

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:) P. & S. Docket No. D-08- 0013
)
Gary W. Jones, d/b/a Big Spring)
Livestock Auction)
)
Respondent)
) Complaint

There is reason to believe that the Respondent named herein has willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.; hereinafter "Act") and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.; hereinafter "Regulations"), and, therefore, this complaint is issued alleging the following:

I.

(a) Gary W. Jones, d/b/a Big Spring Livestock Auction (hereinafter "Respondent"), is an individual whose mailing address is P.O. Box 102, Big Spring, Texas 79721.

(b) Respondent at all times material to the complaint was:

(1) Engaged in the business of conducting and operating Big Spring Livestock Auction, a posted stockyard, subject to the provisions of the Act;

(2) Engaged in the business of a market agency selling livestock in commerce on a commission basis at Big Spring Livestock Auction; and

(3) Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis and to furnish stockyard services.

II.

(a) Respondent was placed on notice, by certified mail received on April 24, 2006, that operating with a Custodial Account for Shippers' Proceeds (hereinafter "custodial account") shortage is considered an unfair and deceptive practice in violation of sections 307(a) and 312(a) of the Act (7 U.S.C. §§ 208(a), 213(a)). Despite being placed on notice, Respondent, during the period of October 31, 2006, through January 10, 2007, failed to maintain and use properly his custodial account, thereby endangering the faithful and prompt accounting of shippers' proceeds and the payment due the owners or consignors of livestock in that:

(1) As of October 31, 2006, Respondent had outstanding checks drawn on its custodial account in the amount of \$220,821.50 and had to offset such checks, a balance in the custodial account of \$99,467.63 and proceeds receivable of \$71,751.59 resulting in a deficiency of \$49,602.28.

(2) As of January 10, 2007, Respondent had outstanding checks drawn on its custodial account in the amount of \$82,375.80 and had to offset such checks, a balance in the custodial account of \$10,912.73 and proceeds receivable of \$4,478.19 resulting in a deficiency of \$66,984.88.

(3) The shortages in Respondent's custodial account were due, in part, to Respondent's failure to deposit in his 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, and also due, in part, to Respondent's withdrawing of funds from the custodial account for personal use and not to pay consignors their proceeds or pay other legitimate expenses and charges from the account.

III.

On December 15, 2006, Respondent misused funds on deposit in his custodial account by withdrawing \$15,000.00 of shippers' proceeds for personal use and not to pay consignors their proceeds or pay other legitimate expenses and charges from the account.

IV.

By reason of the facts alleged in paragraphs II and III, Respondent 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).

WHEREFORE, it is hereby ordered that this complaint shall be served upon Respondent for the purpose of determining whether Respondent has willfully violated the Act and the Regulations. Respondent 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 Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*; hereinafter "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 Respondent fails to file an answer within the time allowed, 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; and
2. That such order or orders be issued, including an order requiring Respondent to

cease and desist from the violations of the Act and the Regulations found to exist, suspending Respondent as a registrant under the Act, and assessing such civil penalties, as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 7 day of November, 2007



Alan R. Christian
Deputy Administrator
Packers and Stockyards Program



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