

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P&S Docket No. 13- 0154
)
Jack and Sandra Berry,)
d/b/a Clinton Livestock Auction)
)
)
Respondents) Complaint

There is reason to believe that the respondents named herein 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) Respondents Jack and Sandra Berry are individuals doing business as Clinton Livestock Auction with a mailing address of P. O. Box 1780, Clinton, Oklahoma 73601.
- (b) Respondents are, and at all times material herein were:
 - (1) Engaged in the business of conducting and operating Clinton Livestock Auction, a stockyard posted under and subject to the provisions of the Act;
 - (2) Engaged in the business of a dealer buying and selling livestock in commerce and as a market agency buying and selling livestock on a commission basis in commerce; and
 - (3) Formerly registered with the Secretary of Agriculture as a dealer buying and selling livestock in commerce and as a market agency to buy and sell livestock on a commission basis in commerce. Respondents' registration was terminated on June 8, 2011, when they failed to file their 2010 annual report.

II.

On May 17, 2011, the Grain Inspection, Packers and Stockyards Administration (GIPSA) sent a Notice of Violation (NOV) via certified mail, to respondents. The NOV was claimed and signed for on May 20, 2011. The NOV advised that a GIPSA review disclosed that respondent's custodial account had shortages of \$120,750.78, \$112,506.17, and \$140,558.45 as January 30, 2011, February 27, 2011, and April 4, 2011, respectively. The NOV further stated that respondent was required to correct the shortage immediately. The NOV informed respondent that operating with 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)) and section 201.42 of the regulations (9 C.F.R. § 201.42), and that failure to comply with the Act and regulations would result in appropriate disciplinary action.

III.

Respondents, during the period of June 30, 2011, through August 28, 2011, failed to properly use and maintain their 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 June 30, 2011, respondents had outstanding checks in the amount of \$873,769.54, and had, to offset these checks, a custodial account balance of \$125,492.63, no deposits in transit and current proceeds receivable of \$581,633.66, resulting in a custodial account shortage of \$166,643.25.

(b) As of July 31, 2011, respondents had outstanding checks in the amount of \$598,888.35, and had, to offset these checks, a custodial account balance of \$167,640.24, no deposits in transit and current proceeds receivable of \$273,506.05, resulting in a custodial account shortage of \$157,742.06.

(c) As of August 28, 2011, respondents had outstanding checks in the amount of \$425,562.70, and had, to offset these checks, a custodial account balance of \$239,171.93, no deposits in transit and current proceeds receivable of \$15,880.75, resulting in a custodial account shortage of \$170,510.02.

(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.

Respondents failed to keep and maintain accounts, records, and memoranda that fully and correctly disclosed all transactions involved in their business, in that they failed to keep and maintain:

(a) custodial account voided checks, deposits in transit and outstanding check lists, and other documentation supporting a bank reconciliation;

(b) general account bank statements with copies of supporting canceled checks and posted deposit slips, voided checks, deposits in transit and outstanding check lists;

(c) complete check registers;

(d) market support accounting records;

(e) documents showing accounts receivable;

(f) documents showing proceeds receivable;

(g) financial statements; and

(h) balance sheets.

V.

By reason of the facts alleged in paragraphs II and III, respondents 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, respondents violated section 401 of the Act (7 U.S.C. §221).

WHEREFORE, it is hereby ordered that this complaint shall be served upon the respondents for the purpose of determining whether respondents 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 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, prohibiting the respondents from engaging in business subject to the Act for a specified period; and

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

Done at Washington, D.C.

this 9th day of January, 2013



S. Brett Offutt
Acting Deputy Administrator
Packers and Stockyards Program

Lisa Jabaily
Attorney for the Complainant
Marketing, Regulatory, and Food Safety Programs Division
Office of the General Counsel
United States Department of Agriculture
Room 2319, South Building
1400 Independence Ave., S.W.
Washington, D.C. 20250-1400
(202) 720-1930