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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	) P & S Docket No. 12-0539
	)
	)
Daniel F. Froman,	)
	)
d/b/a R&K Real Estate, Inc.,	)
	)
Respondent	) Complaint

There is reason to believe that respondent Daniel F. Froman, who did business as R&K Real Estate, Inc., has willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*). Therefore, this Complaint is issued alleging the following:

I

(a) Respondent Daniel F. Froman is an individual. Respondent was the 100% Owner and Operator of R&K Real Estate, Inc., a corporation organized under the laws of the State of Missouri in 1982, and which was administratively dissolved on August 25, 2010. After such time, respondent Froman continued to conduct business as a sole proprietorship doing business as R&K Real Estate, Inc., and doing business as Gallatin Livestock Auction. Respondent Froman is currently incarcerated at the Federal Correctional Institution in Texarkana, TX, and his mailing address is:

Daniel F. Froman, Register # 23082-045  
FCI TEXARKANA  
Federal Correctional Institution  
P.O. Box 7000  
Texarkana, TX 75505

(b) Respondent Daniel F. Froman, doing business as R&K Real Estate, Inc., was at all times material herein:

- (1) Engaged in the business of conducting and operating the Gallatin Livestock Auction, a stockyard posted under and subject to the provisions of the Act;
- (2) Engaged in the business of a market agency selling livestock on a commission basis in commerce;
- (3) Engaged in the business of a dealer buying and selling livestock in commerce; and
- (4) Registered with the Secretary of Agriculture, in the name of R&K Real Estate, Inc., as a market agency to sell livestock on a commission basis in commerce, and registered as a dealer to buy and sell livestock in commerce.

## II

(a) On or about July 2, 2009, the Regional Director, Midwestern Regional Office, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), informed respondent in a Notice of Violation (NOV) dated June

30, 2009, that a GIPSA review of respondent's records indicated that respondent failed to properly maintain his custodial account. The NOV specified that respondent's custodial account as reconciled on March 8, 2009, had a shortage of \$40,602.33, and that respondent's custodial account as reconciled on December 31, 2008 had a shortage of \$85,280.53. The NOV further stated that respondent maintained inadequate records to perform a complete audit of respondent's operations for the year ending on December 31, 2008. The NOV also indicated that the records that respondent did provide demonstrated that respondent had an excess of current liabilities over current assets in the amount of \$96,470.33. The NOV stated that this conduct was in violation of sections 201.42 and 201.94 of the regulations (9 C.F.R. §§ 201.42 and 201.94) and 7 U.S.C. § 204. The NOV also stated that the consequences for future violations included, *inter alia*, the suspension of respondent's registration and the assessment of civil penalties.

(b) Respondent entered into a Civil Penalty Stipulation Agreement with Complainant on October 20, 2010. This Agreement informally resolved, without respondent admitting or denying the alleged violations, GIPSA's allegations against respondent that he had operated with a custodial account shortage and misused his custodial account on December 31, 2008 and August 24, 2009, and assessed a civil penalty of \$750.00.

### III

Respondent failed to maintain and use properly his custodial account for shipper's proceeds, thereby endangering the faithful and prompt accounting therefor and payment of the portions thereof due the owners, consignors, and shippers of livestock, in that:

(a) As of August 31, 2011, respondent had outstanding checks in the amount of \$226,145.81 drawn on his custodial account, and had, to offset these checks, a bank balance overdrawn in the amount of \$11,277.91 and current proceeds receivable in the amount of \$169,324.23, resulting in a custodial account shortage of \$68,099.49.

(b) As of September 30, 2011, respondent had outstanding checks in the amount of \$429,065.04 drawn on his custodial account, and had, to offset these checks, a bank balance of \$47,500.70 and current proceeds receivable in the amount of \$140,744.86, resulting in a custodial account shortage of \$240,819.48.

(c) During the period beginning approximately August 31, 2011, through September 30, 2011, respondent:

1. Transferred \$112,500.00 from his custodial account into other, noncustodial accounts;
2. Paid \$20,215.75 in trucking charges from custodial account funds which were not permitted to be drawn on his custodial account; and
3. Paid \$2,118.73 in bank fees which were charged to his custodial account.

d) The custodial account shortages described herein were due in part to respondent's failure to deposit into the custodial account, within the time prescribed by the regulations, an amount equal to the proceeds receivable for sales of consigned livestock; due in part to respondent's transfer of shippers' funds in the custodial account into noncustodial accounts; and due in part to respondent's use of shippers' funds in the custodial account to pay bank fees and trucking charges.

#### IV

On or about the period beginning August 31, 2011, through September 30, 2011, respondent failed to keep and maintain accounts, records and memoranda as fully and correctly disclosed all transactions involved in his business in that he failed to keep and maintain a complete and accurate custodial account check register showing all custodial checks issued and the purposes therefor, complete and accurate schedules of outstanding checks on custodial analysis dates, complete and accurate invoices related to his purchase and sale of livestock, and complete and accurate journals, records and memoranda adequate to document amounts due to sellers of livestock and amounts owed by purchasers of livestock.

#### V

- (a) On or about the dates and in the transactions described in Appendix A, respondent issued checks in payment for livestock purchases. These checks were returned unpaid by the bank upon which they were drawn because respondent 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 for payment by livestock sellers.
- (b) By reason of the facts alleged above in subsection (a) of this paragraph, respondent purchased livestock and failed to pay, when due, for such livestock.

(c) On or about the dates and in the transactions set forth in Appendices A and B, respondent purchased livestock and failed to pay for such livestock purchases.

(d) As of the date of the filing of this Complaint, approximately \$346,577.67 remains unpaid by respondent for livestock purchases.

## VI

By reason of the facts alleged in paragraphs II and III of this Complaint, respondent has 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).

By reason of the facts alleged in paragraph IV of this Complaint, respondent has willfully violated section 401 of the Act (7 U.S.C. § 221).

By reason of the facts alleged in paragraph V of this Complaint, respondent has willfully violated sections 307, 312(a) and 409 of the Act (7 U.S.C. §§ 208, 213(a) and 228b) and section 201.43 of the regulations (9 C.F.R. § 201.43).

WHEREFORE, it is hereby ordered that this Complaint shall be served upon the respondent for the purpose of determining whether respondent has willfully violated the Act and regulations. Respondent 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 proceedings under the Act (7 C.F.R. § 1.130 *et seq.*). Allegations not answered shall be

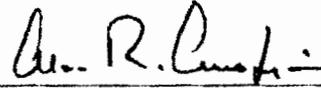
deemed admitted for the purpose of this proceeding. Failure to file an answer will constitute an admission of all the material allegations of this Complaint.

The Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration requests:

1. That unless respondent fails to file an answer within the time allowed, 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; and
2. That such order or orders be issued, including an order requiring respondent to cease and desist from the violations of the Act and the regulations found to exist, suspending respondent in the name of R&K Real Estate, Inc. as a registrant under the Act, and prohibiting respondent, in his own name and directly or indirectly through any corporate or other device, from being registered and engaging in business in any capacity for which registration is required under the Act for a specified period of time, and assessing such civil penalties against respondent as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 23 day of July, 2012



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Alan R. Christian  
Deputy Administrator  
Packers and Stockyards Program

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Appendix A

<b>Purchase Date</b>	<b>Seller's Name</b>	<b>Number of Head of Livestock Purchased</b>	<b>Net Invoice Amount</b>	<b>Payment Due Date per \$409</b>	<b>Date Check Returned by Bank as NSF</b>
8/29/2011	Briscoe Cattle Company	57	\$40,591.13	8/30/2011	9/28/2011
9/9/2011	Gainesville Livestock Auction, LLC	57	\$45,676.16	9/12/2011	9/21/2011
9/15/2011	Hart of Texas Cattle Feeders	82	\$56,650.00	9/16/2011	9/28/2011

**Appendix B**

<b>Purchase Date</b>	<b>Seller's Name</b>	<b>Number of Head of Livestock Purchased</b>	<b>Net Invoice Amount</b>	<b>Payment Due Date per \$409</b>
9/17/2011	Gainesville Livestock Auction, LLC	99	\$57,681.90	9/19/2011
9/17/2011	Gainesville Livestock Auction, LLC	136	\$107,538.55	9/19/2011
9/23/2011	Gainesville Livestock Auction, LLC	60	\$38,439.13	9/26/2011