

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) P. & S. Docket No. D-10-0008  
)  
Herreid Livestock Auction, Inc. )  
and Joe Varner, )  
)  
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.*)(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) Herreid Livestock Auction, Inc., (hereinafter “Corporate Respondent”), is a corporation organized and existing under the laws of the State of South Dakota, with a mailing address of P.O. Box 67, Herreid, South Dakota 56537. Its street address is 1202 Main Street, Herreid, South Dakota 57632.

(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 sole director 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

(a) As of July 31, 2008, Corporate Respondent's current liabilities exceeded its current assets. As of that date, Corporate Respondent had current liabilities totaling \$996,292.62 and current assets totaling \$831,467.89, resulting in an excess of current liabilities over current assets of \$164,824.73.

(b) As of August 31, 2008, Corporate Respondent's current liabilities exceeded its current assets. As of that date, Corporate Respondent had current liabilities totaling \$2,849,982.58 and current assets totaling \$2,658,965.58 resulting in an excess of current liabilities over current assets of \$191,017.00.

(c) As of September 30, 2008, Corporate Respondent's current liabilities exceeded its current assets. As of that date, Corporate Respondent had current liabilities totaling \$1,512,846.56 and current assets totaling \$1,369,486.01 resulting in an excess of current liabilities over current assets of \$143,360.55.

(d) As of June 30, 2009, Corporate Respondent's current liabilities exceeded its current assets. As of that date, Corporate Respondent had current liabilities totaling \$633,806 and current assets totaling \$92,014 resulting in an excess of current liabilities over current assets of \$541,792.

(e) From July 31, 2008 through September 29, 2008, Corporate Respondent engaged in the business of a market agency selling livestock in commerce on a commission basis, notwithstanding the fact that its current liabilities exceeded its current assets. On information and belief, throughout the month of June 2009, and to the present, Corporate Respondent engaged, and continues to engage, in the business of a market agency selling livestock in commerce on a commission basis, notwithstanding the fact that its current liabilities exceeded, and continue to exceed, its current assets

### 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, Corporate Respondent's financial condition on July 31, 2008, August 31, 2008, September 30, 2008 and June 30, 2009 did not meet the requirements of the Act (7 U.S.C. § 204).

WHEREFORE, it is hereby ordered that for the purpose of determining whether Respondents have 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 Respondents fail to file an answer within the time allowed therefor, 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 governing proceedings under the Act; and
2. That such order or orders be issued, including an order requiring Respondents to cease and desist from the violations found to exist and suspending Corporate Respondent as a registrant under the Act.

Done at Washington, D.C.

this 9 day of October, 2009



Alan R. Christian  
Deputy Administrator  
Packers and Stockyards Program

Charles L. Kendall  
Attorney for Complainant  
Telephone: (202) 720-9405