

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



In re:)
)
Powell Livsetock, Inc.) P&S Docket No. D-13- 318
)
and)
)
Hugh B. Powell, Jr.,) P&S Docket No. D-13- 319
)
Respondents) Complaint

There is reason to believe that the financial condition of Powell Livestock, Inc., a North Carolina corporation, named as a respondent herein does not meet the requirements of the Packers & Stockyards Act, 1921 (7 U.S.C. § 181 *et seq.*) hereinafter referred to as the Act, and that the respondents named herein have willfully violated the Packers & Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*) and, therefore, this complaint is issued alleging the following:

I.

(a) Respondent Powell Livestock, Inc. is a corporation organized under the laws of the State of North Carolina, with its principal place of business located at 276 Packing Plant Road, Smithfield, NC 27577 and whose business mailing address is P.O. Box 636, Smithfield, NC 27577.

(b) Respondent Powell Livestock, Inc., under the direction, management, and control of respondent Hugh B. Powell, Jr., is, and at all times material herein was:

- (1) Engaged in the business of a dealer buying and selling livestock in commerce and as a market agency buying and selling livestock in commerce on a commission basis; and

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

(b) Respondent Hugh B. Powell, Jr. is an individual whose business mailing address is P.O. Box 636, Smithfield, NC 27577.

(d) Respondent Hugh B. Powell, Jr. is, and at all times material herein was:

- (1) President of Respondent Powell Livestock, Inc.;
- (2) Sole owner of Respondent Powell Livestock, Inc.; and
- (3) Responsible for the direction, management and control of Respondent Powell Livestock, Inc.

(e) Respondent Hugh B. Powell, Jr. is, and at all times material herein was:

- (1) Engaged in the business of conducting and operating Powell Livestock, Inc.; and
- (2) Engaged in the business of a dealer buying and selling livestock in commerce and as a market agency buying and selling livestock on a commission basis in commerce.
- (3) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce and as a market agency to buy and sell livestock in commerce on a commission basis.

II.

On July 17, 2008, the Grain Inspection, Packers and Stockyards Administration (GIPSA) sent a Notice of Violation (NOV) to respondents. The NOV stated that a GIPSA review of respondents' records indicated that respondents' custodial account had shortages of \$65,536.37 and \$21,760.62 as of April 30, 2008, and June 13, 2008, respectively. The NOV stated that operating with a custodial account shortage is a violation of section 201.42 of the regulations (9

C.F.R. § 201.42), and failure to comply with the Packers and Stockyards Act and regulations may result in appropriate disciplinary action.

III.

Respondent Powell Livestock, Inc., under the direction, management, and control of respondent Hugh B. Powell, Jr., during the period of March 26, 2012 through April 30, 2012, failed to properly use and maintain its custodial account, thereby endangering the faithful and prompt accounting of shippers' proceeds and the payments due the owners or consignors of livestock, in that:

(a) As of March 26, 2012, respondents had outstanding checks drawn on their custodial account in the amount of approximately \$575,359 and had, to offset such checks, a balance in the custodial account of approximately \$141,205.90, CD's/Savings accounts designated as custodial funds of approximately \$115,605.63 and current proceeds receivable in the amount of approximately \$214,730.60, resulting in a custodial account shortage in the amount of approximately \$103,816.87.

(b) As of April 30, 2012, respondents had outstanding checks drawn on their custodial account in the amount of approximately \$542,975.53 and had, to offset such checks, a balance in the custodial account of approximately \$266,199.35, CD's/Savings accounts designated as custodial funds of approximately \$115,605.63 and current proceeds receivable in the amount of approximately \$46,919.24, resulting in a custodial account shortage in the amount of approximately \$114,251.31.

(c) The custodial account shortages described herein were due in part to respondents' failure to deposit in the custodial account, within the time prescribed by the regulations, an amount equal to the proceeds receivable for sales of consigned livestock.

IV.

(a) On April 11, 2012, and May 1, 2012, respondents misused their custodial account by using custodial account funds to make payments on their line of credit.

(b) Respondents misused their custodial account by designating Certificate of Deposit #7164046822 as its custodial account for shipper's funds and also designating the same account to insure its Trust Fund Agreement in lieu of a Clause 1 Bond.

V.

As of April 30, 2012, the corporate respondent's current liabilities exceeded its current assets. As of that date, the corporate respondent had current liabilities totaling \$310,981 and current assets totaling \$268,377 resulting in an excess of current liabilities over current assets of \$42,604.

VI.

By reason of the facts alleged in paragraphs III and IV, respondents have 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).

By reason of the facts alleged in paragraph V, the corporate respondent's financial condition does not meet the requirements of the Act (7 U.S.C. § 204) and the respondents have willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)).

WHEREFORE, it is hereby ordered that this complaint shall be served upon the respondents for the purpose of determining whether respondents have willfully violated the Act and regulations. Respondents 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 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 of this complaint.

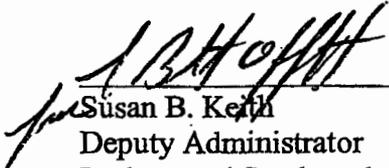
The Packers and Stockyards Program, Grain Inspection, Packers and Stockyards

Administration requests:

1. That unless respondents fail 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 such order or orders be issued, including an order requiring respondents to cease and desist from the violations of the Act and the regulations found to exist, suspending respondents as registrants under the Act, and assessing such civil penalties against respondents as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 8th day of August, 2013



Susan B. Keith
Deputy Administrator
Packers and Stockyards Program

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