

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 15-0057 (P & S)

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In re:

HUBERT DENNIS EDWARDS,

Respondent.

Appearances:

Darlene Bolinger, Esq., for Complainant

Hubert Dennis Edwards, pro se Respondent

Before:

Janice K. Bullard
Administrative Law Judge

DECISION AND ORDER ON GRANT OF SUMMARY JUDGMENT

This proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.) (Act), and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.) (Regulations). The Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture alleged that Hubert Dennis Edwards willfully violated the Act and prevailing regulations.

I. PROCEDURAL HISTORY

On January 15, 2015, GIPSA filed a Complaint with the Hearing Clerk for the Office of Administrative Law Judges (OALJ) of the United States Department of Agriculture (GIPSA; Complainant), alleging that Hubert Dennis Edwards, a.k.a H. D. Edwards (Respondent) willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9C.F.R. § 201.1 et seq.). The Complaint alleged that the Respondent engaged in the business of

buying or selling livestock in commerce without being registered with the GIPSA and without filing a bond or bond equivalent. (Complaint, Paragraph I). The Complaint additionally alleged that during the period including August 23, 2012, through December 31, 2012, Respondent purchased approximately 62 head of cattle from two posted stockyards for approximately \$19,788.53 and failed to pay, when due, the full purchase price of such livestock.

On February 11, 2015, Respondent filed an answer which stated, in pertinent part:

- (1) "Plain and simple I have a small ranch and every animal purchased is purchased for my own ace. [sic] and is ment [sic] to go to my ranch;" (2) "My cattle never even leave the county (Pima) let alone the state. (interstate commerce);" (3) "Your P&S agent said on the witness stand under 'oath' that the P&S had 'no' jurisdiction over the relationship between the 'auction' and the 'Rancher' as to when the rancher pays for their purchases;" and (4) [the 62 head of cattle] were again purchased for my own ace. Not to be resold or shipped as a 'Dealer'."

On April 22, 2015, I held a telephone conference in this matter, and on April 30, 2015, I issued an Order Setting Deadlines for Exchange and Submissions, or in the alternative, a dispositive motion with supporting documentation. On June 23, 2015, Complainant filed a Motion for Summary Judgment, exhibits in support of the Motion For Summary Judgment, a Memorandum of Points and Authorities, and a proposed Decision and Order with findings of fact and conclusions of law. Complainant mailed to the Respondent a list of exhibits and the actual exhibits numbered CX-1 through CX-24, which includes a declaration giving an overview of the investigation and statements in support of a recommended sanction.

Respondent requested additional time to respond to the motion, which I granted by Order issued July 17, 2015. On August 14, 2015, Respondent filed a response in which he reiterated the assertions he made in his answer.

In its motion for summary judgment, Complainant requested that I take Official Notice of the pleadings and Decision and Order issued in a prior administrative proceeding, H.D. Edwards,

P&S Docket No. 10-0296 (January 6, 2012). Section 1.141 (h)(6) of the Rules of Practice and Procedure Governing Formal Adjudicatory Proceedings Before the Secretary (the Rules) provides that "official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: Provided, that the parties shall be given adequate notice of matters so noticed, and shall be given adequate opportunity to show that such facts are erroneously noticed." (7 C.F.R. 1.141(h) (6)). See, *Lion Raisins*, 2008 WL 8120970 (E.D. Cal.). Respondent has not expressed an objection to Complainant's motion.

I hereby take official notice of the prior administrative proceeding involving the Respondent, HD. Edwards, Docket No. 10-0296 (January 6, 2012), including, but not limited to, the transcript of the December 5, 2011, hearing and the January 6, 2012, Decision and Order would be consistent with the applicable Rules of Practice and case precedent. I admit to the record all of Complainant's exhibits, including a copy of the January 6, 2012, Decision and Order marked as CX-4. I also admit to the records pertinent parts of the transcript identified by Complainant as "Appendix A", and hereby renumbered as CX-25.

For the reasons discussed *infra.*, I find it appropriate to GRANT Complainant's motion for summary judgment.

II. AUTHORITIES

A. Packers and Stockyards Act (7 U.S.C. § 181 et seq.)

The term "market agency" means any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services. The term "dealer" means any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser. (7 U.S.C. § 201). The Secretary may require reasonable bonds from every

market agency ..., every packer...in connection with its livestock purchasing operations ..., and every other person operating as a dealer, under such rules and regulations as he may prescribe... (7 U.S.C. § 204).

It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining when persons should be authorized to operate at the stockyards, or with the receiving, marketing, buying, or selling on a commission basis or otherwise, ... (7 U.S.C. § 213).

Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full amount of the purchase price ... Notwithstanding ... and subject to such terms and conditions as the Secretary may prescribe, the parties to the purchase and sale of livestock may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction. (7 U.S.C. § 228b).

B. Prevailing Regulations (9 CFR Part 201)

Every market agency, packer, and dealer ... shall execute and maintain a reasonable bond on forms approved by the Administrator No market agency, packer, or dealer required to maintain a bond shall conduct his operations unless there is on file and in effect a bond complying with the regulations in this part. (9 C.P.R. § 201.29(a)).

C. Standard for Summary Judgment

Pursuant to section 1.143(b) of the Rules of Practice, any motion will be entertained other

than a motion to dismiss on the pleading. Pursuant to Rule 56 of the Federal Rules of Civil Procedure "a party may move for summary judgment, identifying each claim or defense-- or the part of each claim or defense -- on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

The Judicial Officer has stated:

The Rules of Practice do not specifically provide for the use or exclusion of summary judgment; however, I have consistently held that hearings are futile and summary judgment is appropriate in proceedings in which there is no factual dispute of substance. A factual dispute of substance is present if sufficient evidence exists on each side so that a rational trier of fact could resolve the dispute either way and resolution of the dispute is essential to the proper disposition of the claim. The mere existence of some factual dispute will not defeat an otherwise properly supported motion for summary judgment because the factual dispute must be material. The usual and primary purpose of summary judgment is to isolate and dispose of factually unsupported claims or defenses. If the moving party supports its motion for summary judgment, the burden shifts to the non-moving party who may not rest on mere allegation or denial in the pleadings, but must set forth facts showing there is a genuine issue of fact for trial. In setting forth such facts, the non-moving party must identify the facts by reference to depositions, documents, electronically stored information, affidavits, declarations, stipulations, admissions, interrogatory answers, or other materials. In ruling on a motion for summary judgment, all evidence must be considered in the light most favorable to the non-moving party with all justifiable inferences to be drawn in the non-movant's favor.

Hope Knaust, et. al., 2014 WL 4311047, (April 9, 2014).

III. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

A. Discussion

There is no factual dispute regarding jurisdiction, as Judge Jill S. Clifton concluded that the Secretary has jurisdiction over the parties in this matter, See, Decision and Order in HD.

Edwards, Docket No. 10-0296 (P&S-D) (January 6, 2012) at paragraph 16. There is no factual dispute in the instant administrative proceeding regarding whether Respondent was buying and selling livestock in commerce. The Respondent in his Answer admits that he purchased 62 head of livestock from several posted stockyards. The documentary evidence demonstrates that the Respondent was buying and selling livestock in commerce. (CX-8 through 23). Pursuant to Title III of the Packers and Stockyards Act, the term "market agency" means any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services. (7 U.S.C. 201(c)). The term "dealer" means any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser. (7 U.S.C. 201(d)).

I find that Respondent's activities fall squarely within the definition of the term "dealer". I find little merit in Respondent's assertion that he was not buying and selling livestock in interstate commerce, because the cattle he purchased never left Arizona. (CX-2). I fully credit Judge Jill S. Clifton's finding that the term "interstate commerce" under " ... this Act and regulations do[es] not require that you [the Respondent] buy in one state and sell in another to be involved in interstate commerce." (CX-25 at 160). For the purposes of the Packers and Stockyards Act, "any article shall be considered to be in commerce if such article is part of that current of commerce usual in livestock ... industries whereby livestock ... are sent from one State with the expectation that they will end their transit, after purchase, in another..." (7 U.S.C. 183).

Marana, Willcox and Pacific are posted stockyards. (CX-25 at 222-226, 274 and CX-9-11, 23, 24). Judge Clifton instructed Respondent: "Any time you buy or sell at any of these three [markets] Willcox Livestock Auction, Inc., Pacific Livestock Auction, LLC, and Marana Stockyards and Livestock Market, Inc., [] you are in fact engaged in the interstate flow of

commerce." (CX-25 at 302). Judge Clifton found that Respondent was a dealer within the definition of the Act, and was subject to the Act when he engaged in buying and selling livestock, "...even for as little as one head". CX-4.

The record before me demonstrates that on December 5, 2012, approximately 12 months after the conclusion of the prior administrative proceeding, the Respondent purchased one red steer from Pacific. GIPSA traced the same steer as having been sold by the Respondent at Marana. Respondent acted as a dealer under the Act in that transaction, regardless of his contention that "every animal purchased is purchased for my own account and not to be resold or shipped as a 'Dealer'". (CX-2). I reject Respondent's defense that "he is a small rancher" and not a dealer, just as had Judge Clifton. The evidence is undisputed that Respondent bought and sold livestock at posted auctions. The legislative history of the Act shows that Congress intended the Act to apply to persons whose actions meet the statutory definitions, notwithstanding the fact that their chief business may be outside the governance of the Act. *Kelly Cattle Co., Inc., d/b/a Wright County Livestock Auction*, 2008 WL 4675858.

The Secretary is authorized to issue regulations requiring dealers, market agencies, and packers operating under the Act to obtain reasonable bonds to secure their obligations to livestock sellers. 7 U.S.C. 704. Section 201.29 of the regulations provides that every market agency and dealer shall execute and maintain a reasonable bond and no market agency or dealer required to maintain a bond shall conduct his operations unless there is on file and in effect a bond complying with the Secretary's regulations. 9 C.F.R. § 201.29. Additionally, the regulations require every market agency buying on commission basis and every dealer buying for his own account or for the accounts of others to file and maintain a bond in an amount proscribed by 9 C.F.R. § 201.30.

Respondent was provided actual notice of bonding and registering requirements by GIPSA personnel, pursuant to Judge Clifton's Order. I accord weight to the Declaration of Senior Agricultural Marketing Specialist Caleb H. Bott who attested that as recently as June 9, 2015, he checked GIPSA's records and confirmed that Respondent had not filed a bond or registered with GIPSA as a dealer compliant with the Act. (CX-23). Indeed, since Respondent maintains he is not a dealer, there is little reason to believe that he would have registered and acquired bonding. The fact that the Respondent willfully operated subject to the Act without obtaining a bond or bond equivalent is undisputed. The record reveals that Respondent did not have adequate bonding under the Act during the time he engaged in livestock transactions.

The record further establishes that Respondent did not register with the Secretary to engage in covered activity. Since Respondent does not believe that his activities fall within the scope of the Act, it would be unlikely to find that he complied with registration and bonding requirements.

The record also demonstrates without contradiction that Respondent failed to timely pay for livestock. Pursuant to section 409(a) of the Act, each packer, market agency, or dealer purchasing livestock shall before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full amount of the purchase price. (7 U.S.C. § 228b(a)). Section 409(b) of the Act allows the parties to the purchase and sale of livestock to expressly agree in writing before such purchase or sale, to establish a manner of payment other than that required in section 409(a). Such agreements shall be disclosed in the records of any market agency or dealer selling livestock, and in the purchaser's records, and on the accounts or other documents issued by the purchaser relating to the transaction. (7 U.S.C. § 228b (b)).

GIPSA identified seven transactions in which the Respondent engaged in the business as a dealer buying and selling livestock in commerce without being registered with the Secretary, without maintaining an adequate bond or bond equivalent, and without paying, when due, the full amount of the purchase price for the livestock. See, CX-20. The Respondent asserts that the "P&S had 'no' jurisdiction over the relationship between the 'auction' and the 'rancher' as to when the rancher pays for their purchases." (CX-2. 2011 Tr. at 155, 233). The uncontroverted evidence, however, demonstrates that (1) although the Respondent may be a "rancher", he is also a dealer; and (2) the Respondent did not meet the section 409(b) requirements to alter the Act's terms for prompt payment.

In addition, Respondent admitted that he did not make payments in compliance with the Act, as he asserted that he has verbal agreements with the stockyards that permit him to pay for livestock other than in accordance with the Act. RX-1; RX-2. The Act permits alternative payment arrangements but in order to be in compliance, Respondent must meet all three applicable requirements. (2011 Tr. at 236). Respondent failed to do so. His agreements were verbal, not written, and the evidence gathered by GIPSA supports that late payments were accepted on acquiescence. (CX-21 , 22, 23 and 2011 Tr. at 96, 231, 269). Acquiescence to late payment by the Respondent does not absolve the Respondent from the requirement of "prompt payment" in accordance with the Act. *Michael v. Batt and Tony Batt*, 2012 WL 1659162 (May 8, 2012). In the absence of a written agreement by a seller to accept less than full and prompt payment, the acceptance of late payment does not negate a violation of the Act. *Edward Tiemann*, 1988 WL 247015.

The evidence supports the conclusion that Respondent willfully bought and sold livestock in commerce, as a dealer, for which he failed to pay the full purchase price, when due. The

Judicial Officer has stated, "[m]any courts and the USDA hold that 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 careless disregard of statutory requirements." *Marysville Enterprises, Inc., d/b/a Marysville Hog Buying Co., James L. Breeding, and Byron E. Thoreson*, 2000 WL 123137. Judge Clifton's 2012 Decision and Order and GIPSA's notice of program requirements gave Respondent actual notice of his obligations, and his continued failure to pay, when due, the full purchase price of livestock, and failure to register and secure a bond constitutes willful conduct by Respondent. As there are no factual disputes of substance, I find that Summary Judgment in favor of Complainant is appropriate.

B. Sanctions

Section 312(b) of the Act permits the Secretary to impose a cease and desist order for violations of section 312(a). It also authorizes the Secretary to assess a civil penalty of up to \$11,000 per violation of section 312(a), but the Secretary must consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the Respondent's ability to continue in business when determining the appropriate civil penalty.

First, as for the gravity of the violations, the Respondent's act of violating a prior cease and desist order is in itself a serious violation. *Utica Veal Company, et al.*, 1990 WL 322910. Administrative Law Judge Jill S. Clifton issued a cease and desist order to the Respondent. (CX-4). The Respondent was specifically told by the Administrative Law Judge during the December 5, 2011 hearing, what a cease and desist order entailed. She stated: "what a cease and desist order is, is don't violate the Packers and Stockyards Act and regulations and specifically don't go to these cattle auctions without being bonded and do register as a dealer and comply with the requirements. That's-- or stop going to cattle auctions to sell things unless you're absolutely sure that you're selling as pure rancher not possibly construed as a dealer. That's what's involved with

a cease and desist order." (2011 Tr. at 279). The Respondent disregarded Judge Clifton's Order and continued to violate the Act and prevailing regulations.

GIPSA official Timothy B. Hansen has recommended that Respondent Hubert Dennis Edwards be assessed a civil penalty of twelve thousand and five hundred dollars (\$12,500.00). (CX-24). Mr. Hansen also recommended that the Respondent Hubert Dennis Edwards be prohibited from engaging in any activities for which registration is required under the Act until such time as the Respondent demonstrates to GIPSA's satisfaction that he has an adequate bond or bond equivalent and that he is in full compliance with the Act. (CX-24). Mr. Hansen stated that the maximum civil penalty for the 8 transactions for which Respondent had no adequate bond is approximately \$88,000.00. (CX-24). The maximum civil penalty for the 7 transactions in which the Respondent failed to pay, when due, the full purchase price for livestock is approximately \$77,000.00. (CX-24). Mr. Hansen observed that by failing to make timely payments, the Respondent placed Willcox and Marana in the position of having to either finance the Respondent's business or potentially operate with a shortage in their custodial accounts for shippers' proceeds. (CX-24).

The proposed civil penalty of twelve thousand and five hundred dollars (\$12,500.00) and recommendation that Respondent obtain the "minimum bond" of \$10,000.00 to protect others from a market loss (CX-24) does not reflect the gravity of the offense. However, in consideration of the size of Respondent's business, and the effect of Respondent's ability to continue in business, it is an appropriate penalty. "It is the position of this Department that it is the responsibility of the Respondent to come forward with some evidence indicating an inability to pay or an inability to continue to do business." *A. P. "Sonny" Holt, et al*, 1990 WL 322149.

Although Respondent has not introduced evidence of how a civil penalty would affect his ability to remain in business, it is clear that Respondent's business is modest.

In the previous administrative proceeding the Administrative Law Judge chose not to impose a civil penalty. Fewer than twelve months later, Respondent again repeatedly violated the Act. "The purpose of an administrative sanction is to accomplish the remedial purposes of the [Act] by deterring future violations of the [Act] by the violators and others." *Todd Syverson*, 2010 WL 4663161, at *6 (USDA Nov. 16, 2010) (decision on remand), *aff'd* 2012 WL 246520 (8th Cir. 2012). Therefore, the imposition of a civil money penalty may serve as a deterrent to both Respondent and others engaged in business covered by the Act to comply with its requirement.

Therefore, I adopt GIPSA's proposed sanction that (1) a cease and desist order be issued, (2) a civil penalty in the amount of \$12,500.00, be assessed, and (3) a prohibition from being registered and from engaging in any activities for which registration is required under the Act be imposed until the Respondent demonstrates that he has an adequate bond or bond equivalent and that he is in full compliance with the Act.

C. Findings of Fact

1. Hubert Dennis Edwards (also known as H.D. Edwards) is an individual whose business mailing address is a post office box in Marana, Arizona 85653. (CX-1, 2, 4).
2. The Respondent Hubert Dennis Edwards is a "part-time rancher" who is also in the business of buying and selling livestock in commerce. (CX-2 and CX-4 at 3) (See also 2011 Tr. at 163, 166, and 205).
3. Respondent purchases livestock from approximately three posted stockyards. (CX-2, 4, 6, 7, and 12-23).

4. In 2012, the Respondent purchased livestock from the same three posted stockyards from which he had purchased livestock in 2009: Marana Stockyards & Livestock Market, Inc. in Marana, Arizona (Marana), Pacific Livestock Auction, LLC in Chandler, Arizona (Pacific), and Willcox Livestock Auction, Inc. in Willcox (Willcox). (CX-1 , 2, CX-4 at 4, CX-7, 2011 Tr. at 33, 196, 202, 203 , 274).
5. After becoming aware that the Respondent was engaging in the business of buying and selling livestock in interstate commerce in 2009, the GIPSA notified the Respondent, by letter, of his obligation to file an application for registration and to secure a bond or bond equivalent if he wished to engage in the business of buying and selling livestock in interstate commerce. (CX-3, 4, 23, 2011 Tr. at 36, 301).
6. The letter also informed the Respondent that engaging in business in any capacity that is subject to the Act without being properly registered with GIPSA and without filing a bond or bond equivalent is a violation of the Act and regulations and could subject the Respondent to disciplinary action. (CX-3, 4, 23, 2011 Tr. at 187-188).
7. Because the Respondent continued to engage in the business of buying and selling livestock without complying with the registration and bonding provisions of the Packers and Stockyards Act and the regulations issued thereunder, GIPSA filed a complaint on May 27, 2010, alleging that the Respondent committed willful violations of the Act and seeking to have an Administrative Law Judge issue a cease and desist order and assess civil penalties. The matter was captioned: In re: HD. Edwards, P&S Docket No. 10-0296. (CX-4, 6).
8. An oral hearing was held on December 5, 2011 before the Honorable Jill S. Clifton and the hearing was transcribed. (CX-4 at 2, 23, 24).

9. On January 6, 2012, in In re: HD. Edwards, P&S Docket No. 10-0296, Administrative Law Judge Jill S. Clifton issued a Decision holding that the Respondent, in April, May, and early June, 2009, while at the following posted stockyards: Marana Stockyards & Livestock Market, Inc. in Marana, Arizona, Pacific Livestock Auction, LLC in Chandler, Arizona and Willcox Livestock Auction, Inc. in Willcox, Arizona engaged in operations subject to the Packers and Stockyards Act, by (1) making purchases of livestock for which payment was not timely made, thereby engaging in an "unfair practice" in violation of section 312(a) of the Act (7 U.S.C. § 213(a)), and section 409(a) of the Act (7 U.S.C. § 228b(a)); (2) without maintaining an adequate bond or bond equivalent, thereby engaging in an "unfair practice" in violation of section 312(a) of the Act (7 U.S.C. § 213(a)), and section 201.29 of the regulations (9 C.F.R. § 201.29). (CX-4 at 5).

10. Judge Clifton ordered the Respondent to cease and desist from failing to pay, when due, the full purchase price of livestock; and to cease and desist from engaging in business in any capacity for which bonding is required under the Act and the regulations promulgated thereunder, without maintaining an adequate bond or bond equivalent, as required. (CX-4 at 6-7, 23, 24).

11. Judge Clifton ordered GIPSA to promptly deliver to the Respondent a packet of information, including an application for persons interested in registering as a dealer, along with information identifying the appropriate websites, a sample of required reports, and sample instructions for the year-end report. (CX-4 at 6, 24).

12. By certified letter dated January 11, 2012, GIPSA complied with the Administrative Law Judge's order and provided the Respondent with the necessary registration and bond forms, website, sample of the year-end reports, instructions, an additional copy of the written Decision and Order issued on January 6, 2012, and a point of contact should the Respondent have any

questions. (CX-5).

13. The Respondent signed for the packet of information on January 18, 2012. (CX-5).

14. The Respondent has not obtained and filed a bond or bond equivalent with GIPSA, as of June 9, 2015. (CX-23).

15. Between August 23, 2012 and December 13, 2012, GIPSA traced 34 head of cattle that the Respondent had purchased from Willcox, Marana, and Pacific that were resold by the Respondent within 7 days of purchase, notwithstanding the 2009 notice and the January 2012 Cease and Desist Order. (CX-6, 8, 12-19, 23).

16. On August 23, 2012, the Respondent purchased approximately 17 head of cattle from Willcox and of those 17 head, GIPSA traced a branded roan steer and a branded cow that were resold by the Respondent on August 30, 2012, at Marana. (CX-8, 12 and 23).

17. On September 6, 2012, the Respondent purchased approximately 8 head of cattle from Willcox and of those 8 head; GIPSA traced a branded brown heifer that was resold by the Respondent on September 13, 2012, at Marana. (CX-8, 13 and 23).

18. On October 4, 2012, the Respondent purchased approximately 5 head of cattle from Willcox and of those 5 head, GIPSA traced a branded black steer, a branded black and white heifer, and a branded black and white steer that were resold by the Respondent on October 11, 2012, at Marana. (CX-8, 14 and 23).

19. On October 25, 2012, the Respondent purchased approximately 6 head of cattle from Marana, and of those 6 head, GIPSA traced 5 branded heifers that were resold by the Respondent on October 31, 2012, at Pacific. (CX-8, 15 and 23).

20. On November 1, 2012, the Respondent purchased approximately 10 head of cattle from Marana, and of those 10 head, GIPSA traced 9 head of livestock that were resold by the Respondent on November 7, 2012, at Pacific. (CX-8, 16 and 23).

21. On November 8, 2012, the Respondent purchased approximately 7 head of cattle from Willcox and of those 7 head; GIPSA traced 4 head of livestock that were resold by the Respondent on November 14, 2012, at Pacific. (CX-8, 17 and 23).
22. On December 5, 2012, the Respondent purchased one red steer from Pacific; GIPSA traced the steer that was resold by the Respondent on the next day, December 6, 2012, at Marana. (CX-8, 18 and 23).
23. On December 13, 2012, the Respondent purchased approximately 8 head of cattle from Marana, and of those 8 head, GIPSA traced 8 head of livestock that were resold by the Respondent on December 19, 2012, at Pacific. (CX-8, 19 and 23).
24. Between August 23, 2012 and December 13, 2012, in seven transactions, the Respondent purchased at least 62 head of livestock from posted stockyards. (CX-20, 23).
25. The approximate cost of the 62 head of livestock was nineteen thousand seven hundred and eighty-nine dollars (\$19,789). (CX-20, 23).
26. In seven of the eight transactions the Respondent conducted, GIPSA documented that the Respondent failed to pay, when due, the full purchase price of the livestock. The Respondent's payments were made six to thirteen days late in each transaction. (CX-20, 23).
27. On August 23, 2012, the Respondent purchased from Willcox 17 head of cattle for \$5,372.70. The full purchase price was due on August 24, 2012. The Respondent paid by check on August 31, 2012. (CX-12, 20 and 23).
28. On September 6, 2012, the Respondent purchased from Willcox 8 head of cattle for \$2,510.50. The full purchase price was due on September 7, 2012. The Respondent paid by check on September 17, 2012. (CX-13, 20 and 23).

29. On October 4, 2012, the Respondent purchased from Willcox 5 head of cattle for \$1,941.50. The full purchase price was due on October 5, 2012. The Respondent paid by check on October 16, 2012. (CX-14, 20 and 23).

30. On October 25, 2012, the Respondent purchased from Marana 6 head of cattle for \$1,304.40. The full purchase price was due on October 26, 2012. The Respondent paid by check on November 1, 2012. (CX-15, 20 and 23).

31. On November 1, 2012, the Respondent purchased from Marana, 10 head of cattle for \$3,538.75. The full purchase price was due on November 2, 2012. The Respondent made a partial payment by check on November 8, 2012 and the final payment by check on November 15, 2012. (CX-16, 20 and 23).

32. On November 8, 2012, the Respondent purchased from Marana, 7 head of cattle for \$1,952.33. The full purchase price was due on November 9, 2012. The Respondent paid by check on November 15, 2012. (CX-17, 20 and 23).

33. On December 13, 2012, the Respondent purchased from Marana, 9 head of cattle for \$3,168.35. The full purchase price was due on December 14, 2012. The Respondent paid by check on December 20, 2012. (CX-18, 20 and 23).

34. The Respondent and Marana do not have a written waiver of prompt payment agreement as required by section 409(b) of the Act (7 U.S.C. 228b(b)). (CX- 4 at 5, CX-6, 22, 23; 2011 Tr. at 96, 158, 231).

35. The Respondent and Willcox do not have a written waiver of prompt payment agreement as required by section 409(b) of the Act (7 U.S.C. 228 b(b)). (CX- 4 at 5, CX-6, 21, 23; 2011 Tr. at 96, 158).

D. Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. There are no material facts in dispute and the grant of summary judgment in favor of Complainant is appropriate.
3. Respondent willfully violated the Act and Regulations by engaging in covered activity without registering with GIPSA and by not securing adequate bonding.
4. Respondent willfully violated the Act and Regulations by failing to pay promptly when due for livestock purchases covered by the Act.
5. The sanctions recommended by GIPSA are consistent with the sanctions that have been imposed in past cases under similar circumstances.
6. GIPSA's recommended sanction reflects consideration of the gravity of the offense and the effect of the ability to pay the civil penalty on Respondent's business.

ORDER

Respondent, Hubert Dennis Edwards, his agents, employees, successors and assigns directly or through any device, in connection with the Respondent's activities subject to the Packers and Stockyards Act, is hereby Ordered to cease and desist from:

- (1) Engaging in any business of a dealer buying or selling livestock in commerce without maintaining a bond or bond equivalent; and
- (2) Purchasing livestock in commerce, and failing to pay, when due, the full purchase price of such livestock.

Respondent is prohibited from engaging in any activities for which registration is required under the Act until such time as the Respondent demonstrates to the satisfaction of GIPSA that he has an adequate bond or bond equivalent and that he is in full compliance with the Act. At such time and thereafter, any application for registration that the Respondent may file with GIPSA will be processed in accordance with standard GIPSA procedures.

Additionally, in accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent Hubert Dennis Edwards is assessed a civil penalty of twelve thousand and five hundred dollars (\$12,500.00). The civil penalty shall be made by certified check or money order payable to "Treasurer of the United States" and sent to USDA GIPSA, P.O. Box 790335, St. Louis, Missouri 63179-0335.

This Decision and Order shall be final and effective without further proceedings 35 days after service on the Respondent unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service. (7 C.F.R. 1.145).

Copies of this decision shall be served upon the parties.

So ORDERED this 15th day of December, 2015, in Washington, D.C.


JANICE K. BULLARD
Administrative Law Judge