

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



In re:)
)
Daniel Ault and) P&S Docket No. 13-0328
Carrie Ault, dba) P&S Docket No. 13-0329
Strawtown Livestock Auction, LLC,)
)
Respondents)
)
) Complaint

There is reason to believe that the respondents named herein 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) Strawtown Livestock Auction, LLC was a limited liability company organized and operating under the laws of Indiana. It was administratively dissolved on March 14, 2013, and no longer operates. Its address was 22217 N SR 37, Noblesville, IN 46060.
- (b) At all times material to this Complaint, Strawtown Livestock Auction, LLC was:
 - (1) Wholly owned by respondents Daniel and Carrie Ault;
 - (2) Under the direction, management, and control of respondents Daniel and Carrie Ault;
 - (3) Engaged in the business of conducting and operating a posted stockyard subject to the provisions of the Packers and Stockyards Act;
 - (4) Engaged in the business of a market agency selling livestock on a commission basis in commerce; and
 - (5) Registered with the Secretary of Agriculture as a market agency to sell livestock on a commission basis in commerce.

(c) Respondent Daniel Ault is an individual. Respondent Daniel Ault's mailing address will not be stated in the complaint to protect the privacy of Mr. Ault, but will be provided to the Hearing Clerk's Office, United States Department of Agriculture, for the purposes of service of this complaint.

(d) Respondent Daniel Ault was at all times material herein:

(1) Fifty percent owner of Strawtown Livestock Auction LLC;

(2) Responsible for the direction, management and control of Strawtown Livestock Auction LLC;

(3) Engaged in the business of conducting and operating Strawtown Livestock Auction LLC;

(4) Engaged in the business of a dealer buying and selling livestock in commerce;

(5) Registered as a dealer to buy and sell livestock in commerce under the name Daniel Ault doing business as Dwault Livestock.

(e) Respondent Carrie Ault is an individual. Respondent Carrie Ault's mailing address will not be stated in the complaint to protect the privacy of Ms. Ault, but will be provided to the Hearing Clerk's Office, United States Department of Agriculture, for the purposes of service of this complaint.

(f) Respondent Carrie Ault was at all times material herein:

(1) Fifty percent owner of respondent Strawtown Livestock Auction LLC;

(2) Responsible for the direction, management and control of Strawtown Livestock Auction LLC;

(3) Engaged in the business of conducting and operating Strawtown Livestock Auction LLC; and

(4) Engaged in the business of a market agency selling livestock on a commission basis in commerce.

II.

On July 14, 2011, the Grain Inspection, Packers and Stockyards Administration (GIPSA) sent a Notice of Violation (NOV) via certified mail to Strawtown Livestock Auction, LLC ("Strawtown"). The NOV was claimed and signed for on July 18, 2011. The NOV advised Strawtown that an analysis of the custodial bank account disclosed that it had a shortage in its custodial account of \$4,313.88 as of May 31, 2011, that the custodial account funds were being misused, that Strawtown failed to remit or deliver to the consignor the net proceeds from the sale of livestock within the time period required by the Act, that Strawtown had issued insufficient funds checks, and, among other things, that Strawtown failed to keep records in accordance with the Act. The NOV informed Strawtown that failure to properly maintain the custodial account, and the other actions enumerated in the NOV are violations of the Packers and Stockyards Act, and failure to comply with the Act and regulations may result in appropriate disciplinary action.

III.

During the period of August 31, 2011, through February 29, 2012, respondents failed to properly use and maintain their 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 August 31, 2011, respondents had outstanding checks drawn on their custodial account in the amount of \$3,261.62 and had, to offset such checks, a bank balance in

the custodial account of \$17.65, no current proceeds receivable, with no deposits in transit, resulting in a custodial account shortage in the amount of \$3,243.97.

(b) As of October 31, 2011, respondents had outstanding checks drawn on their custodial account in the amount of \$9,639.14 and had, to offset such checks, a negative bank balance in the custodial account of \$1,476.00, current proceeds receivable in the amount of \$1,037.00 with no deposits in transit, resulting in a custodial account shortage in the amount of \$10,078.14.

(c) As of February 29, 2012, respondents had outstanding checks drawn on their custodial account in the amount of \$916.75 and had, to offset such checks, a bank balance in the custodial account of \$886.60, no current proceeds receivable and no deposits in transit, resulting in a custodial account shortage in the amount of \$30.15.

IV.

The custodial account shortages described herein were due in part to the respondents' misuse of shippers' funds in the custodial account to pay for bank charges and other expenses, and due in part to respondents' failure to deposit in the custodial account before the close of the next business day, an amount equal to the proceeds receivable from the sale of livestock that were due from Daniel Ault, 50% owner of Strawtown Livestock Auction, LLC for his purchases of livestock at the Strawtown Livestock Auction market.

V.

(a) During the period of September 1, 2011, through January 31, 2012, the respondents issued approximately 21 insufficient funds checks in payment for livestock

consigned to Strawtown Livestock Auction for sale. The respondents thus failed to have and maintain sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

(b) By issuing insufficient funds checks on the dates referenced in paragraph V(a) of this complaint, the respondents also failed to remit to consignors of livestock, the net proceeds due from the sale within the time period required by the Act.

VI.

Respondents, in connection with their operations subject to the Act, failed to keep and maintain records which fully and correctly disclosed all transactions involved in their business as a market agency as required by section 401 of the Act (7 U.S.C. § 221) and section 203.4 of the Statements of General Policy Under the Act (9 C.F.R. § 203.4). Specifically, respondents failed to keep and maintain accurate records of cash payments made to their consignors and the dates of those cash payments, records documenting the receipt of payments from buyers, and itemized deposit slips showing the deposits of buyer payments.

VII.

By reason of the facts alleged in paragraphs II-IV, respondents 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, respondents willfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208 and 213(a)) and section 201.43 of the regulations (9 C.F.R. § 201.43).

By reason of the facts alleged in paragraph VI herein, respondents willfully violated section 401 of the Act (7 U.S.C. § 221).

WHEREFORE, it is hereby ordered that this complaint shall be served upon the respondents for the purpose of determining whether respondents 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 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, and assessing such civil penalties against respondents as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 27th day of August, 2013

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

Lauren C. Axley
Attorney for the Complainant
Marketing, Regulatory, and Food Safety Programs Division
Office of the General Counsel
United States Department of Agriculture
Room 2319, South Building
1400 Independence Ave., S.W.
Washington, D.C. 20250-1400
Phone: 202-720-5143
Fax: 202-690-4322