

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:) P. & S. Docket No. D-09-0067
)
Fergus Falls Livestock Auction)
Market, Inc. and Joe Varner,)
)
Respondents) Complaint

There is reason to believe that the Respondents named herein have wilfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*)(the Act), and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*)(the regulations), and, therefore, this complaint is issued alleging the following:

I

(a) Fergus Falls Livestock Auction Market, Inc., (hereinafter “Corporate Respondent”), is a corporation organized and existing under the laws of the State of Minnesota, with a mailing address of P.O. Box 602, Fergus Falls, Minnesota 56537. The auction market is located at 16722 County Highway 116, Fergus Falls, Minnesota 56537.

(b) Corporate Respondent, at all times material herein, was:

(1) Engaged in the business of conducting and operating a posted stockyard subject to the provisions of the Act (hereinafter “the stockyard”);

(2) Engaged in the business of a market agency selling livestock in commerce on a commission basis at the stockyard; and

(3) Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis.

(c) Joe Varner, (hereinafter "Individual Respondent"), at all times material herein was:

- (1) President of Corporate Respondent;
- (2) 100 percent shareholder of Corporate Respondent; and
- (3) The manager of Corporate Respondent.

(d) Individual Respondent is also the 100% owner of nine (9) other auction markets, and 50% owner of an additional six (6) auction markets.

II

Corporate Respondent, under the direction, management, and control of the Individual Respondent, during the period of January 31, 2007, through March 30, 2007, failed to maintain its Custodial Account for Shippers' Proceeds ("custodial account"), thereby endangering the faithful and prompt accounting therefor and the payment of portions thereof due the owners and consignors of livestock, in that:

(a) As of January 31, 2007, Corporate Respondent had outstanding checks and obligations drawn on its custodial account in the amount of \$1,174,455.13¹, and had to offset such checks and obligations a balance in the custodial account of \$208,356.98, a balance in a second custodial account in the amount of \$13,206.42, and proceeds receivable in the amount of \$796,295.92, resulting in a shortage of \$156,595.81 in funds available to pay shippers their net proceeds;

¹ This amount reflects: outstanding checks in the amount of \$1,166,964.00; and a prior bank error in favor of Corporate Respondent, carried as an outstanding check on Corporate Respondent's books, in the amount of \$7,491.13.

(b) As of March 30, 2007, Corporate Respondent had outstanding checks and obligations drawn on its custodial account in the amount of \$1,033,182.97², and had to offset such checks and obligations a balance in the custodial account of \$371,446.57, a balance in a second custodial account in the amount of \$11,965.94, and proceeds receivable in the amount of \$557,012.14, resulting in a shortage of \$92,758.32 in funds available to pay shippers their net proceeds;

(c) Such deficiencies were due, in part, to Corporate Respondent, under the direction, management, and control of Individual Respondent, failing to deposit in the custodial account, within the time prescribed by the regulations, an amount equal to the proceeds receivable from the sale of consigned livestock. In particular, Corporate Respondent failed to deposit in the custodial account, within the time prescribed by the regulations, an amount equal to the proceeds receivable from the purchase of consigned livestock by Corporate Respondent itself.

III

By reason of the facts alleged in paragraph I herein, Individual Respondent is the *alter ego* of Corporate Respondent.

By reason of the facts alleged in paragraph II herein, Respondent willfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§208, 213(a)) and section 201.42 of the regulations (9 C.F.R. §201.42).

² This amount reflects: outstanding checks in the amount of \$1,025,691.84; and a prior bank error in favor of Corporate Respondent, carried as an outstanding check on Corporate Respondent's books, in the amount of \$7,491.13.

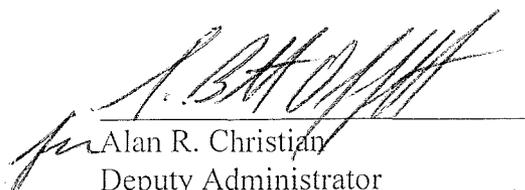
WHEREFORE, it is hereby ordered that for the purpose of determining whether Respondent has in fact willfully violated the Act and the regulations thereunder, this complaint will be served upon Respondent. Respondent shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 *et seq.*). Failure to file an answer will constitute an admission of all the material allegations of this complaint.

Packers and Stockyards Program, GIPSA, requests:

1. That unless Respondent fails to file an answer within the time allowed therefor, or files an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in accordance with the Rules of Practice governing proceedings under the Act; and
2. That such order or orders be issued, including an order requiring Respondent to cease and desist from the violations found to exist and suspending Respondent as a registrant under the Act.

Done at Washington, D.C.

this 6th day of March, 2009


Alan R. Christian
Deputy Administrator
Packers and Stockyards Program

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