

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P & S Docket No. D-12-0239
)
Headwaters Livestock Auction, LLC)
)
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.) (Act), and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.) (Regulations), and, therefore, this complaint is issued alleging the following:

I.

(a) Headwaters Livestock Auction, LLC (Respondent) is a limited liability company organized and existing under the laws of the State of Montana.

Respondent's current mailing address is P.O. Box 590, Three Forks, MT 59752.

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

- (1) Engaged in the business of a market agency selling livestock in commerce on a commission basis; and
- (2) Registered with the Secretary of Agriculture as a market agency to buy and sell livestock in commerce on a commission basis and as a

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dealer buying and selling livestock in commerce for its own account or for the account of others.¹

II.

On October 5, 2009, the Western Regional Office of the Packers and Stockyards Program sent Respondent a Notice of Violation letter, which was served on October 14, 2009, informing Respondent that it had failed to maintain its Custodial Account for Shippers' Proceeds (custodial account) resulting in a custodial account shortage in violation of sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213(a)) and section 201.42 of the Regulations (9 C.F.R. § 201.42). Specifically, Respondent was informed that it had a custodial account shortage of \$4,021.16 as of August 30, 2009. Respondent was further informed that it must correct its business practices and that continued violations could result in the issuance of an administrative complaint.

III.

Respondent failed to maintain properly its custodial account, thereby endangering the faithful and prompt accounting of shippers' proceeds and the payment due the owners or consignors of livestock in that:

(a) As of May 31, 2010, Respondent had outstanding checks drawn on its custodial account in the approximate amount of \$394,794.57 and had to offset such

¹ Since the time of the allegations in this complaint, Respondent's registration has expired pursuant to section 201.10 of the Regulations (9 C.F.R. § 201.10) due to Respondent's failure to file a complete Annual Report of Market Agency – SOC for the calendar year ending December 31, 2010. A corrected report was filed on October 31, 2011. As of the date of filing of this complaint, Respondent has yet to file a new application for registration.

checks, a balance in its custodial account of \$279,860.58, a balance in a savings account designated as custodial funds of \$3,809.06, and proceeds on hand in the approximate amount \$19,883.59 resulting in a deficiency of approximately \$91,241.34.

(b) As of June 30, 2010, Respondent had outstanding checks drawn on its custodial account in the approximate amount of \$341,476.39 and had to offset such checks, a balance in the custodial account of \$129,173.79, and proceeds receivable of \$138,532.21 resulting in a deficiency of approximately \$73,770.39.

(c) As of October 31, 2010, Respondent had outstanding checks drawn on its custodial account in the approximate amount of \$735,212.46 and had to offset such checks, a balance in the custodial account of \$708.85, deposits in transit of \$341,035.50, proceeds on hand in the approximate amount of \$101,889.59, and proceeds receivable of \$246,489.91 resulting in a deficiency of approximately \$45,088.61.

(d) The shortages in Respondent's custodial account were due, in part, to Respondent's failure to timely reimburse its custodial account.

IV.

By reason of the facts alleged in paragraphs II-III, Respondent willfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213(a)), and section 201.42 of the Regulations (9 C.F.R. § 201.42).

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 the 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, DC 20250, in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (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 will 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 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 and the Regulations found to exist, and assessing such civil penalties against Respondent as are

authorized by the Act and warranted in the circumstances.

Done at Washington, D.C.

this 17th day of February, 2012



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Deputy Administrator
Packers and Stockyards Program

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