

# AGRICULTURE DECISIONS

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THIS IS A COMPILATION OF DECISIONS ISSUED BY THE  
SECRETARY OF AGRICULTURE AND THE COURTS  
PERTAINING TO STATUTES ADMINISTERED BY THE  
UNITED STATES DEPARTMENT OF AGRICULTURE

## AGRICULTURE DECISIONS

AGRICULTURE DECISIONS is an official publication by the Secretary of Agriculture consisting of decisions and orders issued in formal adjudicatory administrative proceedings conducted for the Department under various statutes and regulations pursuant to the Administrative Procedure Act. Selected court decisions concerning the Department's regulatory programs are also included. The Department is required to publish its rules and regulations in the *Federal Register* and, therefore, they are not included in AGRICULTURE DECISIONS.

Beginning in 1989, AGRICULTURE DECISIONS is comprised of three Parts, each of which is published every six months. Part One is organized alphabetically by statute and contains all decisions and orders other than those pertaining to the Packers and Stockyards Act and the Perishable Agricultural Commodities Act, which are contained in Parts Two and Three, respectively.

The published decisions and orders may be cited by giving the volume number, page number and year, e.g., 1 Agric. Dec. 472 (1942). It is unnecessary to cite a decision's docket or decision numbers, e.g., D-578; S. 1150, and the use of such references generally indicates that the decision has not been published in AGRICULTURE DECISIONS.

Consent Decisions entered subsequent to December 31, 1986, are no longer published. However, a list of the decisions is included. The decisions are on file and may be inspected upon request made to the Hearing Clerk, Office of Administrative Law Judges.

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**PACKERS AND STOCKYARDS ACT**

**COURT DECISION**

**SAMUEL J. DALESSIO, JR., DOUGLAS S. DALESSIO, d/b/a INDIANA FARMERS LIVESTOCK MARKET, INC. v. SECRETARY OF AGRICULTURE.**

No. 95-3266.

Filed February 6, 1996.

**UNITED STATES COURT OF APPEALS  
THIRD CIRCUIT**

The United States Court of Appeals for the Third Circuit affirmed the Secretary's decision.

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The decision of the Court is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. The Third Circuit provides by rule for the reporting of opinions having "precedential or institutional value. An opinion which appears to have value only to the trial court or the parties is ordinarily not published." The Federal Reporter tables are prepared from lists of cases terminated by judgment orders, unpublished per curiam opinions and unpublished signed opinions, indicating the disposition of each case, transmitted by the Court. Third Circuit Rules, App. 1, Internal Operating Procedures, Ch. 5, sec. 5.1, 28 U.S.C.A.

**PACKERS AND STOCKYARDS ACT****DEPARTMENTAL DECISIONS**

**In re: SMITHFIELD LIVESTOCK AUCTION, INC., LEROY DEL HOLMGREN, WAYNE NORMAN and KAREN JACKSON.**

**P&S Docket No. D-95-43.**

**Decision and Order filed November 29, 1995.**

**Stipulated facts - Failure to maintain and use properly a custodial account - Alter ego - Existence of line of credit no defense to custodial account violation - Sufficient funds necessary without regard to collection of receivables - Cease and desist order - Civil penalty.**

Judge Bernstein issued a cease and desist order and imposed a \$7,000 civil penalty. Complainant and Respondents stipulated that the corporate Respondent, under the direction, management and control of individual Respondents, failed to maintain and use properly its custodial account and that individual Respondents were the alter ego of corporate Respondent. Respondents' delays in securing funds from a bond and from receivables and a bank's failure to honor a line of credit to cover Respondents' overdrafts are no defenses to Respondents' custodial account violations.

Andrew Y. Stanton, for Complainant.

N. George Daines, Logan, UT, for Respondents.

*Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.*

This is a disciplinary proceeding brought under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), (the "Act"), and the regulations promulgated pursuant to the Act (9 C.F.R. § 201.1 *et seq.*). A Complaint was filed on June 7, 1995, by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, charging that the corporate Respondent, under the direction, management and control of the individual Respondents, wilfully violated the Act and the regulations by failing to maintain and use properly its Custodial Account for Shippers' Proceeds, thereby endangering the faithful and prompt accounting and payments of the portions due the owners or consignors of livestock.

Respondents did not file timely Answers and on August 9, 1995, Complainant filed a motion for a decision without hearing by reason of default. On August 9, 1995, Respondents filed a proposed Answer in which they admitted that they technically violated the Act and regulations. On August 14, 1995, Complainant filed an objection to Respondents' proposed Answer. In a September 14, 1995, telephone conference, I stated that I would

reserve ruling on Complainant's motion for a decision and if the parties could file stipulations of fact and proposed findings of fact, conclusions and orders, I would decide the sole issue of sanction based upon such submissions. The parties filed their agreed upon stipulations of fact and they filed proposed findings of fact, proposed conclusions of law, and briefs on November 15 and 16, 1995. All proposed findings, proposed conclusions and arguments have been considered. To the extent indicated, they have been adopted. Otherwise, they have been rejected as irrelevant or not supported by the evidence. In addition, Respondents filed a document of alleged mitigating facts.

As agreed by the parties, the sole issue is one of sanction which will be determined upon consideration of the findings of fact and the applicable law.

### **Pertinent Statutory and Regulatory Provisions**

Section 312 of the Act (7 U.S.C. § 213):

(a) It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with the receiving, marketing, buying or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing or handling of livestock.

(b) Whenever complaint is made to the Secretary by any person, or whenever the Secretary has reason to believe, that any stockyard owner, market agency, or dealer is violating the provisions of subdivision (a), the Secretary after notice and full hearing may make an order that he shall cease and desist from continuing such violation to the extent that the Secretary finds that it does or will exist. The Secretary may also assess a civil penalty of not more than \$10,000 for each such violation. In determining the amount of the civil penalty to be assessed under this section, the Secretary shall consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the person's ability to continue in business. If, after the lapse of the period allowed for appeal or after the affirmance of such penalty, the person against whom the civil penalty is assessed fails to pay such penalty, the Secretary may refer the matter to the Attorney General who may recover such penalty.

by an action in the appropriate district court of the United States.

Section 201.42 of the regulations (9 C.F.R. § 201.42):

(a) *Payments for livestock are trust funds.* Each payment that a livestock buyer makes to a market agency selling on commission is a trust fund. Funds deposited in custodial accounts are also trust funds.

(b) *Custodial accounts for shippers' proceeds.* Every market agency engaged in selling livestock on a commission or agency basis shall establish and maintain a separate bank account designated as "Custodial Account for Shippers' Proceeds," or some similar identifying designation, to disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.

(c) *Deposits in custodial accounts.* The market agency shall deposit in its custodial account before the close of the next business banking day (the next day on which banks are customarily open for business whether or not the market agency does business on that day) after livestock is sold (1) the proceeds from the sale of livestock that have been collected, and (2) an amount equal to the proceeds receivable from the sale of livestock that are due from (i) the market agency, (ii) any owner, officer, or employee of the market agency, and (iii) any buyer to whom the market agency has extended credit. The market agency shall thereafter deposit in the custodial account all proceeds collected until the account has been reimbursed in full, and shall, before the close of the seventh day following the sale of livestock, deposit an amount equal to all the remaining proceeds receivable whether or not the proceeds have been collected by the market agency.

(d) *Withdrawals from custodial accounts.* The custodial account for shipper's proceeds shall be drawn on only for payment of (1) net proceeds to the consignor or shipper, or to any person that the market agency knows is entitled to payment, (2) to pay lawful charges against the consignment of livestock which the market agency shall, in its capacity as agent, be required to pay, and (3) to obtain any sums due the market agency as compensation for its services.

(e) *Accounts and records.* Each market agency shall keep such accounts and records as will disclose at all times the handling of

funds in such custodial accounts for shippers' proceeds. Accounts and records must at all times disclose the name of consignors and the amount due and payable to each from funds in the custodial account for shippers' proceeds.

(f) *Insured banks.* Such custodial accounts for shippers' proceeds must be established and maintained in banks whose deposits are insured by the Federal Deposit Insurance Corporation.

(g) *Certificates of deposit and/or savings accounts.* Funds in a custodial account for shippers' proceeds may be maintained in an interest-bearing savings account and/or invested in one or more certificates of deposit, to the extent that such deposit or investment does not impair the ability of the market agency to meet its obligations to its consignors. The savings account must be properly designated as a part of the custodial account of the market agency in its fiduciary capacity as trustee of the custodial funds and maintained in the same bank as the custodial account. The certificates of deposit, as property of the custodial account, must be issued by the bank in which the custodial account is kept and must be made payable to the market agency in its fiduciary capacity as trustee of the custodial funds.

### Findings of Fact

The parties stipulated and I find:

1. Respondent, Smithfield Livestock Auction, Inc. (the "corporate Respondent"), is a Utah corporation whose business mailing address is 711 South 100 West, Smithfield, Utah 84335.
2. The corporate Respondent was at all times material:
  - a. Engaged in the business of operating the Smithfield Livestock Auction, Inc., a posted stockyard subject to the provisions of the Act,
  - b. Engaged in the business of a market agency selling livestock on a commission basis; and
  - c. Registered with the Secretary of Agriculture as a market agency to sell livestock on a commission basis and furnish stockyard services.
3. Respondent, LeRoy Del Holmgren, is an individual whose business mailing address is 711 South 100 West, Smithfield, Utah 84335.
4. Respondent Holmgren was at all times material:

PACKERS AND STOCKYARDS ACT

a. President and owner of 25 percent of the stock of the corporate Respondent; and

b. Responsible for the direction, management and control of the corporate Respondent.

5. Respondent, Wayne Norman, is an individual whose business mailing address is 711 South 100 West, Smithfield, Utah 84335.

6. Respondent Norman was at all times material:

a. Vice-president and owner of 25 percent of the stock of the corporate Respondent; and

b. Responsible for the direction, management and control of the corporate Respondent.

7. Respondent, Karen Jackson, is an individual whose business mailing address is 711 South 100 West, Smithfield, Utah 84335.

8. Respondent Jackson was at all times material:

a. Secretary/treasurer and owner of 25 percent of the stock of the corporate Respondent; and

b. Responsible for the direction, management and control of the corporate Respondent.

9. The corporate Respondent, under the direction, management and control of the individual Respondents, during the period April 30, 1994, through June 15, 1994, failed to maintain and use properly its Custodial Account for Shippers' Proceeds (the "custodial account"), in that:

a. As of April 30, 1994, the corporate Respondent had outstanding checks drawn on the custodial account in the amount of \$307,764.61, and had, to offset those checks, a balance in the account in the amount of \$94,408.89, no deposits in transit and current proceeds receivable in the amount of \$121,125.70, resulting in a deficiency of \$92,230.02 in funds available to pay shippers' proceeds.

b. As of May 31, 1994, the corporate Respondent had outstanding checks drawn on the custodial account in the amount of \$157,068.71 and a negative balance in the account in the amount of \$38,073.35, and had, to offset such amounts, deposits in transit in the amount of \$89,854.86, and current proceeds receivable in the amount of \$37,480.13, resulting in a deficiency of \$67,807.07 in funds available to pay shippers' proceeds.

c. As of June 13, 1994, the corporate Respondent had outstanding checks drawn on the custodial account in the amount of \$144,845.40, and had, to offset those checks, a balance in the account in the amount of \$12,575.62, no deposits in transit and current proceeds receivable in the amount of

\$65,196.85, resulting in a deficiency of \$67,062.93 in funds available to pay shippers' proceeds.

d. As of June 15, 1994, the corporate Respondent had outstanding checks drawn on the custodial account in the amount of \$144,845.40, and had, to offset those checks, a balance in the account in the amount of \$93,411.02, no deposits in transit and current proceeds receivable in the amount of \$11,183.50, resulting in a deficiency of \$40,250.88 in funds available to pay shippers' proceeds.

e. Such deficiencies were caused, in part, by the failure of the corporate Respondent, under the direction, management and control of the individual Respondents, to deposit in the custodial account, within the time prescribed in section 201.42(c) of the regulations (9 C.F.R. § 201.42(c)), amounts equal to the proceeds receivable from the sale of consigned livestock.

f. Further, the corporate Respondent, under the direction, management and control of the individual Respondents, failed to properly designate the custodial account and failed to reimburse the custodial account in amounts equal to the proceeds receivable from the sale of livestock due from the corporate Respondent, Respondent Holmgren and buyers to whom the corporate Respondent had extended credit.

10. The actions of Respondents were in violation of section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)), and section 201.42 of the regulations issued pursuant to the Act (9 C.F.R. § 201.42).

11. In a certified letter dated March 5, 1991, and received by Respondent Holmgren and the corporate Respondent, Complainant advised that a review of the corporate Respondent's custodial account revealed that the account was short \$4,909.68 due to the failure of the corporate Respondent to fully reimburse the custodial account for accounts receivable. The shortage was also due to withdrawals from the custodial account which exceeded the amount of funds due to the corporate Respondent for services. Respondent Holmgren and the corporate Respondent were also advised that full and complete records of funds due the corporate Respondent as compensation for its services and accounts receivable due the corporate Respondent were not being maintained.

12. The corporate Respondent has submitted an annual report to Complainant, dated May 15, 1995, covering the year ending December 31, 1994. The May 15, 1995, annual report shall be considered part of the evidence (Exhibit 1).

Respondents have alleged additional mitigating facts. Complainant disputes these assertions on the basis that Complainant has no knowledge

about those facts. Since it was agreed that my findings would be based upon only stipulated facts, I am unable to accept Respondents' alleged mitigating facts as a basis for findings of fact.

### Conclusions

- 1. The corporate Respondent, under the direction, management and control of the individual Respondents, during the period April 30, 1994, through June 15, 1994, failed to maintain and use properly its custodial account, in violation of the Act and Regulations.**

Respondents have failed to maintain and use properly the custodial account of the corporate Respondent. Respondents admit that their actions violated section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.42 of the regulations (9 C.F.R. § 201.42) (Finding 10).

Every market agency subject to the Packers and Stockyards Act is required to establish and properly maintain a custodial account (9 C.F.R. § 201.42(b)). The custodial account is a fiduciary account which is designed to hold trust proceeds that a market agency collects from the sale of livestock consigned to it for sale on a commission basis. Section 201.42(c) prescribes the manner in which a market agency is to make deposits into the custodial account and otherwise maintain the custodial account.

Respondents failed to properly maintain the corporate Respondent's custodial account on four different occasions, April 30, 1994, May 31, 1994, June 13, 1994, and June 15, 1994. The custodial account was out of balance, reflecting deficiencies of \$92,230.02, \$67,807.07, \$67,062.93, and \$40,250.88, respectively, in funds available to pay shippers' proceeds (Findings 9a, b, c and d). These deficiencies were caused, in part, by the failure of Respondents to deposit in the custodial account, within the time prescribed in section 201.42(c) of the regulations (9 C.F.R. § 201.42(c)), amounts equal to the proceeds receivable from the sale of consigned livestock (Finding 9e).

Further, Respondents misused the custodial account, as they failed to properly designate the custodial account and failed to reimburse the custodial account in amounts equal to the proceeds receivable from the sale of livestock due from the corporate Respondent, Respondent Holmgren and buyers to whom the corporate Respondent had extended credit (Finding 9f).

It has been consistently held by the Department, and upheld by the Courts, that the improper handling and use of the custodial account, in contravention of the requirements of section 201.42 of the regulations, is a

violation of section 312(a) of the Act (7 U.S.C. § 213(a)). It has also been held that shortages found to exist in the custodial account and the failure to properly use and maintain the custodial account are unfair and deceptive practices in violation of Section 312(a) of the Act. *In re Farmers and Ranchers Livestock Auction, Inc.*, 45 Agric. Dec. 234 (1986); *In re Arab Stock Yard, Inc.*, 37 Agric. Dec. 293, *aff'd mem.*, 582 F.2d 39 (5th Cir. 1978); *In re Thumb Auction Markets, Inc.*, 37 Agric. Dec. 164 (1977); *In re Smithfield Livestock Market, Inc.*, 36 Agric. Dec. 1546 (1977); *In re Breckenridge Auction & Sales Co.*, 36 Agric. Dec. 1522 (1977); *In re James J. Miller*, 33 Agric. Dec. 53, *aff'd per curiam*, 498 F.2d 1088 (5th Cir. 1974); *In re Bowman*, 23 Agric. Dec. 1074 (1964), *aff'd*, *Bowman v. United States Dep't of Agric.*, 363 F.2d 81 (5th Cir. 1966).

A significant aggravating factor in this case is that Respondents were aware of the importance of the proper use and maintenance of the custodial account. In a certified letter dated March 5, 1991, and received by Respondent Holmgren and the corporate Respondent, Complainant advised that a review of the corporate Respondent's custodial account revealed that the account was short \$4,909.68 due to the failure of the corporate Respondent to fully reimburse the custodial account for accounts receivable. The shortage was also due to withdrawals from the custodial account which exceeded the amount of funds due to the corporate Respondent for services. Respondent Holmgren and the corporate Respondent were also advised that full and complete records of funds due the corporate Respondent as compensation for its services and accounts receivable due the corporate Respondent were not being maintained (Finding 11).

Despite receiving prior notice of problems with the corporate Respondent's custodial account, Respondents have again failed to maintain and use properly the corporate Respondent's custodial account, in violation of the Act and regulations.

**2. The individual Respondents were the alter egos of the corporate Respondent.**

The parties have stipulated that, at all times material herein, Respondent Holmgren was the president and 25 percent owner of the corporate Respondent (Finding 4a), Respondent Norman was vice-president and 25 percent owner of the corporate Respondent (Finding 6a), and Respondent Jackson was secretary/treasurer and 25 percent owner of the corporate Respondent (Finding 8a). The parties have also stipulated that, at all times

## PACKERS AND STOCKYARDS ACT

material, the individual Respondents were responsible for the direction, management and control of the corporate Respondent (Findings 4b, 6b and 8b). Therefore, the individual Respondents were the alter egos of the corporate Respondent.

The law is clear that in cases under the Packers and Stockyards Act, "[t]he corporate entity may be disregarded when the failure to do so would enable the corporate device to be used to circumvent a statute." *Bruhn's Freezer Meats v. United States Dep't of Agric.*, 438 F.2d 1332, 1343 (3d Cir. 1971). See also *Van Wyck v. Bergland*, 570 F.2d 701, 705 (1978); *In re Fowler Livestock Auction, Inc.*, 52 Agric. Dec. 558, 571 (1993); *In re Sebastopol Meat Company, Inc.*, 28 Agric. Dec. 435, 441 (1969). In this case, the individual Respondents admittedly directed, managed and controlled the corporate Respondent and are thus responsible for the violations.

### **3. The proper sanction in this case is a cease and desist order and a \$7,000.00 civil penalty.**

Complainant argues that the appropriate sanction in this case is a cease and desist order and a \$7,000.00 civil penalty. Complainant's sanction recommendation is based on the nature of the violations committed by Respondents, the remedial purposes of the Act and relevant circumstances, including the aggravating factor that Respondents were previously notified of problems with the maintenance and use of the corporate Respondent's custodial account in a certified letter dated March 5, 1991. Respondents, therefore, knew the importance of properly maintaining and using the corporate Respondent's custodial account but chose not to do so. Further, there is no stipulated finding or even allegation that Respondents are not able to pay a \$7,000 civil penalty, pursuant to section 312(b) of the Act (7 U.S.C. § 213(b)).

The sanction sought by Complainant complies with the Judicial Officer's sanction policy set forth in *In re S.S. Farms Linn County, Inc.*, 50 Agric. Dec. 476, 497 (1991):

The sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

Respondents' failure to maintain and use properly its custodial account exposes its consignors to great risk. As stated in *In re Danny Cobb and Crockett Livestock Sales Co., Inc.*, 48 Agric. Dec. 234, 256 (1989), "the custodial account is a trust account which is a conduit for funds received from the sale of consignors' livestock. When properly designated, as required, such funds are protected from attachment by creditors and each consignor is further protected by the insurance coverage of the Federal Deposit Insurance Corporation." The consignors were not adequately protected in this case due to Respondents' violations.

Respondents' alleged mitigating facts fall into six basic categories: (1) the corporate Respondent and its bank, the First Bank of Commerce, North Logan, Utah, had an informal agreement that the bank would pay overdrafts, and there is now a formal agreement to this effect; (2) when the corporate Respondent received a bad check from Todd Davis, Complainant requested that the corporate Respondent proceed against the bond, but there was a five and one-half month delay in obtaining the bond money which Respondents allege was caused by Complainant; (3) the deficiencies in the custodial account occurred because receivables owed to the corporate Respondent were delayed beyond seven days; (4) that the corporate Respondent has never had a check returned to any seller for insufficient funds; (5) the violations were corrected during the examination and (6) no one was harmed by the violations. Since these were not stipulated to, I am unable to base my decision upon these allegations. However, even if I found these to be the case, my decision would not be changed.

Assuming, *arguendo*, that the corporate Respondent did have an informal agreement to pay overdrafts with the First Bank of Commerce and currently has a formal line of credit, this is not a legally adequate defense to Respondents' violations. It has been held in many decisions under the Act that the existence of a line of credit, informal or formal, is no defense to payment or custodial account violations because it provides no security to the unpaid livestock sellers. If the bank, lawfully or unlawfully, terminates the line of credit or fails, the sellers will have no recourse. *In re Jeff Palmer d/b/a Palmer Cattle Company*, 50 Agric. Dec. 1762 (1991); *In re Ozark County Cattle Company, Inc.*, 49 Agric. Dec. 336 (1990); *In re Richard N. Garver*, 45 Agric. Dec. 1090 (1986), *aff'd*, 846 F.2d 1029 (6th Cir.), *cert. denied*, 488 U.S. 820 (1988). As stated in *Garver, id.* at 1094-1095 (1986):

Respondent . . . argues that his relationship with his bank and the over-draft protection the bank extended to him demonstrate that he

did not wilfully engage in the practices in violation of the Act. However, the unilateral termination by the bank of the respondent's over-draft protection demonstrates precisely why such arrangement cannot insulate a livestock buyer from accountability under the Act. It gives no protection to the sellers of livestock. Respondent's awareness or state of mind at the time the bad checks were issued is of no consequence.

A line of credit or over-draft protection does not provide respondent's creditors the financial security required by the Act and regulations. Despite Mr. Garver's longstanding and friendly relationship with his bank, his bank lawfully and unilaterally terminated his over-draft protection without notice. Similarly, over-draft protection would be of no value if respondent's bank were to fail. As stated in *In re Thumb Auction Markets, Inc.*, 37 A.D. 164, 167-168 (1977). "Such protection fails to fulfill respondent's obligation under statutory and regulatory requirements . . . ."

Decisions under the Act and regulations have established that a line of credit or over-draft protection extended by a bank is of no defense to a charge of insolvency or custodial account violations. *In re Thumb Auction Markets, Inc.*, *supra*; *In re Hugh B. Powell*, 41 A.D. 1354, 1360 (1982); *In re Sechrist Sales Co.*, 36 A.D. 665, 668, 670-75 (1977); *In re Harry Hardy*, 33 A.D. 1383, 1401 (1974). Similarly, over-draft protection cannot be a defense to a charge of issuing insufficient funds checks.

The lack of protection afforded livestock sellers by the existence of a line of credit was discussed in *In re Harry C. Hardy*, 33 Agric. Dec. 1383, 1401 (1974):

The existence of a line of credit under which the bank agrees to honor a check notwithstanding the absence of funds in the account is not as much protection to consignors as cash in the account. The line of credit could be immediately withdrawn in the event of a sudden business failure by the respondents. In these times, sudden and unexpected business failures have occurred, not only in the livestock industry, but in many other industries. In addition, a line

of credit would be of no value if the bank extending the line of credit failed.

Similarly, in the case at hand, Respondents' consignors should not have been placed in a position where they were compelled to rely on Respondents' informal credit line with the First Bank of Commerce, which the bank apparently elected not to honor. This is not a mitigating circumstance to Respondents' custodial account violations.

Respondents' argument that Complainant is responsible for a five and one-half month delay in recovering funds from the bond of Todd Davis, a customer of the corporate Respondent, is based on a misunderstanding of the Act and regulations. Section 201.29 of the regulations (9 C.F.R. § 201.29) requires that an appropriate bond be maintained by every market agency, packer and dealer, except packers whose annual purchases do not exceed \$500,000.00 and packer buyers registered as dealers to purchase livestock for slaughter only. Section 201.33 of the regulations (9 C.F.R. § 201.33) requires that the bonds contain provisions regarding claims for recovery made on such bonds. However, neither the Act nor the regulations state anywhere that it is the responsibility of Complainant, Packers and Stockyards Programs, to make the claim for recovery on behalf of the aggrieved party. Respondents' contention that Complainant is somehow responsible for the alleged delay in recovery on the bond is, therefore, baseless.

Respondents' claim that the deficiencies in the custodial account occurred because receivables owed to the corporate Respondent were delayed beyond seven days is not a mitigating circumstance. Section 201.42(c) of the regulations (9 C.F.R. § 201.42(c)) states that the market agency shall

deposit in the custodial account all proceeds collected until the account has been reimbursed in full, and shall, before the close of the seventh day following the sale of livestock, deposit an amount equal to all the remaining proceeds receivable whether or not the proceeds have been collected by the market agency.

Therefore, it was Respondents' duty to ensure that, within seven days from the sale of the livestock, the custodial account contained sufficient funds to pay the consignor, whether or not Respondent had collected all proceeds receivable by that time. By conducting business as a market agency subject to the Act, Respondents elected to comply with the requirement set forth in section 201.42(c) to provide sufficient funds in the custodial account, without

regard to the collection of receivables. The alleged untimely collection of receivables is no excuse for Respondents' violations.

Further, Respondents' claim that it could not maintain its custodial account because of the failure to collect its receivables in a timely fashion demonstrates the domino effect created by the failure to comply with the Act's custodial obligations. Respondents should not have been buying on commission if they could not conform to the custodial account requirements of the Act.

Finally, although I am unable to find, as Respondents allege, that the corporate Respondent has never had a check returned for insufficient funds, Respondents have admitted that, prior to these custodial violations, the corporate Respondent and Respondent Holmgren were notified by Complainant in a certified letter dated March 5, 1991, that they were not properly maintaining the custodial account (Finding 11). This is an aggravating factor.

Upon consideration of the foregoing, I conclude that the issuance of a cease and desist order and a \$7,000.00 civil penalty constitute an appropriate sanction.

### Order

Respondent Smithfield Livestock Auction, Inc., its officers, directors, agents, employees, successors and assigns, Respondent LeRoy Del Holmgren, Respondent Wayne Norman and Respondent Karen Jackson, individually or through any corporate or other device, in connection with their operations subject to the Act, shall cease and desist from:

1. Failing to deposit in the corporate Respondent's "Custodial Account for Shippers' Proceeds" within the time prescribed by section 201.42 of the regulations (9 C.F.R. § 201.42) an amount equal to the proceeds receivable from the sale of consigned livestock; and

2. Failing to maintain its "Custodial Account for Shippers' Proceeds" in conformity with the provisions of section 201.42 of the regulations (9 C.F.R. § 201.42).

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondents are jointly and severally assessed a civil penalty of \$7,000.00.

This Decision and Order will become final and effective without further proceedings 35 days after service upon Respondents, unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days after service as provided in section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

[This Decision and Order became final January 10, 1996.-Editor].

**In re: JEREMY BYRD, d/b/a T BYRD CATTLE CO.  
P&S Docket No. D-95-55.  
Decision and Order filed February 21, 1996.**

**Cease and desist order — Registration order — NSF checks — Failing to pay — Failing to pay when due — Engaging in business without being registered or bonded — Failure to file timely answer — P&S sanctions permitted notwithstanding bankruptcy — Sanction.**

The Judicial Officer affirmed the decision by Chief Judge Palmer (Chief ALJ) ordering Respondent to cease and desist from engaging in business in any capacity without the required registration and bonding under the Act; failing to pay for livestock; failing to pay, when due, for livestock; and issuing NSF checks in payment for livestock. The Order prohibits Respondent from engaging in business subject to the Act without being registered, and provides that Respondent shall not be registered to engage in business for 5 years and thereafter until properly registered and bonded; provided, however, that upon application, a supplemental order may be issued allowing Respondent registration and bonding after 150 days upon demonstration that all unpaid livestock sellers have been paid in full, and provided further, that the Order may be modified to permit Respondent's salaried employment by another registrant or packer after 150 days. Respondent failed to file a timely Answer, and, therefore, a default order was properly issued. The Bankruptcy Code permits disciplinary proceedings and the imposition of sanctions under the Packers and Stockyards Act notwithstanding bankruptcy. The sanction imposed is appropriate, based upon similar sanctions in similar disciplinary proceedings under the Packers and Stockyards Act, considering the serious nature of the violations.

Kimberly D. Hart, for Complainant.

Hal B. Cameron, Jr., Tyler, Texas, for Respondent.

Initial decision issued by Victor W. Palmer, Chief Administrative Law Judge.

*Decision and Order issued by William G. Jenson, Judicial Officer.*

This case is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented, (7 U.S.C. § 181 *et seq.*) (Act). An Initial Decision Without Hearing By Reason of Default was filed on December 4, 1995, by Chief Administrative Law Judge Victor W. Palmer (Chief ALJ) ordering that Respondent cease and desist from: (1) Engaging in any business for which registration and bonding are required under the Act and regulations issued under the Act, (9 C.F.R. § 201.1 *et seq.*), without so registering and filing adequate bond or its equivalent; (2) Failing to pay for livestock; (3) Failing to pay, when due, for livestock; and (4) Issuing NSF checks in payment for livestock; and that Respondent not be registered to engage in business subject to the Act for 5 years and thereafter until Respondent is properly registered and bonded. The Chief ALJ's Order provides, however, that, upon application, a supplemental order may be issued allowing Respondent to register and obtain a bond or its equivalent after 150

days if Respondent has paid all livestock sellers in full, and provides further, that, upon application, Respondent may be permitted salaried employment by another registrant or packer after the initial 150 days.

On December 18, 1995, Respondent appealed to the Judicial Officer to whom authority to act as final deciding officer in the Department's adjudicatory proceedings subject to 5 U.S.C. §§ 556 and 557 has been delegated. (7 C.F.R. § 2.35.)<sup>1</sup> The Respondent filed a First Amended Notice of Appeal and a Second Amended Notice of Appeal on December 18, 1995, and December 28, 1995, respectively. On January 25, 1996, Complainant filed a Response to Respondent's Appeal, and on January 26, 1996, the case was referred to the Judicial Officer for decision.

Respondent's request for oral argument before the Judicial Officer, which the Judicial Officer may grant, refuse, or limit, (7 C.F.R. § 1.145(d)), is refused because the issues are not complex and are controlled by established precedents, and, thus, oral argument would appear to serve no useful purpose.

Based upon a careful consideration of the record in this case, the Initial Decision and Order is adopted as the final Decision and Order, with additions or changes shown by brackets, deletions shown by dots, and minor editorial changes not specified. Additional conclusions by the Judicial Officer follow the Chief ALJ's conclusions.

## CHIEF ADMINISTRATIVE LAW JUDGE'S INITIAL DECISION (AS MODIFIED)

### Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented, (7 U.S.C. § 181 *et seq.*), herein referred to as the Act, instituted by a Complaint filed by the Deputy Administrator, Packers and Stockyards Programs, GIPSA, United States Department of Agriculture, charging that the Respondent willfully violated the Act and the regulations promulgated under the Act.

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<sup>1</sup>The position of Judicial Officer was established pursuant to the Act of April 4, 1940, (7 U.S.C. §§ 450c-450g); Reorganization Plan No. 2 of 1953, 18 Fed. Reg. 3219 (1953), reprinted in 5 U.S.C. app. at 1490 (1994); and section 212(a)(1) of the Department of Agriculture Reorganization Act of 1994, (7 U.S.C. § 6912(a)(1)).

Copies of the Complaint and the Rules of Practice, (7 C.F.R. § 1.130 *et seq.*), governing proceedings under the Act were [sent to] Respondent by certified mail, but the letter containing these documents was returned marked by the United States Postal Service as "Unclaimed." The Complaint was then remailed to the Respondent by ordinary mail on October 2, 1995, and under the applicable Rules of Practice, (7 C.F.R. § 1.147(c)(1)), was deemed received by the Respondent on the date of remailing.] Respondent was informed in [the Complaint] that an Answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the Complaint.

Respondent failed to file an Answer within the time prescribed in the Rules of Practice which ended on October 2[3], 1995. [On November 2, 1995, in accordance with the applicable Rules of Practice, (7 C.F.R. § 1.139), Complainant filed a motion for adoption of a proposed decision and a proposed decision based upon Respondent's failure to file an Answer within the time prescribed by the applicable Rules of Practice. (7 C.F.R. § 1.136(a).)] Instead [of filing an Answer or responding to Complainant's motion for adoption of a proposed decision, Respondent filed] a Suggestion of Bankruptcy on November 6, 1995, followed by a Corrected Suggestion of Bankruptcy filed on November 14, 1995. On November 2[2], 1995, an Answer was finally filed by Respondent. Although the late-filed Answer does generally deny the allegations of the Complaint, it . . . asserts bankruptcy as a bar to the Complaint. On November 30, 1995, Complainant filed a response to Respondent's Notice of Bankruptcy Filing. [In that response, Complainant identified] the statutory authorities and the case law which preclude bankruptcy being a bar to this proceeding . . . [and] requested that the Answer tendered by Respondent should not be accepted as timely filed. 7 C.F.R. § 1.136(c) states that failure to file an Answer within the time provided shall be considered a default and deemed an admission of the allegations in the Complaint. Extension of time for filing may be ordered by a Judge if there is good reason for it and after a notice of the request for the extension has been given to the other party. (7 C.F.R. § 1.147([f]).) Respondent has not given any reason why the time for the filing of the Answer should have been extended, and, therefore, the tendered Answer will not be treated as timely filed. Therefore, the material facts alleged in the Complaint, which are admitted by Respondent's default, are adopted and set forth herein as findings of fact.

This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice. (7 C.F.R. § 1.139.)

### Findings of Fact

1. (a) Jeremy Byrd, hereinafter referred to as Respondent . . . , is an individual doing business as T Byrd Cattle Co., whose mailing address is P. O. Box 66, [REDACTED], [REDACTED], [REDACTED].

(b) The Respondent, at all times material herein, was engaged in the business of a dealer buying and selling livestock in commerce for his own account.

(c) The Respondent, at all times material herein, was not registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account.

2. Respondent . . . was placed on notice by certified mail dated June 7, 1994, and July 6, 1994, that he was operating as a dealer subject to the Act and that, if he continued such operations, he would need to register and obtain adequate bond coverage. Notwithstanding such notice, Respondent has continued to engage in the business of a dealer subject to the Act without registering with the Secretary of Agriculture and obtaining an adequate bond or its equivalent.

3. (a) The Respondent, in connection with his operations subject to the Act, on or about the dates and in the transactions set forth in paragraph III(a) of the Complaint, purchased livestock and in purported payment issued checks which were returned unpaid by the bank upon which they were drawn because Respondent did not have sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

(b) Respondent, in connection with his operations subject to the Act, on or about the dates and in the transactions listed in paragraph III(a) of the Complaint, and in the transaction set forth in paragraph III(b) of the Complaint, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

(c) As of August 1, 1995, there remained unpaid a total of \$141,444.69 for such livestock purchases.

### Conclusions

By reason of the facts found in Finding of Fact 2 herein, the Respondent has willfully violated sections 201.29 and 201.30 of the regulations. (9 C.F.R. §§ 201.29-.30.)

By reason of the facts found in Finding of Fact 3 herein, the Respondent has willfully violated sections 312(a) and 409 of the Act. (7 U.S.C. §§ 213(a), 228b.)

### ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER

Respondent raises four issues on appeal. First, Respondent denies that he was told that an Answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all material facts contained in the Complaint. (Respondent's Second Amended Notice of Appeal, p. 1, ¶ I; hereafter RA.) Second, Respondent contends that "he was out of the state working and although the Notice was received by someone at his residence, he did not learn of the contents of this letter until he returned to Grapeland, Texas on November 1, 1995." (RA, p. 1, ¶ II.) These facts, which are set forth for the first time on appeal, come too late. Complainant's proposed decision and motion for adoption of a proposed decision was filed on November 2, 1995, and served on Respondent on November 6, 1995. In accordance with the applicable Rules of Practice, (7 C.F.R. § 1.139), Respondent had 20 days after service of Complainant's motion for a proposed decision in which to file objections to the motion. The letter transmitting Complainant's motion to Respondent informed Respondent of this 20-day time limit. Respondent had an opportunity to raise the facts set forth in RA, p. 1, ¶ I and ¶ II, in response to Complainant's motion for adoption of a proposed decision, but Respondent chose not to file a response to Complainant's motion. Instead, Respondent filed a Suggestion of Bankruptcy on November 6, 1995, a Corrected Suggestion of Bankruptcy on November 14, 1995, and an untimely Answer on November 22, 1995, none of which assert the facts set forth in RA, p. 1, ¶ I and ¶ II. On appeal, Respondent, for the first time, asserts the facts in RA, p. 1, ¶ I and ¶ II.<sup>2</sup> It is well settled that

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<sup>2</sup>The facts asserted in RA, p. 1, ¶ I, are also asserted in Respondent's Notice of Appeal and First Amended Notice of Appeal. The facts asserted in RA, p. 1, ¶ II, are also asserted in Respondent's First Amended Notice of Appeal.

Respondent cannot raise new issues on appeal or present new facts for the first time on appeal to the Judicial Officer.<sup>3</sup>

Nonetheless, I will address the newly raised issues in RA, p. 1, ¶ I and ¶ II, and show that those arguments would not have changed the outcome of this case. Copies of the Complaint and applicable Rules of Practice, (7 C.F.R. § 1.130 *et seq.*), were sent to Respondent by certified mail, but the letter containing these documents was returned marked by the United States Postal Service as "Unclaimed." The Complaint was then remailed to the Respondent by ordinary mail on October 2, 1995, and under the applicable Rules of Practice, (7 C.F.R. § 1.147(c)(1)), was deemed received by the Respondent on the date of remailing, October 2, 1995. Respondent admits that the "Notice was received by someone at his residence," but states that it was not until November 1, 1995, that he learned of its contents. (RA, p. 1, ¶ II.)

Under the Department's Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By The Secretary, a Respondent's failure to file a timely Answer constitutes an admission of the allegations in the Complaint and a waiver of hearing. The Rules of Practice provide:

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<sup>3</sup>*In re Bama Tomato Co.*, 54 Agric. Dec. \_\_\_ (Aug. 17, 1995), *appeal docketed*, No. 95-6778 (11th Cir. Sept. 26, 1995); *In re Stimson Lumber Co.*, 54 Agric. Dec. 155, 166 (1995); *In re Johnny E. Lewis*, 53 Agric. Dec. 1327, 1354-55 (1994), *aff'd in part, rev'd & remanded in part*, 73 F.3d 312 (11th Cir. 1996); *In re Craig Lesser*, 52 Agric. Dec. 155, 167 (1993), *aff'd*, 34 F.3d 1301 (7th Cir. 1994); *In re Rudolph J. Luscher*, 51 Agric. Dec. 1026, 1026 (1992); *In re Lloyd Myers Co.*, 51 Agric. Dec. 782, 783 (1992) (Order Denying Petition for Reconsideration), *aff'd*, 15 F.3d 1086 (9th Cir. 1994), 1994 WL 20019 (9th Cir. 1994) (not to be cited as precedent under 9th Circuit Rule 36-3), *printed in* 53 Agric. Dec. 686 (1994); *In re Van Buren County Fruit Exchange, Inc.*, 51 Agric. Dec. 733, 740 (1992); *In re Conesus Milk Producers*, 48 Agric. Dec. 871, 880 (1989); *In re James W. Hickey*, 47 Agric. Dec. 840, 851 (1988), *aff'd*, 878 F.2d 385 (9th Cir. 1989), 1989 WL 71462 (9th Cir. 1989) (not to be cited as precedent under 9th Circuit Rule 36-3), *printed in* 48 Agric. Dec. 107 (1989); *In re Dean Daul*, 45 Agric. Dec. 556, 565 (1986); *In re E. Digby Palmer*, 44 Agric. Dec. 248, 253 (1985); *In re Evans Potato Co.*, 42 Agric. Dec. 408, 409-10 (1983); *In re Richard "Dick" Robinson*, 42 Agric. Dec. 7 (1983), *aff'd*, 718 F.2d 336 (10th Cir. 1983); *In re Daniel M. Winger*, 38 Agric. Dec. 182, 187 (1979), *appeal dismissed*, No. 79-C-126 (W.D. Wis. June 1979); *In re Lamers Dairy, Inc.*, 36 Agric. Dec. 265, 289 (1977), *aff'd sub nom. Lamers Dairy, Inc. v. Bergland*, No. 77-C-173 (E.D. Wis. Sept. 28, 1977), *printed in* 36 Agric. Dec. 1642, *aff'd*, 607 F.2d 1007 (7th Cir. 1979), *cert. denied*, 444 U.S. 1077 (1980).

**§ 1.136 Answer.**

(a) *Filing and service.* Within 20 days after the service of the complaint . . . the respondent shall file with the Hearing Clerk an answer signed by the respondent or the attorney of record in the proceeding. . . .

(b) *Contents.* The answer shall:

(1) Clearly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent; or

(2) State that the respondent admits all the facts alleged in the complaint; or

(3) State that the respondent admits the jurisdictional allegations of the complaint and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.

(c) *Default.* Failure to file an answer within the time provided under § 1.136(a) shall be deemed, for purposes of the proceeding, an admission of the allegations in the Complaint, and failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation, unless the parties have agreed to a consent decision pursuant to § 1.138. (7 C.F.R. § 1.136(a)-(c).)

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**§ 1.139 Procedure upon failure to file an answer or admission of facts.**

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed

decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing. . . . (7 C.F.R. § 1.139.)

. . . .

**§ 1.141 Procedure for Hearing.**

(a) *Request for Hearing.* Any party may request a hearing on the facts by including such request in the complaint or answer, or by a separate request, in writing, filed with the Hearing Clerk within the time in which an answer may be filed. Failure to request a hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing. (7 C.F.R. § 1.141(a).)

The Complaint served on Respondent on October 2, 1995, states: The respondent shall have twenty (20) days after receipt of this complaint in which to file with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, an answer in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. Section 1.130 *et seq.*). Failure to file an answer shall constitute an admission of all the material allegations of this complaint. (Complaint, pp. 3-4.)

The Complaint clearly informs Respondent of the consequences of a failure to answer and clearly identifies the Rules of Practice applicable to the administrative proceeding instituted by the Complaint.

Respondent's Answer was due October 23, 1995, and a failure to file a timely Answer constitutes an admission of the material allegations in the Complaint. (7 C.F.R. § 1.136(a), (c).) Respondent did not file a timely

Answer.<sup>4</sup> Accordingly, the default order was properly issued in this case. Although on rare occasions default decisions have been set aside for good cause shown or where Complainant did not object,<sup>5</sup> Respondent has shown no basis for setting aside the default decision here.<sup>6</sup>

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<sup>4</sup>Respondent filed an Answer November 22, 1995: 51 days after service of the Complaint under the applicable Rules of Practice, (7 C.F.R. § 1.147(c)(1)); between 51 and 21 days after the Complaint arrived at Respondent's residence, (RA, p. 1, ¶ II); and 21 days after Respondent contends he had actual knowledge of the contents of the Complaint, (RA, p. 1, ¶ II).

<sup>5</sup>*In re Veg-Pro Distributors*, 42 Agric. Dec. 273 (1983) (remand order), *final decision*, 42 Agric. Dec. 1173 (1983) (default decision set aside because service of the Complaint by registered and regular mail was returned as undeliverable, and respondent's license under the Perishable Agricultural Commodities Act had lapsed before service was attempted); *In re J. Fleishman & Co.*, 38 Agric. Dec. 789 (1978) (remand order), *final decision*, 37 Agric. Dec. 1175 (1978); *In re Henry Christ*, L.A.W.A. Docket No. 24 (Nov. 12, 1974) (remand order), *final decision*, 35 Agric. Dec. 195 (1976); and *see In re Vaughn Gallop*, 40 Agric. Dec. 217 (order vacating default decision) (case remanded to determine whether just cause exists for permitting late Answer), *final decision*, 40 Agric. Dec. 1254 (1981).

<sup>6</sup>*See In re Moreno Bros.*, 54 Agric. Dec. \_\_\_\_ (1995) (default order proper where timely Answer not filed); *In re Ronald DeBruin*, 54 Agric. Dec. \_\_\_\_ (1995) (default order proper where Answer not filed); *In re James Joseph Hickey, Jr.*, 53 Agric. Dec. 1087 (1994) (default order proper where Answer not filed); *In re Bruce Thomas*, 53 Agric. Dec. 1569 (1994) (default order proper where Answer not filed); *In re Ron Morrow*, 53 Agric. Dec. 144 (1994), *aff'd per curiam*, 65 F.3d 168 (Table), 1995 WL 523336 (6th Cir. 1995) (default order proper where Respondent was given an extension of time until March 22, 1994, to file an Answer, but it was not received until March 25, 1994); *In re Donald D. Richards*, 52 Agric. Dec. 1207 (1993) (default order proper where timely Answer not filed); *In re Mike Robertson*, 47 Agric. Dec. 879 (1988) (default order proper where Answer not filed); *In re Morgantown Produce, Inc.*, 47 Agric. Dec. 453 (1988) (default order proper where Answer not filed); *In re Johnson-Hallifax, Inc.*, 47 Agric. Dec. 430 (1988) (default order proper where Answer not filed); *In re Charley Charton*, 46 Agric. Dec. 1082 (1987) (default order proper where Answer not filed); *In re Les Zedric*, 46 Agric. Dec. 948 (1987) (default order proper where timely Answer not filed); *In re Aruro Bejarano, Jr.*, 46 Agric. Dec. 925 (1987) (default order proper where timely Answer not filed; respondent properly served even though his sister, who signed for the complaint, forgot to give it to him until after the 20-day period had expired); *In re Schmidt & Son, Inc.*, 46 Agric. Dec. 586 (1987) (default order proper where timely Answer not filed); *In re Roy Carter*, 46 Agric. Dec. 207 (1987) (default order proper where timely Answer not filed; respondent properly served where complaint sent to his last known address was signed for by someone); *In re Luz G. Pieszko*, 45 Agric. Dec. 2565 (1986) (default order proper where Answer not filed); *In re Elmo Mayes*, 45 Agric. Dec. 2320 (1986) (default order proper where Answer not filed), *rev'd on other grounds*, 836 F.2d 550, 1987 WL 27139 (6th Cir. 1987); *In re Leonard McDaniel*, 45 Agric. Dec. 2255 (1986) (default order proper where timely Answer not filed).  
(continued...)

The requirement in the Department's Rules of Practice that Respondent deny or explain any allegation of the Complaint and set forth any defense in a timely Answer is necessary to enable this Department to handle its large workload in an expeditious and economical manner. The Department's four ALJ's frequently dispose of hundreds of cases in a year. In recent years, the Department's Judicial Officer has disposed of 40 to 60 cases per year.

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<sup>6</sup>(...continued)

Answer not filed); *In re Joe L. Henson*, 45 Agric. Dec. 2246 (1986) (default order proper where Answer admits or does not deny material allegations); *In re Northwest Orient Airlines*, 45 Agric. Dec. 2190 (1986) (default order proper where timely Answer not filed); *In re J.W. Guffy*, 45 Agric. Dec. 1742 (1986) (default order proper where Answer, filed late, does not deny material allegations); *In re Wayne J. Blaser*, 45 Agric. Dec. 1727 (1986) (default order proper where Answer does not deny material allegations); *In re Jerome B. Schwartz*, 45 Agric. Dec. 1473 (1986) (default order proper where timely Answer not filed); *In re Midas Navigation, Ltd.*, 45 Agric. Dec. 1676 (1986) (default order proper where Answer, filed late, does not deny material allegations); *In re Gutman Bros., Ltd.*, 45 Agric. Dec. 956 (1986) (default order proper where Answer does not deny material allegations); *In re Dean Daul*, 45 Agric. Dec. 556 (1986) (default order proper where Answer, filed late, does not deny material allegations); *In re Eastern Air Lines, Inc.*, 44 Agric. Dec. 2192 (1985) (default order proper where timely Answer not filed; irrelevant that respondent's main office did not promptly forward complaint to its attorneys); *In re Carl D. Cuttone*, 44 Agric. Dec. 1573 (1985) (default order proper where timely Answer not filed; respondent Carl D. Cuttone properly served where complaint sent by certified mail to his last business address was signed for by Joseph A. Cuttone), *aff'd per curiam*, 804 F.2d 153 (D.C. Cir. 1986) (unpublished); *In re Corbett Farms, Inc.*, 43 Agric. Dec. 1775 (1984) (default order proper where timely Answer not filed; respondent cannot present evidence that it is unable to pay \$54,000 civil penalty where it waived its right to a hearing by not filing a timely Answer); *In re Ronald Jacobson*, 43 Agric. Dec. 780 (1984) (default order proper where timely Answer not filed); *In re Joseph Buzun*, 43 Agric. Dec. 751 (1984) (default order proper where timely Answer not filed; respondent Joseph Buzun properly served where complaint sent by certified mail to his residence was signed for by someone named Buzun); *In re Ray H. Mayer*, 43 Agric. Dec. 439 (1984) (decision as to respondent Doss) (default order proper where timely Answer not filed; irrelevant whether respondent was unable to afford an attorney), *appeal dismissed*, No. 84-4316 (5th Cir. July 25, 1984); *In re William Lambert*, 43 Agric. Dec. 46 (1984) (default order proper where timely Answer not filed); *In re Randy & Mary Berhow*, 42 Agric. Dec. 764 (1983) (default order proper where timely Answer not filed); *In re Danny Rubel*, 42 Agric. Dec. 800 (1983) (default order proper where respondent acted without an attorney and did not understand the consequences and scope of a suspension order); *In re Pastures, Inc.*, 39 Agric. Dec. 395, 396-97 (1980) (default order proper where respondents misunderstood the nature of the order that would be issued); *In re Jerry Seal*, 39 Agric. Dec. 370, 371 (1980) (default order proper where timely Answer not filed); *In re Thomaston Beef & Veal, Inc.*, 39 Agric. Dec. 171, 172 (1980) (default order not set aside because of respondents' contentions that they misunderstood the Department's procedural requirements, when there is no basis for the misunderstanding).

The courts have recognized that administrative agencies "should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties."<sup>7</sup> If Respondent were permitted to contest some of the allegations of fact after failing to file a timely Answer, or raise new issues, all other Respondents in all other cases would have to be afforded the same privilege. Permitting such practice would greatly delay the administrative process and would require additional personnel. There is no basis for permitting Respondent to present matters by way of defense at this time.

Third, Respondent contends that he filed a Suggestion of Bankruptcy on November 1, 1995, which, through a clerical error, was assigned a number of another case, which Respondent's attorney handled in 1992. This error was brought to the attention of Respondent, and, on November 8, 1995, Respondent filed a Corrected Suggestion of Bankruptcy. (RA, pp. 1-2, ¶ III.)

The facts asserted by Respondent in paragraph III of his Second Amended Notice of Appeal do not change the outcome of this case. First, neither Respondent's Suggestion of Bankruptcy nor Respondent's Corrected Suggestion of Bankruptcy deny or respond to any of the allegations in the Complaint; and, under the applicable Rules of Practice, Respondent is deemed, for the purposes of the proceeding, to have admitted the allegations in the Complaint. (7 C.F.R. § 1.136(c).) Further, even if Respondent's Suggestion of Bankruptcy or Corrected Suggestion of Bankruptcy were determined to be an Answer to the Complaint, they were untimely filed,<sup>8</sup> and, under the applicable Rules of Practice, Respondent is deemed, for the purposes of the proceeding, to have admitted the allegations in the Complaint. (7 C.F.R. § 1.136(a), (c).)

Although not stated in the Suggestion of Bankruptcy, the Corrected Suggestion of Bankruptcy, Respondent's Notice of Appeal, Respondent's First Amended Notice of Appeal, or Respondent's Second Amended Notice of Appeal, Respondent's late Answer reveals that Respondent takes the position

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<sup>7</sup>*Cella v. United States*, 208 F.2d 783, 789 (7th Cir. 1953), cert. denied, 347 U.S. 1016 (1954), quoting from *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 143 (1940); accord *Swift & Co. v. United States*, 308 F.2d 849, 851-52 (7th Cir. 1962).

<sup>8</sup>The record shows that Respondent's Suggestion of Bankruptcy was filed November 6, 1995, 35 days after service of the Complaint on Respondent; and the Corrected Suggestion of Bankruptcy was filed November 14, 1995, 43 days after service of the Complaint on Respondent.

that "any efforts to subject Respondent or his assets to this proceeding while he was in bankruptcy are void." (Answer, ¶ III.)

Respondent is incorrect. Section 362(a) of the Bankruptcy Code provides, in relevant part, that:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title. . . . (11 U.S.C. § 362(a).)

Section 362(b) of the Bankruptcy Code provides, in relevant part, that:

(b) The filing of a petition under section 301, 302, or 303 of this title . . . does not operate as a stay—

(4) under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power. . . . (11 U.S.C. § 362(b)(4).)

Further, section 525 of the Bankruptcy Code provides, in relevant part, that:

(a) Except as provided in the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a-499s), the Packers and - Stockyards Act, 1921 (7 U.S.C. 181-229), and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for

other purposes," approved July 12, 1943 (57 Stat. 422; 7 U.S.C. 204), a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act. (11 U.S.C. § 525(a).)

The Secretary of Agriculture is seeking to enforce regulatory power under the Packers and Stockyards Act in this disciplinary proceeding. This proceeding clearly falls within the class of actions or proceedings described in section 362(b)(4) of the Bankruptcy Code, (11 U.S.C. § 362(b)(4)), and, therefore, is exempt from the stay provisions in section 362(a) of the Bankruptcy Code, (11 U.S.C. § 362(a)). Further, section 525(a) of the Bankruptcy Code, (11 U.S.C. § 525(a)), does not limit the Secretary of Agriculture's authority to issue a cease and desist order or refuse to register the Respondent under the Packers and Stockyards Act. See *Farmers & Ranchers Livestock Auction, Inc. v. United States (In re Farmers & Ranchers Livestock Auction, Inc.)*, 46 B.R. 781 (Bankr. E.D. Ark. 1984).

Fourth, Respondent contends that "[a]fter Respondent's Suggestion of Bankruptcy was mailed to this Court on November 1, 1995, and before Respondent learned that his Bankruptcy Petition had been dismissed on November 2, 1995, Respondent filed his Original Answer and generally denied the allegations contained in the Complaint filed by the Administrator, Texas Stockyard Administration and requested a hearing on Complainant's allegations." (RA, p. 2, ¶ IV.)

I assume that the Respondent's reference to his general denial of the allegations contained in the Complaint filed by the "Administrator, Texas Stockyard Administration," is in error and that he meant to refer to his

general denial in response to the Complaint filed in the instant case by the Deputy Administrator, Packers and Stockyards Programs, on September 1, 1995. (Complaint.)

Respondent's Answer was due October 23, 1995. Under the applicable Rules of Practice, (7 C.F.R. § 1.136(a), (c)), a failure to file a timely Answer (in the instant case within 20 days after service of the Complaint on Respondent) constitutes an admission of the allegations of the Complaint. Respondent's Answer was filed on November 22, 1995, 51 days after proper service of the Complaint in accordance with the applicable Rules of Practice, (7 C.F.R. § 1.147(c)(1)), and Respondent is deemed, for the purposes of the proceeding, to have admitted the allegations in the Complaint. Accordingly, the default order was properly issued in this case. Although on rare occasions default decisions have been set aside for good cause shown or where Complainant did not object,<sup>9</sup> the facts set forth in paragraph IV of Respondent's Second Amended Notice of Appeal, (RA, p. 2, ¶ IV), do not constitute a basis for setting aside this default decision.<sup>10</sup>

An examination of other cases instituted by Packers and Stockyards Programs for similar violations reveals that similar sanctions have been imposed. See, e.g., *In re Samuel J. Dalessio, Jr.*, 54 Agric. Dec. 590, 611 (1995), *aff'd*, No. 95-3266 (3d Cir. Feb. 6, 1996) (unpublished); *In re Bruce Thomas*, 53 Agric. Dec. 1569, 1576 (1994); *In re Syracuse Sales Co.* (Decision as to John Knopp), 52 Agric. Dec. 1511, 1530 (1993), *appeal dismissed*, No. 94-9505 (10th Cir. Apr. 29, 1994); *In re Jimmy Ray Hendren*, 51 Agric. Dec. 672, 675-76 (1992); *In re David H. Harris*, 51 Agric. Dec. 649, 651-52 (1992); *In re Jeff Palmer*, 50 Agric. Dec. 1762, 1773, 1790-96 (1991); *In Sam Odom*, 48 Agric. Dec. 519, 536-45 (1989); *In re Richard N. Garver*, 45 Agric. Dec. 1090, 1097-1104 (1986), *aff'd*, 846 F.2d 1029 (6th Cir.), *cert. denied*, 488 U.S. 820 (1988). The sanction imposed in this case is entirely appropriate, considering the serious nature of Respondent's violations.

For the foregoing reasons, the following Order should be issued.

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<sup>9</sup>See note 5.

<sup>10</sup>See note 6.

## Order

### Paragraph I.

Respondent Jeremy Byrd, his 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:

1. Engaging in business in any capacity for which registration and bonding is required under the Act and the regulations, without registering with the Secretary of Agriculture and filing an adequate bond or its equivalent, as required by the Act and the regulations;
2. Failing to pay the full purchase price of livestock;
3. Failing to pay, when due, the full purchase price of livestock; and
4. Issuing checks in payment for livestock purchases without maintaining sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

### Paragraph II.

Respondent Jeremy Byrd shall not be registered to engage in business subject to the Act for a period of 5 years and thereafter until the Respondent is properly registered and bonded; *Provided, however,* That upon application to the Packers and Stockyards Programs a supplemental order may be issued allowing Respondent to register with the Secretary of Agriculture and obtain an adequate bond or its equivalent at any time after 150 days from the effective date of paragraph II of this Order upon demonstration by the Respondent that all unpaid livestock sellers have been paid in full; *And provided further,* That this Order may be modified upon application to the Packers and Stockyards Programs to permit the salaried employment of Respondent by another registrant or packer at any time after 150 days from the effective date of paragraph II this Order.

### Paragraph III.

Pursuant to section 303 of the Act, (7 U.S.C. § 203), Respondent is prohibited from engaging in business subject to the Act without being registered with the Secretary of Agriculture.

**Paragraph IV.**

Paragraph I of this Order shall become effective on the day after service of this Order on Respondent. Paragraphs II and III of this Order shall become effective on the 30th day after service of this Order on Respondent.

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**In re: GREENCASTLE LIVESTOCK MARKET, INC. and JEFFREY S. CRAIG.**

**P&S Docket No. D-94-58.**

**Decision and Order filed March 22, 1996.**

**Civil penalty - Cease and desist order - Failure to maintain and use properly custodial account - Line of credit not acceptable alternative to custodial account or defense to account violation.**

Judge Hunt issued a cease and desist order and jointly and severally assessed respondents a civil penalty of \$4,000.00. Corporate respondent Greencastle Livestock, under the direction, management, and control of respondent Jeffrey S. Craig, failed to maintain or use properly its custodial account for shippers' proceeds. Respondents did not timely deposit in custodial account an amount equal to the proceeds receivable for the sale of consigned livestock. The failure of a market agency to maintain its custodial account is an unfair and deceptive practice. A line of credit is not an acceptable alternative to a certificate of deposit and/or a savings account and is not a defense to a custodial account violation.

Julie Cook Schuster, for Complainant.

James H. Thomas, Lancaster, PA, for Respondents.

*Decision and Order issued by James W. Hunt, Administrative Law Judge.*

This disciplinary proceeding was instituted by a complaint filed on September 28, 1994, by the Acting Administrator, Packers and Stockyards Administration, United States Department of Agriculture, ("Department"). The complaint was brought pursuant to the Packers and Stockyards Act, 1921, as amended and supplemented, ("Act"), 7 U.S.C. § 181 *et seq.*, and the Department's Rules of Practice, 7 C.F.R. § 1.130 *et seq.*

The complaint alleges that the corporate respondent, Greencastle Livestock Market, Inc., under the direction, management and control of respondent Jeffrey S. Craig, wilfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.42 of the regulations (9 C.F.R. § 201.42) by failing to maintain and use properly its Custodial Account for Shippers' Proceeds ("custodial account"). Respondents' answer denied that they violated the Act or regulations.

A hearing was held on November 15, 1995, in Lancaster, Pennsylvania. Complainant was represented by Julie Cook Schuster, Esq. Respondents were represented by James H. Thomas, Esq.

### Facts

Respondent Greencastle Livestock Market, Inc., ("Greencastle"), a Pennsylvania corporation, operates a stockyard in Greencastle, Pennsylvania, as a registered market agency under the Act selling livestock in commerce on a commission basis. Respondent Jeffrey S. Craig, ("Craig"), is president and manager of Greencastle and its 100% stockholder.

On December 4, 1990, Greencastle and Craig entered into a consent decision with complainant (P&S Docket No. D-90-69), whereby Greencastle and Craig were, among other things, ordered to cease and desist from failing to deposit in their Custodial Account for Shippers' Proceeds, within the time prescribed, an amount equal to the outstanding proceeds receivable due from the sale of consigned livestock and from otherwise failing to maintain their Custodial Account for Shippers' Proceeds in conformity with section 201.42 of the regulations. (CX-3.)

During the week of June 6, 1994, two of complainant's auditors, Branard England and Lyle Nordstrand, conducted an audit of Greencastle's custodial account. England testified that it was a routine audit. Nordstrand, who is no longer employed by complainant, testified that it was his "feeling" that the audit resulted from his supervisor, Durwood Helms, wanting to take "formal action" against Greencastle. However, when asked the basis for this "feeling," he responded only with "I don't know why. Ask him [Helms]." (Tr. 114.) Helms said the audit was conducted routinely according to his work plan and that there was no intention to take formal action against Greencastle. (Tr. 20, 142.) Routine audits of market agencies are conducted every three or four years and the 1994 audit of Greencastle was apparently the first since 1990. (Tr. 114-116.)

The auditors' analysis of Greencastle's custodial account revealed that on May 2, 1994, Greencastle had outstanding custodial checks in the amount of \$520,934.69 and that it had offset the checks against a balance in the custodial account of \$67,579.97, with money market savings accounts designated as custodial funds of \$3,069.12, proceeds on hand of \$227,600.12, and proceeds receivable of \$133,615.66. This left a deficiency of \$89,069.82 in Greencastle's custodial account on May 2, 1994. The auditors' analysis further indicated that Greencastle had not deposited in its custodial account an

amount equal to the proceeds received from the sale of consigned livestock within the time required by the regulations. (CX-4.) The auditors' report, however, also showed that by the time they prepared the report in June, 1994, \$90,002.95 in accounts receivable had been paid to Greencastle. (RX-2; Tr. 65.) Nordstrand testified that the receivables had been paid by May 5 to cover the shortage on May 2. (Tr. 113.) Helms, England and Nordstrand all testified that, despite the shortage on May 2, Greencastle was not insolvent. (Tr. 43, 67, 109.) There is no evidence that any livestock seller was not paid.

Craig, who acquired Greencastle in 1985, testified that he has always paid livestock sellers, and has never issued an insufficient funds check. He said that in 1994 he had a formal line of credit for \$100,000 from the bank where Greencastle's custodial account is maintained to insure Greencastle's ability to meet its obligations, that the line of credit was in effect on May 2, 1994, and that since that time he has increased it to \$200,000. The line of credit, secured by a mortgage on Greencastle's property and Craig's personal guarantee, provides that "[d]raws on the line of credit will be available for use in conjunction with the Greencastle Livestock Market custodial account for shippers' proceeds." (Tr. 124-127.) However, it also states that the line of credit is "contingent upon the right of the bank to review the loan from time to time and adjust terms and conditions or to discontinue the line of credit upon written notice by the Bank should it appear necessary to do so." (RX-1.) Craig said he believed that the line of credit was "as good as cash" and complied with the requirements for custodial accounts, but admitted that he had not asked anyone from the Packers and Stockyards Administration at the time he obtained the line of credit whether it was a permissible means of securing the custodial account. (Tr. 124-129.) Craig, however, did tell England about the line of credit at the time of the audit. England said he did not know at the time whether a line of credit met the requirements for custodial accounts, but that others at the agency later told him that a line of credit could not be included in a custodial account analysis. He relayed this information to Craig in a phone call. (Tr. 77-78, 126.)

Craig testified that he has at times drawn on the line of credit to cover shortfalls in the custodial account, but that he did not make any draws on May 2, 1994, because he believed he had sufficient money in the account and he had not checked the account at that time to determine whether there was a shortage. (Tr. 129.)

## Law and Regulations

### 1. Statute

Section 312 of the Act (7 U.S.C. § 213) provides:

(a) It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with the receiving, marketing, buying or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing or handling of livestock.

(b) Whenever complaint is made to the Secretary by any person, or whenever the Secretary has reason to believe, that any stockyard owner, market agency, or dealer is violating the provisions of subdivision (a), the Secretary after notice and full hearing may make an order that he shall cease and desist from continuing such violation to the extent that the Secretary finds that it does or will exist. The Secretary may also assess a civil penalty of not more than \$10,000 for each such violation. In determining the amount of the civil penalty to be assessed under this section, the Secretary shall consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the person's ability to continue in business. If, after the lapse of the period allowed for appeal or after the affirmance of such penalty, the person against whom the civil penalty is assessed fails to pay such penalty, the Secretary may refer the matter to the Attorney General who may recover such penalty by an action in the appropriate district court of the United States.

### 2. Regulations

9 C.F.R. § 201.42

**§ 201.42. Custodial accounts for trust funds.**

(a) *Payments for livestock are trust funds.* Each payment that a livestock buyer makes to a market agency selling on commission is a trust fund. Funds deposited in custodial accounts are also trust funds.

(b) *Custodial accounts for shippers' proceeds.* Every market agency engaged in selling livestock on a commission or agency basis shall establish and maintain a separate bank account designated as "Custodial Account for Shippers' Proceeds," or some similar identifying designation, to disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.

(c) *Deposits in custodial accounts.* The market agency shall deposit in its custodial account before the close of the next business day (the next day on which banks are customarily open for business whether or not the market agency does business on that day) after livestock is sold (1) the proceeds from the sale of livestock that have been collected, and (2) an amount equal to the proceeds receivable from the sale of livestock that are due from (i) the market agency, (ii) any owner, officer, or employee of the market agency, and (iii) any buyer to whom the market agency has extended credit. The market agency shall thereafter deposit in the custodial account all proceeds collected until the account has been reimbursed in full, and shall, before the close of the seventh day following the sale of livestock, deposit an amount equal to all remaining proceeds receivable whether or not the proceeds have been collected by the market agency.

....

(g) *Certificates of deposit and/or savings accounts.* Funds in a custodial account for shippers proceeds may be maintained in an interest-bearing savings account and/or invested in one or more certificates of deposit, to the extent that such deposit or investment does not impair the ability of the market agency to meet its obligations to consignors. The savings account must be properly designated as a party of the custodial account of the market agency in its fiduciary capacity as trustee of the custodial funds and maintained in the same bank as the custodial account. The

certificates of deposit, as property of the custodial account, must be issued by the bank in which the custodial account is kept and must be made payable to the market agency in its fiduciary capacity as trustee of the custodial funds.

### Discussion

The failure of a market agency to maintain its custodial account in accordance with the regulatory requirements is an unfair and deceptive practice in violation of the Act, irrespective of whether livestock sellers were paid or not. *Finger Lakes Livestock Exchange, Inc.*, 48 Agric. Dec. 390, 398 (1989). The Act is intended to prevent potential as well as actual injuries to livestock sellers from occurring. *Thumb Auction Market*, 37 Agric. Dec. 164, 167 (1977).

Respondents contend that they did not violate the statute or regulations because their line of credit, which was intended to cover any shortages in the custodial account, should be considered compliance with the regulations.<sup>1</sup> They argue that a line of credit is an alternative to, and as safe as, a certificate of deposit and/or savings account which are permissible under the regulations (9 C.F.R. § 201.42(g)) to reconcile custodial accounts. The Department, however, has held that a line of credit is not an acceptable alternative and is not a defense to a custodial account violation. "A line of credit or over-draft protection does not provide respondent's creditors the financial security required by the Act and regulations. . . Such protection fails to fulfill respondent's obligation under statutory and regulatory requirements." *Jeff Palmer*, 50 Agric. Dec. 1762, 1775 (1991). In the instant case, for instance, the bank issuing the line of credit specifically reserved to itself the unilateral right to discontinue the line of credit it had extended to Greencastle. Accordingly, I find that respondents' May 2, 1994, shortage in Greencastle's custodial account and their failure to make timely deposits to the custodial account from the sale of consignor livestock was a violation of section 312(a) of the Act and that respondents' line of credit was not a defense to their failure to maintain the custodial account as required by the regulations.

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<sup>1</sup>Respondents do not argue in their brief that complainant conducted its audit for purposes of instituting formal action against respondents, as Nordstrand testified. Whether this is an issue or not, I find the evidence insufficient in any event to support Nordstrand's contention.

In determining the sanction, the seriousness of the offense is one of the factors to consider. Complainant's sanction witness, Daniel Van Ackeren, Director of the Department's Livestock Marketing Division, testified: "We consider it a pretty serious violation if the shortage in the custodial account puts the livestock sellers at risk of not getting paid." (Tr. 157.)

The circumstances of this case, however, do not show that respondents' violation put the sellers at great risk. The line of credit, while not providing the degree of security required by the regulations for custodial accounts, did nevertheless provide some protection for livestock sellers. It was a resource that was available to respondents to pay these creditors. As it turned out, the brief shortfall in the custodial account did not result in any creditor being unpaid and it was corrected within three days. Respondents were also not insolvent.

Craig testified that his reliance on a line of credit was based on his mistaken belief that it was a permissible means of complying with the requirements for custodial accounts. While ignorance of the law's requirements is not a defense, it is noteworthy for purposes of determining whether the violation was wilful that even one of complainant's officials, Branard England, was unsure whether a line of credit was an asset that could be included in a custodial account analysis. I find that respondents' violation was not wilful.

Nevertheless, despite these circumstances, a line of credit, while providing some protection to livestock sellers, is not, contrary to Craig's belief, "as good as cash." It can in fact be a risky means of securing funds. Craig's bank, as noted, reserved the right to unilaterally revoke the line of credit, a power that banks have, indeed, exercised with the result that, on some occasions, market agencies who have relied on a line of credit to pay livestock sellers have been unable to do so. *See, e.g., Richard N. Garver*, 45 Agric. Dec. 1090, 1094-95 (1986).

Greencastle's custodial account was a trust fund for its livestock sellers. Craig and Greencastle, as the fund's fiduciaries, were under a duty to maintain the account according to strict statutory and regulatory requirements. They had, moreover, expressly agreed to an order to that effect. Considering all the circumstances, including the extent to which livestock sellers were actually at risk, I find that \$4,000 is an appropriate sanction for respondents' failure to comply with these requirements.

### Findings of Fact

1. Respondent Greencastle Livestock Market, Inc., is a corporation organized and existing in the State of Pennsylvania.
2. Greencastle is, and at all times material herein, was:
  - a. Engaged in the business of conducting and operating the Greencastle Livestock Market, Inc.;
  - b. Engaged in the business of a market agency selling livestock in commerce on a commission basis; and
  - c. Registered with the Secretary of Agriculture as a market agency.
3. Respondent Jeffrey S. Craig, an individual, is and at all times material herein, was:
  - a. President and manager of Greencastle;
  - b. Owner of 100% of the stock of Greencastle; and
  - c. Responsible for the direction, management and control of Greencastle.
4. On May 2, 1994, Greencastle had a shortage in its Custodial Account for Shippers' Proceeds in the amount of \$89,069.82. Greencastle issued custodial checks in the amount of \$520,934.69, which remained outstanding as of May 2, 1994. Greencastle offset such checks against a balance in the custodial account of \$67,579.97, with money market savings accounts designated as custodial funds of \$3,069.12, proceeds on hand of \$227,600.12, and proceeds receivable of \$133,615.66.
5. Greencastle did not deposit in its custodial account an amount equal to the proceeds receivable from the sale of consigned livestock within the time set forth in the regulations.
6. On May 5, 1994, Greencastle was paid \$90,002.95 in accounts receivable.
7. Greencastle was not insolvent at any time relevant to this proceeding.
8. Greencastle paid all sums due to livestock consignors at all times relevant to this proceeding.
9. On December 4, 1990, Greencastle and Craig entered into a consent decision with complainant which ordered Greencastle and Craig from, among other things, failing to deposit in the Custodial Account for Shippers' Proceeds, within the time prescribed in Section 201.42 of the regulations, amounts equal to the outstanding proceeds receivable due from the sale of consigned livestock and from failing to otherwise maintain their Custodial

Account for Shippers' Proceeds in conformity with section 201.42 of the regulations.

### Conclusion of Law

Greencastle Livestock Market, Inc., under the direction management and control of Jeffrey Craig, violated section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.42 of the regulations (9 C.F.R. § 201.42) by failing to properly maintain its Custodial Account for Shippers' Proceeds.

### Order

Respondent Greencastle Livestock Market, Inc., its officers, directors, agents and employees, successors and assigns, directly or through any corporate or other device, and respondent Jeffrey S. Craig, directly or through any corporate or other device, shall cease and desist from:

1. Failing to deposit in their Custodial Account for Shippers' Proceeds, within the time prescribed in Section 201.42 of the regulations (9 C.F.R. § 201.42), amounts equal to the outstanding proceeds receivable due from the sale of consigned livestock; and
2. Failing to otherwise maintain the Custodial Account for Shippers' Proceeds in strict conformity with the provisions of Section 201.42 of the regulations (9 C.F.R. § 201.42). In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), respondents Greencastle Livestock Market, Inc., and Jeffrey S. Craig are jointly and severally assessed a civil penalty in the amount of Four Thousand Dollars (\$4,000.00).

This decision and order shall become final without further proceedings 35 days after service hereof unless appealed to the Judicial Officer within 30 days after service pursuant to Section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

The provisions of this order shall become effective on the sixth day after service of this order on the respondents.

[This Decision and Order became final May 2, 1996.--Editor]

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**PACKERS AND STOCKYARDS ACT**

**MISCELLANEOUS ORDER**

**In re: RIVERBEND CATTLE COMPANY and JOHN WHEELER.**

**P&S Docket No. D-95-10.**

**Order on Motion Requesting Imposition of Sanction Against Respondents for Failure to Comply with Terms of Consent Decision filed June 17, 1996.**

Kimberly D. Hart, for Complainant.

Dwight D. Sutherland, Jr., Kansas City, MO, for Respondent.

*Order issued by Dorothea A. Baker, Administrative Law Judge.*

On May 6, 1996, Complainant filed a Motion Requesting Imposition of Sanction Against Respondents for Failure to Comply with Terms of Consent Decision. Respondents filed a Response on June 4, 1996, seeking an extension until July 1, 1996, within which to comply. On June 14, 1996, Complainant filed a document indicating it would not agree to the requested extension. Therefore, the following Order is issued:

**Order**

Respondents John Wheeler and Riverbend Cattle Company are suspended as registrants under the Act for a period of five years. Provided, however, that upon application to the Grain Inspection, Packers and Stockyards Administration, Packers and Stockyards Programs, a Supplemental Order may be issued terminating the suspension of the Respondents at any time after ninety (90) days upon demonstration by the Respondents that all livestock sellers identified by the Complaint in this proceeding have been paid in full, and provided, further, that this order may be modified upon application to the Packers and Stockyards Programs, GIPSA, to permit the salaried employment of Respondent John Wheeler by another registrant or packer after the expiration of the initial ninety (90) days of this suspension terms and upon circumstances warranting modification of the Order.

Copies hereof shall be served upon all parties.

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**PACKERS AND STOCKYARDS ACT****DEFAULT DECISIONS**

**In re: BENSON W. THOMPSON.**

**P&S Docket No. D-95-25.**

**Decision and Order filed October 27, 1995.**

**Failure to file an answer - Engaging in the buying and selling of livestock in commerce without adequate bond - Cease and desist order - Suspension of registration - Civil penalty.**

Andrew Y. Stanton, for Complainant.

Respondent, Pro se.

*Decision and Order issued by Victor W. Palmer, Chief Administrative Law Judge.*

**Preliminary Statement**

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), herein referred to as the Act, instituted by a complaint filed by the Acting Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, charging that the respondent wilfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*).

Copies of the complaint and the Rules of Practice (7 C.F.R. § 1.130 *et seq.*) were served upon respondent by certified mail. Respondent was informed in a letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the complaint.

Respondent has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted by respondent's failure to file an answer, are adopted and set forth herein as findings of fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

**Findings of Fact**

1. Benson W. Thompson, hereinafter referred to as the respondent, is an individual whose business mailing address is Route 1, Box 159, Pitkin, Louisiana 70656.

2. Respondent is, and at all times material herein was:

(a) Engaged in the business of buying and selling livestock in commerce for his own account; and

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

3. As more fully set forth in paragraph II of the complaint, respondent was notified by certified mail dated November 18, 1994, that the \$10,000.00 bond he maintained to secure the performance of his livestock obligations under the Act was inadequate and that it was necessary to increase his bond to \$40,000.00 before continuing his livestock operations subject to the Act. Notwithstanding such notice, respondent has continued to engage in the business of a dealer without maintaining an adequate bond or its equivalent.

### Conclusions

By reason of the facts alleged in paragraph II of the complaint, respondent has wilfully violated sections 312(a) of the Act (7 U.S.C. §§ 213(a)) and sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29, 201.30).

### Order

Respondent, Benson W. Thompson, his agents and employees, directly or indirectly through any corporate or other device, in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations.

Respondent is suspended as a registrant under the Act until such time as he complies fully with the bonding requirements under the Act and the regulations. When respondent demonstrates that he is in full compliance with such bonding requirements, a supplemental order will be issued in this proceeding terminating the suspension.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), respondent is hereby assessed a civil penalty in the amount of One Thousand Five Hundred Dollars (\$1,500.00).

The provisions of this order shall become effective on the sixth day after service of this order on the respondent.

Copies of this decision shall be served upon the parties.  
[The Decision and Order became final January 11, 1996.-Editor]

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**In re: LANCE A. TARVER.**  
**P&S Docket No. D-95-48.**  
**Decision and Order filed December 1, 1995.**

**Failure to file an answer - Engaging in the business of buying and selling livestock while not registered as a dealer and without adequate bond - Issuance of checks returned unpaid for insufficient funds - Failure to pay, when due, full purchase price of livestock - Cease and desist order - Prohibition from registration.**

Andrew Y. Stanton, for Complainant.  
Respondent, Pro se.

*Decision and Order issued by James W. Hunt, Administrative Law Judge.*

### **Preliminary Statement**

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), herein referred to as the Act, instituted by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, GIPSA, United States Department of Agriculture, charging that the respondent wilfully violated the Act.

Copies of the complaint and the Rules of Practice (7 C.F.R. § 1.130 *et seq.*) governing proceedings under the Act were served upon respondent by certified mail. Respondent was informed in a letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the complaint.

Respondent has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted by respondent's failure to file an answer, are adopted and set forth herein as findings of fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

### Findings of Fact

1. (a) Lance A. Tarver, hereinafter referred to as respondent Tarver, is an individual whose mailing address is (b) (6) [REDACTED], [REDACTED], [REDACTED] a [REDACTED].

(b) Respondent Tarver, at all times material herein, was:

(1) Engaged in the business of buying and selling livestock for his own account;

(2) Operating as a dealer within the meaning and subject to the provisions of the Act; and

(3) Not registered with the Secretary of Agriculture as a dealer.

2. (a) Respondent Tarver, in connection with his operations subject to the Act, on or about the dates and in the transactions set forth in paragraph II(b) of the complaint, operated without a bond.

(b) Respondent Tarver, in connection with his operations subject to the Act, on or about the dates and in the transactions set forth in paragraph II(b) of the complaint, purchased livestock and in purported payment therefor, issued checks which were returned unpaid by the bank upon which they were drawn because respondent Tarver did not have and maintain sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

(c) Respondent Tarver, on or about the dates and in the transactions set forth in paragraph II(b) and paragraph II(c) of the complaint and on numerous other occasions, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

(d) As of April 26, 1995, \$49,504.00 remained unpaid for livestock purchases.

### Conclusions

By reason of the facts found in Finding of Fact 2 herein, respondent has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) & 228(b)), and sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29, 201.30).

### Order

Respondent Tarver, his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Issuing checks in payment for livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;
2. Failing to pay, when due, the full purchase price of livestock;
3. Failing to pay the full purchase price of livestock; and
4. Engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations.

Respondent Tarver is prohibited from registering as a dealer subject to the Packers and Stockyards Act for a period of five years, and pursuant to section 303 of the Act (7 U.S.C. § 203) is prohibited from engaging in business subject to the Act without being registered and bonded, provided, however, that upon application to the Grain Inspection, Packers and Stockyards Administration, a supplemental order may be issued terminating this prohibition at any time after the expiration of 120 days upon demonstration by the respondent that all unpaid livestock sellers have been paid in full and that the respondent is registered and bonded, and provided further that this order may be modified upon application to the Grain Inspection, Packers and Stockyards Administration to permit respondent Tarver's employment by a registrant or packer after the expiration of the 120 day period of prohibition upon demonstration of circumstances warranting modification of the order.

This decision shall become final and effective without further proceedings 35 days after the date of service upon the respondent, unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies hereof shall be served upon the parties.

[This Decision and Order became final February 28, 1996.-Editor]

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**In re: ROBERT M. CROUCH.**

**P&S Docket No. D-95-54.**

**Decision Without Hearing By Reason of Default filed December 20, 1995.**

**Failure to file an answer - Issuance of checks in payment for livestock without having sufficient funds on deposit - Failure to make full payment when due for livestock - Cease and desist order - Suspension of registration.**

Kimberly Hart, for Complainant.

Respondent, Pro se.

*Decision and Order issued by James W. Hunt, Administrative Law Judge.*

### **Preliminary Statement**

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), herein referred to as the Act, instituted by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, GIPSA, United States Department of Agriculture, charging that the respondent wilfully violated the Act.

Copies of the complaint and the Rules of Practice (7 C.F.R. § 1.130 *et seq.*) governing proceedings under the Act were served upon respondent by certified mail. Respondent was informed in a letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the complaint.

Respondent has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted by respondent's failure to file an answer, are adopted and set forth herein as findings of fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

### **Findings of Fact**

1. (a) Robert Crouch, hereinafter referred to as respondent Crouch, is an individual whose mailing address is (b) (6)

(b) Respondent Crouch is and at all times material herein was:

(1) Engaged in the business of buying and selling livestock as a dealer in commerce for its own account and the account of others; 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 livestock in commerce on a commission basis.

2. (a) The respondent, in connection with his operations subject to the Act, on or about the date and in the transaction set forth in paragraph II(a) of the complaint, purchased livestock and in purported payment issued a check which was returned unpaid by the bank upon which it was drawn because respondent did not have sufficient funds on deposit and available in the account upon which such check was drawn to pay such check when presented.

(b) Respondent, in connection with his operations subject to the Act, on or about the dates and in the transaction listed in paragraph 2(a) and paragraph II(b) of the complaint, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

(c) As of August 1, 1995, there remained unpaid a total of \$16,028.95 for such livestock purchases.

### Conclusions

By reason of the facts found in Finding of Fact 2 herein, respondent has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b)).

### Order

Respondent Robert Crouch, his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Issuing checks in payment for livestock purchases without maintaining sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented;
2. Failing to pay, when due, the full purchase price of livestock; and
3. Failing to pay the full purchase price of livestock.

Respondent Robert Crouch is suspended as a registrant under the Act for a period of 5 years. Provided, however, that upon application to Packers and Stockyards Programs a supplemental order may be issued terminating the suspension of the respondent at any time after 120 days upon demonstration by respondent that all livestock sellers identified by the complaint in this proceeding have been paid in full and provided further, that this order may be modified upon application to Packers and Stockyards Programs to permit

respondent's salaried employment by another registrant or a packer after the expiration of the 120 day period of suspension and upon demonstration of circumstances warranting modification of the order.

This decision shall become final and effective without further proceedings 35 days after the date of service upon the respondent, unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies hereof shall be served upon the parties.

[This Decision and Order became final May 15, 1996.-Editor]

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**In re: JAMES L. "PAT" HANNA, d/b/a HANNA CATTLE.**

**P&S Docket No. D-95-45.**

**Decision Without Hearing By Reason of Admissions filed January 16, 1996.**

**Admissions of material allegations - Issuance of checks in payment for livestock purchases without sufficient funds available - Failure to pay, when due, the full purchase price of livestock - Cease and desist order - Suspension of registration.**

Jane McCavitt, for Complainant.

Respondent, Pro se.

*Decision and Order issued by James W. Hunt, Administrative Law Judge.*

### **Preliminary Statement**

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*) by a complaint filed on June 13, 1995 by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the respondent wilfully violated the Act. It is alleged in the complaint that the respondent issued checks in payment for livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented; failed to pay, when due, the full purchase price of livestock; and failed to pay the full purchase price of livestock totalling \$41,086.25 as of May 3, 1995.

A copy of the complaint was served upon respondent and the complaint was answered on July 31, 1995. In the answer respondent admitted that he issued checks in payment for livestock purchases without having and

maintaining sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented; failed to pay, when due, the full purchase price of livestock; and failed to pay the full purchase price of livestock, but denied that his acts constituted wilful violations of the Act. The respondent's answer constitutes an admission of all the material allegations of fact contained in the complaint pursuant to Section 1.136 of the Rules of Practice (7 C.F.R. § 1.136). Complainant moved for the issuance of a Decision, pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Therefore, the following Decision and Order is issued without further investigation or hearing pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

### Findings of Fact

1. James L. "Pat" Hanna, doing business as Hanna Cattle, hereinafter referred to as respondent Hanna, is an individual whose business mailing address is P.O. Box 349, Kemp, Texas 75143.

2. Respondent Hanna is and at all times material herein was:

(a) Engaged in the business of buying livestock in commerce on a commission basis;

(b) Engaged in the business of buying and selling livestock for his own account; and

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

3. As more fully set forth in paragraph II of the complaint, respondent issued checks in payment for livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented; failed to pay, when due, the full purchase price of livestock; and failed to pay the full purchase price of livestock totalling \$41,086.25 as of May 3, 1995.

### Conclusions

By reason of the facts found in Findings of Fact No. 3 above, respondent has wilfully violated Sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b) for which the Order below is issued.

### Order

Respondent Hanna, his agents and employees, directly or through any corporate or other device, in connection with his operations subject to the Act shall cease and desist from:

1. Issuing checks in payment for livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;
2. Failing to pay, when due, the full purchase price of livestock; and
3. Failing to pay the full purchase price of livestock.

Respondent Hanna is suspended as a registrant under the Act for a period of five (5) years provided, however, that upon application to the Grain Inspection, Packers and Stockyards Administration, a supplemental order may be issued terminating this suspension at any time after the expiration of 120 days upon demonstration by the respondent that all unpaid livestock sellers have been paid in full. It is provided further that this order may be modified upon application to the Grain Inspection, Packers and Stockyards Administration to permit respondent Hanna's employment by a registrant or packer after the expiration of the 120 day period of suspension upon demonstration of circumstances warranting modification of the order.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings thirty-five days after service hereof, unless appealed to the Secretary by a party to the proceeding within thirty 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).

Copies hereof shall be served upon the parties.

[This Decision and Order became final March 5, 1996.-Editor]

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In re: JAMES L. "PAT" HANNA d/b/a HANNA CATTLE.  
P&S Docket No. 95-45.  
Modified Order filed April 30, 1996.

Jane McCavitt, for Complainant.  
Respondent, Pro se.

Order issued by James W. Hunt, Administrative Law Judge.

On January 16, 1996, a Decision Without Hearing by Reason of Admissions was issued in the above-captioned matter, which, *inter alia*,

suspended respondent as a registrant under the Act for a period of five (5) years and included a proviso permitting respondent Hanna's employment by a registrant or packer after the expiration of a 120 day period of suspension upon demonstration of circumstances warranting modification of the order.

Subsequent to that order, the respondent submitted a plan of restitution for the amounts still owing for livestock. As a result, the complainant submitted a request for a modification of the order issued on January 16, 1996, to permit respondent Hanna's employment by a registrant or packer so long as he continues making payments according to the plan of restitution, with the order remaining in effect in all other respects. Accordingly,

IT IS HEREBY ORDERED that respondent Hanna is permitted to be employed by a registrant or packer so long as he continues making payments according to the plan of restitution. If respondent is in default on this payment plan for more than sixty days he shall be prohibited from salaried employment by a registrant or packer for the remainder of the 120 day period. Proof of payments shall be forwarded to the Fort Worth GIPSA Regional Office. Affidavits from each livestock seller will be required to prove payment in full. Upon demonstration that full restitution has been made, a supplemental order terminating the suspension will be issued after such suspension has been in effect for at least 120 days. The order shall remain in full force and effect in all other respects.

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**In re: JACKSON LIVESTOCK MARKET, INC., THOMAS G. OLIN and  
RODNEY L. KOLANDER.**

**P&S Docket No. D-94-20.**

**Decision and Order As To Jackson Livestock Market, Inc., filed January 18,  
1996.**

**Failure to file an answer - Failure to deposit in custodial account amounts equal to outstanding proceeds receivable due from the sale of consigned livestock - Failure to maintain custodial account - Reimbursement of custodial account with checks drawn on other accounts without maintaining sufficient funds on deposit in such accounts to cover the checks when presented - Using funds received from sale of livestock for purpose other than payment of marketing charges or payment to consignors - Issuance of checks in payment for livestock without having sufficient funds on deposit - Kiting checks for the purpose of changing the true amounts of funds available - Failure to remit when due the net proceeds received from the sale of consigned livestock - Failure to pay when due the full purchase price of livestock - Consigning livestock under false names - Cease and desist order - Suspension of registration.**

Eric Paul, for Complainant.

Respondent Jackson Livestock Market, Inc., Pro se.

Donald H. Molstad, Sioux City, IA, for Respondent Thomas G. Olin.

Steven L. Handevidt, Jackson, MN, for Respondent Rodney L. Kolander.

*Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.*

### **Preliminary Statement**

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), herein referred to as the Act, instituted by a complaint filed by the Acting Administrator, Packers and Stockyards Administration, charging that the respondents wilfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201. *et seq.*). The original allegations were realleged and additional new and subsequent allegations were added by an amended complaint filed on May 23, 1995, by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration.

Copies of the complaint and the amended complaint were served upon respondent Jackson Livestock Market, Inc., by certified mail delivery to its officers, respondents Thomas G. Olin and Rodney L. Kolander. Separate answers were duly filed by respondents Thomas G. Olin and Rodney L. Kolander in their individual capacities. Respondent Jackson Livestock Market, Inc., has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the amended complaint, which are admitted by the failure of respondent Jackson Livestock Market, Inc., to file an answer, are adopted and set forth herein as findings of fact.

### **Findings of Fact**

1. Jackson Livestock Market, Inc., hereinafter referred to as the corporate respondent, is a corporation organized and existing under the laws of the state of Minnesota. The corporate respondent's business mailing address was P.O. Box 362, Jackson, Minnesota 56143.

2. The corporate respondent at all times material herein was:

(a) Engaged in the business of conducting and operating the Jackson Livestock Market, a posted stockyard under the Packers and Stockyards Act, hereinafter referred to as the stockyard;

(b) Engaged in the business of selling livestock in commerce on a commission basis at the stockyard;

(c) Engaged in the business of a dealer buying and selling livestock in commerce for its own account and for the account of others; and

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

3. The corporate respondent failed to maintain and use property its "Jackson Livestock Market Custodial Account for Shippers' Proceeds" (hereinafter "custodial account"), thereby endangering the faithful and prompt accounting therefor and the payment of portions thereof due owners and consignors of livestock, in that:

(a) As of February 26, 1993, the corporate respondent had outstanding checks drawn on its custodial account in the amount of \$266,483.67 and expense items chargeable to its custodial account in the amount of \$1,796.70, and had to offset these checks and expense items, a balance in its custodial account of \$152,690.78 and proceeds receivable in the amount of \$35,875.48, resulting in a deficiency of \$79,714.11 in funds available to pay shippers their proceeds.

(b) As of March 24, 1993, the corporate respondent had outstanding checks drawn on its custodial account in the amount of \$145,151.50 and expense items chargeable to its custodial account in the amount of \$2549.36, and had to offset these checks and expense items, a balance in its custodial account of \$34,894.59 and proceeds receivable in the amount of \$80,548.02, resulting in a deficiency of \$31,258.25 in funds available to pay shippers their proceeds.

(c) As of December 31, 1993, the corporate respondent had outstanding checks drawn on its custodial account in the amount of \$163,545.92, and had to offset these check, a balance in its custodial account of \$1,495.89, resulting in a deficiency of \$162,050.05 in funds available to pay shippers their proceeds.

4. The corporate respondent was misusing its custodial account in that the corporate respondent was not reimbursing the account by the close of the next business day following the sale of livestock for purchases made by the corporate respondent, its owners, officers, employees.

5. The corporate respondent was further mishandling its custodial account in that the corporate respondent was not reimbursing the account by the close of the seventh day following the sale of livestock for all uncollected receivables.

6. The corporate respondent misused, mishandled and failed to maintain properly its custodial account on and about the dates set forth above

despite having been placed on notice by certified mail letter dated September 17, 1992, that practices of the nature set forth above were prohibited by section 201.42 of the regulations.

7. The corporate respondent, in connection with its operations as a market agency selling livestock on a commission basis, on or about the dates and in the transactions set forth in paragraph III of the amended complaint, issued checks in purported payment of the net proceeds resulting from the sale of livestock consigned for sale on a commission basis, which checks were returned unpaid by the bank upon which they were drawn because respondents did not have sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

8. The corporate respondent on or about the dates and in the transactions set forth in paragraph IV of the amended complaint sold livestock consigned to the corporate respondent for sale on a commission basis and failed to remit to the consignors the net proceeds resulting from the sale of their livestock.

9. As of March 15, 1995, there remained unpaid approximately \$34,625.88 for livestock sold on a commission basis.

10. The shortage in the custodial account for shippers proceeds that precluded full payment being made for the consigned livestock sold in commission in the above transactions was attributable to:

(a) The corporate respondent's failure to pay for purchase of consigned livestock made by corporate respondent and by respondent Tom Olin; and

(b) The corporate respondent's purported reimbursement of the custodial account with checks drawn on other bank accounts maintained by the corporate respondent and respondent Olin which were subsequently dishonored. Payments received from purchasers of consigned livestock were either expended by the corporate respondent for other purposes, or lost when the banks containing the general or dealer bank accounts in which such funds were deposited stopped providing credit for uncollected funds and applied the funds on deposit to reduce overdrafts in the bank accounts.

11. The corporate respondent, on or about the dates and in the transactions set forth in paragraph V of the amended complaint, purchased livestock from Joseph E. Furr Livestock, a livestock dealer located in Staunton, Virginia, and failed to pay, when due, the full purchase price of such livestock.

12. The corporate respondent, in connection with its operations and a dealer buying and selling livestock in commerce for its own account or the account of others, on or about the dates and in the transactions set forth in paragraph V of the amended complaint, issued checks in purported payment of the purchase price of livestock, which checks were returned unpaid by the bank upon which they were drawn because the corporate respondent did not have sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

13. The corporate respondent, on or about the dates and in the transactions set forth in paragraph VII of the amended complaint consigned livestock under false names and prepared accounts and records using the false names.

14. The corporate respondent sold livestock after August 1993 without keeping and maintaining a purchase and sales journal.

15. The corporate respondent engaged in an extensive exchange or "kiting" of checks between Jacksonville Livestock Market, Inc., Account No. (b) (4) in Bank (b) (4) (the general or "Hay" account) and Tom Olin Livestock Account No. (b) (4) in Bank (b) (4). Checks were exchanged as set forth in paragraph VII of the amended complaint.

16. The corporate exchanged or "kited" these 483 checks totalling \$33,945,249.33 during the three month period set forth in paragraph VII of the amended complaint in order to create a false float and inflated bank balances that relied upon credit extended for uncollected funds. The checks issued vastly exceeded the actual purchase and sales volume of the corporate respondent's livestock operations.

17. The corporate respondent knew, or should have known, when it deposited checks drawn on the above bank accounts in the custodial Account For Shippers Proceeds in purported payment for purchases of consigned livestock, or in purported reimbursement of proceeds due for consigned livestock sold to others, that if Bank Midwest of Farmers Saving Bank became aware of this check kiting and stopped providing immediate credit for uncollected funds that custodial account deposits would be reversed and that a substantial deficit condition would result. This occurred beginning on or about December 17, 1993.

### Conclusions

By reason of the fact found in Findings of Fact 3 through 6 and herein, the corporate respondent has wilfully violated section 312 (a) of the Act (7 U.S.C. § 213(a)) and section 201.42 of the regulations (9 C.F.R. § 201.42).

By reason of the facts found in Findings of Fact 7 through 9 and 11 through 12 herein, the corporate respondent has wilfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228(b) and section 201.43 of the regulations (9 C.F.R. § 201.43).

By reason of the facts found in Findings of Fact 13 and 14 herein, the corporate respondent has violated sections 312(a) and 401 of the Act (7 U.S.C. §§ 213(a), 221).

### Order

Respondent Jackson Livestock Market, Inc., its agents and employees, directly or through any corporate or other device, in connection with its operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to deposit in the Custodial Account for Shippers' Proceeds within the time prescribed in Section 201.42 of the regulations (9 C.F.R. § 201.42) amounts equal to the outstanding proceeds receivable due from the sale of consigned livestock;

2. Failing to otherwise maintain the Custodial Account for Shippers' Proceeds in strict conformity with the provisions of section 201.42 of the regulations (9 C.F.R. § 201.42);

3. Reimbursing the custodial account for shippers' proceeds with checks drawn on any account without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;

4. Using funds received as proceeds from the sale of livestock sold on a commission basis for purposes of its own or for any purpose other than the payment of lawful marketing charges and the remittance of net proceeds to the consignors and shippers of livestock;

5. Issuing checks in payment for livestock purchases without having sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;

6. Issuing checks in payment of the net proceeds from the sale of consigned livestock without having sufficient funds on deposit and available in

the custodial account upon which such checks are drawn to pay such checks when presented;

7. Exchanging or "kiting" checks with any person or between any accounts for the purpose or with the effect of concealing the true amount of funds available in any account;

8. Failing to remit, when due, the net proceeds received from the sale of consigned livestock;

9. Failing of remit the net proceeds received from the sale of consigned livestock;

10. Failing to pay, when due, the full purchase price of livestock, and

11. Consigning livestock under false names and preparing accounts and records using false names.

The corporate respondent shall keep and maintain accounts, records and memoranda which fully and correctly disclose all transactions involved in its business subject to the Packers and Stockyards Act including the following:

1. Check-in-slips, scale tickets, clerk sheets, accounts of sale showing the true and correct names of livestock consignors; and

2. A purchase and sales journal identifying all livestock purchased and sold.

Respondent Jackson Livestock Market, Inc., is suspended as a registrant under the Act for a period of five (5) years and thereafter until such times as it demonstrates that the shortage in its Custodial Account For Shippers' Proceeds has been eliminated. Provided however, that upon application to Grain Inspection, Packers and Stockyards Administration, a supplemental order may be issued terminated the corporate respondent's suspension at any time after 150 days of this suspension term upon demonstration by the corporate respondent that all unpaid consignors have been paid the full net proceeds due for the sale of consigned livestock and that the shortage in its Custodial Account For Shippers' Proceeds has been eliminated.

The decision shall become final and effective without further proceeds 35 days after the date of service upon respondent Jackson Livestock Market, Inc., unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies of this decision shall be served upon the parties.

[This Decision and Order became final May 15, 1996.-Editor]

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**In re: AUSTIN FARMS, INC. and WESLEY W. AUSTIN.**

**P&S Docket No. D-95-33.**

**Decision and Order Upon Admission By Facts By Reason of Default filed  
March 7, 1996.**

**Failure to file an answer - Alter ego - Failure to pay, when due, full purchase price for livestock  
- Issuing checks - Non payment for livestock without sufficient funds on deposit - Cease and  
desist order - Civil penalty.**

Eric Paul, for Complainant.

Respondents, Pro se.

*Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.*

### **Preliminary Statement**

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*) by a complaint and notice of hearing filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the respondents wilfully violated the Act. This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

The respondents admit the jurisdictional allegations in paragraph I of the complaint and notice of hearing and specifically admit that the Secretary has jurisdiction in this matter, neither admit nor deny the remaining allegations, waive oral hearing and further procedure, and consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

The complainant agrees to the entry of this decision.

### **Findings of Fact**

1. Respondent Austin Farms, Inc., hereinafter referred to as the corporate respondent, is a South Dakota corporation whose business mailing address until it ceased operating in 1993 was P.O. Box 1018, Elk Point, South Dakota 57025.

2. The corporate respondent at all times material herein was:

(a) Engaged in the business of purchasing livestock in commerce for purposes of slaughter, and of manufacturing meats or meat food products for sale or shipment in commerce; and

(b) A packer within the meaning of that term as defined in the Act and subject to the provisions of the Act.

3. Respondent Wesley W. Austin, hereinafter referred to as the individual respondent, is an individual whose business mailing address is [REDACTED]

(b) (6)

4. The individual respondent is, and at all times material herein was:

- (a) President and one of the two directors of the corporate respondent;
- (b) Owner, in combination with his wife Marva C. Austin, of 100 percent of the corporate respondent's stock;
- (c) Responsible for the direction, management and control of the corporate respondent;
- (d) The *alter ego* of the corporate respondent; and
- (e) A packer within the meaning of that term as defined in the Act.

### Conclusions

The respondents having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, such decision will be entered.

### Order

Respondent Austin Farms, Inc., its officers, directors, agents, employees, successors and assigns, and respondent Wesley W. Austin, his agents and employees, directly or through any corporate or other device, in connection with their operations as a packer, shall cease and desist from:

1. Failing to pay, when due, the full purchase price of livestock;
2. Failing to pay the full purchase price of livestock; and
3. Issuing checks in payment for livestock purchases without having sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented.

In accordance with section 203(b) of the Act (7 U.S.C. § 193(b)), respondent Wesley W. Austin is assessed a civil penalty in the amount of Ten Thousand Dollars (\$10,000.00).

The provisions of this order shall become effective on the first day after service of this order on the respondents.

Copies of this decision shall be served upon the parties.

[The Decision and Order became final on May 2, 1996.-Editor]

**In re: POPLARVILLE STOCKYARDS, INC., M&J CATTLE COMPANY, INC., and JOE MACK SMITH.**

**P&S Docket No. D-95-14.**

**Decision Without Hearing By Reason of Default With Respect to Respondent Poplarville Stockyards, Inc., filed April 2, 1996.**

**Failure to file an answer - Engaging in the business of a dealer or market agency while insolvent - Current liabilities in excess of current assets - Usage or disposal of funds endangering or impairing the faithful and prompt accounting therefor and payment due to owners or consignors of livestock - Using funds received from the sale of consigned livestock for purposes other than payment to consignors or payment of sums due the respondent as compensation for services rendered - Failure to maintain custodial account - Issuance of checks in payment for livestock without having sufficient funds on deposit - Failure to remit to consignors when due net proceeds from sales of consigned livestock - Cease and desist order - Suspension of registration.**

Julie Cook Schuster, for Complainant.

Respondent Poplarville Stockyards, Inc., Pro se.

James K. Dukes, Hattiesburg, MS, for Respondent M&J Cattle Company, Inc.

Respondent Joe Mack Smith, Pro se.

*Decision and Order issued by James W. Hunt, Administrative Law Judge.*

### **Preliminary Statement**

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), herein referred to as the Act, instituted by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, GIPSA, United States Department of Agriculture, charging that respondent Poplarville Stockyards, Inc., wilfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*).

Copies of the complaint and the Rules of Practice (7 C.F.R. § 1.130 *et seq.*) governing proceedings under the Act were directed to respondent Poplarville Stockyards, Inc., by certified mail on August 24, 1995, but were returned on September 1, 1995. Thereafter, on September 12, 1995, copies of the complaint and the Rules of Practice were sent to respondent Poplarville Stockyards, Inc., by regular mail to its last known address. Respondent Poplarville Stockyards, Inc., was informed in a letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the complaint.

Respondent Poplarville Stockyards, Inc., has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint relative to respondent Poplarville Stockyards, Inc., which are admitted by respondent Poplarville Stockyards, Inc.'s failure to file an answer, are adopted and set forth herein as findings of fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

### Findings of Fact

1. (a) Poplarville Stockyards, Inc., hereinafter "respondent Poplarville," is a corporation whose mailing address is P.O. Box 306, Poplarville, Mississippi 39470.

(b) Respondent Poplarville, at all times material herein, was:

(1) Engaged in the business of conducting and operating the Poplarville Stockyards, Inc., a posted stockyard subject to the provisions of the Act, hereinafter referred to as "the stockyard;"

(2) Engaged in the business of a market agency selling livestock in commerce on a commission basis at the stockyard;

(3) Engaged in the business of a dealer buying and selling livestock in commerce for its own account; and

(4) Registered with the Secretary of Agriculture as a market agency to sell livestock on a commission basis.

2. (a) As of December 31, 1993, respondent Poplarville's current liabilities exceeded its current assets. As of that date, respondent Poplarville had current liabilities totalling \$242,917.34 and current assets totalling \$121,244.85, resulting in an excess of current liabilities over current assets of \$121,672.49.

(b) Respondent Poplarville's current liabilities presently exceed its current assets.

3. During the period December 31, 1993, through December 31, 1994, respondent Poplarville operated subject to the Act while its current liabilities exceeded its current assets.

4. Respondent Poplarville, during the period November 16, 1993, through December 31, 1994, failed to maintain and use properly its Custodial Account for Shippers' Proceeds (hereinafter "custodial account"), thereby *endangering the faithful and prompt accounting therefor and the payment of portions thereof due the owners and consignors of livestock, in that:*

(a) As of November 16, 1993, respondent Poplarville had outstanding checks drawn on the custodial account in the amount of \$306,494.38, and had to offset such checks a balance in the custodial account of \$64,487.35, deposits in transit of \$12,157.70, and current proceeds receivable of \$67,385.40, resulting in a shortage of \$162,463.93.

(b) As of November 30, 1993, respondent Poplarville had outstanding checks drawn on the custodial account in the amount of \$279,249.92, and had to offset such checks a balance in the custodial account of \$93,777.47 and current proceeds receivable of \$60,185.12, resulting in a shortage of \$125,287.33.

(c) As of December 7, 1993, respondent Poplarville had outstanding checks drawn on the custodial account in the amount of \$310,003.10, and had to offset such checks a balance in the custodial account of \$60,369.01, deposits in transit of \$23,386.26, and current proceeds receivable of \$110,909.32, resulting in a shortage of \$115,338.51.

(d) As of December 14, 1993, respondent Poplarville had outstanding checks drawn on the custodial account in the amount of \$354,598.11, and had to offset such checks a balance in the custodial account of \$104,268.04, deposits in transit of \$18,831.95, and current proceeds receivable of \$161,575.88, resulting in a shortage of \$69,922.24.

(e) As of December 22, 1993, respondent Poplarville had outstanding checks drawn on the custodial account in the amount of \$178,143.48, and had to offset such checks a balance in the custodial account of \$34,677.42, resulting in a shortage of \$143,466.06.

(f) As of December 31, 1993, respondent Poplarville had outstanding checks drawn on the custodial account in the amount of \$121,140.94, and had to offset such checks a balance in the custodial account of \$36,040.17, resulting in a shortage of \$85,100.77.

(g) As of December 31, 1994, respondent Poplarville had outstanding checks drawn on the custodial account in the amount of \$299,716.19, and had a deficit balance in the custodial account of \$701.04, resulting in a shortage of \$300,418.03.

5. Respondent Poplarville engaged in unfair and deceptive practices in that respondent Poplarville failed to deposit checks received from purchasers of consigned cattle into the custodial account and used funds received from the sale of consigned livestock for purposes other than remittance of net proceeds to the owners and consignors of livestock. Specifically, respondent Poplarville misused custodial funds by issuing checks on the Poplarville custodial account in payment for loans, commissions, and cattle purchased on

a dealer basis. During the period November 16, 1993, to January 3, 1994, \$364,973.44 in custodial funds were misused in this manner.

6. Respondent Poplarville engaged in unfair and deceptive practices in that respondent Poplarville failed to deposit checks in the amount of \$23,302.19 received from the sale of consigned livestock into its custodial account for shippers' proceeds, but instead converted said checks to cash and transferred the cash to individuals to whom respondent Poplarville previously had given insufficient funds checks as payment for consigned livestock.

7. (a) Respondent Poplarville, in connection with its operations subject to the Act, on or about the dates and in the transactions set forth in Exhibit A to the complaint, sold livestock on a commission basis and in purported payment of the net proceeds thereof issued checks to consignors or shippers of such livestock which were returned unpaid by the bank upon which they were drawn because respondents did not have sufficient funds available in the account upon which such checks were drawn to pay such checks when presented.

(b) In connection with the transactions set forth in Exhibit A to the complaint, respondent Poplarville failed to remit to consignors, when due, the net proceeds due from the sale of consigned livestock.

(c) In connection with the transactions set forth in Exhibit A to the complaint, respondent Poplarville failed to remit to consignors \$141,417.19 in net proceeds due from the sale of consigned livestock.

### Conclusions

By reason of the facts found in Finding of Fact 2 herein, the financial condition of respondent Poplarville does not meet the requirements of the Act (7 U.S.C. § 204).

By reason of the facts found in Finding of Fact 3 herein, respondent Poplarville wilfully violated section 312(a) of the Act (7 U.S.C. § 213(a)).

By reason of the facts found in Finding of Fact 4 herein, respondent Poplarville wilfully 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 found in Finding of Fact 5 herein, respondent Poplarville wilfully 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 found in Finding of Fact 6 herein, respondent Poplarville wilfully 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 found in Finding of Fact 7 herein, respondent Poplarville wilfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213(a)), and section 201.43(a) of the regulations (9 C.F.R. § 201.43(a)).

### Order

Respondent Poplarville Stockyards, Inc., its officers, directors, agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall cease and desist from:

(1) Engaging in business as a dealer or market agency while insolvent, that is, while current liabilities exceed current assets;

(2) Making such use or disposition of funds in its possession or control as will endanger or impair the faithful and prompt accounting therefor and the payment of the portions thereof which may be due the owners or consignors of livestock;

(3) Using funds received as proceeds from the sale of consigned livestock for purposes of its own or for any purpose other than for the payment of the net proceeds to the owners or consignors of such livestock, or for the payment of sums due the respondent as compensation for services rendered or for other lawful marketing charges;

(4) Failing to otherwise maintain its Custodial Account for Shippers' Proceeds in strict conformity with the provisions of section 201.42 of the regulations (9 C.F.R. § 201.42);

(5) Issuing checks to consignors in payment of the net proceeds resulting from the sale of consigned livestock without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;

(6) Failing to remit to consignors the net proceeds resulting from the sale of consigned livestock; and

(7) Failing to remit to consignors, when due, the net proceeds resulting from the sale of consigned livestock.

Respondent Poplarville is suspended as a registrant under the Act for a period of five years, and thereafter until respondent Poplarville demonstrates that its current liabilities no longer exceed its current assets and that any shortages in its Custodial Account for Shippers' Proceeds have been eliminated; *Provided that*, if respondent Poplarville demonstrates that its

current liabilities no longer exceed its current assets and that all shortages in its Custodial Account for Shippers' Proceeds have been eliminated, and that all unpaid consignors have been paid in full, a supplemental order may be issued terminating this suspension after the expiration 180 days of the term of the suspension.

This decision shall become final and effective without further proceedings 35 days after the date of service upon respondent Poplarville, unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies hereof shall be served upon the parties.

[This Decision and Order became final May 22, 1996.-Editor]

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**In re: KARLER PACKING COMPANY, INC., JESSE KARLER and HENRY KARLER.**

**P&S Docket No. D-95-52.**

**Decision By Reason of Admissions filed April 22, 1996.**

**Admission of material allegations - Current liabilities in excess of current assets - Alter ego - Purchasing livestock for slaughter without filing or maintaining a bond or its equivalent - Failing to pay when due for livestock or meat purchases - Issuance of checks in payment for livestock or meat purchases without having sufficient funds on deposit - Impeding prompt disbursement of trust proceeds to unpaid cash sellers of livestock who have preserved their trust interests with timely filed written notices - Violation of Consent Decision - Cease and desist order - Civil penalty.**

Barbara S. Good, for Complainant.

Peter H. Johnstone, Albuquerque, NM, for Respondents.

*Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.*

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*) by a Complaint and Notice of Hearing filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers & Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that the financial condition of the corporate respondent herein does not meet the requirements of the Act and that respondents wilfully violated the Act and the regulations issued thereunder (9 C.F.R. § 201.1 *et seq.*). This decision is entered pursuant to the provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.139).

### Findings of Fact

1. (a) Karler Packing Company, Inc., hereinafter referred to as the corporate respondent, is a corporation incorporated and doing business in the State of New Mexico and whose mailing address is P.O. Box 1005, Albuquerque, New Mexico 87103.

(b) The corporate respondent is, and at all times material herein was:

(1) Engaged in the business of buying livestock in commerce for purposes of slaughter, and manufacturing or preparing meat or meat food products for sale or shipment in commerce; and

(2) A packer within the meaning of and subject to the provisions of the Act.

2. (a) Jesse Karler is an individual whose mailing address is [REDACTED]

(b) (6)

(b) Jesse Karler is, and at all times material herein, was:

(1) President of the corporate respondent;

(2) Owner of 68 per cent of the stock of the corporate respondent; and

(c) In combination with respondent Henry Karler, responsible for the direction, management and control of the corporate respondent.

3. (a) Henry Karler is an individual whose address is [REDACTED]

(b) (6)

(b) Henry Karler is, and at all times material herein was:

(1) Vice-President of the corporate respondent;

(2) Owner of 32 per cent of the stock of the corporate respondent; and

(c) In combination with respondent Jesse Karler, responsible for the direction, management and control of the corporate respondent.

4. Each of the respondents Jesse Karler and Henry Karler, hereinafter collectively referred to as the individual respondents, is, and at all times material herein was, the *alter ego* of the corporate respondent, and a packer within the meaning of and subject to the provisions of the Act.

5. Respondents Karler Packing Company, Inc., Jesse Karler, and Henry Karler entered into a consent decision in P&S Docket No. D-92-28, issued on January 14, 1993, a copy of which is attached to the complaint and notice of hearing as Exhibit A. The decision, *inter alia*, ordered respondents to cease and desist from failing to pay, when due, the full purchase price of livestock and from issuing checks in payment for livestock without having and

maintaining sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

6. Respondents were notified by certified mail, received May 15, 1995, that the surety bond they maintained to secure the performance of the livestock operations of the corporate respondent under the Act would terminate on June 9, 1995. Notwithstanding such notice, the corporate respondent, under the direction, management, and control of the individual respondents, continued to purchase livestock for purposes of slaughter without maintaining an adequate bond or its equivalent as required by the Act and the regulations.

7. As of October 29, 1994, the corporate respondent's current liabilities exceeded its current assets. As of that date, respondent Karler had current liabilities totalling [REDACTED] and current assets totalling [REDACTED] resulting in an excess of current liabilities over current assets of [REDACTED].

8. The corporate respondent's current liabilities presently exceed its current assets.

9. The corporate respondent, under the direction, management and control of the individual respondents, on or about the dates and in the transactions set forth in Exhibit B to the complaint and notice of hearing, purchased livestock for slaughter and failed to pay, when due, the full purchase price of such livestock.

10. As of July 12, 1995, \$551,351.64 of the amounts referred to in ¶ 9 remained unpaid.

11. The corporate respondent, under the direction, management and control of the individual respondents, on or about the dates and in the transactions set forth in Exhibit C to the complaint, purchased livestock for slaughter, and in purported payment for such livestock issued checks which were returned unpaid by the bank upon which they were drawn because respondent did not have and maintain sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

12. The corporate respondent, under the direction, management and control of the individual respondents, in connection with its business as a packer, on March 30, 1995, purchased meat from Booker Packing Company, and failed to pay when due the full purchase price of such meat, which was \$31,385.62.

13. As of July 12, 1995, the entire amount of \$31,385.62 referred to in Paragraph 12 remained unpaid.

14. The corporate respondent, under the direction, management and control of the individual respondents, in connection with its business as a packer, on March 1, 1995, purchased meat from Ruebush Packing Company and in purported payment therefor issued its check no. 3037 to Ruebush Packing Company dated March 27, 1995 in the amount of \$6,048.00, which was returned unpaid by the bank on which it was drawn because the corporate respondent did not have sufficient funds on deposit and available in the account on which such check was drawn to pay the check when presented.

15. The corporate respondent, under the direction, management and control of the individual respondents, purchased livestock for slaughter in cash sales and failed properly to carry out its fiduciary obligations as a statutory trustee by not collecting, liquidating and distributing trust assets on a pro rata basis within a reasonable time after receiving timely written trust notices from unpaid cash sellers of livestock, and the trust analysis prepared by the Packers and Stockyards Programs, Grain Inspection, Packers & Stockyards Administration (GIPSA).

16. The trust proceeds collected and not properly distributed as of the date of issuance of the complaint and notice of hearing herein total at least \$34,081.91.

17. The corporate respondent, under the direction, management, and control of the individual respondents, failed to carry out properly its fiduciary obligations as statutory trustee despite the actual knowledge of the individual respondents of such fiduciary obligations based upon their participation in prior trusts involving the corporate respondent.

### Conclusions

1. Respondents have admitted all the material allegations of fact contained in the complaint, and have therefore, pursuant to 7 C.F.R. § 1.139, waived hearing in this matter.

2. By reason of the facts alleged in paragraph I(a) through I(f) and I(h) of the complaint, which are admitted in the response, each of the individual respondents, Jesse Karler and Henry Karler, is the *alter ego* of the corporate respondent, Karler Packing Company, Inc. See Findings of Fact 1 through 4.<sup>1</sup>

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<sup>1</sup>We note that in the response, each of the individual respondents denied that he was the *alter ego* of the corporate respondent, insofar as corporate formalities were adhered to in the business. However, the issue for our purposes is whether the individuals were responsible for  
(continued...)

3. By continuing to purchase livestock for purposes of slaughter without maintaining an adequate bond or its equivalent as required by the Act and the regulations, which facts are alleged in paragraph II of the complaint and which facts respondents have admitted in their response, respondents have wilfully violated section 202(a) of the Act (7 U.S.C. § 192(a)) and sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29 and 201.30). See Findings of Fact No. 6 herein.

4. Respondents admit, as alleged in paragraph III of the complaint, that as of October 29, 1994, the corporate respondent had current liabilities totalling \$2,084,940.94 and current assets totalling \$1,229,727.75 as of October 29, 1994, resulting in an excess of current liabilities over current assets of \$855,213.19. See Findings of Facts Nos. 7 and 8 herein. Therefore, the corporate respondent's financial condition does not meet the requirements of 7 U.S.C. § 204.

5. Respondents admit, as alleged in paragraphs IV and V of the complaint, that the corporate respondent, under the direction, management, and control of the individual respondents, purchased livestock for slaughter and failed to pay, when due, the full purchase price of such livestock; that as of July 12, 1995, \$551,351.64 of the amounts alleged remained unpaid; that the corporate respondent, under the direction, management, and control of the individual respondents, purchased livestock for slaughter, and in purported payment for such livestock issued checks which were returned unpaid by the bank upon which they were drawn because respondent did not have and maintain sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented. See Findings of Fact Nos. 9 and 10 herein. By reason of such facts, the respondents have wilfully violated sections 202(a) and 409 of the Act (7 U.S.C. §§ 192(a) and 228b), and the Secretary's Order in P&S Docket No. D-92-28.

6. Respondents admit, as alleged in paragraphs VI and VII of the complaint herein, that in connection with its business as a packer, the

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<sup>1</sup>(...continued)

the direction, management, and control of the corporation. The respondents admitted that they were responsible for the direction, management, and control of the corporate respondent. Complaint, ¶¶ I(d)(3) and I(f)(3); Response, ¶ 1. Furthermore, respondents admitted the numerous substantive allegations of the complaint which alleged their direction, management, and control of the corporate respondent. As they admittedly owned and controlled the corporation, they are responsible as individuals for the violations admitted. *In re MCM Livestock, Inc.*, 39 Agric. Dec. 893 (1980); *In re Britton Bros., Inc.*, 49 Agric. Dec. 423 (1990).

corporate respondent, under the direction, management, and control of the individual respondents, on March 30, 1995, purchased meat from Booker Packing Company, and failed to pay when due the full purchase price of such meat. *See* Findings of Fact No. 12 herein. Respondents further admitted that as of July 12, 1995, the entire purchase price of \$31,385 remained unpaid. *See* Findings of Fact No. 13 herein. Respondents also admitted that the corporate respondent, under the direction, management, and control of the individual respondents, in connection with its business as a packer, on March 1, 1995, purchased meat from Ruebush Packing Company and in purported payment therefor issued its check no. 3037 to Ruebush Packing Company dated March 27, 1995, in the amount of \$6,048.00, which was returned unpaid by the bank on which it was drawn because the corporate respondent did not have sufficient funds on deposit and available in the account on which such check was drawn to pay the check when presented. *See* Findings of Fact No. 14 herein. By reason of these facts, respondents have wilfully violated section 202(a) of the Act (7 U.S.C. §§ 192(a)).

7. Respondents have admitted, as alleged in paragraph VIII herein, that the corporate respondent, under the direction, management and control of the individual respondents, purchased livestock for slaughter in cash sales and failed properly to carry out its fiduciary obligations as a statutory trustee by not collecting, liquidating and distributing trust assets on a pro rata basis within a reasonable time after receiving timely written trust notices from unpaid cash sellers of livestock, and a trust analysis prepared by the Packers and Stockyards Programs, Grain Inspection, Packers & Stockyards Administration. The trust proceeds collected and not properly distributed as of the date of issuance of the complaint total at least \$34,081.91. *See* Findings of Fact Nos. 15 and 16 herein. I find that the corporate respondent, under the direction, management, and control of the individual respondents, failed to carry out properly its fiduciary obligations as statutory trustee despite the actual knowledge of the individual respondents of their fiduciary obligations. By reason of these facts, respondents have wilfully violated sections 202(a) and 206(b) of the Act (7 U.S.C. §§ 192(a) and 196(b)).

### Order

Respondent Karler Packing Company, Inc., its officers, directors, agents, employees, successors, and assigns, and respondents Jesse Karler and Henry Karler, individually or as officers, directors, agents or employees of respondent Karler Packing Company, Inc., or of any other packer, directly or through any

corporate or other device, in connection with their operations as a packer, shall CEASE AND DESIST from:

1. Purchasing livestock for slaughter without filing and maintaining a bond or its equivalent in the amount determined by the Packers and Stockyards Programs, GIPSA, in accordance with the Act and the regulations.
  2. Failing to pay, when due, for livestock or meat purchases;
  3. Failing to pay for livestock or meat purchases;
  4. Issuing checks in payment for livestock or meat without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to permit the payment of such checks upon presentation;
  5. Acting in such a manner as to impede or delay the prompt disbursement of trust proceeds to unpaid cash sellers of livestock who have preserved their trust interests with timely filed written notices;
  6. Violating the Order of the Secretary in P&S Docket No. D-92-28;
- and

IT IS HEREBY ORDERED that all purchases of livestock for slaughter by respondents shall be paid for at the time of purchase by cashier's check, wire transfer of funds, or United States currency PROVIDED that a supplemental order may be issued releasing respondents from the obligation to follow such payment procedures after the defendants demonstrate that the current assets of Karler Packing Company, Inc., are no longer exceeded by its current liabilities.

IT IS FURTHER ORDERED that until such time as respondents demonstrate, by properly audited financial statements, that the corporate respondent is solvent; *i.e.*, that the current assets of the Karler Packing Company, Inc., exceed its current liabilities; and a stipulation to such effect is filed in this proceeding, respondents shall prepare weekly statements showing all livestock purchases, and all payments made for such purchases by cashier's check, wire transfer of funds or United States currency; and monthly balance sheets of Karler Packing Company, Inc. The weekly statements shall identify the names of the livestock sellers, the number of head and purchase amount, the purchase and payment date; and the method of payment; *i.e.*, whether the payment is by cashier's check, wire transfer of funds, or United States currency. Copies of these weekly statements and monthly balance sheets shall be mailed to the Regional Supervisor of the GIPSA Regional Office in Denver, Colorado, at the close of each week and month, respectively. Monthly balance sheets may be prepared by compilation by a certified public accountant.

In accordance with section 203(b) of the Act (7 U.S.C. § 193(b)), respondents Karler Packing Company, Inc., Jesse Karler, and Henry Karler are jointly and severally assessed a civil penalty of \$46,000.

The provisions of this order shall become effective on the first day after service of this order on the respondents.

Jurisdiction is retained for the purpose of insuring full compliance with the provisions of this Order.

Copies of this decision shall be served upon the parties.

[This Decision and Order became final May 1, 1996.-Editor]

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In re: S. LEVON OWENS.

P&S Docket No. D-95-13.

Decision and Order filed May 3, 1996.

**Failure to deny material allegations - Suspension of registration - Cease and desist order - Failure to pay full purchase price when due - Prior course of dealing not sufficient - Willful violation.**

Barbara S. Good, for Complainant.

Michael S. MacInnis, Jackson, MS, for Respondent.

*Decision and Order issued by James W. Hunt, Administrative Law Judge.*

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*) by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the respondent willfully violated the Act. This decision is entered pursuant to the provisions of the Rules of Practice setting forth the procedure upon failure to file an answer or admissions of facts (7 C.F.R. § 1.139).

The complaint in this matter was filed on December 22, 1994, and served upon the respondent on January 25, 1995. The complaint set forth the details of a number of livestock purchase transactions covering the period January 4, 1993 through September 22, 1993, and alleged that respondent, in these transactions, had failed to pay when due for livestock in the amount of \$63,602.43, and that further, of that amount, \$32,104.01 remained unpaid as of the date of the complaint. The complaint further alleged that respondent's failures to pay when due for livestock and failures to pay for livestock as

alleged constitute violations of §§ 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

Respondent filed his answer to the complaint on March 24, 1995. In the answer, respondent admitted the jurisdictional allegations in paragraph I of the complaint, admitted that he purchased livestock on or about the dates set forth in the complaint, admitted that there remains unpaid the \$32,104.01 specified in the complaint; but denied that he failed to pay when due for the livestock purchases and denied that the \$32,104.01 admitted as unpaid is due because there were no terms of "repayment other than those established by prior course of dealing." AN, ¶ II(b).

### Findings of Fact

1. S. Levon Owens, hereinafter referred to as "the respondent," is an individual whose business mailing address is (b) (6)

2. Respondent is, and at all times material herein, was:

(A) Engaged in the business of a dealer, buying and selling livestock in commerce for his own account or the accounts of others; and

(B) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce.

3. Respondent purchased livestock as set out in Paragraph II of the complaint and failed to pay, when due, the amount of \$32,104.01.

4. Respondent purchased livestock as set out in Paragraph II of the complaint and failed to pay therefor the amount of \$32,104.01.

### Conclusions

The respondent admits making the purchases of livestock set forth in the complaint, and further admits that \$32,014.01 remains unpaid for such purchases. As a defense, he states that the amount is not presently due based upon a prior course of dealing with the livestock seller. As a matter of law, respondent has willfully violated §§ 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b). Section 409 of the Act provides, in part, as follows:

(a) Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full

amount of the purchase price: . . . *Provided further*, That if the seller or his duly authorized representative is not present to receive payment at the point of transfer of possession, as herein provided, the packer, market agency or dealer shall wire transfer funds or place a check in the United States mail for the full amount of the purchase price, properly addressed to the seller, within the time limits specified in this subsection, such action being deemed compliance with the requirements for prompt payment.

(b) Notwithstanding the provisions of subsection (a) of this section and subject to such terms and conditions as the Secretary may prescribe, the parties to the purchase and sale of livestock may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required in subsection (a). Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction.

(c) Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an "unfair practice" in violation of this Act. Nothing in this section shall be deemed to limit the meaning of the term "unfair practice" as used in this Act.

Respondent here admits the transactions, admits the amount unpaid, but relies on a theory that he had a prior course of dealing with the livestock seller for the argument that the unpaid amount is not due. Section 409, however, requires either payment or a written credit agreement. Under no set of circumstances can "prior course of dealing" suffice as compliance with the Act. If parties to a transaction wish to extend payment terms beyond those specified in the Act, the plain language of section 409 requires a written credit agreement to be in existence before the transaction in question. Thus, the admissions that the transactions took place as alleged and that \$32,104.01 remains unpaid establishes that a violation of the statute occurred.

The undisputed facts show that the respondent has violated the Act by failing to pay when due and failing to pay for livestock. Section 409 of the Act requires *delivery of the full amount of the purchase price before the close of the next business day following the purchase.* 7 U.S.C. § 228b(a). Subsection (c) provides, further, that "[a]ny delay or attempt to delay by a market agency [or] dealer . . . purchasing livestock, the collection of funds as herein provided . . . resulting in extending the normal period of payment shall be considered an unfair practice" in violation of § 213(a) of the Act. (Emphasis supplied).

Such a violation is willful where the respondent has " . . . 1) intentionally do[ne] an act that is prohibited--irrespective of evil motive or reliance on erroneous advice, or 2) act[ed] with careless disregard of statutory requirements. . . . *Goodman v. Benson*, 286 F.2d 896 (7th Cir. 1961), citing *Eastern Produce v. Benson*, 278 F.2d 606, 609 (3d Cir. 1960); *American Fruit Purveyors, Inc. v. United States*, 630 F.2d 370, 374 (5th Cir. 1980), cert. denied, 450 U.S. 997. The Ninth Circuit Court of Appeals has ruled that if a person "acts with careless disregard of statutory requirements, the violation is willful." \* \* \* [quotations omitted]. "To establish willfulness, the . . . [agency] . . . only needed to show that . . . [petitioner's] . . . ongoing failure to act was intentional as opposed to accidental. Proof of an evil motive is unnecessary." *Lawrence v. Commodity Futures Trading Comm'n*, 759 F.2d 767, 773 (9th Cir. 1985). In such cases the notice described in 5 U.S.C. § 558(c) is not required prior to suspension of respondents' registration.

### Order

Respondent, S. Levon Owens, his agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall cease and desist from:

1. Failing to pay, when due, the full purchase price of livestock; and
2. Failing to pay the full purchase price of livestock; and

Respondent, S. Levon Owens, is suspended as a registrant under the Act for a period of 5 years; **provided, however**, that at any time after the expiration of 90 days after the effective date of this decision, if respondent demonstrates that restitution has been made to all unpaid sellers of livestock, then a supplemental order may be issued terminating this suspension; and **provided further** that this order may be modified upon application to Packers and Stockyards Programs, Grain Inspection, Packers & Stockyards Administration to permit the salaried employment of the respondent, S. Levon Owens, by a

registrant or packer after the initial 90 days of the term of this order and upon demonstration of circumstances warranting modification of the order.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service upon Respondent unless appealed to the Secretary by a party to the proceeding 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).

Copies of this decision shall be served upon the parties.

[This Decision and Order became final June 14, 1996.-Editor]

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**PACKERS AND STOCKYARDS ACT****CONSENT DECISIONS**

(Not published herein.-Editor)

Jimmy Hughes. P&S Docket No. D-95-35. 1/17/96.

Gregory W. Shipman. P&S Docket No. D-95-57. 1/23/96.

Riverbend Cattle Company and John Wheeler. P&S Docket No. D-95-10.  
2/1/96.

Taylor Packing Co., Inc., Harold A. Roney. P&S Docket No. D-95-21.  
2/12/96.

Empire Kosher Poultry, Inc., Lenard Tessler and Matthew Soccio.  
P&S Docket No. D-96-06. 2/29/96.

Aiken Livestock, Sam Aiken, Jerry Aiken, Jack Aiken and Jeff Aiken.  
P&S Docket No. D-96-07. 3/8/96.

C.R. (Rick) Nejmanowski. P&S Docket No. D-95-39. 3/20/96.

Milan Brumit. P&S Docket No. D-96-09. 3/28/96.

Barry Kort. P&S Docket No. D-95-19. 4/2/96.

Thomas G. Olin. P&S Docket No. D-94-20. 4/24/96.

Harold L. Marshall. P&S Docket No. D-96-08. 4/29/96.

J.B. Richards. P&S Docket No. D-96-16. 4/30/96.

Joe A. Fritz d/b/a Mid West Cattle Co. P&S Docket No. D-95-05. 5/2/96.

Gaines Hughes. P&S Docket No. D-96-14. 5/9/96.

Fresh Meat Export Co., Inc. and Herve Solandt. P&S Docket No. D-96-01.  
5/14/96.

Jack-Rich, Inc. P&S Docket No. D-95-39. 5/31/96.