

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P & S Docket No. D-10-0053
Jeff Dutton, d/b/a Jeff Dutton Cattle)
Co., and d/b/a Bar 7 Cattle Co.)
)
)
Respondent) Complaint

There is reason to believe that the Respondent named herein has willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.; hereinafter “Act”), and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.; hereinafter “Regulations”), and, therefore, this complaint is issued alleging the following:

I.

(a) Jeff Dutton, d/b/a Jeff Dutton Cattle Co., and d/b/a Bar 7 Cattle Co. (hereinafter “Respondent”), is an individual whose mailing address is in the State of Texas. In order to protect the personal privacy of Respondent, this complaint does not include Respondent’s address, but Complainant will provide the address to the Hearing Clerk so that service might be effected.

(b) At all times material herein, Respondent was:

- (1) Engaged in the business of buying and selling livestock in commerce as a dealer for his own account;
- (2) Engaged in the business of a market agency buying livestock in commerce on a commission basis;
- (3) Not registered as a dealer or a market agency with the Secretary of

Agriculture;¹ and

(4) At all times material to this complaint, operating as a dealer and a market agency within the jurisdiction of the Secretary.

II.

(a) In a certified Notice of Default letter dated May 8, 2008, and served upon Respondent on or about May 20, 2008,² Respondent was informed that he needed to file a new application for registration and a bond or bond equivalent in the amount of \$10,000.00. Respondent was referred to section 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) and informed that it was an unfair and/or deceptive practice to operate as a market agency or dealer without filing an application for registration and a bond or bond equivalent. Respondent was further informed that if he did not bring his operations into compliance with the registration and bonding provisions of the Act that appropriate formal action would be taken. Notwithstanding such notice, Respondent continued to engage in the business of a dealer and a market agency without maintaining an adequate bond or its equivalent as required by the Act and the Regulations.

(b) On October 7, 2008, a Packers and Stockyards Program representative personally informed Respondent that he needed to file a new application for registration and a bond or bond equivalent. Respondent was further informed that he was operating in violation of the Act and should discontinue operations.

¹ Respondent and his wife were owners of Bar 7 Cattle Company, LLC, which was registered with Complainant as a dealer and a market agency buying on commission. At the request of Respondent, the registration of Bar 7 Cattle Company, LLC, was made inactive on March 26, 2007.

² United States Postal Service Domestic Return Receipt for Article No. 7007 1490 0003 4558 was signed for by Kay Yonker. In a sworn affidavit dated October 7, 2008, Ms. Yonker states that she is a former employee of Respondent and currently picks up his mail and holds it for him until he picks it up. She further states that if she signed for any certified mail addressed to Respondent, she would make sure that Respondent received it.

(c) On May 27, 2009, a Packers and Stockyards Program representative personally served on Respondent a letter dated May 26, 2009, informing Respondent that a review of his records disclosed that he continued to operate as a market agency without being properly bonded and that he is required to obtain a \$40,000.00 bond or bond equivalent.

III.

On or about the dates and in the transactions set forth in Appendix A and incorporated herein by reference, Respondent engaged in the business of a market agency buying livestock in commerce on a commission basis without maintaining an adequate bond or bond equivalent. The transactions occurred at Llano Livestock Auction Co.,³ a posted stockyard, in Llano, Texas and Gillespie Livestock Co., Inc., a posted stockyard, in Fredericksburg, Texas.

IV.

(a) On or about the dates and in the transactions set forth below, Respondent issued checks in payment for livestock purchases, which checks 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 the checks were drawn to pay the checks when presented.

³ Llano Livestock Auction Co. made its registration inactive as of March 31, 2009.

Seller	Purchase Date	Date Payment Due	No. of Head	Livestock Amount	Check No.	NSF Check Amount	Date Check Returned	Date Paid
Central Texas Cattle Co. La Vernia, Texas	06/04/07	06/05/07	62	\$33,538.32 ^a	1330	\$33,538.32	06/18/07	Not fully paid
Llano Livestock Auction Co. Llano, Texas	12/09/08	12/10/08	18	\$5,913.78	1229	\$6,100.89 ^b	12/18/08	Late April or Early May 2009
Union Commission Co., Inc. Hondo, Texas	12/15/08	12/16/08	12	\$3,968.75	1230	\$4,085.45 ^c	12/31/08	Unpaid

^a The original livestock amount was \$33,828.32, but \$290.00 was deducted due to a dead calf.

^b Check amount includes fees for hauling and commission.

^c Check amount includes a fee for hauling.

(b) Respondent, in connection with his operations subject to the Act, on or about the dates and in the transactions set forth in Appendix B and incorporated herein by reference, failed to pay the full amount of the purchase price for livestock within the time period required by the Act, with the total amount remaining unpaid of \$59,533.92 as of November 4, 2009.

V.

On August 31, 2009, Respondent filed a Voluntary Petition pursuant to chapter 13 of the Bankruptcy Code (11 U.S.C. § 1301 *et seq.*) in the United States Bankruptcy Court, Western District of Texas, San Antonio Division. This petition was designated case number 09-53364-rbk. Respondent, in bankruptcy schedule F, admits that two of the sellers listed in Appendix B of this complaint hold unsecured nonpriority claims for debt. Specifically, in bankruptcy schedule F, Respondent admits that it owes K. Jordan Enterprises, Inc., d/b/a Jordan Cattle Auction \$45,000.00 for debt incurred in October 2007 and that it owes Union Commission Co., Inc., \$4,100.00 for debt incurred in December 2008. The chart below compares the amounts alleged to be due in this complaint to the amounts admitted to be due by Respondent in bankruptcy schedule F.

Seller	Complaint	Schedule F
K. Jordan Enterprises, Inc. d/b/a Jordan Cattle Auction San Saba, Texas	\$44,787.81	\$45,000.00
Union Commission Co., Inc. Hondo, Texas	\$3,968.75	\$4,100.00
TOTAL	\$48,756.56	\$49,100.00

VI.

By reason of the facts alleged in paragraphs II and III, Respondent has willfully violated section 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).

By reason of the facts alleged in paragraph IV, Respondent has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

WHEREFORE, it is hereby ordered that this complaint shall be served upon Respondent for the purpose of determining whether Respondent has willfully violated the Act and the Regulations. Respondent shall have twenty (20) days after receipt of this complaint in which to file an answer with the Hearing Clerk, Room 1031-South Building, United States Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9200, in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 et seq.; hereinafter "Rules of Practice"). Allegations not answered shall be deemed admitted for the purpose of this proceeding. Failure to file an answer will constitute an admission of all the material allegations of this complaint.

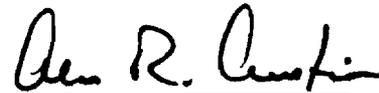
The Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), requests:

1. That unless Respondent fails to file an answer within the time allowed, or files an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in accordance with the Rules of Practice; and

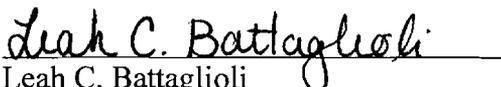
2. That such order or orders be issued, including an order requiring Respondent to cease and desist from the violations of the Act and the Regulations found to exist, suspending Respondent as a registrant under the Act, and assessing such civil penalties against Respondent as are authorized by the Act and warranted in the circumstances.

Done at Washington, D.C.

this 3 day of December, 2009



Alan R. Christian
Deputy Administrator
Packers and Stockyards Program


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Appendix A: Jeff Dutton - Market Agency Purchases

Location of Purchase	Purchase Date	Purchased For	No. Head	Livestock Amount	Commission
Llano Livestock Auction Co. Llano, Texas	06/24/08	Richard Brown Goldthwaite, Texas	37	\$23,841.91	\$171.79
		Central Texas Cattle La Vernia, Texas	13	\$7,168.50	\$59.63
	07/08/08	Richard Brown Goldthwaite, Texas	82	\$55,010.68	\$377.03
	07/15/08	J.C. Kimbel Oklahoma City, Oklahoma	41	\$25,409.28	\$195.56
	07/29/08	Richard Brown Goldthwaite, Texas	9	\$5,932.80	\$40.88
		Joe Paul McCullough Comanche, Texas	38	\$26,875.03	\$187.24
	08/05/08	Richard Brown Goldthwaite, Texas	10	\$6,707.75	\$47.36
	08/12/08	Joe Paul McCullough Comanche, Texas	47	\$31,850.98	\$226.25
	08/19/08	Joe Paul McCullough Comanche, Texas	73	\$47,528.77	\$332.48
		Central Texas Cattle La Vernia, Texas	3	\$1,967.90	\$32.85
	08/26/08	Joe Paul McCullough Comanche, Texas	52	\$34,898.55	\$246.26
	09/02/08	Central Texas Cattle La Vernia, Texas	14	\$9,022.35	\$57.56
	09/09/08	Archie Morris Rochelle, Texas	91	\$40,218.65	\$280.05
		Joe Paul McCullough Comanche, Texas	71	\$47,820.10	\$344.55
	09/16/08	Richard Brown Goldthwaite, Texas	25	\$15,626.98	\$112.54
		Archie Morris Rochelle, Texas	71	\$34,186.45	\$210.86
		D.P. Smith & Son Llano, Texas	9	\$6,278.85	\$31.91
Gillespie Livestock Co., Inc. Fredericksburg, Texas	06/25/08	Richard Brown Wheeler, Texas	16	\$10,072.60	\$72.94
	06/25/08	Central Texas Cattle La Vernia, Texas	53	\$29,277.95	\$244.70
	08/06/08	Sid W. Wilson Midland, Texas	54	\$28,650.00	\$241.99
		Joe Paul McCullough Comanche, Texas	29	\$17,457.90	\$121.43
	08/06/08	Richard Brown Wheeler, Texas	36	\$23,341.91	\$156.30
		Bobby Uecker Blanco, Texas	17	\$4,753.40	\$64.69
	08/06/08	Hector Guerra Roma, Texas	75	\$54,483.00	\$371.48
	09/10/08	Joe Paul McCullough Comanche, Texas	105	\$68,981.56	\$517.17
		Richard Brown Wheeler, Texas	54	\$30,917.15	\$223.69
	09/10/08	Central Texas Cattle La Vernia, Texas	49	\$26,734.30	\$187.10
		Sid W. Wilson Midland, Texas	31	\$19,500.60	\$141.53
	09/10/08	Archie Morris Rochelle, Texas	8	\$5,354.40	\$40.09
		TOTALS		1213	\$739,870.30

Appendix B: Jeff Dutton - Failure to Timely Pay for Livestock

Seller	Purchase Date	Date Payment Due	No. of Head	Livestock Amount	Payment Method	Date Paid ^a	Amount Paid	Balance Owed for Livestock Amount	Days Late
Central Texas Cattle Co., Inc. La Vernia, Texas	06/04/07	06/05/07	62	\$33,538.32	Cashier's Check	06/25/07	\$5,200.00	\$10,797.36	Not fully paid
					Cashier's Check	07/26/07	\$6,000.00		
					Cashier's Check	08/30/07	\$3,500.00		
					Cashier's Check	11/09/07	\$4,000.00		
					Commission ^b	05/31/08	\$3,246.47		
					Commission ^c	07/22/08	\$355.10		
					Commission ^d	11/30/08	\$439.39		
K. Jordan Enterprises, Inc., d/b/a Jordan Cattle Auction San Saba, Texas	10/29/07	10/30/07	72	\$44,787.81			\$44,787.81	Unpaid	
Llano Livestock Auction Co. Llano, Texas	12/09/08	12/10/08	18	\$5,913.78	Proceeds from Sale of Equipment	Late April or Early May 2009	\$5,913.78		Approximately 136 ^e
	01/27/09	01/28/09	3	\$1,046.83	Check ^e	02/12/09 ^f	\$959.53		Approximately 87 ^g
				Proceeds from Sale of Equipment	Late April or Early May 2009	\$87.30			
Union Commission Co., Inc. Hondo, Texas	12/15/08	12/16/08	12	\$3,968.75				\$3,968.75	Unpaid
TOTALS			167	\$89,255.49			\$29,701.57	\$59,553.92	

^a Date paid is the date payment was issued unless otherwise noted.

^b Central Texas Cattle Co., Inc., had an agreement with Respondent that it would apply half of the commission owed to Respondent to Respondent's debt. Commissions covered the time period of 06/18/07 through 05/21/08.

^c Commissions covered the time period of 05/28/08 through 07/22/08.

^d Commissions covered the time period of 07/29/08 through 10/21/08.

^e According to the invoice, Respondent purchased the livestock for David Whitworth of Junction, Texas. Mr. Whitworth informed Llano Livestock Auction Co., that he never told or asked Respondent to purchase the livestock for him. On February 11, 2009, the livestock was resold at Gillespie Livestock Co., Inc., which issued a check to Mr. Whitworth in the amount of \$959.53. On February 12, 2009, Mr. Whitworth hand-delivered the check to Llano Livestock Co., Inc., which deposited the check the same day.

^f Date check hand-delivered to Llano Livestock Auction Co.

^g A Packers and Stockyards Program investigator spoke with Hatch Smith, the former owner of Llano Livestock Auction Co. Mr. Hatch was unable to recall the exact date the balance due for the livestock purchases was paid, but said payment was made in late April or early May 2009. Calculation of days late was determined by using April 25, 2009, as a possible date of payment.