

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 14-0052

In re: Newman Livestock 11, Inc.,
Respondent

Default Decision and Order

Preliminary Statement



This disciplinary proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), by a complaint filed on December 26, 2013, by Susan B. Keith, the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that Respondent Newman Livestock 11, Inc. 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) (rules of practice) were mailed to Respondent by certified mail on December 27, 2013 at addresses in Newman, California and Sherman Oaks, California; however, the mailings were returned as "Attempted Not Known" and "Insufficient Address." A copy of the Complaint was thereafter personally served informed on Hillel Shamam by Resident Agent Douglas E. Rydberg on March 12, 2014.

On April 3, 2014, the Hearing Clerk's Office sent a "No Answer" letter to Respondent and I entered a Show Cause Order directing the parties to show cause why a Default Decision and Order should not be entered. That same day the Hearing Clerk's Office received a facsimile

response from Nicole Pacheco on behalf of Hillel Shamam requesting a sixty day extension, citing circumstances that corporate records were boxed and in storage since May of 2013 and claiming that they were unaware that they had only twenty days to respond.

On April 4, 2014, I denied the request for an extension, noting that the Complaint alleged that Respondent had issued a number of checks that had been returned by the bank upon which they had been drawn for insufficient funds and that approximately \$178,600.89 remained unpaid to livestock sellers, the truth and correctness should be well known to Respondent, and its officers and directors. No further information has been since been submitted by Respondent, but Complainant subsequently filed a Motion for Clarification which indicated that Mr. Shamam had been served only with a copy of the Complaint and had not received either the Hearing Clerk's letter or a copy of the Rules of Practice. The pleading further indicated that Mr. Shamam had previously contacted Counsel for

As Respondent failed to file an answer within the time period prescribed by the Rules of Practice, the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the rules of practice applicable to this proceeding (7 C.F.R. § 1.139).

Findings of Fact

1. Newman Livestock 11, Inc., referred to herein as the Respondent, is a corporation organized under the laws of California. The individual personally served with a copy of the Complaint, Hillel Shamam, is a director and agent for process of the corporation.
2. Respondent is, and at all times material herein was:
 - (a) Engaged in the business of buying livestock in commerce for the purpose of slaughter;

(b) Engaged in the business of manufacturing or preparing meat and meat food products for sale or shipment in commerce;

(c) Was projected to have an average annual purchases of livestock exceeding \$500,00; and

(d) Operated as a packer within the meaning of and subject to the provisions of the Act.

3. During the period from October of 2011 through January of 2012, in 10 transactions involving the purchase of a total of 279 head of livestock for an approximate purchase price of \$214,084.14, Respondent failed to pay, or failed to pay when due, the full amount of the livestock purchase prices within the time period required by the Act.

4. During the period from October of 2011 through January of 2012, Respondent failed to have and maintain sufficient funds on deposit and available in the account upon which checks were drawn to pay for livestock purchases by issuing five insufficient funds checks in payment for livestock purchases.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent willfully violated sections 202(a) and 409 of the Act (7 U.S.C. §§ 192(a) and 228b).

Order

1. Respondent, Newman Livestock 11, Inc., his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Act, shall cease and desist from failing to pay when due the full purchase price for livestock purchases and issuing checks in purported payment for livestock purchases without having sufficient funds on deposit

and available in the account upon which such checks are drawn to pay such checks when presented.

2. Respondent is assessed a civil penalty in the amount of sixty two thousand four hundred dollars (\$62,400.00).

3. This decision shall become final and effective without further proceedings 35 days after the date of service upon respondents, 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 and Order shall be served upon the parties.

May 29, 2014

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge