

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P. & S. Docket No. D-09-0094
	)	
David Nolan,	)	
d/b/a Northern Livestock,	)	
	)	Decision Without Hearing
Respondent	)	By Reason of Default

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.)(the “Act”), instituted by a Complaint filed on April 8, 2009 by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondent David Nolan d/b/a Northern Livestock (hereinafter “Respondent”) violated the Act.

The Complaint alleged that Respondent 1) issued checks in payment for livestock purchases that were returned unpaid by the bank upon which they were drawn because Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented; 2) failed to pay, and failed to pay, when due, for livestock purchases; and 3) failed to keep accounts, records, and memoranda which fully and correctly disclosed all transactions in his business as a dealer and market agency as required by Section 401 of the Act.

A copy of the Complaint was mailed by the Hearing Clerk to Respondent by certified mail on May 4, 2009, and was returned as “unclaimed” by the U.S. Postal Service to the Hearing Clerk's office. The Hearing Clerk re-mailed the Complaint and served the Respondent via regular mail on June 4, 2009 pursuant to Section 1.147 of the Rules of Practice Governing Formal

Adjudicatory Administrative Proceedings Instituted By The Secretary (7 C.F.R. § 1.147, hereinafter referred to as the “Rules of Practice”), as of that date.

Respondent has failed to file an answer within the time period prescribed by the Rules of Practice (7 C.F.R. § 1.136), 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 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) Respondent is an individual whose mailing address is 730 South Main Street, Marion, Wisconsin 54950.
- (2) Respondent at all times material to this complaint was:
  - a. Engaged in the business of buying and selling livestock in commerce as a dealer for his own account; and
  - b. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce, and as a market agency buying on commission.
- (3) Respondent, between May 30, 2007 and July 25, 2007, issued checks in payment for livestock purchases which were returned unpaid by the bank upon which they were drawn. These checks were returned because Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented. The details of the checks and the transactions for which they were written are more fully set forth in paragraph II(a) of the Complaint.

- (4) Respondent, between May 30, 2007 and July 25, 2007, purchased livestock, and failed to pay, when due, for such livestock purchases. The details of the purchases are more fully set forth in paragraph II(b) of the Complaint.
- (5) Respondent, between July 19, 2007 and September 7, 2007, purchased livestock, and failed to pay for such livestock purchases. As of the date of the filing of the Complaint, all of the \$634,125.49 in livestock purchases for which Respondent failed to pay, outlined in paragraph II(c) of the Complaint, remains unpaid.
- (6) Respondent failed to keep accounts, records, and memoranda that fully and correctly disclosed all transactions involved in his business, as required by section 401 of the Act (7 U.S.C. § 221), including but not limited to, copies of all livestock invoices, copies of cancelled, returned and/or reissued checks, bank statements, balance sheets, records of inventory, records of profit or loss, documentation indicating Respondent's commission fee agreements, and complete and accurate accounts and records reflecting Respondent's financial condition.

#### Conclusions

- (7) By reason of the facts found in paragraphs 3, 4, and 5, Respondent has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).
- (8) By reason of the facts found in paragraph 6, Respondent has failed to keep records as required by section 401 of the Act (7 U.S.C. § 221) and, therefore, has willfully engaged in an "unfair practice" in violation of section 312(a) of the Act (7 U.S.C. §213(a)).

Order

- (9) Respondent David Nolan, d/b/a Northern Livestock, its agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from:
- (10) Issuing checks in payment for livestock purchases that are returned unpaid by the bank upon which they are drawn because Respondent does not have and maintain sufficient funds on deposit and available in the account upon which the checks are drawn to pay the checks when presented;
- (11) Failing to pay livestock sellers for livestock purchases in accordance with the Act and regulations; and
- (12) Failing to pay livestock sellers, when due, for livestock purchases in accordance with the Act and regulations.
- (13) Respondent shall keep accounts, records and memoranda that fully and correctly disclose all transactions involved in his business. Specifically, Respondent shall keep and maintain copies of all livestock invoices, copies of cancelled, returned and/or reissued checks, bank statements, balance sheets, records of inventory, records of profit or loss, documentation indicating Respondent's commission fee agreements, and complete and accurate accounts and records reflecting Respondent's financial condition.
- (14) Respondent is suspended as a registrant under the Act for a period of five (5) years. Provided, however, that upon application to Packers and Stockyards Program, a supplemental order may be issued terminating the suspension at any time after 420

days, upon demonstration of circumstances warranting modification of the original order. Provided, further, that this order may be modified upon application to Packers and Stockyards Program to permit the salaried employment of Respondent by another registrant or packer after the expiration of 420 days of this suspension term and upon demonstration of circumstances warranting modification of the order.

- (15) This decision shall become final and effective without further proceedings 35 days after the date of service upon 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, DC

This 9<sup>th</sup> day of September, 2009

Marc R. Hillson  
Administrative Law Judge