

U.S. DEPT. OF AGRICULTURE  
OFFICE OF THE SECRETARY  
3200 L ST., WASHINGTON, D.C. 20250  
FEB 13 2013

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) P & S Docket No. D-12- 0392  
Robert Witt and )  
Thomas Witt )  
)  
)  
Respondents ) Complaint

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

I.

(a) Robert Witt and Thomas Witt, herein referred to as Respondents, are individuals whose home address is in the State of Nebraska. In order to protect the personal privacy of respondents, their addresses are not included in the Complaint, but have been provided to the Hearing Clerk for the purpose of effectuating service of process.

(b) At all times material herein, Respondents Robert Witt and Thomas Witt were:

(1) Each 50% co-owners of KWW, LLC d.b.a. Grove Livestock Auction, a limited liability company organized under the laws of the State of Oklahoma. The mailing address of KWW, LLC d.b.a. Grove Livestock Auction was: P.O. Box 451282, Grove, OK 74344. In a letter to the Western Regional Office, dated October 27, 2010, the Respondents

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claimed to have ceased operations of KWW, LLC d.b.a. Grove Livestock Auction (the company). As of the date of the filing of this complaint, the company is listed as inactive.

(c) At all times material herein, KWW, LLC d.b.a. Grove Livestock Auction was:

- (1) Engaged in the business of a market agency selling livestock on a commission basis; and
- (2) Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis.

(d) Respondents Robert Witt and Thomas Witt, at all times material herein, were:

- (1) Each 50% co-owners of KWW, LLC d.b.a. Grove Livestock Auction; and
- (2) Each responsible for the day-to-day management, direction, and control of KWW, LLC d.b.a. Grove Livestock Auction.

## II.

On or about December 24, 2009, the Western Regional Office mailed a Notice of Violation to Respondents, via certified receipt, noting that a custodial account analysis disclosed that Respondents had failed to maintain and properly use their custodial account, among other violations, in contravention of the Act and regulations.<sup>1</sup> Specifically, Respondents were notified that their custodial account had been improperly maintained because: (1) the custodial account had a shortage of \$4,450.53 as of October 27, 2009 and \$108,737.23 as of August 31, 2009.

Respondents were notified of the provisions of section 201.42(c) of the Regulations (9 C.F.R. § 201.42(c)) and further informed that failure to take immediate steps to correct the

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<sup>1</sup> United States Postal Service Domestic Return Receipt for Article Number 7108 2133 3936 1518 0117 was signed and received on January 6, 2010.

violations and bring their operations into compliance with the Act could result in administrative action.

### III.

Respondents, during the period of February 26, 2010 through March 8, 2010 failed to properly maintain their custodial account, thereby endangering the faithful and prompt accounting of shippers' proceeds and the payment due the owners or consignors of livestock in that:

- (1) As of February 26, 2010, Respondents had outstanding checks drawn on the custodial account in the amount of \$6,318.00 and had to offset such checks a balance in the custodial account in the amount of \$1,000 and proceeds receivable of \$0, resulting in a deficiency of \$5,318.00.
- (2) As of March 8, 2010, Respondents had outstanding checks drawn on the custodial account in the amount of \$143,502.02 and had, to offset such checks, a balance in the custodial account in the amount of \$15.61 and proceeds receivable of \$132,752.96, resulting in a deficiency of \$10,733.45.

The shortages in Respondents' custodial account were due, in part, to Respondents' failure to deposit into its custodial accounts, within the time prescribed by section 201.42 of the Regulations (9 C.F.R. § 201.42), an amount equal to the proceeds receivable from the sale of consigned livestock and to the withdrawal of bank charges from their custodial account.

### IV.

By reason of the facts alleged in paragraph I, Respondents Robert Witt and Thomas Witt are the alter ego of KWW, LLC d.b.a. Grove Livestock Auction.

By reason of the facts alleged in paragraphs II and III, Respondents 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).

WHEREFORE, it is hereby ordered that this complaint shall be served upon Respondents for the purpose of determining whether Respondents have willfully violated the Act and the Regulations. Respondents shall have twenty (20) days after receipt of this complaint in which to file an answer with the Hearing Clerk, Room 1031-South Building, United States Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9200, in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 et seq.; hereinafter "Rules of Practice"). Allegations not answered shall be deemed admitted for the purpose of this proceeding. Failure to file an answer will constitute an admission of all the material allegations of this complaint.

The Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), requests:

1. That unless Respondents fail to file an answer within the time allowed, or file an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in accordance with the Rules of Practice; and
2. That such order or orders be issued, including an order requiring Respondents to cease and desist from the violations of the Act found to exist, suspending Respondents as registrants under the Act, and assessing such civil penalties against Respondents, jointly and severally, as are authorized by the Act and warranted in the circumstances.

Done at Washington, D.C.

this 27 day of March, 2012



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Packers and Stockyards Program

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