

USDA
OASIS/CHIC
FEB 15 PM 1:39
RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-08- 0061
)
Newman Livestock, Inc.)
)
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.*)(the Act), and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*)(the regulations), and, therefore, this complaint is issued alleging the following:

I

(a) Newman Livestock, Inc., ("Respondent"), is a corporation incorporated as a nonprofit cooperative association under the laws of the State of California, with a business address of P.O. Box 343-2011 East Stuhr Road, Newman, CA 95360.

(b) Respondent, at all times material herein, was:

(1) Engaged in the business of conducting and operating 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;

(3) Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis and as a dealer buying and selling livestock in commerce.

II

Respondent, during the period of May 31, 2005, through July 31, 2005, failed to maintain its Custodial Account for Shippers' Proceeds ("custodial account"), thereby endangering the faithful and prompt accounting therefor and the payment of portions thereof due the owners and consignors of livestock, in that:

(a) As of May 31, 2005, Respondent had outstanding checks drawn on its custodial account in the amount of \$1,112,485.47, and had to offset such checks a balance in the custodial account of \$636,075.55, deposits in transit in the amount of \$875.00, and proceeds receivable in the amount of \$305,045.95, resulting in a shortage of \$170,488.97 in funds available to pay shippers their net proceeds;

(b) As of July 31, 2005, Respondent had outstanding checks drawn on its custodial account in the amount of \$374,059.16, and had to offset such checks a balance in the custodial account of \$140,890.74 and proceeds receivable in the amount of \$145,626.17, resulting in a shortage of \$87,542.25 in funds available to pay shippers their net proceeds;

(c) Such deficiencies were due, in part, to Respondent failing to deposit in the custodial account, within the time prescribed by the regulations, an amount equal to the proceeds receivable from the sale of consigned livestock.

III

By reason of the facts alleged in paragraph II herein, 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 for the purpose of determining whether Respondent has in fact willfully violated the Act and the regulations thereunder, this complaint will be served upon Respondent. Respondent 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 will constitute an admission of all the material allegations of this complaint.

Packers and Stockyards Program, GIPSA, requests:

1. That unless Respondent fails 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 an order requiring Respondent to cease and desist from the violations found to exist and suspending Respondent as a registrant under the Act.

Done at Washington, D.C.

this 14 day of February 2008



Alan R. Christian
Deputy Administrator
Packers and Stockyards Program

Charles L. Kendall
Attorney for Complainant
Telephone: (202) 720-9405