

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-12-0167
)
Robert M. Self,)
)
Respondent) **Order Denying Late Appeal**

PROCEDURAL HISTORY

Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, 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 January 10, 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 under the Packers and Stockyards Act (9 C.F.R. pt. 201) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Deputy Administrator alleges Robert M. Self: (1) operated as a dealer or market agency without obtaining the necessary registration and bond, in willful violation of 7 U.S.C. § 213(a) and 9 C.F.R. §§ 201.29-.30; (2) issued checks in payment for livestock purchases, which checks were returned unpaid by the bank upon which the checks were drawn because Mr. Self 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, in willful violation of 7 U.S.C. §§ 213(a) and 228b; and (3) failed to pay, when due, the full purchase price of the livestock, in willful violation of 7 U.S.C. §§ 213(a) and 228b.¹

The Hearing Clerk served Mr. Self with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter on February 7, 2012.² Mr. Self failed to file an answer to the Complaint within 20 days after the Hearing Clerk served him with the Complaint, as required by 7 C.F.R. § 1.136(a). The Hearing Clerk sent a letter, dated February 28, 2012, to Mr. Self informing him that an answer to the Complaint had not been filed within the time prescribed in the Rules of Practice. Mr. Self failed to respond to the Hearing Clerk's February 28, 2012, letter.

¹Compl. ¶¶ II-IV.

²Hearing Clerk's Memorandum To The File, dated February 7, 2012.

On March 6, 2012, in accordance with 7 C.F.R. § 1.139, the Deputy Administrator filed a Motion for Decision Without Hearing By Reason of Default attached to which was a proposed Decision Without Hearing By Reason of Default. On May 17, 2012, the Hearing Clerk served Mr. Self with the Deputy Administrator's Motion for Decision Without Hearing By Reason of Default and the Hearing Clerk's service letter.³ Mr. Self failed to file objections to the Deputy Administrator's Motion for Decision Without Hearing By Reason of Default within 20 days after service, as required by 7 C.F.R. § 1.139.

On June 29, 2012, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ], in accordance with 7 C.F.R. § 1.139, issued a Default Decision and Order: (1) concluding Mr. Self violated the Packers and Stockyards Act and the Regulations, as alleged in the Complaint; (2) ordering Mr. Self to cease and desist from violating the Packers and Stockyards Act and the Regulations; (3) prohibiting Mr. Self from engaging in business for which registration and bonding is required under the Packers and Stockyards Act without first becoming registered under the Packers and Stockyards Act; and (4) assessing Mr. Self a

³Hearing Clerk's Memorandum To The File, dated May 17, 2012.

\$19,600 civil penalty.⁴ The Hearing Clerk served Mr. Self with the Chief ALJ's Default Decision and Order on July 6, 2012.⁵

On August 24, 2012, the Mr. Self filed an appeal petition. On September 17, 2012, the Deputy Administrator filed Complainant's Opposition to Respondent's Appeal Petition. On September 20, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

CONCLUSIONS BY THE JUDICIAL OFFICER

⁴Chief ALJ's Default Decision and Order at 3-4.

⁵United States Postal Service Domestic Return Receipt for article number 7009 1680 0001 9852 1537.

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.⁶ The Hearing Clerk served Mr. Self with the Chief ALJ's Default Decision and Order on July 6, 2012;⁷ therefore, Mr. Self was required to file his appeal petition with the Hearing Clerk no later than August 6, 2012. Instead, Mr. Self filed his appeal petition with the Hearing Clerk on August 24, 2012. Therefore, I find Mr. Self's appeal petition is late-filed.

⁶7 C.F.R. § 1.145(a).

⁷See note 5.

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.⁸ The Chief ALJ's Default Decision and Order became final 35 days after the Hearing Clerk served Mr. Self with the Default Decision and Order, namely, August 10, 2012.⁹ Mr. Self filed his appeal petition on August 24, 2012, 14 days after the Chief ALJ's Default Decision and Order became final. Therefore, I have no jurisdiction to hear Mr. Self's appeal petition.

⁸See, e.g., *In re Timothy Mays* (Order Denying Late Appeal), 69 Agric. Dec. 631 (2010) (dismissing 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).

⁹See 7 C.F.R. § 1.142(c)(4).

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 Mr. Self's filing an appeal petition after the Chief ALJ's Default Decision and Order became final.

Moreover, the jurisdictional bar under the Rules of Practice, which precludes the Judicial Officer from hearing an appeal that is filed after an administrative law judge's decision becomes final, is consistent with the judicial construction of the Administrative Orders Review Act ("Hobbs Act"). As stated in *Illinois Cent. Gulf R.R. v. ICC*, 720 F.2d 958, 960 (7th Cir. 1983) (footnote omitted):

The Administrative Orders Review Act ("Hobbs Act") requires a petition to review a final order of an administrative agency to be brought within sixty days of the entry of the order. 28 U.S.C. § 2344 (1976). This sixty-day time limit is jurisdictional in nature and may not be enlarged by the courts. *Natural Resources Defense Council v. Nuclear Regulatory Commission*, 666 F.2d 595, 602 (D.C. Cir. 1981). The purpose of the time limit is to impart finality into the administrative process, thereby conserving administrative resources and protecting the reliance interests of those who might conform their conduct to the administrative regulations. *Id.* at 602.^[10]

¹⁰*Accord City of Arlington v. FCC*, 668 F.3d 229, 237 (5th Cir. 2012) (stating the 60-day period to file a petition for review of an agency order in 28 U.S.C. § 2344 is jurisdictional and cannot be judicially altered or expanded); *Brazoria County v. EEOC*, 391 F.3d 685, 688 (5th Cir. 2004) (same); *Jem Broad. Co. v. FCC*, 22 F.3d 320, 324-26 (D.C. Cir. 1994) (stating the court's baseline standard long has been that statutory limitations on

Accordingly, Mr. Self's appeal petition must be denied.

petitions for review are jurisdictional in nature and appellant's petition filed after the 60-day limitation in the Hobbs Act will not be entertained); *Friends of Sierra R.R. v. ICC*, 881 F.2d 663, 666 (9th Cir. 1989) (stating the time limit in 28 U.S.C. § 2344 is jurisdictional), *cert. denied sub nom. Tuolumne Park & Recreation Dist. v. ICC*, 493 U.S. 1093 (1990).

For the foregoing reasons, the following Order is issued.

ORDER

1. Robert M. Self's appeal petition, filed August 24, 2012, is denied.
2. The Chief ALJ's Default Decision and Order, filed June 29, 2012, is the final decision in this proceeding.

Done at Washington, DC

September 24, 2012

William G. Jenson
Judicial Officer