 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. Engaging in business in any capacity for which bonding is required under the Act and regulations without filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations;
2. Issuing checks in purported payment for purchases of livestock which are returned unpaid by the bank upon which they are drawn because the Corporate Respondent does not have and maintain sufficient funds on deposit and available in the accounts upon which such checks are drawn to pay such checks when presented;
3. Failing to pay, when due, the full purchase price of livestock; and
4. Failing to pay the full purchase price of livestock.

Respondents shall make and keep such accounts, records and memoranda as fully and correctly disclose all transactions in Respondents' business as a packer under the Act.

Specifically, the Respondents shall make and keep the following records:

- (a) Kill sheets;
- (b) Accounts receivable records;
- (c) Sales invoices;
- (d) Accounts payable records;
- (e) Purchase invoices for all livestock purchases;
- (f) Cash disbursements and cash receipts journals;

- (g) Check registers, check copies or check stubs showing date, payee and amount of all checks written; and
- (h) Notices received from bank when checks are returned.

Pursuant to section 203(b) of the Act (7 U.S.C. § 193(b)), Respondents are assessed a civil penalty, jointly and severally, in the amount of Seventeen Thousand Dollars (\$17,000.00).

This decision and order shall become final and effective without further proceedings thirty-five (35) days after service on Respondents, if it is not appealed to the Judicial Officer by a party to the proceeding within thirty (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 23rd day of December, 2003



Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Ave, SW
Room #1081, South Building
Washington, D C 20250-9200
202-720-4443
Fax 202-720-9776