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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:)	P&S Docket No. 11-0303
)	
Montana Livestock Auction, Inc.,)	
and Kenneth Moe,)	
)	
)	
Respondent)	Complaint

There is reason to believe that the Respondents named herein have willfully violated the provisions of the Packers & 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.*) and therefore, this Complaint is issued alleging the following:

I.

(a) Respondent Montana Livestock Auction, Inc. ("Montana Livestock") is a Montana corporation with a principal place of business in Ramsay, Montana. The corporation's registered agent for service of process in the State of Montana is: Kenneth Moe, 2333 Telegraph Gulch Road, P.O. Box 4285, Butte, Montana 59702.

(b) At all times material to the allegations herein, Respondent Montana Livestock managed and operated a livestock auction market located at 100 Cattle Drive, Ramsay, Montana 59748, and was:

1. Engaged in the business of conducting and operating a posted stockyard subject to the provisions of the Act;

2. Engaged in the business of a market agency selling consigned livestock in commerce on a commission basis; and

3. Registered with the Secretary of Agriculture as a market agency to buy and sell livestock in commerce on a commission basis.

(c) Respondent Kenneth Moe is an individual whose home address is in the State of Montana. In order to protect the personal privacy of Respondent Moe, his address is not included in this Complaint but has been provided to the Hearing Clerk for purpose of effectuating service of process.

(d) At all times material to the allegations herein, Respondent Moe was:

1. The sole owner of Respondent Montana Livestock;
2. Responsible for the day-to-day direction, management and control of Respondent Montana Livestock; and
3. A market agency within the meaning of and subject to the provisions of the Act.

(e) On or about February 20, 2009, Respondent Moe sold his ownership interest the Montana Livestock auction market. The new owners of the facility, which operates under the name Montana Livestock Auction, registered with the Secretary of Agriculture.

II

(a) Section 201.42 of the regulations (9 C.F.R. § 201.42), issued by the Secretary of Agriculture under the Packers and Stockyards Act, requires market agencies selling livestock on commission to maintain a custodial account for shippers' proceeds

("custodial account"). A custodial account is a trust account that protects funds that are owed to livestock producers and owners who consign livestock for sale at an auction market. The proceeds from livestock sales at regulated auction markets must be deposited into custodial accounts. If the proceeds receivable from livestock sales cannot be collected and deposited into a market's custodial account by the close of the seventh day after the sale, then the market must make up the shortfall and reimburse the custodial account for the unpaid receivables.

(b) On November 26, 2008, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration notified Respondents Moe and Montana Livestock, via certified mail, that failing to maintain the auction market's custodial account and operating with a custodial account shortage violated sections 307 and 312(a) of the Packers and Stockyards Act (7 U.S.C. §§ 307, 213(a)) and section 201.42 of the regulations (9 C.F.R. § 201.42). Notwithstanding this notice, Respondents continued to misuse custodial account funds and operate with a custodial account shortage.

III.

Respondent Montana Livestock, under the direction, management, and control of Respondent Moe, during the period of December 31, 2008, through February 17, 2009, failed to properly use and maintain its custodial account, thereby endangering the faithful and prompt accounting of shippers' proceeds and the payments due the owners or consignors of livestock, in that:

(a) As of December 31, 2008, Respondent Montana Livestock had outstanding checks drawn on its custodial account in the amount of \$338,677.30 and had to offset such

checks a balance in the custodial account of \$56,283.73, resulting in a custodial account shortage in the amount of \$282,393.57.

(b) As of February 17, 2009, Respondent Montana Livestock had outstanding checks drawn on its custodial account in the amount of \$1,286,914.45 and had to offset such checks a balance in the custodial account of negative \$49,705.62 and proceeds on hand of \$384,732.57 and proceeds receivable of \$457,778.80, resulting in a custodial account shortage in the amount of \$494,108.70.

(c) The shortages in Respondent Montana Livestock's custodial account were due, in part, to Respondents' failure to deposit into the account an amount equal to the proceeds receivable from the sale of consigned livestock within the time prescribed by section 201.42 of the regulations (9 C.F.R. § 201.42).

IV.

The shortages in Respondent Montana Livestock's custodial account, during the period of December 31, 2008, through February 17, 2009, as set forth in paragraph III above, were also due, in part, to the misuse of custodial account funds:

(a) Respondent Montana Livestock, under the direction, management, and control of Respondent Moe, on or about the dates set forth below, permitted \$3,350.00 in bank fees to be charged to its custodial account:

<u>Date</u>	<u>Description</u>	<u>Amount</u>
01/06/09	Overdraft Charge	\$25.00
01/07/09	Overdraft Charge	\$25.00
01/08/09	Overdraft Charge	\$25.00
01/12/09	Overdraft Charges	\$175.00
01/13/09	Overdraft Charges	\$525.00
01/15/09	Overdraft Charges	\$100.00

<u>Date</u>	<u>Description</u>	<u>Amount</u>
01/16/09	Overdraft Charge	\$25.00
01/20/09	Overdraft Charges	\$125.00
01/27/09	Overdraft Charges	\$200.00
01/29/09	Overdraft Charge	\$25.00
01/30/09	Overdraft Charges	\$225.00
02/02/09	Overdraft Charges	\$475.00
02/09/09	Overdraft Charges	\$450.00
02/10/09	Overdraft Charge	\$25.00
02/11/09	Returned Check Fees	\$50.00
02/11/09	Overdraft Charges	\$275.00
02/12/09	Returned Check Fees	\$325.00
02/13/09	Overdraft Charges	\$50.00
02/17/09	Stop Payment Fees	\$75.00
02/17/09	Overdraft Charges	\$150.00
		\$3,350.00

V.

(a) Respondent Montana Livestock, under the direction, management, and control of Respondent Moe, in connection with its operations subject to the Act, on or about the dates and in the transactions set forth below, sold livestock on a commission basis and in purported payment of the net proceeds thereof issued checks to consignors that were returned unpaid by the bank upon which they were drawn because Respondent Montana Livestock did not have sufficient funds available in the account upon which the checks were drawn to pay the checks when presented:

<u>Sale Date</u>	<u>Seller's Name</u>	<u>No. of Head</u>	<u>Check Amount</u>	<u>Check No.</u>	<u>Date Check Returned NSF</u>
01/30/09	Ellison Ranch	44	\$23,235.03	41908	02/12/09
01/30/09	Wolfe Hereford Ranch	13	\$4,613.87	42000	02/12/09
01/30/09	Raffety Cattle Co.	17	\$8,618.47	42027	02/12/09
02/03/09	J. Blaine Anderson Jr.	8	\$3,987.27	42108	02/12/09

<u>Sale Date</u>	<u>Seller's Name</u>	<u>No. of Head</u>	<u>Check Amount</u>	<u>Check No.</u>	<u>Date Check Returned NSF</u>
02/03/09	WCC	8	\$3,366.67	42125	02/12/09
02/03/09	WCC	3	\$1,627.13	42132	02/12/09
02/03/09	Bear Creek Ranches	31	\$18,449.13	42141	02/12/09
02/03/09	Debbie Melle	12	\$5,398.82	42144	02/12/09

(b) Respondent Montana Livestock, under the direction, management, and control of Respondent Moe, on or about the dates and in the transactions set forth above, failed to remit, when due, the net proceeds due from the sale price of such livestock on a commission basis.

VI.

By reason of the facts alleged in paragraph I, Respondent Moe is the alter ego of Respondent Montana Livestock.

By reason of the facts alleged in paragraphs III and IV, Respondents have willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.42 of the regulations (9 C.F.R. § 201.42).

By reason of the facts alleged in paragraph V, Respondents have willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.43 of the regulations (9 C.F.R. § 201.43).

WHEREFORE, it is hereby ordered that this Complaint shall be served on Respondents for the purpose of determining whether Respondents have willfully violated the Act. Respondents 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 shall constitute an admission of all the material allegations of this Complaint.

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

1. That unless Respondents fail to file an answer within the time allowed therefore, 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.
2. That an order be issued requiring Respondents to cease and desist from the violations found to exist, suspending Respondent Montana Livestock as a registrant under the Act, barring Respondent Moe from registering under the Act, and assessing such civil penalties as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 7 day of July 2011



Alan R. Christian
Deputy Administrator,
Packers & Stockyards Program



Charles E. Spicknall
Attorney for Complainant
Office of the General Counsel
United States Department of Agriculture
Trade Practices Division
1400 Independence Avenue, S.W.
Room 2318, South Building
Washington, D.C. 20250
Telephone: (202) 720-8564