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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	P&S Docket No.	12-0025
)		
Fred J. Berger, Ltd. d.b.a,)		
Berger Cattle Company,)		
)		
and)		
)		
Fred J. Berger,)		
)		
Respondents)	Complaint	

There is reason to believe that the respondent named herein has willfully violated 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 Fred J. Berger, Ltd., doing business as Berger Cattle Company, is a corporation organized and existing under the laws of the State of North Dakota. Its business mailing address is P.O. Box 308, Mandan, ND 58554.
- (b) Respondent Fred J. Berger, Ltd., under the direction, management, and control of respondent Fred J. Berger, is, and at all times material herein was:
 - (1) Engaged in the business of a livestock dealer buying and selling livestock in commerce for its own account, and as a market agency buying livestock in commerce on a commission basis; and

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

(c) Respondent Fred J. Berger is an individual and his mailing address is P.O. Box 308, Mandan, ND 58554. Respondent Berger is, and at all times material herein was, the owner, president and manager of Respondent Fred J. Berger, Ltd., and formulated, directed, and controlled the policies, practices and activities of Respondent Fred J. Berger, Ltd.

(d) Respondent Fred J. Berger is, and at all times material herein was engaged in the business of a livestock dealer buying and selling livestock in commerce for his own account, and as a market agency buying livestock in commerce on a commission basis.

II.

Respondents were advised by the Midwestern Regional Office, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA) in a Notice of Violation letter dated February 4, 2010, that the respondents had failed to pay for livestock in a timely manner in violation of section 409 of the Act (7 U.S.C. § 228b) and section 201.43 of the regulations (9 C.F.R. § 201.43).

III.

Respondent Fred J. Berger, Ltd., under the direction, management, and control of respondent Fred J. Berger, commencing on or about April 7, 2010, and continuing through August 11, 2010, in approximately 27 transactions, purchased livestock in the amount of approximately \$3,417,731 and failed to pay, when due, the full amount of the purchase prices within the time period required by the Act. Respondents' payments were made between approximately 1 and 7 days late. Respondents purchased the livestock from the following sellers: (1) Stockmen's West, Dickinson, North Dakota; (2) Kist Livestock Auction, Mandan,

North Dakota; (3) Northern Livestock Auction, Minot, North Dakota; (4) Farmers Livestock Exchange, Bismarck, North Dakota; (5) Sitting Bull Livestock, Williston, North Dakota; (6) Rugby Livestock Sales, Inc., Rugby, North Dakota; (7) Wishek Livestock Sales, Inc., Wishek, North Dakota; and (8) Herreid Livestock Auction, Inc., Herreid, South Dakota.

IV.

By reason of the facts alleged in paragraphs II and III, respondents willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b), and section 201.43 of the regulations (9 C.F.R. § 201.43).

WHEREFORE, it is hereby ordered that this complaint shall be served upon the respondents for the purpose of determining whether the respondents have willfully violated the Act and regulations. Respondents shall have twenty (20) days after receipt of this complaint to file an answer with the Hearing Clerk, Room 1031 - South Building, United States Department of Agriculture, 1400 Independence Ave., S.W., Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. §§ 1.130 *et seq.*). Allegations not 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 in this complaint.

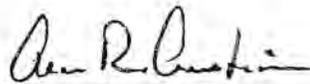
The Grain Inspection, Packers and Stockyards Administration, Packers and Stockyards Program, requests:

- (1) That unless the respondents fail to file an answer within the time allowed, 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; and
- (2) That such order or orders be issued, including an order requiring the respondents to cease and desist from the violations of the Act and the regulations found to exist, suspending

the respondents' registration under the Act, and assessing such civil penalties against respondents as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 13 day of October, 2011



Alan R. Christian
Deputy Administrator
Packers and Stockyards Program

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