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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P. & S. Docket No. D-03-0020
	)	
WILLIAM CHANDLER d/b/a Bill Chandler Cattle,	)	
	)	
	)	
Respondent	)	**DECISION AND ORDER**

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.; the "Act") initiated by a complaint filed on September 2, 2003, by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration. The complaint alleges that Respondent, a registered livestock dealer, committed numerous violations of the Act and the regulations issued pursuant thereto (9 C.F.R. § 201.1 et seq. and 9 C.F.R. § 203.1 et seq.; the "regulations").

Specifically, the complaint alleges that during the period June 30, 2001 through September 30, 2001, Respondent operated while insolvent in that Respondent's current liabilities exceeded his current assets, and thereby willfully violated the Act (7 U.S.C. §204 and §213(a)). The complaint additionally alleges that, during the period June 25, 2001, through August 6, 2001, Respondent purchased livestock from 13 sellers in the amount of $378,638.69 and paid them with checks that were returned unpaid by the bank because of insufficient funds, in further willful violation of the Act (7 U.S.C. §213(a)). The complaint also alleges that Respondent failed to pay on time these 13 sellers from whom Respondent purchased livestock on September 10, 2001, for $235,526.78, in willful violation of the Act and the regulations (7 U.S.C. §§ 213(a),

228b and 9 C.F.R. § 201.43(b)). Finally, the complaint alleges that Respondent also willfully violated the Act by failing to keep such records as fully and correctly disclosed all transactions involved in his business because he did not maintain necessary documentation showing his costs of purchasing, feeding and caring for cattle he purchased and preconditioned for Supreme Cattle Feeders, LLC, Boise, Idaho (7 U.S.C. § 221). The complaint alleged that previous administrative orders and warning letters had been issued against Respondent. Complainant requested the suspension of Respondent's registration and/or the imposition of a civil penalty. Respondent filed an answer, generally denying liability.

An oral hearing was held and transcribed on May 11 and 12, 2004, in Tallahassee, Florida. The hearing transcript shall be referred to as "Tr." followed by the page reference. Complainant was represented by Andrew Y. Stanton, Esquire, Office of the General Counsel, United States Department of Agriculture, Washington, D.C. Respondent was represented by Bruce P. Anderson, Esquire, Broad and Cassel, Destin, Florida. At the hearing, five witnesses testified for Complainant. No witnesses testified on behalf of Respondent. Documentary evidence was received from both Complainant (CX 1-5, 7-22, 24-26) and Respondent (RX 3-13). Pertinent statutory provisions and regulations are set forth in an Addendum following the Order.

Upon consideration of the record evidence and the arguments of the parties, I have concluded that an Order should be entered requiring Respondent to cease and desist from engaging in business while insolvent, issuing insufficient checks for livestock purchases and failing to pay the full amount for livestock purchases within the time period required by the Act and the Regulations. Respondent is also being suspended for a period of six (6) years from being a registrant under the Act.

FINDINGS OF FACT

1. Respondent, William Chandler d/b/a Bill Chandler Cattle, is an individual whose business mailing address is 5791 County Line Road, Pelham, Georgia 31779. See Complaint, page 1, paragraph I (a)); Answer, page 1, paragraph I (a)); CX 1, pages 2, 7.

2. Respondent was at all times material herein engaged in the business of a dealer, buying and selling livestock for his own account and the accounts of others, and registered with the Secretary of Agriculture as a dealer to buy or sell livestock in commerce for his own account and the accounts of others and a market agency, to buy on commission. See Complaint, page 1, paragraph I (b)); Answer, page 1, paragraph I (b); CX 1, pages 2, 7. At all times material herein, Respondent was bonded in the amount of $50,000.00 (Tr. at 27). Respondent filed for chapter 11 bankruptcy in the United States Bankruptcy Court for the Middle District of Georgia, Thomasville Division, Case No. 02-10715-JTL (RX 7) (Tr. at 193).

3. On February 11, 1982, a Consent Decision was issued in an administrative disciplinary proceeding Complainant filed against Respondent (*In re: William "Bill" Chandler d/b/a Chandler Cattle Company and conducting business through C&N Cattle Corporation*, P.& S. Docket No. 5976). In the Consent Decision, Respondent agreed to cease and desist from engaging in business for which bonding is required under the Act and the regulations without filing and maintaining a reasonable bond or its equivalent, as required by the Act and the regulations; issuing checks or drafts in payment for livestock purchased without having and maintaining sufficient funds to pay such checks available in the bank account from which such checks or drafts are to be paid; and failing to pay, when due, the full purchase price of livestock. CX 2, pages 18-20.

4. On November 22, 1996, a Consent Decision was issued in an administrative disciplinary proceeding Complainant had filed against Respondent and others (*In re: Southeast Livestock Order Buyers, Inc., Jefferson County Stockyards, Inc., Jacquelyn A. Chandler and William Chandler*, P. & S. Docket No. D-96-0028). In the Consent Decision, Respondent and the others agreed to cease and desist from failing to reimburse, when due, their clearor with funds received from the sale of the livestock for which the clearor had made payment. In addition, Respondent's registration was suspended for 180 days. CX 2, pages 11-15.

5. On November 9, 1999, Complainant sent a certified letter to Respondent, which was signed for by "J. Chandler",[1] that advised Respondent he was failing to comply with section 201.49 of the regulations (9 C.F.R. § 201.49) by failing to maintain his records of scale tickets as required by the regulations. Complainant also advised Respondent the he was failing to comply with section 409(a) of the Act (7 U.S.C. § 228b) and section 201.43(b)(2)(i) of the regulations (9 C.F.R. § 201.43(b)(2)(i)) by failing to pay when due for livestock purchases. CX 2, pages 4-6.

6. On May 23, 2001, Complainant sent a certified letter to Respondent, which Respondent received, advising Respondent that he was failing to comply with sections 409(a) and (c) of the Act (7 U.S.C. §§ 228b(a) and (c)) regarding the requirement of making timely payment for livestock purchases. Respondent was instructed to take immediate steps to come into compliance. CX 2, pages 1-3.

7. On approximately July 9, 2001, Complainant's Atlanta, Georgia Regional office received a telephone call from Respondent, who advised that he had been notified that his bank had returned approximately 15 checks drawn on Respondent's checking account for insufficient funds (Tr. at 20-21). At that point, Nilsa Ramos Taylor, a Resident Agent employed by

[1] Respondent's wife's name is Jacqueline Chandler (Tr. at 138).

Complainant, was assigned to conduct an investigation of Respondent concerning the 15 returned checks mentioned by Respondent and to explore any other possible payment problems Respondent may be having (Tr. at 21-22). James Hood, a marketing specialist employed by Complainant, was assigned to conduct the investigation with Ms. Ramos Taylor. Mr. Ramos Taylor was the lead investigator and was involved in every activity engaged in by Mr. Hood (Tr. at 22-23).

8. Ms. Ramos Taylor and Mr. Hood arrived at Respondent's place of business to conduct their investigation on July 11, 2001 (Tr. at 37). Respondent's controller, Gene Rice, provided them with all of Respondent's records concerning possible insufficient funds checks and payment problems (Tr. at 38-39). These records included purchase invoices, copies of checks, check registers and other documents (Tr. at 39). Ms. Ramos Taylor and Mr. Hood returned to Respondent's place of business on July 30, 2001, to obtain additional records regarding the possible insufficient funds checks and payment problems (Tr. at 40).

9. Respondent's records reviewed by Ms. Ramos Taylor and Mr. Hood, as well as some information obtained from livestock sellers, indicated that during the period June 25 through September 10, 2001, Respondent made 15 purchases of livestock from 14 sellers (CX 7-22).

10. With respect to 14 purchases from 13 of the sellers referred to in Finding of Fact 9 (excluding one seller, Jack and Earl O'Dell), Respondent issued 14 checks in purported payment for the livestock, which were returned by the bank upon which they were drawn due to insufficient funds in Respondent's account (CX 7-21, (Tr. at 54-78).

11. With respect to 12 of the 13 sellers referred to in Finding of Fact 10 (excluding one seller, James Whiten Livestock, Inc.), Respondent eventually issued replacement checks for

12 purchases and wired funds for one purchase, in full payment to these 12 sellers. The period of time between Respondent's original purchase and the issuance date of the replacement checks and the wiring of funds ranged from 14 days for Ocala Livestock Market (CX 8) to 38 days for Okeechobee Livestock Market, Inc. (CX 20). The original livestock amount for these purchases, $321,217.17, was paid but not in the timely manner required by the Act.

12. James Whiten Livestock, Inc., who sold livestock to Respondent on June 27, 2001, in the amount of $49,470.50, received only a $5,000 cashier's check issued on August 8, 2001 (CX 21, page 4) and a February 2, 2002, check for $33,372.90 resulting from a bond claim which James Whiten Livestock, Inc. filed against Respondent (CX 21, page 5) (Tr. at 78). The $38,372.90 that was paid to James Whiten Livestock, Inc. was paid long after payment was due under the Act. No further payments were received by James Whiten Livestock, Inc., and as of May 10, 2004, $11,097.60 remained unpaid. Tr. at 63.

13. On September 10, 2001, Jack and Earl O'Dell sold 468 head of livestock to Respondent pursuant to a contract they had entered into several months earlier (Tr. at 159). The livestock was in two lots, one containing 220 head, for the amount of $117,624.34 (CX 22, page 1) (Tr. at 161), and one containing 248 head, for the amount of $117,908.44 (CX 22, pages 2-3) (Tr. at 161), for a total of $235,526.78. On May 31, 2001, Respondent had paid $17,500 for a down payment (RX 10) (Tr. at 160). After deducting Respondent's down payment and a dollar per head, or $468, for the beef check-off, Respondent owed $217,558.08 (Tr. at 164). On September 10, 2001, Respondent gave Jack O'Dell two checks, one for $217,558.08 and another for $21,755.00 (Tr. at 159 and 187). Jack O'Dell testified that Respondent asked him to hold off cashing the big check for three months and cash the little one as advance interest on what would be a three month loan. Jack O'Dell testified that he told Respondent he was not interested but

that Respondent persisted and asked him to take the two checks home and discuss the matter with his brother. Jack O'Dell then testified "Bill, I will take it home and I will call you tomorrow, but the answer will be the same as today" (Tr. at 159-160). The next day, O'Dell deposited the check for $217,558.08 for the livestock, but Respondent stopped payment on the check (CX 22, pages 8-11) (Tr. at 168). On October 2, 2002, and November 2, 2002, Respondent issued checks to Jack and Earl O'Dell pursuant to bankruptcy court proceedings, for $2,874.67 each, or $5,749.34 (RX 4, 5). The $5,749.34 was paid long after full payment was due under the Act and $211,808.74 remains unpaid.[2]

14. In the course of a lawsuit filed by Jack O'Dell and Earl O'Dell against Respondent in the United States Bankruptcy Court for the Middle District of Georgia, Thomasville Division, Case No.: 02-10715-JTL, Adversary Proceeding File No.: 02-1018, Respondent filed an Answer on July 3, 2002, in which he admitted that he owed the Plaintiffs $217,558.08 and that the transaction was a sale (CX 25, 26). On August 28, 2002, an order was issued by the United States Bankruptcy Court for the Middle District of Georgia (RX 7) in which Jack and Earl O'Dell were given judgment against Respondent in the amount of $217,558.78 and Respondent was ordered to make monthly payments of $2,874.67 over a seven year period. Respondent made two such payments (RX 4, 5).

15. On July 30, 2001, Ms. Karen D. Johnson, an auditor employed by Complainant's Atlanta Regional Office, arrived at Respondent's place of business (Tr. at 44). Ms. Johnson's purpose was to determine whether Respondent was solvent (Tr. at 209). Ms. Johnson did not begin her investigation until Complainant's Atlanta Regional Office received a balance sheet

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[2] Jack and Earl O'Dell also received a check for approximately $6,000 for interest, pursuant to a Bankruptcy Court ruling (Tr. at 174).

from Respondent, that showed Respondent was insolvent as of July 13, 2001, as in that he had total current assets of $2,398,595.14 and total current liabilities of $3,155,709.74 (RX 20) (Tr. 210). In conducting her investigation, Ms. Johnson was assisted by Ms. Ramos Taylor, who analyzed Respondent's bank reconciliations (Tr. at 214) and Mr. Hood, who examined Respondent's accounts receivable (Id.). Ms. Johnson supervised the work done by Ms. Ramos Taylor and Mr. Hood (Id.). Ms. Johnson was provided with Respondent's financial records by Respondent's controller, Mr. Rice (Tr. at 214-15).

16. Ms. Johnson returned to Respondent's place of business on August 27, 2001, to obtain additional financial information (Tr. at 218-219). Ms. Johnson was accompanied by Mr. Hood, who was under Ms. Johnson's supervision (Tr. at 219). Ms. Johnson was provided with documents by Mr. Rice and Linda Solana, a certified public accountant who was working for Respondent (Tr. at 220). Ms. Solana gave Ms. Johnson a worksheet so Ms. Johnson could determine Respondent's inventory (CX 24, pages 8-10) (Tr. at 220). Ms. Johnson noted that six lots of cattle set forth in Ms. Solana's worksheet (CX 24, pages 8-10), were described as "missing", consisting of lots 5051, 5055, 5059, 5101, 5103, 5110 (Tr. at 221). When Ms. Johnson requested documentation for the six lots of cattle (Tr. at 221), Ms. Solana and Mr. Rice directed Ms. Johnson to speak to Respondent about them (Tr. at 221-222). Ms. Johnson asked Respondent for documentation supporting these lots and Respondent stated that he did not have any documentation (Tr. at 225). However, the six lots of cattle were jointly owned by Respondent and Supreme Cattle Feeders, LLC; and Supreme Cattle Feeders performed the recordkeeping for the cattle (Tr. at 399-404).

17. While examining Respondent's financial records, Ms. Johnson requested that Mr. Rice provide a June 30, 2001, balance sheet (Tr. at 222). In response to this request, Mr. Rice,

on August 30, 2001, provided Ms. Johnson with Respondent's June 30, 2001, balance sheet (CX 24, pages 3-7) (Tr. at 222). Respondent's June 30, 2001, balance sheet showed the lot numbers of the "missing" cattle under current liabilities as "Supreme Cattle Feeders Payable". Respondent's June 30, 2001, balance sheet also showed Respondent's total current assets as $4,158,438.71 and Respondent's total current liabilities as $6,779,032.37.

18. During Ms. Johnson's investigation, Respondent informed her that he was insolvent and that he would sign a document stating that he was insolvent as of June 30, 2001 (Tr. at 226).

19. After Ms. Johnson concluded her investigation of Respondent, she prepared a balance sheet for Respondent, as of June 30, 2001, based largely on documentation she had obtained from Respondent. Ms. Johnson determined that Respondent's total current assets were $4,892,752.29 and Respondent's total current liabilities were $7,485,097.13 (CX 3) (Tr. at 227).

20. Respondent prepared a balance sheet as of September 30, 2001 (RX 2). Respondent's balance sheet showed total current assets of $155,594.60 and total current liabilities of $2,645,054.61.

CONCLUSIONS

1. Respondent's financial condition did not meet the requirements of the Act, in that Respondent was insolvent as of June 30, 2001, and September 30, 2001.

Complainant presented extensive evidence, through the testimony of Karen D. Johnson, Auditor with Complainant's Atlanta Regional Office (Tr. at 205-447) and the submission of numerous documents (CX 3, 4, 5 and 24, pages 1, 3-13), which show that, as of June 30, 2001, and September 30, 2001, Respondent was insolvent and that his total current liabilities vastly exceeded his current assets. Respondent presented no witnesses to rebut Ms. Johnson's

testimony. It is apparent from the evidence that Respondent's financial condition did not comply with the requirements of the Act.

The Act, at 7 U.S.C. § 204, provides that, if the Secretary of Agriculture finds that:

> any registrant is insolvent . . . he may issue an order suspending such registrant for a reasonable specified period.

According to section 203.10 of the Statements of General Policy (9 C.F.R. § 203.10)

> the principal test of insolvency is to determine whether a person's current liabilities exceed his current assets.

The Secretary's test for insolvency was upheld in *Blackfoot Livestock Commission Company v. Department of Agriculture, Packers and Stockyards Administration*, 810 F.2d 916 at 921 (9th Cir. 1987), where the court stated:

> The Act prohibits operating a stockyard while insolvent. 7 U.S.C. § 204; *Bowman v. United States Department of Agriculture*, 363 F.2d 81 (5th Cir. 1966). Insolvency is defined as current liabilities exceeding current assets. *Bowman*, 363 F.2d at 84-85. The Secretary defines current assets and current liabilities by regulation. 9 C.F.R. § 203.10(b)(1)(1982)(assets); 9 C.F.R. § 203.10(b)(2)(1982)(liabilities).

also *See In re*: *Syracuse Sales Co.* (Decision as to John Knopp), 52 Agric. Dec. 1511 (1993), appeal dismissed, No. 94- 9505 (10th Cir., Apr. 29, 1994).

As is reflected by the balance sheet prepared by Ms. Johnson for Respondent for June 30, 2001, Respondent's total current assets were $4,892,752.29 and Respondent's total current liabilities were $7,485,097.13 (CX 3) (Tr. at 227), for an excess of total current liabilities over total current assets of $2,592,344.84.

Although Respondent's counsel extensively questioned Ms. Johnson during the hearing and took issue with her conclusions, Respondent has presented neither testimony nor

documentation contradicting Ms. Johnson's investigative findings. Respondent's own balance sheet for June 30, 2001, provided to Ms. Johnson by Respondent's controller, Gene Rice, on August 30, 2001, (CX 24, pages 3-7) (Tr. at 222), shows that Respondent's total current assets were $4,158,438.71 and Respondent's total current liabilities were $6,779,032.37, for an excess of total current liabilities over total current assets of $2,620,593.66. Further, during the course of the investigation, Respondent admitted to Ms. Johnson that he was insolvent and offered to sign a document stating that he was insolvent as of June 30, 2001 (Tr. at 226).

Respondent was still insolvent on September 30, 2001. The balance sheet which Respondent prepared for that date (RX 2) shows Respondent's total current assets were $155,594.60 and his total current liabilities were $2,745,054.61, for an excess of total current liabilities over total current assets of $2,589,460.01.

Unquestionably, Respondent was insolvent on June 30, 2001, and on September 30, 2001. Respondent therefore was in violation of the requirements of the Act.

2. Respondent operated while insolvent, in willful violation of the Act.

During the period June 30, 2001, through September 30, 2001, while Respondent was insolvent, he conducted business subject to the Act. As shown by the testimony and documentary evidence provided by Nilsa Ramos Taylor, a Resident Agent employed by Complainant, on August 6, 2001, Respondent purchased108 head of livestock from Okeechobee Livestock Market, Inc., Okeechobee, Florida, for $40,018.40 (CX 7, 20), (Tr. at 55). Further, as Jack O'Dell, a livestock producer located in Wildwood, Florida, testified, Jack and Earl O'Dell sold 468 head of livestock to Respondent, which were delivered on September 10, 2001 (CX 22) (Tr. at 158-166). Respondent presented no witnesses to attempt to rebut the testimony of Ms. Ramos Taylor and Mr. O'Dell.

Operating as a market agency or dealer subject to the Act while insolvent is an unfair and deceptive practice, in willful violation of section 312(a) of the Act (7 U.S.C. § 213(a)). *See In re: Syracuse Sales Co.* (Decision as to John Knopp), supra at 1522; *In re: Jeff Palmer d/b/a Palmer Cattle Company*, 50 Agric. Dec. 1762, 1771-72 (1991).

Further, it has been held in numerous decisions that a violation is willful for administrative law purposes if a respondent intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice, or acts with careless disregard of statutory requirements[3]. *Butz v. Glover Livestock Comm'n Co.*, 411 U.S. 182 (1973); *American Fruit Purveyors, Inc. v. United States*, 630 F.2d 370, 374 (5th Cir.1980), cert. denied, 450 U.S. 997 (1981); *Silverman v. CFTC*, 549 F.2d 28, 31 (7th Cir.1977); *Goodman v. Benson*, 286 F.2d 896, 900 (7th Cir.1961). When Respondent bought livestock from Okeechobee Livestock Market, Inc. on August 6, 2001, and from Jack and Earl O'Dell on September 10, 2001, Respondent knew or should have known that he was insolvent. This is evident by the fact that Respondent prepared and sent to Complainant a balance sheet as of July 13, 2001, which showed Respondent to be insolvent, since his total current assets were $2,398,595.14 while his total current liabilities were $3,155,709.74 (RX 20) (Tr. 210).

Therefore, Respondent willfully violated section 312(a) of the Act by operating while he was insolvent.

3. Respondent willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b) by issuing 14 insufficient funds checks to 13 livestock sellers and failing to pay the full amount of the purchase price for livestock, within the time period required by the Act.

[3] Except for cases in the 4th and 10th Circuits, where the respondent's actions must have been either intentional or grossly negligent. *Capital Produce Co. v. United States*, 930 F.2d 1077, 1079 81 (4th Cir. 1991); *Capitol Packing Co. v. United States*, 350 F.2d 67, 78 79 (10th Cir. 1965).

a. Respondent's issuance of insufficient funds checks.

Respondent issued 14 checks to 13 livestock sellers during the period June 26, 2001, through August 6, 2001, in purported payment for livestock purchases, which were returned by the bank upon drawn because Respondent did not have sufficient funds to pay the checks (CX 7-21) (Tr. at 54-78). Respondent argues on brief, that when he issued the checks he was unaware that his bank was holding back a deposit he had made of $242,605.46.

However, this defense is not acceptable. As stated in *In re: George Durflinger*, 58 Agric. Dec. 940, 942 (1999):

> It is Respondent's responsibility to ensure that there are sufficient funds in the applicable account as long as there are checks outstanding on that account.

Even if a respondent has mistakenly relied upon an over-draft protection arrangement with his bank, this does not excuse the issuance of insufficient funds checks. As stated in *In re: Ozark County Cattle Company, Inc.*, 49 Agric. Dec. 336, 351 (1990), quoting from *In re Richard N. Garver*, 45 Agric. Dec. 1090, 1094-1095 (1986) aff'd, *Garver v. United States*, 846 F.2d 1029 (6th Cir. 1988):

> Respondent . . . argues that his relationship with the bank and the over-draft protection the bank extended to him demonstrate that he did not willfully engage in the practices in violation of the Act. However, the unilateral termination by the bank of the respondent's overdraft protection demonstrates precisely why such arrangement cannot insulate a livestock buyer from accountability under the Act. It gives no protection to the sellers of livestock. Respondent's awareness or state of mind at the time the bad checks were issued is of no consequence.
>
> A line of credit or over-draft protection does not provide respondent's creditors the financial security required by the Act and regulations. Despite Mr. Garver's longstanding and friendly relationship with his bank, his bank lawfully and unilaterally terminated his over-draft protection without notice. Similarly, over-draft protection would be of no value if respondent's bank were to fail.

Respondent's issuance of 14 checks dishonored for insufficient funds constitutes an unfair and deceptive practice and the willful violation of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b). *See In re: George Durflinger*, supra; *In re: Tiemann*, 47 Agric. Dec. 1573, 1579-1580 (1988); *In re Richard N. Garver*, supra.

b. Respondent failed to pay the full amount of the purchase price for livestock within the time period required by the Act.

As shown by the evidence presented through the testimony of Ms. Ramos Taylor and Mr. O'Dell (CX 22, 25, 26) (Tr. at 157-182), Respondent failed to pay the full amount of the purchase price for livestock within the time period required by the Act and currently owes approximately $222,906.34 to livestock sellers. Respondent chose to present no witnesses to attempt to rebut Complainant's evidence.

Section 409 of the Act states that:

> "[e]ach packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full amount of the purchase price."

When asked when payment for livestock is due, Ms. Ramos Taylor testified that the date on the invoice is considered the date of purchase, and payment is due by the close of the next business day (Tr. at 119-120). Ms. Ramos Taylor stated that sometimes, when livestock is purchased, markets will keep the livestock until the buyer picks them up (Tr. at 119). Creig Stephens, Resident Agent Supervisor with Complainant's Atlanta Regional Office, who worked at his family's auction market all his life and has investigated numerous auction markets during his career with Complainant (Tr. at 451), testified that when livestock is purchased at a market, the purchaser sometimes requests the market to hold the livestock on the purchaser's behalf (Tr. at 453) but, when that happens, the purchaser is responsible for paying any yardage and fees

incurred by the market in caring for the purchased livestock (Tr. at 453-454). This is because title to the livestock passes to the buyer when the animal is purchased in the ring (Tr. at 455). *See In re: Embry Livestock Co., Inc., et al*, 48 Agric. Dec. 972, 989 (1989) ("Embry Livestock paid for and took title to the hogs it purchased, and bore the risk of loss on those hogs from the time the hogs came off the stockyard's scales"). Similarly, in this case, title passed from the sellers to Respondent when Respondent purchased the livestock. Once title passed, Respondent became the owner of the livestock and was required to pay for the livestock by the close of the next business day, and not 14 to 38 days after the date of purchase as Respondent did in this case.

Respondent issued 14 insufficient funds checks for 14 livestock purchases from 13 sellers (CX 7-21, (Tr. at 54-78). Respondent eventually issued replacement checks for 12 of the purchases and wired replacement funds for one purchase. However, the period of time between Respondent's purchases and the issuance dates of the 12 replacement checks and the wiring of replacement funds ranged from 14 days for replacement checks issued to Ocala Livestock Market (CX 8) to 38 days for the wiring of replacement funds to Okeechobee Livestock Market, Inc. (CX 20). Even though these 12 sellers eventually received full payment for their purchases, the payment took place long after the close of the next business day after purchase and transfer of possession that was the time when payment was due under the Act.

With respect to one seller who received an insufficient funds check from Respondent, James Whiten Livestock, Inc., Respondent did not issue a replacement check in full payment for his purchase. Respondent had purchased livestock from James Whiten Livestock, Inc. in the amount of $49,470.50 on June 27, 2001 (CX 21, page 1). The only payments received by James Whiten Livestock, Inc., for the livestock were a $5,000 cashier's check issued on August 8, 2001

(CX 21, page 4) and a February 2, 2002, check for $33,372.90 resulting from a bond claim which James Whiten Livestock, Inc. had filed against Respondent (CX 21, page 5) (Tr. at 78). The $38,372.90 that was paid to James Whiten Livestock, Inc. was paid long after payment was due under the Act. No further payments were received by James Whiten Livestock, Inc. and as of May 10, 2004, $11,097.60 remained unpaid. (Tr. at 63)

In addition to the 13 sellers to whom Respondent issued insufficient funds checks, Respondent also purchased from Jack and Earl O'Dell, Wildwood, Florida, a total of 468 head of livestock, delivered to Respondent on September 10, 2001, based on a contract several months earlier (Tr. at 159). Mr. Jack O'Dell gave testimony at the hearing concerning this transaction (Tr. at 157-203). The livestock was purchased in two lots. One lot contained 220 head purchased for $117,624.34 (CX 22, page 1) (Tr. at 161). The second lot contained 248 head purchased for $117,908.44 (CX 22, pages 2-3) (Tr. at 161). The combined purchase price for the two lots of livestock was $235,526.78. On May 31, 2001, Respondent gave Jack and Earl O'Dell $17,500 as a down payment for the livestock (RX 10) (Tr. at 160). Upon delivery of both lots totaling 468 head of livestock on September 10, 2001, Respondent gave Jack O'Dell two checks, one for $217,558.08 and another for $21,755. Respondent asked Mr. O'Dell to cash the smaller check and hold off for three months before cashing the larger one which the parties agreed constituted the remaining amount owed after deducting Respondent's down payment and a dollar per head, or $468, for the beef check-off (Tr. at 164). However, Respondent stopped payment on the check (CX 22, pages 8-11) (Tr. at 168).Mr. O'Dell testified that he rejected Respondent's proposal that he accept the smaller check as an interest payment for advancing Respondent a three month loan. The next day Mr. O'Dell deposited the larger check and Respondent stopped payment on it. The O'Dell's had no obligation to forbear from being paid in

full when the checks were given and Respondent had no right to stop payment. Later, pursuant to bankruptcy proceedings, Respondent issued two checks to Jack and Earl O'Dell for $2,874.67 each, or $5,749.34, on October 2, 2002, and November 2, 2004 (RX 4, 5), long after payment was due under the Act, leaving $211,808.74 unpaid. As of the date of the hearing, Respondent had not made any additional payments (Tr. at 176). Mr. O'Dell testified (Tr. at 176) that, as a result of not receiving full payment for the 468 head of livestock, he was almost forced to go out of business (Tr. at 176).

Respondent's counsel argues that Mr. O'Dell accepted the loan arrangement. However, the only evidence Respondent provided to support this was a note from Mr. O'Dell to Respondent on November 6, 2002, concerning a proposal by Mr. O'Dell to withdraw a criminal complaint he had filed against Respondent if Respondent would make payments on the amount owed (RX 3). In the note, Mr. O'Dell makes reference to the "end of the loan". Mr. O'Dell explained that he used the word "loan" based on instructions from his attorney but that the transaction was a sale, not a loan (Tr. at 200-203).

This transaction involved the sale of 468 head of livestock and there is documentary evidence showing that Respondent acknowledged his failure to pay Jack and Earl O'Dell for the livestock. The record contains a complaint filed by Jack O'Dell and Earl O'Dell against Respondent in the United States Bankruptcy Court for the Middle District of Georgia, Thomasville Division, Case No.: 02-10715-JTL, Adversary Proceeding File No. 02-1018, in which the O'Dells claimed $217,558.08 owed them for their livestock. (CX 25). Respondent's Answer to the complaint admitted that there had been a sale of cattle and that he owed the Plaintiffs $217,558.08 (CX 26). On August 28, 2002, the Bankruptcy Court ordered Respondent to pay Jack and Earl O'Dell the $217,558.78 he owed them for the cattle by making monthly

payments of $2,874.67 over a seven year period (RX 7). Respondent has made two payments under the Order in October and November 2002 (RX 4, 5), leaving an indebtedness of $211,808.74. Moreover, even though Respondent agues on brief that this transaction involved a loan, he never took the witness stand to give supporting testimony. The evidence is overwhelming that Jack and Earl O'Dell sold 468 head of livestock to Respondent and are still owed $211,808.74.

Failing to pay the full amount of the purchase price for livestock within the time required by the Act is a very serious violation and constitutes an unfair and deceptive practice, in willful violation of the Act (7 U.S.C. §§ 213(a), 228b). Respondent's actions were willful, because he knew or should have known that he did not have sufficient funds in the account upon which the checks were drawn and he also knew or should have known when he purchased livestock that he could not make full and prompt payment in accordance with the requirements of the Act. *In re*: *George Durflinger*, supra; *In re*: *Richard N. Garver, supra*; *In re*: *George County Stockyard, Inc.*, 45 Agric. Dec. 2342, 2350 (1986); *In re*: *Farmers & Ranchers Livestock Auction, Inc., supra; In re Donald Hageman*, 43 Agric. Dec. 531 (1983).

Based on the overwhelming evidence in the record, Respondent failed to pay the full amount of the purchase price for livestock within the time period required by the Act in the amounts of $321,217.17 for 13 purchases from 12 sellers, $49,470.50 for a purchase from James Whiten Livestock, Inc., and $217,558.78 for a purchase from Jack and Earl O'Dell, for a total of $588,246.45. Further, Respondent still owes James Whiten Livestock $11,097.60 and Jack and Earl O'Dell $211,808.74, for a total of $222,906.34. Respondent's failures to pay the full amount of the purchase price for livestock within the time period required by the Act are willful violations of the Act (7 U.S.C. §§ 213(a), 228b).

4. Respondent has not failed to keep records required by the Act respecting "missing cattle" jointly owned with Supreme Cattle Feeders.

Section 401 of the Act (7 U.S.C. § 221) requires a registrant to "keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business." The failure to keep such records violates section 401 of the Act. *See In re Shield Livestock Co., Inc.*, 49 Agric. Dec. 455, 470-471 (1990). However, the so-called "missing cattle" for which Respondent did not have records were owned by Respondent jointly with Supreme Cattle Feeders, LLC, Boise, Idaho and recordkeeping respecting these cattle that they owned 50-50, was performed by Supreme Cattle. Supreme Cattle did supply Complainant with the records it sought and no recordkeeping violation by Respondent is therefore found.

5. Sanction.

Complainant supplied testimony respecting its recommended sanction through the testimony of Branard England, auditor with Complainant's Washington, D.C. office. Mr. England testified (Tr. at 501-503), that in light of Respondent's numerous severe violations of the Act and history of noncompliance with the Act, an order should be issued containing the following provisions: (a) that Respondent cease and desist from operating while insolvent, issuing insufficient funds checks, failing to pay when due for livestock and failing to pay for livestock; (b) that Respondent keep records that fully and correctly disclose all transactions involved in his business, including records reflecting his purchases of livestock and his expenses for feeding and caring for livestock; and (c) that Respondent's registration be suspended for 10 years and thereafter until Respondent demonstrates solvency. With respect to the suspension, Complainant recommends that, upon application to Packers and Stockyards Programs, a supplemental order may be issued as follows: (1) terminating the suspension at any time after

two years upon demonstration to the satisfaction of Packers and Stockyards Programs of circumstances warranting modification of the order, which circumstances would include full payment of all livestock sellers or shippers and proof that Respondent is no longer insolvent; and (2) modifying the suspension to permit Respondent's salaried employment by another registrant or packer after two years upon demonstration of circumstances warranting modification of the order, which circumstances would include Respondent's adoption and compliance with a payment plan to fully pay all unpaid sellers, the selection of a proposed employer who is properly registered and bonded and has not been placed on notice or been the respondent in a disciplinary action for violations of the Packers and Stockyards Act during the previous five years, and a proposed employment arrangement that is not an attempt to circumvent the order.

Respondent's violations in operating while insolvent, issuing checks drawn on accounts having insufficient funds, failing to pay for cattle purchases within the time required and leaving a total of $222,906.34 still unpaid are indeed very serious violations of the Act.

The fact that Respondent operated while he was insolvent subjected cattle sellers to the very real risk of being paid late or not being paid at all. In fact this is exactly what happened. Respondent failed to pay the full amount of the purchase price for livestock within the time period required by the Act in the amounts of $321,217.17 for 13 purchases from 12 sellers, $49,470.50 for a purchase from James Whiten Livestock, Inc, and $217,558.78 for a purchase from Jack and Earl O'Dell, for a total of $588,246.45. Moreover, Respondent still owes James Whiten Livestock $11,097.60 and Jack and Earl O'Dell $211,808.74, for a total of $222,906.34.

Respondent's issuance of insufficient funds checks and his failure to pay the full amount of the purchase price for livestock within the time period required by the Act are actions that must be construed as willful violations of the Act.

Mr. England testified that Complainant ordinarily seeks a five year suspension of registration for payment violations of the kind found in this case (Tr. at 503). A longer suspension was requested due to Respondent's past history of similar violations (Tr. at 503-504).

Complainant introduced two prior consent orders to demonstrate the need for an increased period of suspension. In each consent order, Respondent neither admitted nor denied having violated the Act. No adverse inference of guilt may therefore be drawn from the consent orders nor may the allegations of wrongdoing that underlay the orders constitute the basis for enhanced sanctions. *Spencer Livestock Commission v. Department of Agriculture*, 841 F.2d 1451, 1458 (9th Cir. 1988). On the other hand, the fact that the consent orders were violated may be used to determine what kind of sanction is needed to deter Respondent from conduct prohibited by the Act. *Spencer, supra.*

Respondent consented to two orders. On February 11, 1982, (*In re: William "Bill" Chandler d/b/a Chandler Cattle Company and conducting business through C&W Cattle Corporation*, P. & S. Docket No. 5976), Respondent agreed to cease and desist from, among other things, issuing checks or drafts in payment for livestock purchased without having and maintaining sufficient funds to pay such checks available in the bank account from which such checks or drafts are to be paid, and failing to pay, when due, the full purchase price of livestock (CX 2, pages 18-20). His present violations violate that consent order. On November 22, 1996, Respondent entered into a second consent order (*In re: Southeast Livestock Order Buyers, Inc., Jefferson County Stockyards, Inc., Jacquelyn A. Chandler and William Chandler* P. & S. Docket No. D-96-0028)) (CX 2, pages 11-15) in which Respondent and the other parties agreed to cease and desist from failing to reimburse, when due, their clearor with funds received by the parties from the sale of the livestock for which the clearor had made payment and Respondent's

registration was suspended for 180 days. Respondent's present violations do not involve a clearor and therefore he has not violated that consent order.

Complainant also sent notices to Respondent advising Respondent that he appeared to be violating the Act. On November 9, 1999, Complainant sent a certified letter to Respondent, which was signed for by "J. Chandler", who is most probably Jacqueline Chandler, Respondent's wife (Tr. at 138), advising Respondent that, among other purported violations, he was failing to comply with the Act (7 U.S.C. § 228b) and the regulations (9 C.F.R. § 201.43(b)(2)(i)) respecting timely payment for livestock purchases. On May 23, 2001, Respondent received a certified letter advising him that he was failing to comply with the Act's requirement to pay on time for livestock purchases (CX 2, pages 1-3). In sum, Respondent has violated a prior consent order and has been given ample prior instructions on the Act's timely payment requirements and his legal obligations to comply with them as a registrant.

I agree with Complainant that appropriate cease and desist provisions should be made part of the Order issued against Respondent. I am not, however, including a provision imposing recordkeeping requirements since I have not found such a violation by Respondent. I also agree with Complainant that a suspension of Respondent's registration for more than the usual sanction of five years is warranted in this case in light of the gravity of the offenses, the size of the business involved and the need to effectively deter Respondent from future violations. However, ten years would be too long even with the provision that P& S may conditionally allow Respondent to be employed by another registrant. Instead I am imposing a six year suspension of Respondent's registration under the Act. Extending the suspension to a six year period of time recognizes the aggravating factors in this case without going so far as to empower Complainant to be able to effectively preclude Respondent from ever again operating his own

business as the proposed ten year suspension would do. The purpose of an administrative sanction is not to punish one who may have violated governmental regulations; the purpose is instead to take such steps as are necessary to deter the Respondent from future conduct prohibited by the Act. *See Spencer, supra*, at 1458.

Accordingly, the following ORDER is being issued.

ORDER

Respondent, William Chandler d/b/a Bill Chandler Cattle, his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Act, shall cease and desist from:

1. Engaging in business subject to the Act while insolvent, i.e. while current liabilities exceed current assets

2. Issuing insufficient funds checks in payment for livestock purchases; and

3. Failing to pay the full amount of the purchase price for livestock within the time period required by the Act.

Respondent is suspended as a registrant under the Act for a period of six (6) years and thereafter until he has demonstrated that he is no longer insolvent. Provided, however, that upon application to Packers and Stockyards Programs, a supplemental order may be issued terminating the suspension at any time after two (2) years, upon demonstration of circumstances warranting modification of the order. Provided, further, that this order may be modified upon application to Packers and Stockyards Programs to permit Respondent's salaried employment by another registrant or packer after the expiration of two (2) years of this suspension term and upon demonstration of circumstances warranting modification of the order.

This Decision and Order shall become effective and final thirty-one (31) days after receipt thereof by Respondent unless either party shall appeal the Decision within thirty (30) days after receiving it in accordance with 7 CFR 1.145.

Dated: January 3, 2005

Victor W. Palmer
Administrative Law Judge

ADDENDUM

Pertinent Provisions of the Packers and Stockyards Act

7 U.S.C. § 204

....whenever, after due notice and hearing, the Secretary finds any registrant is insolvent or has violated any provisions of this chapter, he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect within not less than five days, unless suspended or modified or set aside by the Secretary or a court of competent jurisdiction....

7 U.S.C. § 213(a)

It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with the receiving, marketing, buying or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing or handling of livestock

7 U.S.C. § 221

Every packer, any swine contractor, and any live poultry dealer, stockyard owner, market agency, and dealer shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stockholding or otherwise. Whenever the Secretary finds that the accounts, records, and memoranda of any such person do not fully and correctly disclose all transactions involved in his business, the Secretary may prescribe the manner and form in which such accounts, records, and memoranda shall be kept, and thereafter any such person who fails to keep such accounts, records, and memoranda in the manner and form prescribed or approved by the Secretary shall upon conviction be fined not more than $5,000, or imprisoned not more than three years, or both.

7 U.S.C. § 228(b)

(a) Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full amount of the purchase price: *Provided*, That each packer, market agency, or dealer purchasing livestock for slaughter shall, before the close of the next business day following purchase of livestock and transfer of possession thereof, actually deliver at the point of transfer of possession to the seller or his duly authorized representative a check or shall wire transfer funds to the seller's

account for the full amount of the purchase price; or, in the case of a purchase on a carcass or "grade and yield" basis, the purchaser shall make payment by check at the point of transfer of possession or shall wire transfer funds to the seller's account for the full amount of the purchase price not later than the close of the first business day following determination of the purchase price: *Provided further*, That if the seller or his duly authorized representative is no present to receive payment at the point of transfer of possession, as herein provided, the packer, market agency or dealer shall wire transfer funds or place a check in the United States mail for the full amount of the purchase price, properly addressed to the seller, within the time limits specified in this subsection, such action being deemed compliance with the requirement for prompt payment.

(b) Notwithstanding the provisions of subsection (a) of this section and subject to such terms and conditions as the Secretary may prescribe, the parties to the purchase and sale of livestock may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required in subsection (a). Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction.

(c) Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an "unfair practice" in violation of this Act. Nothing in this section shall be deemed to limit the meaning of the term "unfair practice" as used in this Act.

Pertinent Regulatory Provisions

9 C.F.R. § 201.43(b)

Prompt payment for livestock and live poultry - terms and conditions.

(1) No packer, market agency, or dealer shall purchase livestock for which payment is made by a draft which is not a check, unless the seller expressly agrees in writing before the transaction that payment may be made by such a draft. (In cases of packers whose average annual purchases exceed $500,000, and market agencies and dealers acting as agents for such packers, see also 201.200).

(2)(i) No packer, market agency, or dealer purchasing livestock for cash and not on credit, whether for slaughter or not for slaughter, shall mail a check in payment for the livestock unless the check is placed in an envelope with proper first class postage prepaid and properly addressed to the seller or such person as he may direct, in a post office, letter box, or other receptacle regularly used for the deposit of mail for delivery, from which such envelope is scheduled to be collected (A) before the close of the next business day following the purchase of livestock and transfer of possession thereof, or (B) in the case of a purchase on a "carcass" or "grade and yield" basis, before the close of the first business day

following determination of the purchase price.
(ii) No packer, market agency, or dealer purchasing livestock for slaughter, shall mail a check in payment for the livestock unless (A) the check is made available for actual delivery and the seller or his duly authorized representative is not present to receive payment, at the point of transfer of possession of such livestock, on or before the close of the next business day following the purchase of the livestock and transfer of possession thereof, or, in the case of a purchase on a "carcass" or "grade and yield" basis, on or before the close of the first business day following determination of the purchase price; or unless (B) the seller expressly agrees in writing before the transaction that payment may be made by such mailing of a check.
(3) Any agreement referred to in paragraphs (b)(1)or(2) of this section shall be disclosed in the records of any market agency or dealer selling such livestock, and in the records of the packer, market agency, or dealer purchasing such livestock, and retained by such person for such time as is required by any law, or by written notice served on such person by the Administrator, but not less than two calendar years from the date of expiration thereof.
(4) No packer, live poultry dealer, market agency, or livestock dealer shall as a condition to its purchase of livestock or poultry, impose, demand, compel or dictate the terms or manner of payment, or attempt to obtain a payment agreement from a seller through any threat of retaliation or other form of intimidation.

Pertinent Statements of General Policy

Section 203.10 (9 C.F.R. § 203.10):

Statement with respect to insolvency; definition of current assets and current liabilities.
(a) Under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181 et seq.), the principal test of insolvency is to determine whether a person's current liabilities exceed his current assets. This current ratio test of insolvency under the Act has been reviewed and affirmed by a United States Court of Appeals. *Bowman v. United States Department of Agriculture*, 363 F. 2d 81 (5th Cir. 1966).
(b) For the purposes of the administration of the Packers and Stockyards Act, 1921, the following terms shall be construed, respectively, to mean:
(1) Current assets means cash and other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business, which is considered to be one year.
(2) Current liabilities means obligations whose liquidation is reasonably expected to require the use of existing resources principally classifiable as current assets or the creation of other current liabilities during the one year operating cycle of the business.
(c) The term current assets generally includes: (1) Cash in bank or on hand; (2)

sums due a market agency from a custodial account for shippers' proceeds; (3) accounts receivable, if collectable; (4) notes receivable and portions of long-term notes receivable within one year from date of balance sheet, if collectable; (5) inventories of livestock acquired for purposes of resale or for purposes of market support; (6) feed inventories and other inventories which are intended to be sold or consumed in the normal operating cycle of the business; (7) accounts due from employees, if collectable; (8) accounts due from officers of a corporation, if collectable; (9) accounts due from affiliates and subsidiaries of corporations if the financial position of such subsidiaries and affiliates justifies such classification; (10) marketable securities representing cash available for current operations and not otherwise pledged as security; (11) accrued interest receivable; and (12) prepaid expenses.

(d) The term current assets generally excludes: (1) Cash and claims to cash which are restricted as to withdrawal, such as custodial funds for shippers' proceeds and current proceeds receivable from the sale of livestock sold on a commission basis; (2) investments in securities (whether marketable or not) or advances which have been made for the purposes of control, affiliation, or other continuing business advantage; (3) receivables which are not expected to be collected within 12 months; (4) cash surrender value of life insurance policies; (5) land and other natural resources; and (6) depreciable assets.

(e) The term current liabilities generally includes: (1) Bank overdrafts (per books); (2) amounts due a custodial account for shippers' proceeds; (3) accounts payable within one year from date of balance sheet; (4) notes payable or portions thereof due and payable within one year from date of balance sheet; (5) accruals such as taxes, wages, social security, unemployment compensation, etc., due and payable as of the date of the balance sheet; and (6) all other liabilities whose regular and ordinary liquidation is expected to occur within one year.