

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:

E.N.A. Meat Packing Corporation,)	P & S Docket No. D-07-0202
Respondent)	
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)	Decision and Order by
)	Reason of Admissions

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.) and the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By the Secretary (7 C.F.R. §§ 1.130 through 1.151). Complainant, the Deputy Administrator, Grain Inspection, Packers and Stockyards initiated this proceeding against the Respondent by filing a disciplinary Complaint and Notice of Hearing on September 21, 2007, which was served on Respondent on September 28, 2007. On October 17, 2007, the Hearing Clerk for the United States Department of Agriculture received a letter from the Respondent, which constitutes the sole Answer filed by the Respondent. In its Answer Respondent admits it does not have a bond and claims that “until recently [it] had no knowledge of not having a...bond.” Respondent further asserts that it is in the process of, “reaching out to a few new companies”, to secure a bond. Despite Respondent’s admissions that it did not have a bond, and its representation that the bond would be obtained and filed, Respondent has continued to operate as a packer without obtaining and filing the

required bond or bond equivalent. Furthermore, Respondent's letter did not address or deny paragraph II (c) of the Complaint and Notice of Hearing, which set forth the particulars of notice given to Respondent concerning bond requirements. (Compl. ¶ II(c))

In response to Respondents' Answer, Complainant moved for a decision without hearing based on admissions pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Since Respondent's Answer admits Respondent does not have a bond and presents no *bona fide* defense to its admitted violation of the Packers and Stockyards Act, no hearing is warranted in this matter.

Respondent filed an Answer admitting that it had no bond or bond equivalent. In its defense, Respondent states that until recently it was unaware that it did not have a bond. Additionally, Respondent states that the insurance company that it had secured its bond with, "[was] no longer in service." Respondent's claim of ignorance of its lack of bond is not credible. Respondent had been notified by the Packer's and Stockyards Program no less than three times that it was required to obtain a bond. Specifically, Respondent was notified by letter on June 27, 2006, stating that the Respondent's surety bond would be terminated on July 26, 2006. (Compl. ¶ II(c).) Respondent was again notified on September 8, 2006, when a Packers and Stockyards representative personally informed it that it was without a bond or bond equivalent, in violation of the Act and that it must refrain from engaging in activities subject to the Act until bonding requirements had been met. (Compl. ¶ II(d).) Moreover, by virtue of previous disciplinary actions brought against the Respondent (see P & S Docket No. D-91-28), Respondent had actual notice that the Packers and Stockyards Act required all packers whose annual purchases exceeded \$500,000 to file and maintain a surety bond or bond equivalent. Respondent was found to have

willfully violated section 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) and was ordered to cease and desist from purchasing livestock for slaughter without securing a bond or equivalent. (Compl. ¶ II(a).) Respondent knew or should have known that the bonding requirement was mandatory.

Respondent claims in its Answer, dated October 17, 2007, that it had “reached out to a few companies” and was waiting to obtain a bond. (Answer. ¶ 1.) As of January 1, 2008, Respondent has continued in its operations, purchasing livestock without a bond or bond equivalent. Even if Respondent attempted unsuccessfully to obtain a bond, Respondent’s failure to obtain a bond and its continued operation in spite of failing to obtain a bond violates the Act and the Regulations.

Respondent failed to secure a bond or bond equivalent, despite notification by certified mail, numerous phone calls, and a visit from a Packers and Stockyards representative notifying Respondent that it must refrain from engaging in activities subject to the Act until bonding requirements had been met. Respondent’s violation of the bond requirements of the Act violated a Cease and Desist Order entered in 1992 that ordered Respondent not to purchase livestock for slaughter without securing a bond or equivalent.

FINDINGS OF FACT

1. E.NA. Meat Packing Corporation (hereinafter "Respondent ") is a corporation organized and existing under the laws of the state of New Jersey. Its mailing address is 240 East 5th Street, Paterson, New Jersey.
2. Respondent is, and at all times material herein was, engaged in the business of

buying livestock in commerce for purposes of slaughter, and subject to the requirements of the Act as a packer.

3. Respondent's average annual purchases of livestock exceeded \$500,000.

CONCLUSIONS

Respondents willfully violated sections section 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 failing to secure a bond or bond equivalent while engaging in operations of a packer. Complainant has moved for the issuance of a Decision without Hearing by Reason of Admissions, pursuant to section 1.139 of the Rules of Practice (7 C.F.R § 1.139). Accordingly, this decision and order is entered without hearing or further procedure.

ORDER

Respondent E.N.A. Meat Packing, Corp., shall cease and desist from engaging in operations subject to the Packers and Stockyards Act without first securing an adequate bond or bond equivalent. The Respondent is hereby assessed a civil penalty in the amount of \$3,750, payable to the United States Treasury, to be forwarded to USDA GIPSA, P.O. Box 790335, St. Louis, MO 63179-0335, within 60 days of the effective date of this order.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceedings within 30 days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145)

Copies of this decision shall be served upon the parties.

Issued in Washington D.C.

this 11th day of April, 2008

Marc R. Hillson
Administrative Law Judge

Submitted by:

Mary Hobbie
Attorney for Complainant