

UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

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In re:)
Wes Myers d/b/a Wes Myers)
Livestock,)
Respondent)

P. & S. Docket No. D-01-0008

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DECISION WITHOUT HEARING BY REASON OF DEFAULT

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.), hereinafter “the Act”, by a complaint filed by JoAnn Waterfield, Deputy Administrator, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that the Respondent wilfully violated the Act.

Copies of the complaint and Rules of Practice (7 C.F.R. § 1.130 et seq.) governing proceedings under the Act were served upon Respondent Wes Myers by a certified mail letter that was forwarded to Respondent’s new address, P.O. Box 7292, Bozeman, MT 59771-7292, and signed for on June 27, 2001, by Nita Myers. Respondent Wes Myers has failed to file an answer within the time prescribed in the Rules of Practice (7 C.F.R. § 1.130 et seq.), and the material facts alleged in the complaint, which are admitted by the failure of Respondent Wes Myers to file an answer, 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).

Findings of Fact

1. Respondent Wes Myers, hereinafter referred to as Respondent, is an individual whose current address is P.O. Box 7292, Bozeman, MT 59771-7292, and whose business address at all times material herein was Route 1, Box 114, Tribune, KS 67879.

2. Respondent is, and at all times material herein was:

(a) Engaged in the business of a dealer, buying and selling livestock in commerce for his own account and for the account of others; and a market agency buying livestock on a commission basis; and

(b) Registered with the Secretary of Agriculture as an individual doing business as Wes Myers Livestock, and as a dealer to buy and sell livestock in commerce.

3. Respondent, on or about the dates and in the transactions set forth below, purchased livestock and failed to pay the full purchase price of such livestock.

Purchase Date	Livestock Seller	No. of Head	Total Invoice Amount	Livestock Purchase Amount	Payment Amount	Payment Date	Unpaid Livestock Amount
06/23/99	Five States Livestock Auction, Inc.	101	\$46,219.03	\$43,066.49			
		121	<u>49,570.62</u>	<u>48,325.57</u>			
				95,789.65	91,392.06		
07/09/99	Syracuse Commission Co., Inc.	139	63,061.05	60,454.29			
07/16/99		15	<u>8,252.25</u> 71,313.30	<u>8,166.38</u> 68,620.67	\$41,047.71*	07/23/99	\$30,265.59

*This partial payment was made by wire transfer after checks in the amounts of \$63,061.05 and \$8,252.25 had been returned for insufficient funds

4. Respondent has failed to pay \$121,657.65 for livestock purchased in the above transactions.

5. Respondent, in the transactions set forth below, issued checks in purported payment for livestock which were returned unpaid by the bank upon which they were drawn because Respondent did not have sufficient funds on deposit and available in the account upon

which such checks were drawn to pay such checks when presented.

Purchase Date	Livestock Seller	No. of Head	Livestock Purchase Amount	Check No.	Check Date	Check Amount	Date Returned NSF	Date Cleared
05/21/99	Syracuse Commission Co., Inc.	218	\$91,339.72	1367	05/21/99	\$94,516.16	05/28/99	06/03/99
05/28/99	Syracuse Commission Co., Inc.	111	46,918.97	1379	05/28/99	48,600.93	06/04/99	06/09/99
06/18/99	Syracuse Commission Co., Inc.	112	53,048.71	1399	06/18/99	55,051.39	06/25/99	06/30/00
06/23/99	Five States Livestock Auction, Inc.	101 121	\$43,066.49 <u>48,325.57</u> 91,392.06	1401 1408	06/23/99 07/14/99	\$95,789.65 95,789.65	07/01/99 07/12/99 07/20/99	
06/24/99	Burlington Livestock Exchange, Inc.	151	80,262.24	1402	06/24/99	82,956.59	07/02/99	07/12/99
07/09/99	Syracuse Commission Co., Inc.	139	60,454.29	1405	07/09/99	63,061.05	07/16/99 07/22/99	
07/16/99	Syracuse Commission Co., Inc.	15	8,166.38	1407	07/16/99	8,252.25*	07/22/99	

*Respondent paid \$41,047.71 by wire transfer on 07/23/99 after placing a stop payment on these NSF checks.

6. Respondent, on or about the dates and in the transactions above where payments were made after the return of NSF checks and in the transactions below, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

Purchase Date	Livestock Seller	No. of Head	Purchase & Check Amount	Date Payment Due	Date of Check	No. of Days Late
04/29/99	Colby Livestock Auction	15	\$ 7,264.01	04/30/99	05/03/99	3
05/06/99	Colby Livestock Auction	46	16,790.54	05/07/99	05/09/99	2
05/15/99	Oakley Livestock Commission Co., Inc.	312	132,603.13	05/17/99	05/18/99	1

7. Respondent has failed to keep and maintain records that fully and correctly disclose all transactions involved in Respondent's business subject to the Act. Respondent has failed to prepare and keep livestock purchase invoices and livestock sales invoices for all of his livestock purchases and sales. Respondent has also failed to keep and maintain load preparation and inventory records that would permit the tracing of his dealer livestock from purchase through resale.

8. Respondent, although registered to do business under the trade name Wes Myers Livestock, has also regularly used the unauthorized trade names N and W Livestock and 3 M Cattle, Inc. Respondent has unfairly and deceptively used all these three trade names in the same livestock purchase transactions as if they were separate legal entities. For example, Respondent has purchased livestock under the name N and W Livestock (or N and W Cattle Co.), has assessed and collected a buying commission as Wes Myers, has collected for hauling the livestock under the name 3 M Cattle, Inc., and has made payment to the auction market using a 3 M Cattle, Inc. check.

Conclusion

By reason of the facts found in Findings of Fact 3 through 6 above, Respondent Wes Myers has wilfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

By reason of the facts found in Finding of Fact 7 above, Respondent Wes Myers has violated section 401 of the Act (7 U.S.C. § 221).

By reason of the facts found in Finding of Fact 8 above, Respondent Wes Myers has wilfully violated section 312(a) of the Act (7 U.S.C. § 213(a)).

Order

Respondent Wes Myers, his agents and employees, directly, doing business as Wes Myers Livestock, or through any corporate or other device, in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to pay the full purchase price of livestock;
2. Failing to pay, when due, the full purchase price of livestock;
3. Issuing checks in payment for livestock purchases without having sufficient funds

on deposit and available in the account upon which such checks are drawn to pay such checks when presented;

4. Using multiple and deceptive trade names in any livestock transaction; and
5. Operating under any trade name that is not disclosed and approved pursuant to his

registration under the Act.

Respondent Wes Myers shall keep and maintain under his name, and under the trade name Wes Myers Livestock or such other trade name as may subsequently be approved and registered under the Act, accounts, records and memoranda which fully and correctly disclose all

transactions involved in his business subject to the Act, including, but not limited to: (1) livestock purchase invoices; (2) livestock sales invoices; and (3) load preparation and inventory records that permit the tracing of dealer livestock from purchase through resale.

Respondent Wes Myers is suspended as a registrant under the Act for a period of 5 years provided, however, that this order may be modified to permit Respondent's salaried employment by another registrant or packer after the expiration of the initial 150 days of this suspension term upon demonstration to the Packers and Stockyards Programs, GIPSA, of circumstances warranting modification of the order.

This decision shall become final and effective without further proceedings 35 days after the date of service upon Respondent Wes Myers, unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies of this decision shall be served upon the parties.

Issued this 15th day of April, 2002

Dorinda Baker
Administrative Law Judge