

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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In re:) P & S Docket No. 13- 0007
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James Emanuel Mowery,)
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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.) (Act) and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. §§ 201.1 et seq.) (Regulations), and, therefore, this complaint is issued alleging the following:

I.

(a) James Emanuel Mowery (Respondent) is an individual whose mailing address is PO Box 97, Georgetown, TN 37336.

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

- (1) Engaged in the business of a dealer buying and selling livestock in commerce for his own account;
- (2) Engaged in the business of a market agency buying livestock in commerce on a commission basis; and
- (3) Registered with the Secretary of Agriculture as a dealer buying and selling livestock in commerce for his own account and as a market agency buying livestock in commerce on a commission basis until November 18, 2011, when Respondent was informed that his registration had expired pursuant to section 201.10(e) of the Act (9 C.F.R. § 201.10(e)) for failure to file his 2010 Annual

Report of Dealer or Market Agency Buying on Commission. Respondent is not currently registered.

II.

(a) On August 17, 2009, a Decision Without Hearing By Reason of Default (Default Decision) was issued against Respondent in In re: James Emanuel Mowery, P&S Docket No. D-09-0093. The Default Decision became final and effective on October 30, 2009. The Default Decision ordered Respondent to cease and desist from engaging in business in any capacity for which bonding is required under the Act and the Regulations without filing and maintain an adequate bond or bond equivalent as required by the Act and the Regulations.

(b) In 2010 and part of 2011, Respondent was registered with the Secretary of Agriculture to engage in the business of a dealer buying and selling livestock in commerce and as a market agency buying livestock in commerce on a commission basis. Respondent failed to file a complete 2010 Annual Report of Dealer or Market Agency Buying on Commission by the due date of April 18, 2011. In a Notice of Default Annual Report letter dated September 7, 2011, and served on Respondent on September 13, 2011, the Packers and Stockyards Program (P&S Program) informed Respondent that page 3 of his 2010 Annual Report needed to be completed and signed by a registered officer. The P&S Program further informed Respondent that a correct and complete annual report was required to prevent his registration from expiring. Respondent still did not file a complete 2010 Annual Report and in a Registration Expiration Notice Letter dated November 16, 2011, and served on Respondent on November 18, 2011, the Atlanta, Georgia Regional Office of the P&S Program informed Respondent that his failure to file a complete 2010 Annual Report resulted in the expiration of his registration. The Atlanta, Georgia Regional Office also informed Respondent of his obligation to file a new application for

registration and to submit the delinquent annual report if he wished to continue operating as a dealer or market agency and that engaging in business in any capacity that is subject to the Act without complying with the registration provisions of the Act could subject him to disciplinary action. Respondent did not file a complete 2010 Annual Report until July 11, 2012, when he personally provided his 2010 Annual Report to a P&S Program representative.

(c) In a letter dated March 10, 2010, and served on Respondent on March 18, 2010, the Atlanta, Georgia Regional Office of the P&S Program informed Respondent that his surety bond would expire on April 7, 2010, and that unless he obtained a new bond or bond equivalent on or before that date, he must discontinue all livestock operations for which bonding is required under the Act. The Atlanta, Georgia Regional Office further informed Respondent that operating as a dealer or market agency without an adequate bond or bond equivalent is a violation of section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.29 of the Regulations (9 C.F.R. § 201.29) and could subject him to disciplinary action.

(d) Respondent filed a new Letter of Credit in the amount of \$15,000 on July 28, 2010. The effective date of the bond equivalent was June 25, 2010.

(e) In a Notice of Default Registration/Bonding letter dated September 3, 2010, and served on Respondent on September 7, 2010, the Atlanta, Georgia Regional Office of the P&S Program informed Respondent that he needed to increase his bond coverage from \$15,000 to \$55,000. On February 3, 2011, a P&S Program representative called Respondent and informed him that the Atlanta, Georgia Regional Office had recalculated his bond and that Respondent only needed to increase the bond from \$15,000 to \$20,000.

(f) After the Atlanta, Georgia Regional Office made repeated unsuccessful attempts to inform Respondent by letter that the Letter of Credit he maintained in connection with his

Trust Agreement would expire on June 25, 2011, a P&S Program representative called Respondent on June 24, 2011, and informed him that he must cease all livestock operations subject to the Act until he obtained a new Letter of Credit in the amount of \$20,000.

(g) On July 25, 2011, a P&S Program representative spoke with Respondent while he was attending a sale at Athens Stockyard in Athens, Tennessee and reminded Respondent that he still needed to increase his Letter of Credit to \$20,000.

(h) Respondent filed a new Trust Fund Agreement and Letter of Credit in the amount of \$15,000 on July 26, 2011. The effective date of the bond equivalent was July 25, 2011.

(i) In a letter dated June 25, 2012, and served on Respondent on August 8, 2012, the Atlanta, Georgia Regional Office of the P&S Program informed Respondent that the Letter of Credit he maintained in connection with his Trust Agreement would expire on July 25, 2012, and that unless he obtained a replacement Letter of Credit, new bond, or bond equivalent on or before that date, he must discontinue all livestock operations for which bonding is required under the Act and the Regulations. The Atlanta, Georgia Regional Office of the P&S Program further informed Respondent that continuing livestock operations without filing an adequate bond or bond equivalent is a violation of section 312(a) of the Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30) and could subject him to disciplinary action.

(j) On July 12, 2012, Respondent filed a new application for registration. On July 25, 2012, Respondent's Letter of Credit expired. As of the date of filing of this complaint, Respondent has not filed a new Letter of Credit, new bond, or bond equivalent nor has Respondent's application for registration been accepted.

III.

(a) Respondent, in the transaction set forth below, purchased livestock as a dealer at Crossville Stockyard, LLC, Crossville, Tennessee, a posted stockyard, and issued a check in payment for the livestock purchase, which check was returned unpaid by the bank upon which it was drawn because Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the check was drawn to pay the check when presented.

Seller	Purchase Date	Date Payment Due	No. of Head	Livestock Amount	Check No.	NSF Check Amount	Date Check Returned	Date Paid
Crossville Stockyard, LLC	03/10/12	03/12/12	10	\$6,393.11	2127	\$6,393.11	03/22/12	On or between 04/24/12 and 05/01/12 ¹

¹ Crossville Stockyard, LLC filed a bond claim for the \$6,393.11 on April 16, 2012. A P&S Program representative spoke with Respondent on April 24, 2012, and Respondent informed the representative that he would settle the account with the market. Crossville Stockyard, LLC's attorney sent a letter dated May 1, 2012 to the P&S Program informing it that Respondent had paid the outstanding debt. Therefore, payment was made on or between April 24, 2012 and May 1, 2012.

(b) Respondent, in connection with his operations subject to the Act, in the transaction described in subparagraph (a) above, purchased livestock and failed to pay, when due, for the livestock purchase. Respondent paid for the livestock between approximately 43 and 50 days late.

(c) Respondent, in a signed statement dated July 11, 2012, admitted that he had purchased livestock at Crossville Stockyard, LLC and that the check he wrote was returned as unpaid because the bank took money out of his checking account for a monthly payment. The statement is attached hereto as Appendix A and incorporated herein by reference.

IV.

Respondent, on or about the dates and in the transactions set forth on Appendices B and C and incorporated herein by reference, engaged in the business of a dealer and a market agency

without maintaining an adequate bond or bond equivalent. The transactions occurred at (1) Athens Stockyard, Athens, Tennessee; (2) East Tennessee Livestock Center, Inc., Sweetwater, Tennessee; and (3) Crossville Stockyard, LLC, Crossville, Tennessee, all posted stockyards. Respondent received commissions totaling approximately \$3,787.28 for these transactions.

V.

By reason of the facts alleged in paragraph III herein, Respondent has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

By reason of the facts alleged in paragraph IV herein, Respondent has willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30).

WHEREFORE, it is hereby ordered that for the purpose of determining whether the Respondent has in fact willfully violated the Act and Regulations, this complaint shall be served upon Respondent. Respondent shall have twenty (20) days following receipt of this complaint to file an Answer with the Hearing Clerk, Room 1031 - South Building, United States Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 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.). 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 in this complaint and a waiver of hearing.

The Grain Inspection, Packers and Stockyards Administration, Packers and Stockyards Program, requests:

1. That unless the Respondent fails to answer within the time allowed, or files an

answer admitting all material allegations of this complaint, this proceeding be set for oral hearing in accordance with the Rules of Practice; and

2. That an order be issued requiring the Respondent to cease and desist from the violations of the Act and the regulations found to exist, prohibiting the Respondent from engaging in business in any capacity for which registration and bonding are required under the Act and regulations without properly registering and providing such bond, and assessing such civil penalties against the Respondent as are authorized by the Act and warranted by the facts and circumstances of this case.

Done at Washington, D.C.

this 1 day of October, 2012

Alan R. Christian

Alan R. Christian
Deputy Administrator
Packers and Stockyards Program

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