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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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P & S Docket No. D-10-0047

In re: Joe U. Ambrose, Jr.,

Respondent

Decision and Order

This is a disciplinary proceeding brought pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*; hereinafter “Act”) and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 - 1.151; hereinafter “Rules of Practice”). Complainant, the Deputy Administrator, Grain Inspection, Packers and Stockyards Program, initiated this proceeding against Respondent Joe U. Ambrose, Jr. (hereinafter “Respondent”) by filing a disciplinary complaint on December 1, 2009.

Copies of the Complaint and the Rules of Practices were served upon Respondent by certified mail. The Complaint alleged that Respondent failed to pay the full amount of the purchase price for livestock within the time period required by the Act, with the total amount remaining unpaid of \$352,811.43 as of November 2, 2009, in willful violation of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b). (Compl. ¶¶ II-III.)

Respondent filed a timely Answer to Complaint on December 30, 2009, denying the allegations in the Complaint and asserting multiple affirmative defenses. On January 29, 2010, Respondent and his wife, Rhonda Ambrose, filed a Voluntary Petition pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. § 701 *et seq.*) in the United States Bankruptcy Court, Eastern

District of California. This petition was designated case number 10-10936. Included with the Voluntary Petition was Schedule F which listed Respondent's creditors and the amounts each creditor is owed. On May 13, 2010, Respondent and his wife filed an Amended Schedule F. Respondent admitted in both the original Schedule F and the Amended Schedule F that the three livestock sellers identified in the Complaint as still being owed money for livestock purchases remained unpaid at the time Respondent filed each schedule.

Upon learning of the bankruptcy proceeding, Complainant moved for a Decision Without Hearing By Reason of Admissions pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Based on careful consideration of the pleadings and the precedent cited by the parties, Complainant's motion is hereby granted and the following Decision and Order is issued without further proceeding or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

In his Answer to Complaint, Respondent raises three affirmative defenses. The first affirmative defense raised by Respondent is that the Complaint is overly broad, vague, and ambiguous. (Answer 2 ¶ 1.) The second affirmative defense raised by Respondent is that the Complaint fails to state a legally recognizable cause of action. (Answer 2 ¶ 2.) These defenses are meritless. Section 1.135(a) of the Rules of Practice (7 C.F.R. § 1.135(a)) specifies the required contents of complaints. All of the requirements are met. In addition, violations of section 409 of the Act (7 U.S.C. § 228b) are considered "unfair practices" under section 312(a) of the Act (7 U.S.C. § 213(a)) for which complaints can be issued against the violating person or entity. 7 U.S.C. §§ 228b(c), 213(b). Therefore, because the Complaint complies with the requirements of section 1.135(a) of the Rules of Practice (7 C.F.R. § 1.135(a)) and violations of sections 409 and 312(a) of the Act (7 U.S.C. §§ 228b, 213(a)) are legally recognizable causes of

action, Respondent's first two defenses fail.

Respondent's third affirmative defense is that the transactions in the Complaint were credit transactions. Even if all the livestock sellers listed in the Complaint extended credit, in writing, to Respondent, which Complainant contests, it is still an unfair practice in violation of the Act for Respondent to fail to make full payment to the livestock sellers. *See* 7 U.S.C. § 409(c) ("Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an 'unfair practice' in violation of this Act."); *see also In re Great Am. Veal, Inc.*, 48 Agric. Dec. 183, 211 (1989) ("Even if a livestock seller expressly extends credit, in writing, . . . it is still an unfair practice . . . to fail to make full payment to such a seller.") Here, Respondent has declared bankruptcy and has admitted in both the original Schedule F and the Amended Schedule F that he failed to make full payment to Western Stockman's Market, Visalia Livestock Market, and Overland Stockyard, and still owes the markets close to \$350,000.00. Ex. A pp. 8, 10-11; Ex. B pp. 7, 9. Even under the most liberal interpretation of the payment requirements under the Act, by not fully paying for livestock purchases, Respondent is in violation of the Act. Moreover, on June 14, 2010, the bankruptcy court issued a Discharge of Debtor for both Respondent and his wife. Ex. C p. 1. Under section 524(a)(2) of the bankruptcy code (11 U.S.C. § 524(a)(2)), a discharge order eliminates a debtor's legal obligation to pay a debt that is discharged and operates as an injunction against any attempt to collect payment against the debtor. 11 U.S.C. § 524(a)(2); Ex. C p. 2. Therefore, unless Respondent reaffirms the livestock debt, of which there is no indication he has, or he voluntarily repays the livestock debt, which he is not required to do, the livestock sellers that are still owed money by Respondent will likely never be fully paid.

Because it is irrelevant whether or not Respondent had credit agreements with all of the livestock sellers identified in Appendix A of the Complaint to make a determination that Respondent is in violation of the Act, Respondent's third defense also fails.

It is well-established that failing to make full payment for livestock purchases is a serious violation of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b). *E.g.*, *In re Hines and Thurn Feedlot, Inc.*, 57 Agric Dec. 1408, 1428-29 (1998); *In re Syracuse Sales Co.*, 52 Agric. Dec. 1511, 1524 (1993); *In re Palmer*, 50 Agric. Dec. 1762, 1772-73 (1991); *In re Hennessey*, 48 Agric. Dec. 320, 324 (1989), *In re Garver*, 45 Agric. Dec. 1090, 1094-95 (1986), *aff'd sub nom. Garver v. United States*, 846 F.2d 1029 (6th Cir. 1988), *cert. denied* 488 U.S. 820 (1988). Because Respondent has admitted in bankruptcy documents that he has failed to fully pay for the livestock he purchased from Western Stockman's Market, Visalia Livestock Market, and Overland Stockyard, Respondent's actions are deemed to be unfair and deceptive practices in violation of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

Respondent's actions are also willful. A violation is willful under the Administrative Procedure Act (5 U.S.C. §558(c)) "if a prohibited act is done intentionally, irrespective of evil intent, or done with a careless disregard of statutory requirements." *In re Marysville Enters., Inc.*, 59 Agric. Dec. 299, 309 & n.5 (2000). In other words, "a violation is willful if a prohibited act is done intentionally, regardless of the violator's intent in committing those acts." *In re Hines and Thurn Feedlot*, 57 Agric. Dec. at 1414. Here, willfulness is established because Respondent intentionally continued to purchase livestock over the course of a year while some of the livestock sellers he previously purchased from were not fully paid.

Even applying the more stringent standard of willfulness used by the Fourth and Tenth Circuits, namely, that willfulness requires "such gross neglect of a known duty as to be the

equivalent” of an intentional misdeed, the conduct of Respondent was still willful. *Capital Produce Co. v. USDA*, 930 F.2d 1077, 1079-80 (4th Cir. 1991); *Capitol Packing Co. v. USDA*, 350 F.2d 67, 78-79 (10th Cir. 1965). Respondent clearly knew or should have known that he was unable to fully pay for the livestock that he was purchasing because as he continued to make purchases through October 2009, purchases from October and November of the previous year remained unpaid. In addition, according to Respondent’s sworn affidavit, Respondent knew he had exhausted his working capital by the end of October 2008. Whether or not Respondent had credit agreements is irrelevant to a determination of willfulness because Respondent failed to comply with any alleged credit agreements as evidence by three livestock sellers still being owed close to \$350,000.00 for livestock purchases.

Therefore, because Respondent was aware of his financial problems and continued to purchase livestock in spite of them, his actions can only be described as willful, both as intentional acts or as acts performed with careless disregard of statutory requirements.

The sanction policy of the Department is “to impose severe sanctions for violations of any of the regulatory programs administered by the Department that are repeated or that are regarded . . . as serious, in order to serve as an effective deterrent not only to the Respondents but to other potential violators as well.” *In re Wooten*, 58 Agric. Dec. 944, 980 (1999); *see also Garver*, 45 Agric. Dec. at 1100. In this case, Respondent has failed to fully pay three different markets on multiple occasions, and still owes the markets close to \$350,000.00 making these violations both serious and repeated. When livestock sellers, such as Respondent, do not make full payment for their livestock purchases, the sellers are forced to finance the transaction. *See Van Wyk v. Bergland*, 570 F.2d 701, 704 (8th Cir. 1978); *In re Powell*, 46 Agric. Dec. 49, 53

(1985). Considering Respondent's bankruptcy and his discharge from his debts, the livestock sellers are likely to never receive full payment for their livestock.

Complainant's recommendation that Respondent be ordered to cease and desist from violating the Act and suspended as a registrant under the Act for five years is consistent with the sanctions regularly imposed in other cases involving failure to pay for livestock. *E.g., Marysville Enters.*, 59 Agric. Dec. at 321 & n.14, 323; *Hines and Thurn Feedlot*, 57 Agric. Dec. at 1429 & n.9.¹ The order and sanctions requested by Complainant are necessary to deter future violations and to prevent Respondent from continuing to purchase livestock while he is bankrupt and unable to pay for his purchases. *In re Holmes*, 62 Agric. Dec. 254, 259 (2003).

Findings of Fact

1. Respondent Joe U. Ambrose, Jr., is an individual whose mailing address is in the State of California.
2. Respondent is and, at all times material herein, was:
 - (a) Engaged in the business of buying and selling livestock in commerce as a dealer for his own account;
 - (b) Engaged in the business of a market agency buying livestock in commerce on a commission basis;
 - (c) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account; and
 - (d) Registered with the Secretary of Agriculture as a market agency to buy livestock in commerce on a commission basis.

¹ In determining the sanction, "appropriate weight" is to be given to the sanction "recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose." *In re S.S. Farms Linn County, Inc.*, 50 Agric Dec. 476, 497 (1991); see also *Marysville Enters.*, 59 Agric. Dec. at 318.

3. Respondent and his wife, Rhonda Ambrose, filed for bankruptcy under Chapter 7, Title 11 of the United States Bankruptcy Code, in the United States Bankruptcy Court, Eastern District of California, Case No. 10-10936.

4. Respondent has admitted in bankruptcy documents, of which the Secretary may take official notice, that the three livestock sellers identified in the Complaint as still being owed money by Respondent remain unpaid for close to \$350,000.00 worth of livestock. The original Schedule F and the Amended Schedule F contain tables with columns for the name and address of the creditor, along with the amounts of each creditor's claim.

5. The amounts alleged unpaid by Complainant and admitted unpaid by Respondent are as follows:

<u>Seller's Name</u>	<u>Amount Unpaid</u>
Western Stockman's Market	\$168,238.29 ²
Visalia Livestock Market	\$61,641.23 ³
Overland Stockyard	\$119,250.00 ⁴
TOTAL	\$349,129.52

6. On June 14, 2010, the bankruptcy court issued a Discharge of Debtor for both Respondent and his wife.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts found in Findings of Fact 4 and 5, Respondent has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

² Amount alleged unpaid in Complaint of \$171,919.98 was reduced to the amount Respondent admitted was unpaid in original Schedule F and Amended Schedule F.

³ Amount Respondent admitted was unpaid in original Schedule F and Amended Schedule F of \$92,305.00 was reduced to the amount alleged to be unpaid in the Complaint.

⁴ Amount alleged unpaid in Complaint of \$119,250.22 was reduced by 22¢ to the amount Respondent admitted was unpaid in original Schedule F and Amended Schedule F.

Order

1. Respondent Joe U. Ambrose, Jr., 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 make full payment for livestock purchases in accordance with the Act or in accordance with the terms of a credit agreement that complies with the requirements of the Act.

2. Pursuant to 7 U.S.C. § 204, Respondent is hereby suspended as a registrant under the Act for a period of five (5) years. Provided, however, that after the expiration of 120 days of the suspension period, upon application to the Packers and Stockyards Program and upon Respondent's demonstration that the unpaid livestock sellers identified in the Complaint have been paid, in full, the amount of \$349,129.52 or a reasonable schedule of restitution has been arranged with the unpaid livestock sellers identified in the Complaint, a supplemental order may be issued permitting Respondent's salaried employment by another registrant or packer.

3. The provisions of this Order shall become effective on the sixth day after service of this Decision and Order on Respondent.

4. This Decision and Order shall become final without further proceedings thirty-five (35) days after service on Respondent, unless appealed to the Judicial Officer by a party to the proceeding within thirty (30) days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139, 1.145).

Copies of this Decision and Order shall be served upon the parties.

November 30, 2010


Peter M. Davenport
Chief Administrative Law Judge