

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:

Valley Stockyards, Inc.,
Robert C. Elliot, and
Melissa J. Elliot,

Respondents

P&S Docket No. D-08-0117

**Decision and Order
by Reason of Default**

The Complaint, filed on May 9, 2008, alleged that the Respondents willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (the “Act” or the “Packers and Stockyards Act”).

Parties and Counsel

The Complainant is the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration (“GIPSA”), United States Department of Agriculture (frequently herein “Complainant” or “Packers and Stockyards”). Packers and Stockyards is represented by Jonathan D. Gordy, Esq., with the Office of the General Counsel, Trade Practices Division, United States Department of Agriculture, South Building Room 2309, 1400 Independence Avenue SW, Washington, D.C. 20250-1413.

The Corporate Respondent, Valley Stockyards, Inc. (“Respondent Valley” or “Corporate Respondent”); and the Individual Respondents, Robert C. Elliot and Melissa J. Elliot (“Individual Respondents”), have all been served and all failed to appear.

Respondents' Failures to Answer

No answers to the Complaint have been received. The time for filing answers expired in late June 2008. The Complainant's Motion for Decision Without Hearing by Reason of Default, filed July 2, 2008, is before me.

Copies of the Complaint and the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*) ("Rules of Practice") were mailed to the Respondents via certified mail on May 12, 2008. Respondent Robert C. Elliot signed the certified mail return receipt card for his copy of the Complaint on June 3, 2008. The Hearing Clerk's initial mailing to Respondent Melissa J. Elliot was returned as "not deliverable as addressed." Accordingly, Complainant's counsel provided a substitute mailing address for Respondent Melissa J. Elliot, and the Hearing Clerk sent a copy of the Complaint to that address via certified mail. Melissa J. Elliot signed the certified mail return receipt card for her copy of the Complaint on June 2, 2008. Because both Individual Respondents are officers of Respondent Valley, proof of delivery on Individual Respondents is delivery on Respondent Valley under 7 C.F.R. § 1.147(c)(3)(ii).

The Rules of Practice provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. § 1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. Accordingly, the material allegations in the Complaint, which are admitted by Respondents' default, are adopted and set forth herein as Findings of Fact. This Decision, therefore, is issued pursuant to section 1.139 of the Rules of Practice. 7 C.F.R. § 1.139.

Findings of Fact

1. Valley Stockyards, Inc. (“Respondent Valley”) is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Its last known mailing address was P.O. Box 231, Athens, Pennsylvania 18810.
2. Respondent Valley, at all times material to this Decision, was:
 - a. Engaged in the business of conducting and operating the Valley Stockyards Inc. stockyard, a posted stockyard subject to the provisions of the Act;
 - b. Engaged in the business of a market agency buying and selling livestock in commerce on a commission basis;
 - c. Engaged in the business of a dealer buying and selling livestock in commerce for its own account; and
 - d. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for its own account and as a market agency to buy and sell livestock on a commission basis.
3. Respondent Valley no longer operates a posted stockyard.
4. Individual Respondents, at all times material to this Decision, each owned 50% of the issued stock of Respondent Valley, and were responsible for the management, direction, and control of Respondent Valley.
5. Respondent Valley, under the direction, management and control of the Individual Respondents, misused custodial funds by writing a check to cash for \$6,500.00 from its Custodial Account for Shipper’s Proceeds (“custodial account”) with Citizens & Northern Bank, for which there was no consigned livestock. This amount was deposited in a livestock purchaser’s account at Citizens & Northern Bank. After Respondents’ deposit, Citizens & Northern Bank honored a check drawn on the purchaser’s account in the amount of \$37,891.25. Using the funds from this check, Respondent Valley then obtained

a cashier's check from Citizens & Northern Bank for the \$37,891.25 and deposited the cashier's check in its custodial account. When Citizens & Northern Bank discovered that a stop payment order had been issued for the purchaser's check, the bank rescinded the cashier's check and closed Respondent Valley's custodial account. Shortly thereafter, Respondents opened a new custodial account in Peoples State Bank.

6. In part due to Respondent Valley's misuse of custodial account funds in its Citizens & Northern Bank custodial account, as described in finding of fact 5 above, Respondent Valley, under the direction, management and control of the Individual Respondents, during the period February 15, 2006, through April 20, 2006, and thereafter failed to maintain and use properly Respondent Valley's custodial account with Peoples State Bank, thereby endangering the faithful and prompt accounting of the custodial account and the payment of portions of the custodial account due the owners and consignors of livestock, in that:
 - a. As of February 15, 2006, Respondent Valley had outstanding proceeds due shippers in the amount of \$168,798.28 that had been due from custodial account with Citizens & Northern Bank and expense items remaining in the account in the amount of \$10,423.71 and had to offset those proceeds due shippers and expense items against a balance in its custodial account with Peoples State Bank of \$60,388.54, which resulted in a deficiency of \$118,833.45.
 - b. As of April 20, 2006, Respondent Valley had outstanding checks drawn on its custodial account with People's State Bank in the amount of \$21,333.55, outstanding proceeds due shippers in the amount of \$126,940.86 that had been due from its closed custodial account with Citizens & Northern Bank and expense items remaining in the account in the amount of \$8,145.71 and had to offset those

amounts against a balance in the custodial account with People's State Bank of \$32,285.47, which resulted in a deficiency of \$124,134.65.

7. Such shortages were also due, in part, to the failure of the Respondents 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.
8. Respondent Valley, under the direction, management, and control of the Individual Respondents, on or about the dates and in the transactions set forth below, issued checks in payment for livestock purchases which checks were returned unpaid by the bank upon which they were drawn because Respondents did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented.

Sale Date	Payee	Amount
01/02/06	Vicke Kibbe	\$562.40
01/02/06	R. Hidden Valley Farm	\$4,691.38
01/02/06	Lantland Farms	\$615.09
01/09/06	Norman Allen	\$6,327.66
01/09/06	R. Hidden Valley Farm	\$548.38
01/09/06	Iva-Jen Farms	\$1,295.31
01/09/06	Donald Brooks	\$446.39
01/09/06	Mundy Brook Farm	\$1,009.63
01/11/06	Donald Brooks	\$597.50
01/11/06	Paul Winch	\$166.50
01/16/06	Terry Grant	\$1,242.20
01/16/06	Jeffery Klossner	\$822.50
01/16/06	Merle Lawton	\$418.91
Total		\$18,743.85

9. Respondent Valley, under the direction management and control of the Individual Respondents, on or about the dates and in the transactions set forth below, issued checks in payment for livestock purchases which checks were returned unpaid by the bank upon

which they were drawn because Respondents' custodial account had been closed by Citizens & Northern Bank due to Respondents' misuse of custodial account funds as more fully described above.

Sale Date	Payee	Amount
11/02/05	Ed Traver	\$9,174.81
01/02/06	Glenn Warren	\$885.28
01/09/06	Robert Rubenstein	\$47.90
01/09/06	Cold Creek Farm	\$345.20
01/16/06	Duane Wilcox	\$239.40
01/16/06	Vaughn Jennings, Jr.	\$373.62
01/16/06	Corey Miles	\$513.20
Total		\$11,579.41

10. On or about the dates and in the transactions set forth in findings of fact 8-9 and in the transactions set forth in Appendix A to the Complaint, Respondent Valley, under the direction, management, and control of the Individual Respondents, failed to remit, when due, the net proceeds of the sales of livestock to the consignors of the livestock, by failing to timely deliver the net proceeds from the sale to those consignors.
11. Respondent Valley, under the direction, management, and control of the Individual Respondents, failed to maintain adequate records which fully and correctly disclosed all the transactions involved in their business in that: Respondents failed to keep records which correctly disclosed the date checks were written and correctly disclosed dates that sales were held, and Respondents failed to maintain copies of invoices and copies of checks.

Conclusions

1. The Individual Respondents maintained complete ownership of Respondent Valley, and Respondent Valley was under their direction, management, and control.

2. By writing a check from their custodial account for \$6,500.00 without a lawful purpose and by permitting a shortage in their custodial account, Respondents willfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213(a)) and sections 201.42(c) and 201.42(d) of the regulations (9 C.F.R. § 201.42(c)-(d)).
3. Respondents have wilfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213), by writing checks which were returned by the bank for insufficient funds.
4. Because Respondents did not timely remit the net proceeds to livestock consigned to their market, Respondents have wilfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213) and section 201.43(a) of the regulations (9 C.F.R. § 201.43(a)).
5. Because Respondents failed to maintain records which correctly disclosed the date checks were written and correctly disclosed dates that sales were held and also failed to keep documents that supported Respondents' transactions, Respondents failed to maintain records as required by section 401 of the Act (7 U.S.C. § 221) and willfully violated section 312(a) of the Act as a result (7 U.S.C. § 213(a)).

Order

Respondents, their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Act, shall cease and desist from failing to remit the full amount of the purchase price for livestock within the time period required by the Act and the regulations promulgated under it.

Respondents, their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Act, shall cease and desist from misuse of their custodial account for reasons other than for payment of (1) the net proceeds to the consignor or shipper, or to any person that Respondents know is entitled to payment, (2) to pay lawful charges against the consignment of livestock which the Respondents shall, in

their capacity as agent, are required to pay, and (3) to obtain any sums due Respondents as compensation for their services.

Respondents, their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Act, shall cease and desist from failing to properly maintain their custodial accounts for shippers' proceeds.

Respondents, their agents and employees shall keep such accounts, records and memoranda which fully and correctly disclose all transactions conducted subject to the Act, including, but not limited to, records which correctly disclosed the date checks were written and correctly disclosed dates that sales were held, and maintain copies of invoices and copies of checks.

Respondents are suspended as registrants under the Act for 5 years, *provided*, however, that the 5-year period of suspension may be terminated by the issuance of a supplemental order at any time after the first 300 days of the suspension have been served upon Respondents' demonstration to the Packers and Stockyards Administration of facts and circumstances warranting the termination of the suspension.

Finality

This Decision will become final and effective without further proceedings 35 days after it is served unless a party to the proceeding files with the Hearing Clerk an appeal to the Judicial Officer within 30 days after service, as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145). See attached Appendix A, containing 7 C.F.R. § 1.145).

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 8th day of October 2008

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Bldg Room 1031
1400 Independence Ave SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

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SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) Filing of petition. Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) Response to appeal petition. Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) Transmittal of record. Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been

filed in the proceeding.

(d) Oral argument. A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) Scope of argument. Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) Notice of argument; postponement. The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) Order of argument. The appellant is entitled to open and conclude the argument.

(h) Submission on briefs. By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) Decision of the [J]udicial [O]fficer on appeal. As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145