

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	P & S Docket No. 16-0043
)	
)	
American Pacific, Inc. - International,)	
)	
)	
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.) (Act) and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.) (Regulations), and, therefore, this complaint is issued alleging the following:

I.

(a) American Pacific, Inc. – International (Respondent) is a corporation organized under the laws of the State of Hawaii with a mailing address of PO Box 10, Ninole, Hawaii 96773.

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

- (1) Engaged in the business of a dealer buying and selling livestock in commerce for the account of others;
- (2) Engaged in the business of a market agency buying livestock in commerce on a commission basis; and
- (3) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for the account of others.

II.

(a) In a letter dated February 15, 2012 and served on Respondent on February 22, 2012, the Western Regional Office of the Packers and Stockyards Program (P&S Program) informed Respondent that its surety bond maintained in connection with its operations subject to the Act would terminate on March 15, 2012, and that unless Respondent obtained a new bond or bond equivalent on or before that date, it must discontinue all livestock operations for which bonding is required under the Act. The Western Regional Office further informed Respondent that operating as a dealer or market agency without an adequate bond or bond equivalent is a violation of section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.29 of the Regulations (9 C.F.R. § 201.29) and could subject it to disciplinary action.

(b) Notwithstanding the notice referenced above, Respondent engaged in the business of a dealer buying and selling livestock in commerce or a market agency buying livestock in commerce on a commission basis without filing and maintaining an adequate bond or bond equivalent as required by the Act and the Regulations.

III.

(a) Respondent, commencing on or about May 23, 2012, and continuing through September 14, 2012, in approximately 181 separate transactions, engaged in the business of a dealer buying livestock in commerce for the account of others or a market agency buying livestock in commerce on a commission basis, by purchasing approximately 3,302 head of livestock in the approximate amount of \$1,381,955.00 without filing and maintaining an adequate bond or bond equivalent.

(b) Respondent purchased at least 1,910 of the 3,302 head of livestock described in subparagraph (a) above for John Hepton, owner of Horse Heaven Cattle Feeders, in Sunnyside, Washington. The 1,910 head of livestock were shipped to Mr. Hepton in three shipments on July 13,

2012, August 17, 2012, and August 24, 2012. Respondent received a service fee of \$455,646.80 from Mr. Hepton for the 1,910 head of livestock.

IV.

(a) In a Notice of Default letter dated January 11, 2012, and served on Respondent on January 17, 2012, the Western Regional Office of the P&S Program notified Respondent that as of December 31, 2011, Respondent had failed to supply an accurate and acceptable copy of a scale test report for the scale it operated. Respondent was further notified that unless the P&S Program received a scale report in the next 30 days showing that the scale had been properly tested between July 1, 2011 and December 31, 2011, formal corrective action may be initiated. Respondent was also informed that section 201.72 of the Regulations (9 C.F.R. § 201.72) requires scale owners to have their scales tested by a competent scale testing agency at least once between January 1 and June 30 and at least once again between July 1 and December 31 with a minimum period of 120 days between tests and to furnish a copy of the test report to the Western Regional Office.

(b) Having received no response to its January 11, 2012 Notice of Default letter, the Western Regional Office of the P&S Program sent Respondent a Notice of Violation letter dated March 2, 2012, and served on Respondent on March 9, 2012, in which it notified Respondent that it had failed to have its scale tested between July 1, 2011 and December 31, 2011. This Notice of Violation again reminded Respondent that section 201.72 of the Regulations (9 C.F.R. § 201.72) requires scale owners to have their scales tested by a competent scale testing agency at least once between January 1 and June 30 and at least once again between July 1 and December 31 with a minimum period of 120 days between tests and to furnish a copy of the test report to the Western Regional Office.

(c) In a Notice of Default letter dated July 12, 2012, and served on Respondent on July 19, 2012, the Western Regional Office of the P&S Program notified Respondent that as of June 30, 2012, Respondent had failed to supply an accurate and acceptable copy of a scale test report for the scale it operated. Respondent was further notified that unless the P&S Program received a scale report in the next 30 days showing that the scale had been properly tested between January 1, 2012 and June 30, 2012, formal corrective action may be initiated. Respondent was also informed for a third time that section 201.72 of the Regulations (9 C.F.R. § 201.72) requires scale owners to have their scales tested by a competent scale testing agency at least once between January 1 and June 30 and at least once again between July 1 and December 31 with a minimum period of 120 days between tests and to furnish a copy of the test report to the Western Regional Office.

(d) Notwithstanding the notices referenced above, Respondent's scale was last tested on March 4, 2010.

V.

(a) Respondent, after having been put on notice, commencing on or about August 20, 2012, and continuing through September 14, 2012, in approximately 26 transactions of the 181 transactions described in paragraph III(a) above, engaged in the business of a dealer buying livestock in commerce for the account of others or a market agency buying livestock in commerce on a commission basis, by purchasing approximately 712 head of livestock on a live-weight basis and using a scale to weigh the livestock which Respondent had not had tested in accordance with section 201.72 of the Regulations (9 C.F.R. § 201.72).

(b) On August 24, 2012, Respondent reweighed 444 head of the livestock described in subparagraph (a) above and paragraph III(b) on the same scale which Respondent had not had tested in accordance with section 201.72 of the Regulations (9 C.F.R. § 201.72) prior to shipping

the livestock to Mr. Hepton in the State of Washington. The livestock was weighed for a second time to determine the amount Mr. Hepton owed for the livestock once the livestock was pre-conditioned and ready to be shipped from the State of Hawaii to the State of Washington.

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 paragraphs IV and V, Respondent has willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.72 of the Regulations (9 C.F.R. § 201.72).

WHEREFORE, it is hereby ordered that this complaint shall be served upon Respondent for the purpose of determining whether Respondent 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, SW., Washington, DC 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.*) (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 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. [REDACTED] an order requiring Respondent to cease and desist from the violations of the Act and the Regulations found to exist.

Done at Washington, D.C.

this 8th day of February, 2016

[REDACTED]

Susan B. Keith
Deputy Administrator
Packers and Stockyards Program

Leah C. Battaglioli
Attorney for Complainant
Marketing, Regulatory, and Food Safety Programs Division
Office of the General Counsel
United States Department of Agriculture
South Building, Room 2319
1400 Independence Ave., SW.
Washington, DC 20250
Phone: (202) 720-5191
Fax: (202) 690-4322
Email: leah.battaglioli@ogc.usda.gov