

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0135

In re: Claypoole Livestock, Inc., and
Timothy J. Claypoole

Respondents

Default Decision and Order

Preliminary Statement

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. §§ 181-229) (PSA) by a complaint filed by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration on December 23, 2011. Respondents failed to file a timely Answer to the complaint. By handwritten letter received on April 5, 2012, Respondents recounted his difficulties in obtaining a bond and the financial problems experienced as a result of family medical expenses. As no Answer was timely filed, the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Claypoole Livestock, Inc., (Corporate Respondent) is a corporation organized and existing under the laws of the State of Colorado. Corporate Respondent's business mailing address is in Clifton, Colorado. Corporate Respondent's registered agent for service of process is Timothy J. Claypoole.

2. Corporate Respondent is, and at all times material herein was:
 - (a) Engaged in the business of buying and selling livestock in commerce as a dealer for its own account or for the account of others;
 - (b) Engaged in the business of a market agency buying livestock in commerce on a commission basis; and
 - (c) Not registered as a dealer or market agency with the Secretary of Agriculture.
3. Timothy J. Claypoole (Individual Respondent) is an individual whose business mailing address is in the State of Colorado.
4. Individual Respondent is, and at all times material herein was:
 - (a) President of Corporate Respondent;
 - (b) A director of Corporate Respondent;
 - (c) An owner of Corporate Respondent;
 - (d) Registered agent of Corporate Respondent; and
 - (e) Responsible for the direction, management, and control of Corporate Respondent.
5. On or about the dates and in the transactions set forth below, Corporate Respondent, under the direction, management, and control of Individual Respondent, in connection with its operations subject to the PSA, purchased livestock and failed to pay, when due, the full purchase price of such livestock:

Purchase Date	Seller	No. of Head	Type of Livestock	Sale Price – Excluding Non-Livestock Charges	Payment Due Date Per 7 U.S.C. § 228b	Payment Date	Days Late
05/21/09	Delta Sales Yard	14	LAMBS	\$1,850.03	05/22/09	10/16/09	147
06/11/09	Delta Sales Yard	6	LAMBS	\$484.50	06/12/09	07/07/09	25
05/06/09	Western Slope Cattlemen's	8	CATTLE	\$6,107.88	05/07/09	05/08/09	1
05/13/09	Western Slope Cattlemen's	2	CATTLE	\$1,078.08	05/14/09	06/03/09	20
05/20/09	Western Slope Cattlemen's	1	CATTLE	\$290.70	05/21/09	07/14/09	54
06/24/09	Western Slope Cattlemen's	6	LAMBS	\$639.35	06/25/09	07/14/09	19
08/05/09	Western Slope Cattlemen's	10	CATTLE	\$10,209.60	08/06/09	08/08/09	2
08/12/09	Western Slope Cattlemen's	54	LAMBS	\$5,542.76	08/13/09	08/15/09	2
08/10/11	Western Slope Cattlemen's	24	LAMBS/ EWES	\$3,545.60	08/11/11	08/15/11	4

6. On or about the dates and in the transactions set forth below, Corporate Respondent, under the direction, management, and control of Individual Respondent, in connection with its operations subject to the PSA, issued checks for livestock purchases that 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:

Purchase Date	No. of Head	Type of Livestock	Invoice Amount	Check Date	Check Number	Check Amount	Date Check Returned
05/21/09	14	LAMBS	\$1,843.07	05/25/09	3267	\$1,843.07	07/01/09 07/14/09
06/11/09	6	LAMBS	\$482.12	06/20/09	3228	\$482.12	07/01/09
Purchase Date	No. of Head	Type of Livestock	Invoice Amount	Check Date	Check Number	Check Amount	Date Check Returned
05/20/09	1	LAMBS	\$290.70	05/25/09	3266	\$290.70	06/15/09
06/24/09	6	LAMBS	\$639.35	06/28/09	3271	\$639.35	07/10/09
08/24/11	96	LAMBS	\$19,630.85	08/24/11	3630	\$19,630.85	08/30/11

7. On August 24, 2009, Individual Respondent received written notification from the Packers and Stockyards Program that he was operating subject to the PSA and that he was required to register and to obtain a bond or bond equivalent as required by the PSA and regulations. Notwithstanding such notice, Individual Respondent continued to direct, manage and control Corporate Respondent while engaging the business of a dealer buying and selling livestock in commerce, and the business of a market agency buying livestock on a commission basis, without registering or maintaining an adequate bond or bond equivalent as required by the PSA and the regulations.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. At all times relevant to the allegations in the Complaint, Respondents were operating as a dealer and market agency subject to the provisions of the PSA.¹

¹ “It is the Secretary’s policy to . . . hold personally accountable a stockholder who completely dominates and controls the company or a company official who manages, directs, and controls the day-to-day operations of the company.” *See In re Eastern Kansas Livestock, Inc.*, 54 Agric. Dec. 1178, 1184 (1995).

3. Respondents willfully violated sections 312(a) and 409 of the PSA (7 U.S.C. §§ 213(a), 228b) by failing to make timely payment for livestock purchases and issuing insufficient fund checks in purported payment for livestock

4. Respondents willfully violated section 312(a) of the PSA (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Secretary's regulations (9 C.F.R. §§ 201.29, 201.30) by engaging in operations subject to the PSA without maintaining an adequate bond or bond equivalent.

Order

1. Respondents Claypoole Livestock, Inc., and Timothy J. Claypoole, their agents and employees, directly or indirectly through any corporate or other device, in connection with their operations subject to the Packers and Stockyards Act, shall cease and desist from:

a. Engaging in business in any capacity for which bonding is required without filing and maintaining an adequate bond or its equivalent as required by the PSA and the regulations;

b. Purchasing livestock and failing to pay for such livestock purchases within the time period required by the Act; and

c. Issuing checks in payment for livestock without having and maintaining sufficient funds on deposit and available in the accounts upon which they are drawn to pay such checks when presented.

2. Respondents are prohibited from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act without first becoming properly registered.

3. In accordance with section 312(b) of the PSA (7 U.S.C. § 213(b)), Respondents are jointly and severally assessed a civil penalty in the amount of eleven thousand dollars (\$11,000); however, all in excess of two thousand five hundred dollars is suspended provided that Respondents fully comply with terms of the cease and desist provisions contained in this Order for a period of one year. Payment of the unsuspended amount of two thousand five hundred dollars shall be made by check or money order made payable to the "US Department of Agriculture." Respondents are directed to note the docket number of this case on the payment instrument. Payment shall be sent to: USDA GIPSA, PO Box 790335, St. Louis, Missouri 63179-0335.

4. This Decision and Order shall become final and effective without further proceedings thirty-five (35) days after service on Respondents, unless appealed to the Judicial Officer by a party to the proceeding within thirty (30) days, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

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

May 10, 2012

Peter M. Davenport
Chief Administrative Law Judge