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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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FILED

In re:)	P & S Docket No. D-11-0130
)	
Victor Peak d/b/a)	
Peak Livestock Co., L.L.C.,)	
)	
Respondent)	Complaint

There is reason to believe that the Respondent named herein has willfully violated 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) Victor Peak, d/b/a Peak Livestock Co., L.L.C., (herein "Respondent") is an individual whose mailing address is 502 Albert Street, Emporia, Kansas 66801.

(b) At all times material herein, Respondent was:

1. Engaged in the business of buying and selling livestock in commerce for his own account or for the account of others;
2. Not registered as a dealer or a market agency with the Secretary of Agriculture;¹ and

¹ Respondent was the owner and alter ego of TAB Cattle, which was registered with Complainant as a dealer. On September 5, 2006, Respondent stated that he had discontinued livestock operations, and his registration was made inactive.

3. At all times material to the Complaint, operating as a dealer within the jurisdiction of the Secretary.

II.

On June 28, 2006, the Denver, Colorado regional office of Complainant received letter of credit notifications from Exchange National Bank stating that the letters of credit nos. 37964 and 40340 for Respondent would be terminated effective July 26, 2006. In a certified letter dated July 5, 2006, Milton B. Hansen, Trade Practices Supervisor of the Denver, Colorado regional office of Complainant, informed Respondent that the regional office had received notice that on July 27, 2006 the letters of credit collateralizing the trust agreement covering the livestock operation of Peak Cattle, L.L.C. will expire. Respondent was informed that unless Peak Cattle, L.L.C. provided replacement bond coverage including Respondent's firm as a cleeree, Respondent must obtain his own bond, or make arrangements with some other firm to provide clearing services. The letter further notified the Respondent that unless he had a new bond, or bond equivalent, he must discontinue all livestock operations for which bonding is required under the Act and the Regulations. Respondent was further informed that continuing livestock operations without filing an adequate bond or bond equivalent was a violation of section 312(a) of the Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29 and 201.30) and subject to disciplinary action.

In a Notice of Default, dated December 15, 2008, and served upon Respondent by certified mail on December 20, 2008, the Packers and Stockyards Program notified Respondent that he was operating subject to the Act and that he needed to file a new application for registration and a bond or bond equivalent in the amount of \$60,000 before

he continued livestock operations. Respondent was referred to section 312(a) of the Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30) and informed that it was an unfair and/or deceptive practice to operate as a market agency or dealer without filing an application for registration and a bond or bond equivalent. Respondent was further informed that continued violations of the Act could result in the filing of a complaint against Respondent and in appropriate sanctions, including an order to cease and desist from the unlawful conduct, civil penalties of up to \$11,000 per violation, and suspension of any registration, if Respondent was found after opportunity for hearing to have violated the Act.

III.

Notwithstanding the notice to Respondent that he must be registered and bonded in order to lawfully operate subject to the Act, on or about the dates and in the transactions set forth in Appendix A and incorporated herein by reference, Respondent engaged in the business of purchasing livestock in commerce without obtaining the necessary registration and bond as required by the Act and the Regulations.

IV.

- (a) Respondent, in connection with his operations subject to the Act, on or about the dates and in the transactions set forth below, issued checks in payment for livestock purchases, which 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.

PURCHASED FROM	PURCHASE DATE	NO. OF HEAD	CHECK DATE	CHECK NUMBER	CHECK AMOUNT	RETURN DATE
Missildine d/b/a LHRM, Inc.	10/6/08	280	10/6/08	2928	\$50,142.00	12/3/08
G.W. Cattle Company	11/19/08	136	11/19/08	3014	\$105,528.37	12/5/08 ²
TOTALS		416			\$155,670.37	

(b) Respondent, in connection with his operations subject to the Act, on or about the dates and in the transactions set forth in Appendix B and incorporated herein by reference, failed to pay the full amount of the purchase price for livestock within the time period required by the Act, with the total amount remaining unpaid of \$375,347.29 as of November 17, 2010.

V.

By reason of the facts alleged in paragraphs II and III, Respondent has willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30).

By reason of the facts alleged in paragraph IV, Respondent has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 409).

WHEREFORE, it is hereby ordered that this complaint shall be served upon 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, 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

² Check was first returned on 11/26/08 for NSF.

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, GIPSA, requests:

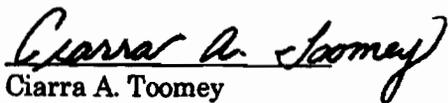
1. That unless Respondent fails to file an answer within the time allowed, or files an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in accordance with the Rules of Practice; and
2. That such order or orders be issued, including an order requiring Respondent to cease and desist from the violations of the Act found to exist, requiring that Respondent not engage in operations subject to the Act unless or until he is bonded as required by 7 U.S.C. § 204 of the Act, and assessing such civil penalty, as authorized by the Act and warranted in the premises.

Done at Washington, D.C.

this 24 day of January, 2011



Alan R. Christian
Deputy Administrator,
Packers and Stockyards Program



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Appendix A

Victor Peak d/b/a Peak Livestock Co LLC Purchase and Sales Transactions

Purchase Date	Seller	No. of Head	Total Livestock Purchase Amount	Sale Date	Sold To	No. of Head	Total Sale Amount
10/6/08	Missildine d/b/a LHRM, Inc., Avery, TX	280	\$189,662.59				
11/18/08	Fredonia Livestock Auction, LLC, Fredonia, Kansas	132	\$80,296.04				
11/19/08	G.W. Cattle Company, Randolph, Kansas	136	\$105,528.37	11/19/08	Sunbelt Feeders, Hugoton, KS ¹	136	\$106,145.50
11/21/08		204	\$141,498.50	11/20/08	Don Garrett, Garrett Construction ²	204	\$143,212.88
11/21/08		58	\$47,823.29	11/20/08	Don Garrett, Garrett Construction ³	59	\$49,018.61
01/23/09	Big Springs Livestock Auction, Big Springs, TX	79	\$42,176.99				

¹ Noted on Peak Livestock Co LLC invoice no. 1033 dated November 19, 2008

² Noted on Peak Livestock Co LLC invoice no. 1038 dated November 20, 2008 In his affidavit dated July 28, 2009, Garren Walrod, owner of G.W. Cattle Company stated that these head of livestock went to HRC Feeders, Scott City, Kansas.

³ Noted on Peak Livestock Co LLC invoice no. 1037 dated November 20, 2008 In his affidavit dated July 28, 2009, Garren Walrod, owner of G.W. Cattle Company stated that these head of livestock went to Cheyenne County Feeders, St. Francis, Kansas

**Appendix B
Victor Peak d/b/a Peak Livestock Co LLC Failure to Pay Timely for Livestock**

Seller	Purchase Date	No. of Head	Livestock Amount	Due Date	Check Number	Check Date	Check Amount	Unpaid Balance			
Missildine d/b/a LHRM, Inc.	10/6/08	280	\$189,662.59	10/9/08	2927	10/6/08	\$140,370.54	\$50,142.00 ¹			
				10/13/08	2928	10/6/08	\$50,142.00				
Fredonia Livestock Auction, LLC	11/18/08	132	\$80,296.04 ²	11/19/08	3006*	11/18/08	\$74,481.71 ³	\$77,907.48			
					130248	11/21/08	\$2,448.56				
G.W. Cattle Company	11/19/08	136	\$105,528.37	11/20/08	3014	11/19/08	\$105,528.37	\$105,528.37 ⁴			
							11/21/08	3022*	11/21/08	\$141,498.50	\$141,498.50
							11/21/08	3021*	11/21/08	\$47,823.29	\$47,823.29
Big Springs Livestock Auction	1/23/09 ⁵	79	\$42,176.99	1/26/09			\$15,818.25 ⁶	\$2,589.65			
							\$23,769.09 ⁷				
TOTALS		889	\$606,9865.78					\$875,347.29			

*Indicates Peak placed a stop payment on the check.

¹Amount represents the balance owed for the livestock (\$49,292.05) and a commission charge of \$849.95. Check no. 2928 was returned on 12/3/08 for NSF.

²The livestock balance due does not include the additional charge of \$60 in vet fees

³Check amount is short \$5,874.33 of the total amount due. Peak placed a stop payment on the check.

⁴Check was first returned on 11/26/08 and then again on 12/5/08 for NSF.

⁵Livestock was purchased by Bill Cox on commission for Victor Peak. The cattle were directly invoiced to Peak.

⁶Check was drawn on the account of Brody Peak.

⁷Check was drawn on the account of Jan S. Peak.