

RECEIVED
APR 1 RECD

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF POLICY/LITIGATION SUPPORT
BEFORE THE SECRETARY OF AGRICULTURE

APR 1 1981 2:20
C. [unclear]

In re:

P&S Docket No. 13-0207

Jerry O. Smith,

Respondent

)
)
)
)
)
)

Complaint

There is reason to believe that the respondent named herein has willfully violated the Packers & Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) and, therefore, this complaint is issued alleging the following:

I

- (a) Jerry O. Smith, referred to herein as respondent, is an individual whose current address is in the State of Florida. His address will not be stated in the complaint to protect respondent's privacy but will be provided to the Hearing Clerk, United States Department of Agriculture, for the purpose of service of this complaint.
- (b) Respondent is, and at all times material herein was:
 - 1) Engaged in the business of obtaining live poultry by purchase in commerce for the purpose of slaughter; and
 - 2) Operating as a live poultry dealer subject to the provisions of the Act.

II

- (a) On May 18, 2011, respondent purchased live poultry from Charles Brothers, Inc., of Lancaster, Pennsylvania (Charles Brothers) and issued an insufficient funds check in the amount of \$9,944.40. The insufficient funds check cleared the bank thirty four (34) days after payment for the live poultry was due. By issuing the insufficient funds check, respondent failed to pay, when due, the full amount of the poultry purchase price within the time period required by the Act.
- (b) On June 7, 2011, respondent purchased live poultry from Charles Brothers in the amount of \$13,118.40 but failed to pay the full amount of the poultry purchase price. As of the date of the filing of this complaint, respondent has failed to pay \$13,118.40 for this purchase.
- (c) On June 29, 2011, respondent purchased live poultry from Charles Brothers in the amount of \$10,482.80 but failed to pay the full amount of the poultry purchase price. As of the date of the filing of this complaint, respondent has failed to pay \$10,482.80 for this purchase.

III

By reason of the facts alleged in paragraph II, respondent has willfully violated section 410 of the Act (7 U.S.C. § 228b-1) by delaying payments to a poultry seller.

WHEREFORE, it is hereby ordered that for the purpose of determining whether respondent has in fact willfully violated the Act, 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., S.W., Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing the 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 in this complaint and a waiver of hearing.

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

1. That unless respondent fails 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 an order be issued requiring respondent to cease and desist from the violations of the Act and the regulations found to exist, and assessing such civil penalties against respondent as are authorized by the Act and warranted by the facts and circumstances of this case.

Done at Washington, D.C.

this 15th day of April, 2013

Susan B. Keith
Susan B. Keith
Deputy Administrator
Packers and Stockyards Program

Thomas N. Bolick
Attorney for the Complainant
Office of the General Counsel--Regulatory Division
Room 2319, South Building
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250-1400
Telephone: (202) 690-2032