

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

2016 MAY -2 PM 3: 35

RECEIVED

In re:) Docket No._____ (P & S) 16-0100
)
Mount Airy Stockyard, Inc.,)
)
Venancio Torres, and) Docket No._____ (P & S) 16-0101
)
)
Deborah Torres,) Docket No._____ (P & S) 16-0102
)
)
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. §§ 181-229) (Act), and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*), hereinafter referred to as the "regulations." Therefore the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA)(Complainant), pursuant to the rules of practice applicable to this proceeding (7 C.F.R. §§ 1.130-.151)(rules of practice) issues this complaint alleging the following:

I.

(a) The Respondent, Mount Airy Stockyard, Inc., is a corporation organized under the laws of the State of North Carolina, with its principal place of business located at 2344 Turkey Ford Road, Mount Airy, North Carolina 27030. The Respondent's mailing address is P.O. Box 1948, Mount Airy, North Carolina 27030.

(b) The registered agent for service of process listed on the North Carolina

Secretary of State website for the Respondent Mount Airy Stockyard, Inc. is Deborah Torres, P.O. Box 1948, Mount Airy, North Carolina 27030.

(c) Respondent Mount Airy Stockyard, Inc. was suspended from operations by the North Carolina Secretary of State on or about August 1, 2014.

(d) At all times material herein, the Respondent Mount Airy Stockyards, Inc. was under the direction, management, and control of Respondent Venancio Torres, President, and Respondent Deborah Torres, Vice President/Secretary/Treasurer.

(e) Unless otherwise specified, at all times material herein the Respondent Mount Airy Stockyards, Inc. was:

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

(2) Registered with the Secretary of Agriculture as a market agency selling livestock in commerce on a commission basis until its registration expired August 29, 2014¹; and

(3) Engaged in the business of conducting and operating a stockyard posted under and subject to the provisions of the Act;

(f) The Respondent Venancio Torres is an individual whose business mailing address is P.O. Box 1948, Mount Airy, North Carolina 27030.

(g) At all times material herein, the Respondent Venancio Torres was:

(1) Engaged in the business of a market agency as that term is defined and used in the Act and the regulations promulgated thereunder;

¹ Although Mount Airy Stockyard, Inc.'s registration actually expired August 29, 2014, it did not receive notice from GIPSA that it must cease operations until October 10, 2014.

(2) Engaged in the business of conducting and operating a stockyard posted under and subject to the provisions of the Act.

(3) President and fifty percent (50%) owner of respondent Mount Airy Stockyard, Inc.; and

(4) Responsible for the day-to-day direction, management and control of respondent Mount Airy Stockyard, Inc. including the acts and practices referred to in this complaint.

(h) The Respondent Deborah Torres is an individual whose business mailing address is P.O. Box 1948, Mount Airy, North Carolina 27030.

(i) At all times material herein, the Respondent Deborah Torres was:

(1) Engaged in the business of a market agency as that term is defined and used in the Act and the regulations promulgated thereunder;

(2) Engaged in the business of conducting and operating a stockyard posted under and subject to the provisions of the Act.

(3) Vice President, Secretary, Treasurer and fifty percent (50%) owner of respondent Mount Airy Stockyard, Inc.; and

(4) Responsible for the day-to-day direction, management and control of respondent Mount Airy Stockyard, Inc. including the acts and practices referred to in this complaint.

(j) As of February 10, 2015, Respondent Mount Airy Stockyard, Inc. had ceased all operations and as of February 12, 2015, its trust fund agreement terminated.

II.

(a) By written notice addressed to Respondents Venancio Torres and Mount Airy Stockyard, Inc., dated May 31, 2013, and received by Sarah Torres² on June 3, 2013, GIPSA advised the Respondents that operating with current liabilities exceeding current assets was a violation of section 312(a) (7 U.S.C. 213(a)) and section 203.10 of the regulations (9 C.F.R. 203.10). The Notice of Violation stated that the failure to take steps to correct the violation and bring the Respondents' operation into compliance with the provisions of the Act may result in the assessment of sanctions under the Act.

(b) By letter addressed to Respondents Venancio Torres and Mount Airy Stockyard, Inc., dated September 25, 2013, and received by Sarah Torres on September 27, 2013, GIPSA informed the Respondents that they had failed to file the required Form P&SP-7002 *Supplemental Balance Sheet Special Report* and were therefore in default. The Notice of Default stated that the failure to file the required form within thirty days from the Notice of Default would subject the Respondents to appropriate sanctions.

(c) By written notice addressed to Respondents Venancio Torres and Mount Airy Stockyard, Inc., dated December 4, 2014, and received by Sarah Torres on December 11, 2014, GIPSA advised the Respondents that the custodial account shortage they reported in their December 31, 2013 annual report was a violation of sections 201.42(c) and (d) of the regulations (9 C.F.R. 201.42(c) and (d)) and the Act. The Notice of Violation stated that the failure to take steps to correct the violations and bring the

² Sarah Torres is the daughter of Venancio and Deborah Torres. As Account Manager and Bookkeeper for Mount Airy Stockyard, Inc., Sarah Torres took responsibility for managing its business accounts starting in August or September 2012

Respondents' operation into compliance with the Act and the regulations may result in the assessment of appropriate sanctions.

III.

During the period from June 11, 2013 through July 2, 2013, Respondent Mount Airy Stockyard, Inc. issued 15 checks totaling \$32,812.72 to consignors in purported remittance of proceeds for livestock it sold on the consignors' behalf that the issuing bank returned for non-sufficient funds. As a result, it failed to timely remit proceeds to consignors.

IV.

During the period from July 15, 2014 through October 7, 2014, Respondent Mount Airy Stockyard, Inc. issued 32 checks totaling \$158,278.50 to consignors in purported remittance of proceeds for livestock it sold on the consignors' behalf that the issuing bank returned for non-sufficient funds. As a result, it failed to timely remit proceeds to consignors.

V.

During the period from March 31, 2013 through January 13, 2015, as specified in this paragraph, Mount Airy Stockyard, Inc. failed to maintain and use properly its custodial account for shippers' proceeds, thereby endangering the faithful and prompt accounting of shippers' proceeds and the payments due the owners and consignors of livestock.

(a) As of March 31, 2013, Respondent Mount Airy Stockyard, Inc. had outstanding checks drawn on its custodial account for shippers' proceeds totaling

\$350,685.12. It had to offset such checks against a balance in the custodial account of \$172,161.73 and proceeds receivable of \$13,880.55, resulting in a \$164,642.84 custodial account shortage.

(b) As of April 29, 2013, Respondent Mount Airy Stockyard, Inc. had outstanding checks drawn on its custodial account for shippers' proceeds totaling \$377,547.67. It had to offset such checks against a balance in the custodial account of \$211,717.72 and proceeds receivable of \$48,653.92, resulting in a \$117,176.03 custodial account shortage.

(c) As of May 31, 2013, Respondent Mount Airy Stockyard, Inc. had outstanding checks drawn on its custodial account for shippers' proceeds totaling \$312,175.15. It had to offset such checks against a balance in the custodial account of \$51,276.80 and proceeds receivable of \$76,788.52, resulting in a \$184,109.83 custodial account shortage.

(d) As of January 31, 2014, Respondent Mount Airy Stockyard, Inc. had outstanding checks drawn on its custodial account for shippers' proceeds totaling \$291,719.58. It had to offset such checks against a balance in the custodial account of \$37,990.19 and proceeds receivable of \$127,581.12, resulting in a \$126,148.27 custodial account shortage.

(e) Although the registration for Respondent Mount Airy Stockyard, Inc. expired on August 29, 2014, and Respondents Venancio Torres and Mount Airy Stockyard, Inc. received notice from GIPSA to cease operations on October 10, 2014, it continued engaging in business as a market agency selling livestock on commission after October 10, 2014. As of January 13, 2015, Respondent Mount Airy Stockyard, Inc.

had outstanding checks drawn on its custodial account for shippers' proceeds totaling \$104,423.71. It had to offset such checks against a balance in the custodial account of \$20,852.12 and proceeds receivable of \$0.00, resulting in a \$83,571.59 custodial account shortage.

(f) The shortages in Respondent Mount Airy Stockyard, Inc.'s custodial account for shippers' proceeds were due, in part, to its failure to comply with the provisions of section 201.42 of the regulations (9 C.F.R. 201.42). Respondent Mount Airy Stockyard, Inc. failed to timely reimburse the custodial account for uncollected receivables. It also otherwise misused the custodial account by transferring custodial funds to other accounts, and allowed its bank to withdraw fees and charges from the custodial account.

VI.

By reason of the facts alleged in paragraphs II, III, IV and V the Respondents have willfully violated sections 307(a) and 312(a) of the Act (7 U.S.C. §§208 and 213), and sections 201.42 and 201.43(a) of the regulations (9 C.F.R. § 201.42 and 201.43(a)).

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

Done at Washington, D.C.

this 2nd day of May, 2016


SUSAN B. KEITH
Deputy Administrator
Packers and Stockyards Program

Darlene M. Bolinger
Attorney for Complainant
Office of the General Counsel
United States Department of Agriculture
Room 2319
1400 Independence Avenue, S.W.
Washington, D.C. 20250-1400
Phone: (202) 720-5550
Fax: (202) 690-4322
Darlene.Bolinger@ogc.usda.gov