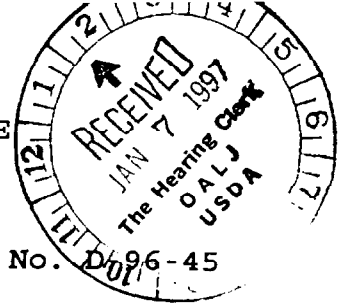


UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



In re:) P. & S. Docket No. D-96-45
)
)
Pryor Livestock Market,)
Inc., Jim W. Deberry and)
Douglas A. Landers,)
)
)
Respondents)

DECISION WITHOUT HEARING BY REASON OF
ADMISSIONS WITH RESPECT TO JIM W. DEBERRY

Preliminary Statement:

This disciplinary proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. §181 et seq.), hereinafter referred to as the "Act", by a complaint filed on August 16, 1996, by the Acting Deputy Administrator, Packers and Stockyards Programs, GIPSA, United States Department of Agriculture. The complaint alleged that Respondent Deberry in his direction, management, and control of Pryor Livestock Market, Inc., hereinafter "Pryor Livestock", wilfully violated the Act and the regulations issued thereunder (9 C.F.R. §201.1 et seq.), by: (1) failing to maintain and use properly Pryor Livestock's Custodial Account for Shippers' Proceeds; (2) issuing checks which were returned unpaid by the bank upon which they were drawn because sufficient funds were not available in the account upon which such checks were drawn; and (3) failing to remit and failing to remit, when due, the net proceeds due from the sale price of livestock on a commission basis. Complainant requested a finding that respondent Deberry was the alter ego of Pryor Livestock and that respondent Deberry 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) and section 312(a) of the Act (7 U.S.C. §213(a)) and section 201.43 of the regulations (9 C.F.R. §201.43). The complaint requested an order that Respondent Deberry cease and desist from the violations found to exist; that Respondent Deberry be suspended as a registrant under the Act; and the assessment of civil penalties.

A copy of the complaint was served on Pryor Livestock, on August 23, 1996. Service on respondent Deberry was accomplished on September 17, 1996, by regular mail to his last known mailing address of record. Respondent Deberry was informed in a letter of service that an answer should be filed pursuant to the Rules of Practice and that filing of an answer that does not deny the material allegations of the complaint shall constitute an admission of all the material allegations contained in the complaint.

Respondent Deberry submitted a response on September 30, 1996, on his own behalf. Respondent Deberry did not indicate that he was responding on behalf of or in the capacity as President of Pryor Livestock. In his reply letter, respondent Deberry indicated that there was money that was owed to customers and that money in excess of the claims in the custodial account was involved in litigation to which he was not a party. He stated that the customers would be paid upon the resolution of that litigation. Respondent Deberry did not offer any legitimate defense to the allegations in the complaint that during his direction, management, and control of Pryor Livestock, he failed

to maintain and use properly Pryor Livestock's Custodial Account for Shippers' Proceeds, or that he failed to remit and failed to remit, when due, the net proceeds due from the sale price of livestock on a commission basis. The explanation that he offered in response to the complaint amounts to an admission to the factual assertions underlying these allegations.

Respondent Deberry did not admit, deny, or otherwise respond to the allegation that in his direction, management, and control of Pryor Livestock, he issued checks which were returned unpaid by the bank upon which they were drawn because of a lack of sufficient funds available in the account upon which such checks were drawn. He did not deny or otherwise respond to the remaining allegations of the complaint. He did not deny his ownership of fifty (50) percent of the stock of Pryor Livestock, Inc. or his status as alter ego, jointly with respondent Douglas A. Landers of Pryor Livestock, Inc. Section 1.136(c) of the Rules of Practice requires that the failure to deny or otherwise respond to every material allegation in a complain shall be deemed an admission of every allegation to which no denial or response is presented.

Respondent Deberry's reply letter constitutes an admission of all the material allegations of fact contained in the complaint. The admission of all of the material allegations of fact contained in a complaint shall constitute a waiver of hearing (7 C.F.R. § 1.139), pursuant to which complainant moved for the issuance of a Decision. 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. Jim W. Deberry, hereinafter referred to as Respondent Deberry, is an individual whose mailing address is 124 Pawnee Place, Yukon, Oklahoma 73099.

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

- a. President of Pryor Livestock;
- b. Owner of 50% of the stock of Pryor Livestock; and
- c. Responsible for the direction, management and control of Pryor Livestock in concert with Douglas A. Landers.

3. Respondent Deberry in his direction, management and control of Pryor Livestock, failed to maintain and use properly Pryor Livestock's 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 August 1, 1995, outstanding checks were drawn on the custodial account of Pryor Livestock in the amount of \$92,705.51, which were offset by a balance in the custodial account of \$0.00 and proceeds receivable of \$5,354.51, resulting in a shortage of \$87,351.00 in funds available to pay shippers their net proceeds.

b. Such deficiencies were due in part, to the failure of Respondent Deberry to deposit in the custodial account of Pryor Livestock, within the time prescribed in the regulations, an amount equal to the proceeds receivable from the sale of consigned livestock to the respondent and others. Such deficiencies were also due to respondent's failure to fully reimburse the custodial account by the close of the seventh day after each sale.

4. As set forth in paragraph III(a) of the complaint, Respondent Deberry in his direction, control, and management and control of Pryor Livestock, 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 sufficient funds were not available in the account upon which such checks were drawn to pay such checks when presented.

5. Respondent Deberry through his direction, management and control of Pryor Livestock on or about the dates and in the transactions set forth in (a) and (b) in paragraph III of the complaint, failed to remit, when due, the net proceeds due from the sale price of livestock on a commission basis.

6. As of June 18, 1996, \$92,183.11 in proceeds remained due to consignors for the sale of their livestock.

Conclusions

By reason of the facts in Finding of Fact 2, respondent Jim W. Deberry is the alter ego of Pryor Livestock Market, Inc.

By reason of the facts in Finding of Fact 3, Respondent Deberry 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 in Findings of Fact 4, 5, and 6, Respondent Deberry wilfully violated section 312(a) of the Act (7 U.S.C. §213(a)) and section 201.43 of the regulations (9 C.F.R. §201.43).

Order

Respondent Deberry, his agents and employees, directly or through any corporate device, in connection with his activities 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 times 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. Using funds received from the sale of consigned livestock for his own purposes or for any purpose other than

payment to consignors of the amount due from the sale of livestock and the payment of lawful marketing charges;

4. Issuing checks in payment for the net proceeds due consignors from the sale of livestock on a commission basis without maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;

5. Failing to remit, when due, the net proceeds due from the sale price of consigned livestock sold on a commission basis; and

6. Failing to remit the net proceeds due from the sale price of consigned livestock sold on a commission basis.

Respondent Deberry is suspended as a registrant under the Act for a period of five years (5) and thereafter until he demonstrates that the shortage in Pryor Livestock's Custodial Account for Shippers' Proceeds has been eliminated. Provided that, upon application to Packers and Stockyards Programs, GIPSA, a supplemental order may be issued terminating the suspension of respondent Deberry at any time after the expiration of the initial 150 days of this suspension term upon demonstration that all livestock consignors identified in the complaint have been paid in full. Provided further, that this order may be modified upon application to the Packers and Stockyards Programs, GIPSA, to permit the salaried employment of respondent Deberry by another registrant or packer after the expiration of the initial

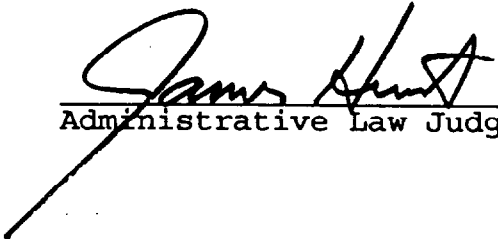
150 days of this suspension term upon demonstration of circumstances warranting modification of the order.

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.

Done at Washington, D.C.

this 7th day of January, 1997


Administrative Law Judge