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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:

David DeStafino

d.b.a.

D & D Stockhauling

Respondent

RECEIVED
P & S Docket No. D-~~10~~-0002

COMPLAINT

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

I

- (a) David DeStafino (hereinafter "Respondent DeStafino") is an individual doing business as D & D Stockhauling (hereinafter "D & D Stockhauling"), whose business mailing address is 779 County Road 1615, Cullman, Alabama 35058.
- (b) Respondent DeStafino is and at all times material herein was:
 - (1) President of D & D Stockhauling;
 - (2) One hundred percent owner of D & D Stockhauling;
 - (3) Responsible for the day-to-day operations of D & D Stockhauling.
- (c) Respondent DeStafino, doing business as D & D Stockhauling at all times material herein, was:
 - (1) Engaged in the business of buying and selling livestock in commerce for his own account as a dealer; and

(2) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account, and as a market agency buying on commission.

II

(a) On or about the dates and in the transactions listed below, Respondent DeStafino, doing business as D & D Stockhauling, issued checks in payment for livestock purchases which were returned unpaid by the bank upon which they were drawn. These checks were returned because Respondent DeStafino did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay such checks when presented.

| Seller | Purchase Date | No. of Head | Check Date | Check Number | Check Amount | Date Returned |
|---------------------------|----------------------|--------------------|-------------------|---------------------|---------------------|----------------------|
| Ashville Stockyard Inc. | 10/13/08 | 18 | 10/14/08 | 1926 | \$7,540.28 | 10/24/08 |
| Fort Payne Stockyard Inc. | 9/30/08 | 36 | 10/7/08 | 1902 | \$14,426.28 | 10/16/08 |
| Fort Payne Stockyard Inc. | 11/18/08 | 39 | 1/22/09 | 1992 | \$14,283.65 | 11/25/08 |
| Total | | 93 | | | \$36,250.21 | |

(b) By letter of notice signed on July 9, 2007, the Packers and Stockyards Program put Respondent on notice, via certified mail, that the firm's payment practices were in violation of section 409 of the Act. The letter was received by Respondent.

Despite the letter of notice, Respondent failed to pay, within the time period required by the Act, the full purchase price of such livestock. All of Respondent's failures to pay for livestock purchases are set forth below:

| Seller | Purchase Date | No. of Head | Livestock Amount | Total Invoice* | Due Date Per §409 |
|---|---------------|-------------|------------------|----------------|-------------------|
| Fort Payne Stockyard Inc. | 11/18/08 | 39 | \$14,283.65 | \$14,283.65 | 11/19/08 |
| Mid-South Livestock Center, LLC | 11/3/08 | 35 | \$7,297.82** | \$17,247.43 | 11/4/08 |
| Mid-South Livestock Center, LLC | 11/10/08 | 8 | \$3,680.65 | \$3,750.65 | 11/12/08 |
| Mid-South Livestock Center, LLC | 11/10/08 | 41 | \$15,562.13 | \$15,562.13 | 11/12/08 |
| Mid-South Livestock Center, LLC | 11/10/08 | 1 | \$427.50 | \$427.50 | 11/12/08 |
| Mid-South Livestock Center, LLC | 11/17/08 | 11 | \$4,287.78 | \$4,345.78 | 11/18/08 |
| Mid-South Livestock Center, LLC | 11/17/08 | 49 | \$18,084.63 | \$18,084.63 | 11/18/08 |
| | Total | 184 | \$63,624.16 | | |
| *Total invoice includes amounts due for non-livestock items and does not reflect any credits applied. | | | | | |
| **Reflects \$9,879.61 credit given to DeStafino by Mid-South Livestock Center, LLC applied to original livestock amount of \$17,177.43. | | | | | |

(c) Of the \$63,624.16 total livestock amount referred to in paragraph II (b) above, \$8,722.16 remains unpaid as of the date of issuance of this complaint.

(d) On or about the dates and in the transactions listed below, Respondent DeStafino, failed to pay, when due, the full purchase price of such livestock:

| Seller | Purchase Date | No. Head | Livestock Amount | Check Amount* | Due Date Per §409 | Date Paid | Days Late |
|-----------------------------|---------------|----------|------------------|---------------|-------------------|-----------|-----------|
| Arab Livestock Market, Inc. | 2/12/08 | 20 | \$10,167.05 | \$10,337.24 | 2/13/08 | 2/20/08 | 7 |
| Arab Livestock Market, Inc. | 2/19/08 | 36 | \$18,829.20 | \$19,171.16 | 2/20/08 | 2/23/08 | 3 |
| Arab Livestock Market, Inc. | 2/26/08 | 22 | \$11,268.40 | \$11,437.63 | 2/27/08 | 3/4/08 | 6 |
| Arab Livestock Market, Inc. | 3/4/08 | 16 | \$7,916.53 | \$8,045.42 | 3/5/08 | 3/11/08 | 6 |
| Arab Livestock Market, Inc. | 3/25/08 | 22 | \$10,595.45 | \$10,795.65 | 3/26/08 | 4/1/08 | 6 |
| Arab Livestock Market, Inc. | 4/1/08 | 17 | \$7,739.05 | \$7,883.05 | 4/2/08 | 4/8/08 | 6 |
| Arab Livestock Market, Inc. | 4/8/08 | 51 | \$22,794.56 | \$23,287.56 | 4/9/08 | 4/15/08 | 6 |
| Arab Livestock Market, Inc. | 5/13/08 | 43 | \$22,846.20 | \$23,289.60 | 5/14/08 | 5/17/07 | 3 |
| Ashville Stockyard Inc. | 10/13/08 | 18 | \$7,331.65 | \$7,540.28 | 10/14/08 | 10/27/08 | 13 |
| Cullman Stockyard, Inc. | 2/21/08 | 31 | \$16,181.75 | \$16,181.75 | 2/22/08 | 3/6/08 | 13 |
| Cullman Stockyard, Inc. | 3/6/08 | 4 | \$1,960.20 | \$1,960.20 | 3/7/08 | 3/20/08 | 13 |
| Cullman Stockyard, Inc. | 3/20/08 | 17 | \$7,416.80 | \$7,416.80 | 3/21/08 | 4/3/08 | 13 |
| Cullman Stockyard, Inc. | 3/27/08 | 16 | \$7,756.25 | \$7,756.25 | 3/28/08 | 4/3/08 | 6 |
| Cullman Stockyard, Inc. | 4/10/08 | 9 | \$3,045.33 | \$3,045.33 | 4/11/08 | 4/17/08 | 6 |
| Cullman Stockyard, Inc. | 4/17/08 | 1 | \$633.60 | \$633.60 | 4/18/08 | 5/1/08 | 13 |
| Cullman Stockyard, Inc. | 5/8/08 | 32 | \$17,497.71 | \$17,497.71 | 5/9/08 | 5/15/08 | 6 |
| Cullman Stockyard, Inc. | 5/15/08 | 30 | \$16,769.42 | \$16,769.42 | 5/16/08 | 5/28/08 | 12 |
| Fort Payne Stockyard Inc. | 9/30/08 | 36 | \$14,037.65 | \$14,426.28 | 10/1/08 | 10/7/08 | 20** |

| | | | | | | | |
|---|----------|-----|--------------|-------------|-------------------|---------|-------|
| Fort Payne Stockyard Inc. | 11/18/08 | 39 | \$14,283.65 | \$14,283.65 | 11/19/08 | 1/22/09 | 64 |
| Mid-South Livestock Center, LLC | 11/3/08 | 35 | \$17,177.43 | \$17,247.43 | 11/4/08 | 1/22/09 | 79 |
| Mid-South Livestock Center, LLC | 11/10/08 | 8 | \$3,680.65 | \$3,750.65 | 11/12/08 | 1/22/09 | 71 |
| Mid-South Livestock Center, LLC | 11/10/08 | 41 | \$15,562.13 | \$15,562.13 | 11/12/08 | 1/22/09 | 71 |
| Mid-South Livestock Center, LLC | 11/10/08 | 1 | \$427.50 | \$427.50 | 11/12/08 | 1/22/09 | 71 |
| Mid-South Livestock Center, LLC | 11/17/08 | 11 | \$4,287.78 | \$4,345.78 | 11/18/08 | 1/22/09 | 65 |
| Mid-South Livestock Center, LLC | 11/17/08 | 49 | \$18,084.63 | \$18,084.63 | 11/18/08 | 1/22/09 | 65 |
| TOTAL | | 605 | \$278,290.57 | | Average Days Late | | 25.76 |
| * Check amount includes some amounts due for non-livestock items | | | | | | | |
| ** Payment on this transaction was recorded as 20 days late because although Respondent paid the amount owed on 10/7/08, Respondent's check was returned on 10/16/08 due to insufficient funds on deposit and available in the account upon which the check was drawn to pay such check when presented. | | | | | | | |

III

By reason of the facts alleged in paragraph II (a), (b), (c) and (d), Respondent DeStafino, doing business as D & D Stockhauling, has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b(a)).

WHEREFORE, it is hereby ordered that this complaint shall be served upon Respondent for the purpose of determining whether the Respondent has willfully violated the Act and the regulations issued thereunder. Respondent shall have twenty (20) days after receipt of this

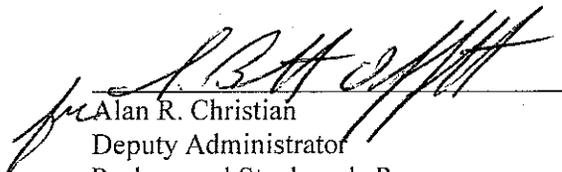
complaint in which to file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, in accordance with the Rules of Practice Governing Proceedings under the Act (7 C.F.R. § 1.130 *et seq.*; "Rules of Practice"). Allegations not answered shall be deemed admitted for the purpose of this proceeding. Failure to file an answer shall 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 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 accord with the Rules of Practice governing proceedings under the Act.

2. That such order or orders be issued, including an order requiring Respondent DeStafino, doing business as D & D Stockhauling, to cease and desist from the violations of the Act with respect to the matters alleged herein, and assessing such penalties as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.
this 2nd day of October, 2009


Alan R. Christian
Deputy Administrator
Packers and Stockyards Program


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