



8-13-2007

TENNESSEE DEPARTMENT OF
AGRICULTURE, Petitioner, vs. STEVE MYERS
D/B/A UNION LIVESTOCK YARDS,
Respondent

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**BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF AGRICULTURE
ELLINGTON AGRICULTURAL CENTER
NASHVILLE, TENNESSEE**

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
AGRICULTURE,
*Petitioner,***

v.

**STEVE MYERS D/B/A
UNION LIVESTOCK YARDS
*Respondent.***

DOCKET NO: 01.10-095922J

**INITIAL ORDER
OF DEFAULT AND DISMISSAL**

This contested case was heard on August 13, 2007, in Nashville, Tennessee, before Mary M. Collier, Administrative Judge, assigned by the Secretary of State to sit for the Commissioner of the Tennessee Department of Agriculture. Thomas McIntire, Attorney for the Tennessee Department of Agriculture, represented the Department of Agriculture ("State"). Respondent, Steve Meyers d/b/a Union Livestock Yards was not present.

Because the Respondent failed to appear for the hearing, the State made a motion for a default to be entered against the Respondent for his failure to participate in the hearing after due notice. The State introduced proof that the Respondent had received notice of the complaint and notice of the hearing and that the Respondent had informed the State's counsel that he would not be attending the hearing. It appearing that proper notice was provided to the Respondent, and that Respondent failed to appear at the hearing, the State's Motion for Default is well taken and is

hereby **GRANTED** pursuant to TENN. CODE ANN. § 4-5-309. *See also* RULE 1360-4-1-.15(1).¹

After the Motion for Default was granted at the hearing held on August 13, 2007, the State was allowed to proceed on that same date with an uncontested hearing pursuant to TENN. CODE ANN. § 4-5-309(a) and RULE 1360-4-1-.15. The subject of the hearing was whether the State had properly assessed the Respondent with a civil penalty of Six Hundred Dollars (\$600.00). After consideration of all of the evidence, arguments of counsel, and the entire record in this matter, it is determined that the State properly assessed the Respondent with a civil penalty of Six Hundred Dollars (\$600.00). This decision is based upon the following.

FINDINGS OF FACT

1. On October 14, 2006, Kent Nease, animal health technician with the Tennessee Department of Agriculture, and other departmental personnel conducted truck inspections in association with a horse auction being held by the Respondent, Union Livestock Yards (hereinafter “Union”).

2. During the course of the inspection it was established that on nine separate occasions the respondent failed to have documentation showing that the horses being purchased had tested negative for Equine Infectious Anemia (hereinafter “EIA”).

3. As part of the enforcement effort, orders of quarantine were issued to nine different purchasers/transporters of horses submitted for sale at Union. In each case these horses were quarantined to the respective address of each purchaser/transporter.

¹ RULE 1360-4-1-.15(1)(a) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies provides, in pertinent part:

The failure of a party to attend or participate in a prehearing conference, hearing or other stage of contested case proceedings after due notice thereof is cause for holding such party in default pursuant to T.C.A. §4-5-309. . . .

TENN. COMP. R. & REGS. ch. 1360-4-1-.15(1)(a) (June 2004 (Revised)).

4. Questioning at the time of the inspection and follow-up review of market records failed to reveal evidence of any signed agreement to maintain such horses at a specified location until the test results were known.

5. Acting on instructions from Dr. Ron Wilson, State Veterinarian with the Tennessee Department of Agriculture, Billy Graham, animal health technician with the United States Department of Agriculture, conducted an inspection of Union at a horse sale on January 13, 2007.

6. Upon visiting the management office and requesting copies of Destination Location Agreements from previous sales, Mr. Graham was notified by Carl Lusby, employee of Union, that the market was making no effort to have horse purchasers sign the agreements.

7. On February 9, 2007, the Department sent the Respondent a Notice of Violation and Enforcement Action (N.O.V.) via certified mail. Said N.O.V. cited violations of RULE 0080-2-10-.01, TENN. COMP. R. & REGS. ch. 0080-2-10 (June 2002 (Revised)), imposed a civil penalty of six-hundred dollars (\$600), and advised the Respondent that he must pay the penalty, request an informal settlement discussion, or request a formal hearing within thirty (30) days or a default order would be entered against it.

8. The N.O.V. was returned to the Department unsigned. On March 22, 2007, Mr. Graham hand-delivered the same N.O.V. to Carl Lusby, employee of Union, who gave assurances that the document would be passed along to market owner/operator Steve Myers. Ms. Marianne Cheaves, Enforcement Officer with the Tennessee Department of Agriculture Crime Unit, was a witness. Union failed to pay the prescribed penalty or request a hearing within the time allotted.

9. Thereafter, the State set the matter for a hearing, which was held on August 13, 2007.

CONCLUSION OF LAW

Based on the forgoing Findings of Fact, it is determined that that the evidence presented at the hearing by the State has sufficiently carried the burden of proof in favor of the Tennessee Department of Agriculture that the Notice of Violation issued on February 9, 2007, was properly issued, is valid and should be enforced. Specifically, the Respondent, by failing to issue, maintain, and require buyers to sign the agreements described above, has violated RULE 0080-2-10-.01(2) of the Tennessee Department of Agriculture on at least nine (9) occasions. RULE 0080-2-10-.01(2) of the Tennessee Department of Agriculture provides as follows:

(2) Approved livestock market testing - All horses or other equidae offered for sale at approved livestock markets shall have evidence of a negative official Equine Infectious Anemia test conducted within six (6) months, or shall have blood collected for testing prior to sale. Equidae sold with a results-pending market test shall be confined at the market, or the buyer shall sign an agreement to maintain such equine at a specified location until test results are known. Equidae testing negative may move in normal trade channels.

RULE 0080-2-10-.01(2), TENN. COMP. R. & REGS. ch. 0080-2-10 (June 2002 (Revised)). As found above, the Respondent repeatedly violated this Rule.

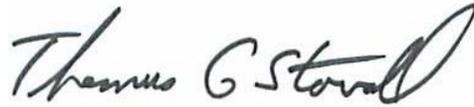
It is THEREFORE ORDERED that the Notice of Violation issued on February 9, 2007, against Respondent Steve Myers, d/b/a Union Livestock Yards is hereby upheld and the Respondent is ordered to pay the sum of SIX HUNDRED DOLLARS (\$600.00) to the Tennessee Department of Agriculture.

Such payment shall be made within thirty (30) days of entry of any FINAL ORDER resulting from this INITIAL ORDER.

This INITIAL ORDER entered and effective this the _____ day of _____ 2007.

MARY M. COLLIER
ADMINISTRATIVE JUDGE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 6th day of November, 2007.



THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION