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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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In re:	)	P & S Docket No. D-12- 0089
	)	
Whispering Oaks Farms, LLC, and	)	
Mike D. Esther,	)	
	)	
Respondents	)	Complaint

There is reason to believe that the Respondents named herein have 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) Whispering Oaks Farms, LLC (Respondent Whispering Oaks), is a limited liability company organized and existing under the laws of the State of Missouri. Its current mailing address is Box 145, Lebanon, MO 65536.

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

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

(2) Not registered with the Secretary of Agriculture as a market agency to buy livestock in commerce on a commission basis.

(c) Mike D. Esther (Respondent Esther) is an individual whose current mailing address is Box 145, Lebanon, MO 65536.

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- (d) At all times material herein, Respondent Esther was:
- (1) Not currently registered with the Secretary of Agriculture. Respondent Esther was previously registered with the Secretary of Agriculture as a dealer buying and selling livestock in commerce and as a market agency buying livestock in commerce on a commission basis. Respondent Esther's prior registration was made inactive at his request on or about May 3, 2010;
  - (2) The sole member of Respondent Whispering Oaks;
  - (3) The 100 percent owner of Respondent Whispering Oaks;
  - (4) Registered agent of Respondent Whispering Oaks;
  - (5) Responsible for the direction, management, and control of Respondent Whispering Oaks.

II.

(a) On March 17, 2010, the Midwestern Regional Office of the Packers and Stockyards Program (P&S Program) sent Respondent Esther a letter by certified mail, served on or about March 19, 2010, notifying him that the letter of credit he maintained to secure the performance of his individual livestock obligations under the Act would terminate on April 17, 2010. Respondent Esther was further informed that unless he filed a replacement letter of credit, new bond, or bond equivalent on or before April 17, 2010, that he must discontinue his livestock operations. Respondent Esther was also informed that continuing his livestock operations without filing an adequate bond or bond equivalent was a violation of section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.29 of the Regulations (9 C.F.R. § 201.29) for which disciplinary action could be taken.

(b) On May 3, 2010, the Midwestern Regional Office received a Statement of

Registrant from Respondent Esther dated April 30, 2010. In the statement, Respondent Esther notified the Midwestern Regional Office that he had discontinued his livestock operations and requested that his registration be made inactive and that his trust fund agreement be terminated.

(c) On May 10, 2010, the Midwestern Regional Office sent Respondent Esther a letter informing him that his Statement of Registrant had been received and that his registration had been made inactive. Respondent Esther was further informed that if he resumed operations, he must file a new bond and activate his registration. The letter referenced section 312(a) of the Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30) for the bonding requirements.

(d) Notwithstanding the notice referenced above and Respondent Esther's representation that he had discontinued livestock operations, Respondent Whispering Oaks, under the direction, management, and control of Respondent Esther, engaged in the business of a market agency buying livestock in commerce on a commission basis without filing and maintaining an adequate bond or bond equivalent as required by the Act and the Regulations.

### III.

Respondent Whispering Oaks, under the direction, management, and control of Respondent Esther, commencing on or about June 16, 2010, and continuing through September 28, 2010, in 11 separate transactions, engaged in the business of a market agency purchasing livestock in commerce on a commission basis, by purchasing 1,039 head of livestock totaling approximately \$740,171.48, without filing and maintaining an adequate bond or bond equivalent. Respondent Whispering Oaks purchased the livestock on a commission basis from South Central Regional Stockyards, Inc., Vienna, Missouri, and Interstate Regional Stockyards, Inc., Cuba, Missouri, both posted stockyards, for (1) T&E Cattle Co., Inc., Grand Island, Nebraska, (2)

Farmers Livestock Auction, LLC, Boonville, Missouri, (3) Schellammer Construction, Bolivar, Missouri, and (4) R&R Cattle Co., Omaha, Nebraska. Respondent Whispering Oaks received commissions totaling \$2,781.72 for these purchases.

IV.

By reason of the facts alleged in paragraph I, Respondent Whispering Oaks is the alter ego of Respondent Esther.

By reason of the facts alleged in paragraphs II and III, Respondents have willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30).

WHEREFORE, it is hereby ordered that this complaint shall be served upon Respondents for the purpose of determining whether Respondents have willfully violated the Act and the Regulations. Respondents 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 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, and assessing such civil penalties against Respondents, jointly and severally, as are authorized by the Act and warranted in the circumstances.

Done at Washington, D.C.

this 30 day of November, 2011



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Alan R. Christian  
Deputy Administrator  
Packers and Stockyards Program

Leah C. Battaglioli  
Attorney for Complainant  
Office of the General Counsel  
United States Department of Agriculture  
Room 2309, Stop 1413  
1400 Independence Avenue, SW.  
Washington, DC 20250-1413  
(202) 720-5191