

JUN 22 2012

UNITED STATES DEPARTMENT OF AGRICULTURE JUN 22 11 13 06

BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	P&S Docket No. D-12-0497
)	
Southern Colorado Livestock)	
Auction Inc.,)	
)	
and)	
)	
John R. Malouff, Jr.,)	
)	
Respondents)	Complaint

There is reason to believe that the respondents named herein have 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 Southern Colorado Livestock Auction Inc. is a corporation organized under the laws of the State of Colorado, with its principal place of business located at 5660 E. Hwy 160, Monte Vista, CO 81144.
- (b) Respondent John R. Malouff, Jr. is an individual whose mailing address is 5660 E. Hwy 160, Monte Vista, CO 81144.
- (c) Respondent Southern Colorado Livestock Auction Inc., under the direction, management, and control of respondent John R. Malouff, Jr., is, and at all times material herein was:
 - (1) Engaged in the business of conducting and operating Southern Colorado Livestock Auction Inc., a stockyard posted under and subject to the provisions of the Act;
 - (2) Engaged in the business of a market agency selling consigned livestock on a commission basis in commerce;

- (3) Registered with the Secretary of Agriculture as a market agency to sell livestock on a commission basis in commerce.
- (d) Respondent John R. Malouff, Jr. is, and at all times material herein was:
 - (1) President of respondent Southern Colorado Livestock Auction Inc.;
 - (2) Sole owner of respondent Southern Colorado Livestock Auction Inc.;
 - (3) Responsible for the direction, management and control of respondent Southern Colorado Livestock Auction Inc.
- (e) Respondent John R. Malouff, Jr. was, at all times material herein:
 - (1) President and owner of another livestock market, the Southern Colorado Livestock Auction Fowler, LLC stockyard located in Fowler, CO.
- (f) Respondent John R. Malouff, Jr. is, and at all times material herein was:
 - (1) Engaged in the business of conducting and operating Southern Colorado Livestock Auction Inc., a stockyard posted under and subject to the provisions of the Act;
 - (2) Engaged in the business of a market agency selling consigned livestock on a commission basis in commerce.

II.

(a) On or about August 27, 2009, the Packers and Stockyards Program notified Respondent John R. Malouff, Jr., via certified mail, that a custodial account shortage violates sections 307(a) and 312(a) of the Packers and Stockyards Act (7 U.S.C. §§ 208 and 213(a)). The notice advised that a Packers and Stockyards Program audit disclosed that the Fowler livestock auction's custodial account had shortages on March 31, 2009 and January 31, 2009.

(b) On or about October 5, 2009, the Packers and Stockyards Program notified the Fowler livestock auction of a custodial account shortage reported on the market's "Status of

Custodial Account for Shippers' Proceeds – Special Report” filed with GIPSA on August 6, 2009.

(c) On or about June 27, 2011, as a result of a further audit by the Packers and Stockyards Program, the Respondent John R. Malouff, Jr. and the Packers and Stockyards Program entered into a stipulation agreement to resolve additional findings that the Respondent had custodial account shortages at the Fowler livestock auction on April 30, 2010, May 31, 2010, and November 7, 2010.

III.

Respondent Southern Colorado Livestock Auction, Inc., under the direction, management, and control of respondent John R. Malouff Jr., during the period of December 31, 2010 through March 11, 2011, 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, 2010, respondents had outstanding checks drawn on their custodial account in the amount of approximately \$304,163 and had, to offset such checks, a balance in the custodial account of approximately \$34,396, and current proceeds receivable in the amount of approximately \$25,923, resulting in a custodial account shortage in the amount of approximately \$243,844.

(b) As of January 31, 2011, respondents had outstanding checks drawn on their custodial account in the amount of approximately \$491,428 and had, to offset such checks, a balance in the custodial account of approximately \$136,519, and current proceeds receivable in the amount of approximately \$103,044, resulting in a custodial account shortage in the amount of approximately \$251,866.

(c) As of March 11, 2011, respondents had outstanding checks drawn on their custodial account in the amount of approximately \$451,870 and had, to offset such checks, a balance in the custodial account of approximately \$104,756, and current proceeds receivable in the amount of approximately \$125,058, resulting in a custodial account shortage in the amount of approximately \$222,056.

(d) The custodial account shortages described herein were due in part to respondents' failure to deposit in the custodial account, within the time prescribed by the regulations, an amount equal to the proceeds receivable for sales of consigned livestock.

IV.

(a) During the period from November 18, 2010, through December 16, 2010, in connection with consignments of livestock for sale on a commission basis, totaling 118 head of livestock valued at \$80,631.83, the respondent Southern Colorado Livestock Auction, under the direction, management, and control of respondent John R. Malouff, Jr., sold the livestock on a commission basis and, in purported payment of the net proceeds resulting from such sales, issued checks to consignors Patrica Hought, Kristy Hill Staudt, and Scot Schaefer that were returned unpaid by the bank upon which they were drawn because respondents did not have and maintain sufficient funds available in the custodial account upon which the checks were drawn to pay the checks when presented.

(b) By issuing the insufficient funds checks referenced in paragraph IV(a) of this complaint, the respondent Southern Colorado Livestock Auction, under the direction, management, and control of respondent Malouff, failed to remit to the consignors, when due, the net proceeds due from the sale price of such livestock on a commission basis.

V.

By reason of the facts alleged in paragraphs II and III, respondents have 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).

By reason of the facts alleged in paragraph IV, the respondents have willfully violated section 312(a) (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 upon the respondents for the purpose of determining whether respondents have willfully violated the Act and regulations. Respondents shall have twenty (20) days after receipt of this complaint in which to file an answer with the Hearing Clerk, Room 1031-South Building, United States Department of Agriculture, 1400 Independence Avenue, 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 of this complaint.

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

1. That unless 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 respondents to cease and desist from the violations of the Act and the regulations found to exist,

suspending respondents as registrants 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 22 day of June, 2012



Alan R. Christian
Deputy Administrator
Packers and Stockyards Program

Lauren C. Axley
Attorney for the Complainant
Office of the General Counsel
Marketing, Regulatory, and Food Safety Programs Division
Room 2319, South Building
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250-1400
Telephone: (202) 720-5143
Email: lauren.axley@ogc.usda.gov