

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	P & S Docket No. D-08-0126
)	
South Shore Meats Corporation,)	
)	Decision and Order
Respondent)	by Reason of Default

1. The Respondent’s name is clarified in the Status Filing filed on April 30, 2009 (*see* footnote 1), and I hereby amend the case caption accordingly. The Complaint, filed on May 22, 2008, alleged that the Respondent, in or about 2007, willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181, *et seq.*) (frequently herein the “Packers and Stockyards Act” or the “Act”), and the regulations promulgated thereunder, 9 C.F.R. § 201.1 *et seq.*

Parties and Counsel

2. The Complainant is the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (frequently herein “Packers and Stockyards” or “Complainant”). Packers and Stockyards is represented by Ciarra A. Toomey, Esq. with the Office of the General Counsel (Trade Practices Division), United States Department of Agriculture, South Building Room 2309 Stop 1413, 1400 Independence Avenue S.W., Washington, D.C. 20250-1413.

3. The Respondent is South Shore Meats Corporation (herein frequently “South Shore” or “Respondent”), a corporation organized and existing under the laws of the State of Florida, which ceased business operations in about August 2008, but had been operating at 6712 State Rd 674, Wimauma, Florida 33598 (this address is found in Online Yellow Pages, and is apparently preferred by the U.S. Postal Service); or 6712 Hwy 674 East, Wimauma, Florida 33598 (this address is in filings with the Florida Department of State, and in the Affidavit of Resident Agent Nilsa Ramos Taylor, dated April 30, 2009).

Procedural History

4. Packers and Stockyards’ Motion for Decision Without Hearing by Reason of Default, filed October 20, 2008, is before me. Respondent South Shore was served on February 9, 2009, with a copy of that Motion and a copy of the proposed Decision and has failed to respond.

5. Respondent South Shore was served with a copy of the Complaint on July 16, 2008, as follows. The Hearing Clerk’s certified mailing on June 16, 2008, to Respondent South Shore, of a copy of the Complaint, was sent to “South Shore Meats, Inc., 6712 State Road 674, Wimauma, Florida 33598”. In the same mailing, the Hearing Clerk included a “notice letter” (Acting Hearing Clerk letter) and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151) (the “Rules of Practice”). The envelope was returned as “Unclaimed” by the United States Postal Service. On July 16, 2008, the Hearing Clerk re-mailed a copy of the Complaint with the enclosures to the same address by regular mail.

6. Under the Rules of Practice, a Complaint returned “Unclaimed” “shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address.” 7 C.F.R. §1.147(c) (1).

7. Further, on July 3, 2008, Complainant sent a letter to Respondent South Shore, to the same address as the July 16, 2008 mailing of the Complaint. The letter informed Respondent that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the Complaint. The letter also informed Respondent that if this matter was to proceed to hearing, the Packers and Stockyards Program would seek a civil penalty of \$43,000. On July 17, 2008, Respondent responded to Complainant’s letter, but failed to file an answer.

8. The Respondent’s answer was due to be filed within 20 days after service, according to section 1.136(a) of the Rules of Practice. 7 C.F.R. § 1.136(a). The time for filing an answer to the Complaint expired on August 5, 2008. To date, the Respondent still has failed to file an answer. The Respondent is in default, pursuant to section 1.136(c) of the Rules of Practice. 7 C.F.R. § 1.136(c).

9. Failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. §1.136(c). Failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. Accordingly, the material facts alleged in the Complaint, which are admitted by the Respondent’s default, 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. *See* 7 C.F.R. §1.130 *et seq.*

Findings of Fact

10. Respondent South Shore Meats Corporation is a corporation organized and existing under the laws of the State of Florida with the following **current** mailing address:

South Shore Meats Corporation
c/o Mr. Richard Nusman
5465 46th Ct W
Bradenton, FL 34210-6601

11. Mr. Richard Nusman is the registered agent and 100% stockholder of Respondent South Shore Meats Corporation.

12. Respondent South Shore Meats Corporation, was, at all times material to this Decision:

(a) Engaged in the business of buying livestock in commerce for purposes of slaughter and of manufacturing or preparing meats or meat food products for sale or shipment in commerce; and

(b) A packer within the meaning of that term under the Act and subject to the Act.

(c) Respondent's average annual purchases of livestock exceeded \$500,000.

13. Respondent South Shore Meats Corporation, on or about the dates and in the transactions set forth below, issued checks in payment for livestock purchases which checks 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.

SELLER	NO. OF HEAD	CHECK AMOUNT	CHECK NUMBER	CHECK DATE	DATE RETURNED
JOLLEY'S	225	\$16,707.81	1832	2/16/07	2/27/07
JOLLEY'S	88	\$6,442.60	1834	2/20/07	2/27/07
JOLLEY'S	193	\$16,870.25	1840	2/22/07	2/27/07
JOLLEY'S	168	\$17,347.36	1855	2/28/07	3/9/07
JOLLEY'S	178	\$19,183.62	1858	3/3/07	3/9/07
JOLLEY'S	200	\$17,948.77	1871	3/14/07	3/22/07
JOLLEY'S	188	\$17,480.01	1866	3/15/07	3/22/07
JOLLEY'S	251	\$23,337.99	2021	4/5/07	4/17/07
NEELY ¹	N/A	\$20,156.47	2035	4/24/07	5/3/07
JOLLEY'S	189	\$18,971.81	2054	4/27/07	5/14/07
TOTALS	1680	\$174,446.69			

1. Respondent did not maintain an invoice for this transaction; check no. 2035 was returned, not presented again. Respondent wire transferred two amounts \$14,500 on 05/15/07 and \$5,700 on 05/17/07 to pay this balance.

14. On or about the dates and in the transactions set forth below, Respondent purchased livestock and failed to pay, within the time period required by the Act, the full purchase price of such livestock.

PURCHASED FROM	PURCHASE DATE	NO. OF HEAD	INVOICE AMOUNT	PAYMENT DATE	DUE DATE PER \$409	DAYS LATE
JOLLEY'S	3/13/07	183	\$17,384.49	3/16/07	3/14/07	2
JOLLEY'S	4/18/07	180	\$16,799.04	4/20/07	4/19/07	1
JOLLEY'S	4/19/07	140	\$13,116.46	4/24/07	4/20/07	4
JOLLEY'S	4/23/07	240	\$20,356.62	4/26/07	4/24/07	2
JOLLEY'S	4/24/07	119	\$12,080.44	4/30/07	4/25/07	5
JOLLEY'S	4/30/07	160	\$ 6,633.00	5/9/07	5/1/07	8
JOLLEY'S	5/22/07	140	\$16,960.80	5/24/07	5/23/07	1
JOLLEY'S	5/24/07	140	\$14,910.95	5/31/07	5/25/07	6
JOLLEY'S	5/23/07	198	\$21,600.26	5/31/07	5/24/07	7
JOLLEY'S	5/28/07	154	\$18,225.57	5/31/07	5/29/07	2
JOLLEY'S	5/30/07	188	\$21,207.38	6/15/07	5/31/07	15
JOLLEY'S	5/31/07	200	\$21,792.96	6/6/07	6/1/07	5
JOLLEY'S	6/3/07	159	\$16,636.72	6/6/07	6/4/07	2
JOLLEY'S	6/7/07	178	\$18,980.66	6/15/07	6/8/07	7
JOLLEY'S	6/10/07	293	\$23,852.97	6/15/07	6/11/07	4

JOLLEY'S	6/11/07	125	\$14,064.65	6/15/07	6/12/07	3
JOLLEY'S	6/12/07	215	\$24,710.63	6/15/07	6/13/07	2
TOTALS		3012	\$299,313.60	AVERAGE DAYS LATE		4.5

15. Respondent failed to keep accounts, records, and memoranda that fully and correctly disclosed all transactions involved in its business, as required by section 401 of the Act (7 U.S.C. § 221), including, but not limited to, all livestock invoices, written credit agreements, copies of all third party checks that were given to livestock sellers in payment for Respondent's livestock purchases, and a complete record showing the dates and amounts of all payments made for livestock purchases, including payments made using third party checks.

16. On August 8, 2007 the Packers and Stockyards Program sent Respondent a certified letter, which the Respondent received on August 17, 2007, stating that the Respondent's surety bond would be terminated on September 1, 2007. The letter referenced 9 C.F.R. § 201.29 which requires packers to file and maintain bonds and reminded the Respondent that violators are subject to disciplinary action under the Act. The letter also notified the Respondent that failure to furnish the requested bond coverage and a continuation of livestock purchases as a packer would be a violation of the Act, 7 U.S.C. § 204. Notwithstanding such notice, Respondent continued to engage in business as a packer without maintaining an adequate bond or its equivalent as required by the Act and the regulations.

17. On or about the dates and in the transactions set forth below, Respondent purchased livestock for the purpose of slaughter without maintaining an adequate bond or bond

equivalent. The transactions occurred at Neely Livestock, in Murfreesboro, Tennessee, and at Jolley's, in Doyle, Tennessee.

SELLER	DATE OF PURCHASE	NUMBER OF HEAD	INVOICE TOTAL
JOLLEY'S	09/03/2007	181	\$14,320.10
NEELY	09/04/2007	221	\$19,289.60
JOLLEY'S	09/04/2007	179	\$14,681.42
JOLLEY'S	09/05/2007	75	\$6,021.35
JOLLEY'S	09/09/2007	135	\$11,619.27
NEELY	09/11/2007	378	\$27,087.60
JOLLEY'S	09/11/2007	192	\$14,728.80
JOLLEY'S	09/12/2007	60	\$4,790.40
JOLLEY'S	09/16/2007	88	\$6,667.79
NEELY	09/17/2007	276	\$17,055.00
JOLLEY'S	09/18/2007	215	\$13,864.87
JOLLEY'S	09/19/2007	132	\$10,097.70
JOLLEY'S	09/24/2007	162	\$11,152.86
JOLLEY'S	09/25/2007	150	\$11,880.70
JOLLEY'S	09/26/2007	100	\$6,939.26
JOLLEY'S	09/30/2007	200	\$10,523.84
TOTALS		2744	\$200,720.56

Conclusions

18. The Secretary of Agriculture has jurisdiction over Respondent South Shore Meats Corporation and the subject matter involved herein.

19. Respondent South Shore Meats Corporation willfully violated sections 202(a) and 409 of the Act. 7 U.S.C. §§ 192(a), 228b. Paragraphs 13 and 14.

20. Respondent South Shore Meats Corporation failed to keep records as required by section 401 of the Act (7 U.S.C. §221) and therefore willfully engaged in an "unfair practice" under section 202(a) of the Act. 7 U.S.C. §192(a). Paragraph 15.

21. Respondent South Shore Meats Corporation, by failing to maintain a bond, willfully violated section 202(a) of the Act and sections 201.29 and 201.30 of the Regulations. 7 U.S.C. § 204; 9 C.F.R. §§ 201.29, 201.30. Paragraphs 16 and 17.

Order

22. Respondent South Shore Meats Corporation, and its agents and employees, directly or through any corporate or other device, in connection with its activities subject to the Packers and Stockyards Act, shall cease and desist from: (a) failing to pay the full amount of the purchase price for livestock within the time period required by the Act and the regulations promulgated under it; (b) issuing checks in payment for livestock without sufficient funds on deposit and available in the account upon which the checks are drawn to pay the checks when presented; and (c) purchasing livestock for the purpose of slaughter without maintaining an adequate bond or bond equivalent.

23. Respondent South Shore Meats Corporation and its agents and employees shall keep such accounts, records, and memoranda which fully and correctly disclose all transactions conducted subject to the Act, including, but not limited to, all livestock invoices, written credit agreements, copies of all third party checks that were given to livestock sellers in payment for Respondent's livestock purchases, and a complete record showing the dates and amounts of all payments made for livestock purchases, including payments made using third party checks.

24. Respondent South Shore Meats Corporation is assessed a civil penalty in the amount of Forty Three Thousand dollars (**\$43,000**), in accordance with section 203(b) of the Act. 7

U.S.C. § 193(b). The civil penalty payment instrument shall be made payable to the order of **USDA-GIPSA** and sent to:

USDA-GIPSA
P.O. Box 790335
St. Louis, Missouri 63179-0335

Payment shall be made within 30 days from the date this Order is final and effective (*see* next paragraph).

Finality

25. This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties, USING the address in Paragraph 10 for Respondent.

Done at Washington, D.C.
this 4th day of May 2009

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Bldg Room 1031
1400 Independence Ave SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in

§ 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition,

and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145