

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P & S Docket No. D-12-0079
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Sugar creek Livestock Auction, Inc.,)
)
and)
)
Leroy H. Baker, Jr.)
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)
)
Respondents) Complaint

There is reason to believe that respondents Sugar creek Livestock Auction, Inc., and Leroy H. Baker, Jr., have willfully violated the Packers and 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.). Therefore, this Complaint is issued alleging the following:

I.

- (a) Respondent Sugar creek Livestock Auction, Inc. is a corporation organized under the laws of the State of Ohio, with its principal place of business located at 102 Buckeye Street, Sugar creek, Ohio, 44681. Its mailing address is P.O. Box 452, Sugar creek, Ohio, 44681.
- (b) Respondent Leroy H. Baker, Jr., is an individual whose mailing address is 29357 State Route 172, East Rochester, Ohio, 44625.

(c) Respondent Sugarcreek Livestock Auction, Inc., under the direction, management, and control of respondent Leroy H. Baker, Jr., is, and at all times material herein was:

(1) Engaged in the business of conducting and operating Sugarcreek Livestock Auction, Inc., a stockyard posted under and subject to the provisions of the Act;

(2) Engaged in the business of a market agency buying and selling livestock on a commission basis in commerce;

(3) Engaged in the business of a dealer buying and selling livestock in commerce;

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

(d) Respondent Leroy H. Baker, Jr. is, and at all times material herein was:

(1) President of respondent Sugarcreek Livestock Auction, Inc.;

(2) Owner of 80% of the stock issued by respondent Sugarcreek Livestock Auction, Inc.;

(3) Responsible for the direction, management and control of respondent Sugarcreek Livestock Auction, Inc..

II.

(a) As of September 30, 2008, respondent Sugarcreek Livestock Auction, Inc. had current assets of approximately \$169,921 and current liabilities of approximately \$183,865, resulting in an excess of current liabilities over current assets in the approximate amount of \$13,944.

(b) As of April 30, 2009, respondent Sugarcreek Livestock Auction, Inc. had current assets of approximately \$427,945 and current liabilities of approximately \$567,294, resulting in an excess of current liabilities over current assets in the approximate amount of \$139,349.

(c) During the period beginning approximately September 30, 2008, and continuing to April 30, 2009, respondent Sugarcreek Livestock Auction, Inc. engaged in the business of a market agency buying and selling livestock in commerce on a commission basis and in the business of a dealer buying and selling livestock in commerce, notwithstanding that its current liabilities exceeded its current assets.

III.

On December 3, 2002, respondents agreed to a consent decision and order In re: Sugarcreek Livestock Auction, Inc. and Leroy H. Baker, Jr., P&S Docket No. D-02-0001 (hereinafter Decision). The Decision required respondents, their agents and employees, directly or through any corporate or other device, in connection with their operations subject to the Act, to cease and desist from:

- (1) Failing to reimburse the Custodial Account for Shippers' Proceeds (hereinafter "custodial account") for owners' and officers' purchases within the time prescribed by section 201.42 of the regulations (9 C.F.R. § 201.42);
- (2) Failing to deposit in the custodial account, within the time prescribed by section 201.42 of the regulations (9 C.F.R. § 201.42), an amount equal to the proceeds receivable from the sale of consigned livestock;
- (3) Failing to otherwise maintain the custodial account in strict conformity with the provisions of section 201.42 of the regulations (9 C.F.R. § 201.42).
- (4) Misusing the custodial account by allowing bank fees to be charged to the account and making unlawful withdrawals from the account.

Additionally, the Decision suspended respondents as registrants under the Act for a period of 14 days and thereafter until they demonstrated that any deficiency in their custodial account had been eliminated, and they were jointly and severally assessed a civil penalty of three thousand eight hundred dollars (\$3,800).

IV.

On or about January 9, 2006, respondents were informed by the Regional Director, Midwestern Regional Office, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA) that a GIPSA review of respondents' records indicated that respondents failed to properly maintain their

custodial account. The letter specified that respondents' custodial account as reconciled on September 30, 2005, had a shortage of \$136,893.75. The letter further specified that respondents' bank was withdrawing money from the custodial account to pay bank service charges. The letter stated that as a result of this shortage in respondents' custodial account and the withdrawal of funds from the custodial account to pay bank service charges, respondents were in violation of the cease and desist order contained in the consent decision and order, 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). The letter also indicated that these violations were discussed with respondent Leroy H. Baker, Jr. and his staff, and that respondent Baker stated that he understood the requirements related to maintaining respondents' custodial account.

V.

Respondents, notwithstanding the facts alleged in paragraphs III and IV, failed to maintain and use properly their custodial account for shipper's proceeds, thereby endangering the faithful and prompt accounting therefor and payment of the portions thereof due the owners, consignors, and shippers of livestock, in that:

(a) As of February 27, 2009, respondents had outstanding checks in the amount of \$187,219.81 drawn on their custodial account, and had, to offset these checks, a bank balance of \$36,266.64, deposits in transit of \$22,623.50, and current proceeds receivable in the amount of \$13,323.14, resulting in a custodial account shortage of \$115,006.53.

(b) As of March 31, 2009, respondents had outstanding checks in the amount of \$250,275.56 drawn on their custodial account, and had, to offset these checks, a bank balance of \$62,518.70, proceeds on hand of \$24,902.76 and current proceeds receivable in the amount of \$38,654.54, resulting in a custodial account shortage of \$124,199.56.

(c) As of April 30, 2009, respondents had outstanding checks in the amount of \$251,360.14 drawn on their custodial account, and had, to offset these checks, a bank balance of \$38,171.73, proceeds on hand in the amount of \$32,881.09, and current proceeds receivable in the amount of \$51,987.79, resulting in a custodial account shortage of \$128,319.53.

(d) During the period beginning approximately January 1, 2009, through April 30, 2009, respondents permitted approximately \$7,350 in bank fees to be charged to their custodial account.

(e) 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 and due in part to respondents' use of shippers' funds in the custodial account to pay bank fees.

VI.

On or about the period beginning July 31, 2003, through March 17, 2009, respondents failed to keep and maintain:

- (1) A complete and accurate custodial account check register showing all custodial checks issued;
- (2) Complete and accurate schedules of outstanding checks on custodial analysis dates.

VII.

By reason of the facts alleged in paragraphs I and II of this Complaint, the financial condition of respondent Sugarcreek Livestock Auction, Inc., does not meet the requirements of the Act (7 U.S.C. § 204) and respondents have wilfully violated section 312(a) of the Act (7 U.S.C. § 213(a)).

By reason of the facts alleged in paragraphs I, III, IV and V of this Complaint, 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 I and VI, respondents have willfully violated section 401 of the Act (7 U.S.C. § 221) by failing to keep and maintain accounts, records and memoranda as fully and correctly disclose all transactions involved in their business.

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 18th day of November, 2011

for

Amy R. Blochinger

Alan R. Christian
Deputy Administrator
Packers and Stockyards Program

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