

UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

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In re:

Colorado City Livestock Market, LLC,)
and James W. "Jim" Calvert,)
Respondents) Complaint

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P. & S. Docket No. D-07-0073

There is reason to believe that Respondents have wilfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.), hereinafter referred to as the Act, and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.), hereinafter referred to as the regulations, and therefore, this complaint is issued alleging the following:

I

(a) Colorado City Livestock Market, LLC, hereinafter referred to as Respondent Colorado City, is a Texas limited liability company whose business address, until it ceased operations on or about August 22, 2006, was 1630 West Point, Colorado City, TX 79512.

(b) The Respondent Colorado City at all times material herein was:

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

(2) Registered with the Secretary of Agriculture as a market agency to sell livestock on commission.

(c) James W. "Jim" Calvert, hereinafter referred to as Respondent Calvert, is an individual whose address is 11214 South Highway 208, Dunn, TX 79516.

(d) Respondent Calvert is and at all times material herein was:

(1) President and one hundred percent owner of the Respondent Colorado

City;

(2) The individual who managed, directed, and controlled the daily operations of Respondent Colorado City;

(3) A market agency selling livestock in commerce on a commission basis;
and

(4) Not individually registered with the Secretary of Agriculture in any capacity under the Act.

II

(a) Respondents failed to maintain and use properly their custodial account for shippers' proceeds, endangering the faithful and prompt accounting therefor and the payment of portions thereof due the owners and consignors of livestock, in that:

(1) As of May 31, 2005, Respondents had outstanding checks drawn on the custodial account in the amount of \$210,518.00, and had to offset those checks a balance in the custodial account in the amount of \$67,439.37 and proceeds receivable in the amount of \$19,411.92, resulting in a deficiency of \$123,666.71 in funds available to pay shippers their proceeds;

(2) As of July 31, 2005, Respondents had outstanding checks drawn on the custodial account in the amount of \$198,173.22 and a negative \$32,918.43 balance in the custodial account, and had to offset these checks and negative balance proceeds receivable in the amount of \$34,829.80, resulting in a deficiency of \$196,261.85 in funds available to pay shippers their proceeds; and

(3) As of August 22, 2005, Respondents had outstanding checks drawn on the

custodial account in the amount of \$195,978.49, and had to offset those checks a zero balance in the closed custodial account, resulting in a deficiency of \$195,978.49 in funds available to pay shippers their proceeds.

(b) Such deficiencies were due, in part, to Respondents' failure to deposit in the custodial account for shippers' proceeds, within the time prescribed by the regulations, an amount equal to the proceeds receivable from the sale of livestock consigned to the market on a commission basis.

III

(a) On or about the dates and in the transactions set forth below, Respondents willfully misused the custodial account, and proceeds received from the sale of consigned livestock, in that they permitted the American State Bank to take NSF check charges and other fees from the custodial account as follows:

Date	Custodial Account Shortage	Monthly Service Charge	NSF Check Fees	Wire Transfer Charge	Total Monthly Charges
5/31/05	-\$123,666.71				
6/03/05 6/10/05 6/30/05		\$417.73	\$500.00	\$10.00	[on June Statement] \$927.73

7/05/05			\$325.00		
7/06/05			\$275.00		
7/07/05			\$325.00		
7/08/05			\$350.00		
7/11/05			\$325.00		
7/12/05			\$100.00		
7/13/05			\$175.00		
7/18/05			\$325.00		
7/20/05			\$ 50.00		
7/26/05			\$ 25.00		
7/27/05			\$275.00		[on July Statement]
7/28/05			\$350.00		
7/31/05	-\$196,261.85	\$1,003.15			\$3,903.15
7/29/05			\$350.00		
8/01/05			\$275.00		
8/02/05			\$175.00		
8/03/05			\$125.00		
8/09/05			\$ 50.00		[on August Statement]
8/10/05			\$175.00		
8/31/05	-\$195,978.49				\$1,150.00
3 Month Totals:		\$1,420.88	\$4,550.00	\$10.00	\$5,980.88

IV

Respondents failed to maintain and use properly the custodial account on and about the dates set forth in paragraph II above, and misused the custodial account on or about the dates set forth in paragraph III above, despite having been placed on notice by a certified mail letter from the Packers and Stockyards Program, GIPSA, dated January 26, 2005, that shortages found in the custodial accounts were due to (1) failures to reimburse the account for owner and market support purchases by the close of the next business day, and for proceeds receivable not collected from other buyers within seven days of the sale; and (2) for NSF check charges and other bank fees. Respondents were notified that operating with shortages in the custodial account

and failure to timely reimburse the custodial account are considered unfair trade practices in violation of Sections 307(a) and 312(a) of the Act, and section 201.42(c) of the regulations; and that section 201.42(d) of the regulations does not permit NSF check and bank fees to be paid using custodial account funds.

V

(a) On or about the dates and in the transactions set forth below, Respondents issued custodial account checks in purported payment of the net proceeds from the sale of consigned livestock to the shippers of such livestock which were returned unpaid because Respondents failed to maintain sufficient funds in the custodial account for shippers' proceeds to pay such checks when presented; and because the custodial account on which such checks were drawn was closed before checks were presented for payment.

Sale Date/ Check Date	Livestock Consignor/ Payee	No. of Head	Check No.	Net Proceeds/ Check Amount	Bond Claim Distribution	Unpaid Balance
5/18/05	Borden Spade Ranch	35	5951	\$ 25,296.83	no claim	\$25,296.83
6/01/05	Henry Hoyle	1	6074	704.71	no claim	704.71
7/13/05	Tom Willingham	2	6517	1,048.33	\$562.78	485.55
7/13/05	Gaylon Sorrells	2	6521	1,290.32	692.69	597.63
7/20/05	Bobby Nobles	1	6566	847.51	454.98	392.53
7/27/05	W. T. Henderson	5	6649	2,999.76	1,610.39	1,389.37
8/03/05 8/10/05	Tulia Feedlot Tulia Feedlot	1 2	6699 6824	547.39 <u>997.83</u> 1,545.22		
					829.53	715.69
8/03/05	Max Drum	7	6705	5,423.56	2,911.58	2,511.98
8/03/05 sale 8/08/05 ck	J. C. Stroman, Jr.	1	6780	768.00	412.29	355.71
8/10/05	Hontas Hines	2	6788	1,521.80	816.96	704.84
8/10/05	Bullard Ranch	1	6789	210.22	no claim	210.22

8/10/05	Waldon Millican	5	6796	3,134.48	1,682.71	1,451.77
8/10/05	C & Y Cattle	3	6799	1,314.64	705.75	608.89
8/10/05	Shot Branham	1	6815	* 377.13	375.79	* 1.34
8/10/05	Roddy Harrison	145	6844	90,427.84	48,545.22	41,882.62
8/10/05	Powell Ranch	47	6847	28,724.23	15,420.30	13,303.93
8/10/05	Larry Wilson	<u>25</u>	6848	<u>14,876.62</u>	<u>7,986.35</u>	6,890.27
	Total:	286		\$180,511.20	\$83,007.32	\$97,503.88

* Unpaid seller Shot Branham filed a \$700.00 bond claim for proceeds from the sale of a 600 lb. bull. Respondents' issued the \$377.13 dishonored check to remit proceeds from the sale of a 475 lb. bull. The unpaid balance stated is the undisputed minimum amount owed.

(b) Respondents' failure to remit net proceeds from the sale of consigned livestock to shippers in the above transactions was reduced to \$97,503.88 by bond proceed distributions.

VI

Respondents failed to keep such accounts, records, and memoranda that fully and correctly disclosed all transactions involved in their business subject to the Act, in that they failed to: (1) issue checks in numerical sequence; (2) prepare reconciled sale summaries for given sale days; (3) fully document the voiding of checks and the issuance of replacement or correcting checks; (4) maintain a record of the identity of livestock owners for all livestock sold; and (5) maintain full documentation for livestock transactions, and for balance sheet accounts and general ledger accounts. Respondents also failed to keep such records as they did prepare for the required two year record retention period.

VII

By reason of the facts alleged in paragraph I herein, Respondent Calvert is the alter ego of Respondent Colorado City.

By reason of the facts alleged in paragraphs II, III, IV and V herein, Respondents have

wilfully violated 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).

By reason of the facts alleged in paragraph VI herein, Respondents have failed to keep records required by section 401 of the Act (7 U.S.C. § 221) and have wilfully violated section 312(a) of the Act (7 U.S.C. § 213(a)).

WHEREFORE, it is hereby ordered for the purpose of determining whether Respondents have in fact violated the Act and the regulations issued thereunder, this complaint shall be served upon Respondents. Respondents shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.) Failure to file an answer shall constitute an admission of all the material allegations of this complaint.

The Grain Inspection, Packers and Stockyards Administration (GIPSA) requests:

1. That unless Respondents fail to file an answer within the time allowed therefor, or files an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in accordance with the Rules of Practice governing proceedings under the Act; and
2. That such order or orders be issued, including orders requiring Respondents to cease and desist from violating the Act with respect to the matters alleged herein, suspending Respondents as a registrant under the Act and assessing such civil penalties, as are authorized by

the Act and warranted in the premises.

Done at Washington, D.C.

this 5 day of March



ALAN R. CHRISTIAN
Deputy Administrator
Packers and Stockyards Program



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