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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P. & S. Docket No. 13-0087
	)	
Piedmont Livestock, Inc., and Joseph Ray Jones,	)	
	)	
Respondents	)	**Order Denying Late Appeal**

PROCEDURAL HISTORY

Alan R. Christian, Deputy Administrator, Packers and Stockyard Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on November 19, 2012. The Deputy Administrator instituted the proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act]; the regulations issued pursuant to the Packers and Stockyards Act (9 C.F.R. pt. 201); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture Under Various Statutes (7 C.F.R. §§ 1.130-.151).

The Deputy Administrator alleges, during the period October 10, 2011, through November 21, 2011, Piedmont Livestock, Inc., and Joseph Ray Jones, in 16 transactions,

purchased 342 cattle from 10 different sellers for a total purchase price of $255,077.31 and failed to pay, when due, the full amount of the purchase price, in willful violation of 7 U.S.C. §§ 213(a) and 228b and 9 C.F.R. § 201.43.[1]

The Hearing Clerk served Piedmont Livestock, Inc., and Mr. Jones with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter on November 26, 2012.[2] Neither Piedmont Livestock, Inc., nor Mr. Jones filed an answer to the Complaint, and on December 20, 2012, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] issued a Show Cause Order in which the Chief ALJ provided the parties 15 days within which to show cause why a default decision should not be entered.

On January 4, 2013, the Deputy Administrator filed a response to the Chief ALJ's Show Cause Order in the form of a Motion for Decision Without Hearing by Reason of Default [hereinafter Motion for Default Decision] and a Proposed Decision Without Hearing by Reason of Default. Neither Piedmont Livestock, Inc., nor Mr. Jones filed a response to the Chief ALJ's Show Cause Order.

On January 9, 2013, the Hearing Clerk served Piedmont Livestock, Inc., and Mr. Jones with the Deputy Administrator's Motion for Default Decision and the Hearing

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[1]Compl. at second unnumbered page ¶¶ II-III.

[2]United States Postal Service Domestic Return Receipts for article numbers 7005 1160 0002 7836 2307, 7005 1160 0002 7836 3540, and 7005 1160 0002 7836 3557.

Clerk's service letter.[3] Neither Piedmont Livestock, Inc., nor Mr. Jones filed objections to the Deputy Administrator's Motion for Default Decision.

On March 7, 2013, the Chief ALJ, in accordance with 7 C.F.R. § 1.139, issued a Default Decision and Order [hereinafter Decision]: (1) concluding Piedmont Livestock, Inc., and Mr. Jones willfully violated 7 U.S.C. §§ 213(a) and 228b and 9 C.F.R. § 201.43, as alleged in the Complaint; (2) ordering Piedmont Livestock, Inc., and Mr. Jones to cease and desist from failing to pay the full amount of the purchase price for livestock before the close of the next business day following each purchase of livestock, as required by 7 U.S.C. §§ 213(a) and 228b; and (3) assessing Piedmont Livestock, Inc., and Mr. Jones a $14,000 civil penalty.[4] On March 11, 2013, the Hearing Clerk served Piedmont Livestock, Inc., with the Chief ALJ's Decision and the Hearing Clerk's service letter,[5] and on March 13, 2013, the Hearing Clerk served Mr. Jones with the Chief ALJ's Decision and the Hearing Clerk's service letter.[6]

On April 18, 2013, Piedmont Livestock, Inc., and Mr. Jones appealed the Chief ALJ's Decision to the Judicial Officer. On April 24, 2013, the Deputy Administrator

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[3]United States Postal Service Domestic Return Receipts for article numbers 7005 1160 0002 7836 3212, 7005 1160 0002 7836 3229, and 7005 1160 0002 7836 3236.

[4]Chief ALJ's Decision at 3.

[5]United States Postal Service Domestic Return Receipt for article number 7005 1160 0002 7837 4584.

[6]United States Postal Service Domestic Return Receipt for article number 7005 1160 0002 7837 4577.

filed Complainant's Response to Respondents' Appeal of Default Decision and Order. On April 26, 2013, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

CONCLUSIONS BY THE JUDICIAL OFFICER

The Rules of Practice provide that an administrative law judge's written decision must be appealed to the Judicial Officer by filing an appeal petition with the Hearing Clerk within 30 days after service.[7] The Hearing Clerk served Piedmont Livestock, Inc., with the Chief ALJ's Decision on March 11, 2013, and served Mr. Jones with the Chief ALJ's Decision on March 13, 2013;[8] therefore, Piedmont Livestock, Inc., was required to file its appeal petition with the Hearing Clerk no later than April 10, 2013, and Mr. Jones was required to file his appeal petition with the Hearing Clerk no later than April 12, 2013. Instead, Piedmont Livestock, Inc., and Mr. Jones filed their appeal petition with the Hearing Clerk on April 18, 2013. Therefore, I find Piedmont Livestock, Inc., and Mr. Jones' appeal petition is late-filed.

Moreover, the Judicial Officer has continuously and consistently held under the Rules of Practice that the Judicial Officer has no jurisdiction to hear an appeal that is filed after an administrative law judge's decision becomes final.[9] The Chief ALJ's Decision

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[7] 7 C.F.R. § 1.145(a).

[8] See notes 5 and 6.

[9] *See, e.g., In re Custom Cuts, Inc.* (Order Denying Late Appeal), __ Agric. Dec.
(continued...)

became final 35 days after the Hearing Clerk served Piedmont Livestock, Inc., and Mr. Jones with the Chief ALJ's Decision.[10] Thus, the Chief ALJ's Decision became final as to Piedmont Livestock, Inc., on April 15, 2013, and final as to Mr. Jones on April 17, 2013. Piedmont Livestock, Inc., and Mr. Jones filed their appeal petition on April 18, 2013. Therefore, I have no jurisdiction to hear Piedmont Livestock, Inc., and Mr. Jones' appeal petition.

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[9](...continued)
___ (Feb. 20, 2013) (dismissing the respondents' appeal petition filed 1 month 27 days after the chief administrative law judge's decision became final); *In re Robert M. Self* (Order Denying Late Appeal), __ Agric. Dec. ___ (Sept. 24, 2012) (dismissing the respondent's appeal petition filed 18 days after the chief administrative law judge's decision became final); *In re Timothy Mays* (Order Denying Late Appeal), 69 Agric. Dec. 631 (2010) (dismissing the respondent's appeal petition filed 1 week after the administrative law judge's decision became final); *In re David L. Noble* (Order Denying Late Appeal), 68 Agric. Dec. 1060 (2009) (dismissing the respondent's appeal petition filed 1 day after the administrative law judge's decision became final); *In re Michael Claude Edwards* (Order Denying Late Appeal), 66 Agric. Dec. 1362 (2007) (dismissing the respondent's appeal petition filed 6 days after the administrative law judge's decision became final); *In re Tung Wan Co.* (Order Denying Late Appeal), 66 Agric. Dec. 939 (2007) (dismissing the respondent's appeal petition filed 41 days after the chief administrative law judge's decision became final); *In re Tim Gray* (Order Denying Late Appeal), 64 Agric. Dec. 1699 (2005) (dismissing the respondent's appeal petition filed 1 day after the chief administrative law judge's decision became final); *In re Jozset Mokos* (Order Denying Late Appeal), 64 Agric. Dec. 1647 (2005) (dismissing the respondent's appeal petition filed 6 days after the chief administrative law judge's decision became final); *In re Ross Blackstock* (Order Denying Late Appeal), 63 Agric. Dec. 818 (2004) (dismissing the respondent's appeal petition filed 2 days after the administrative law judge's decision became final); *In re David Gilbert* (Order Denying Late Appeal), 63 Agric. Dec. 807 (2004) (dismissing the respondent's appeal petition filed 1 day after the administrative law judge's decision became final); *In re Vega Nunez* (Order Denying Late Appeal), 63 Agric. Dec. 766 (2004) (dismissing the respondent's appeal petition filed on the day the administrative law judge's decision became final).

[10]See 7 C.F.R. § 1.139; Chief ALJ's Decision at 3.

The Rules of Practice do not provide for an extension of time (for good cause or excusable neglect) for filing an appeal petition after an administrative law judge's decision has become final. The absence of such a provision in the Rules of Practice emphasizes that jurisdiction has not been granted to the Judicial Officer to extend the time for filing an appeal after an administrative law judge's decision has become final. Therefore, under the Rules of Practice, I cannot extend the time for Piedmont Livestock, Inc., and Mr. Jones' filing an appeal petition after the Chief ALJ's Decision became final.

Accordingly, Piedmont Livestock, Inc., and Mr. Jones' appeal petition must be denied. For the foregoing reasons, the following Order is issued.

ORDER

1. Piedmont Livestock, Inc., and Joseph Ray Jones' appeal petition, filed April 18, 2013, is denied.

2. The Chief ALJ's Decision, filed March 7, 2013, is the final decision in this proceeding.

Done at Washington, DC

April 29, 2013

William G. Jenson
Judicial Officer