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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)
)
Southern Colorado Livestock) P & S Docket No. D-17-0019
Auction, Incorporated)
)
and)
)
John R. Malouff, Jr.) P & S Docket No. D-17-0020
)
)
Respondents) Complaint

There is reason to believe that Respondents named herein have willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (“the Act”) and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*) (“Regulations”). Therefore, this Complaint is issued pursuant to the Rules of Practice Governing Proceedings Under the Act (7 C.F.R. § 1.130 *et seq.*) (“Rules of Practice”) alleging the following:

I.

1. Southern Colorado Livestock Auction, Inc. (“Respondent Southern Colorado”) is a corporation organized under the laws of, and located in, the State of Colorado, Respondent Southern Colorado’s mailing address is P.O. Box 609, Monte Vista, CO 81144.
2. Respondent Southern Colorado is, and at all times material herein was:
 - a. Engaged in the business of conducting and operating a posted stockyard subject to the provisions of the Act;

- b. Engaged in the business of a market agency selling consigned livestock in commerce on a commission basis at the stockyard; and,
 - c. Registered with the Secretary of Agriculture as a market agency selling livestock in commerce on a commission basis.
3. John R. Malouff, Jr. (“Respondent Malouff”) is an individual whose mailing address is P.O. Box 609, Monte Vista, CO 81144.
4. Respondent Malouff is, and at all times material herein was:
- a. President, sole owner, and registered agent of Respondent Southern Colorado;
 - b. Responsible for the day-to-day direction, management, and control of Respondent Southern Colorado;
 - c. Engaged in the business of conducting and operating Southern Colorado; and,
 - d. Engaged in the business of a market agency selling livestock in commerce on a commission basis within the meaning of and subject to the provisions of the Act.

II.

A custodial account for shippers’ proceeds (“custodial account”) is a trust account that protects funds that are owed to livestock producers and owners who consign livestock for sale at an auction market. Section 201.42 of the regulations (9 C.F.R. § 201.42) requires market agencies selling livestock on commission to maintain a custodial account. The proceeds from livestock sales at regulated auction markets must be deposited into custodial accounts within the prescribed time period. If the proceeds receivable from livestock sales are not collected and deposited into a market’s custodial account by the close of the seventh day after the sale, then the market must make up the shortfall and reimburse the custodial account for the unpaid receivables.

Respondents entered into a Consent Decision and Order on December 14, 2012, in the case of *In re Southern Colorado Livestock Auction Inc., and John R. Malouff, Jr.*, P & S Docket No. 12-0492. Respondents agreed to cease and desist from failing to properly maintain their custodial account in accordance with the Act and section 201.42 of the regulations (9 C.F.R. § 201.42), issuing checks without sufficient funds available in the accounts upon which they are drawn to pay such checks when presented, failing to maintain and operate scales to ensure accurate weights in compliance with section 201.71 of the regulations (9 C.F.R. § 201.71(a) and (d)), failing to properly test scales, and failing to maintain copies of all scale tests and inspections. In resolution of that matter, Respondents were assessed a \$1,000 civil penalty and suspended for a period of 14 days upon the demonstration to the satisfaction of GIPSA that the custodial shortages were corrected. The suspension was terminated on January 8, 2013.

III.

Respondent Southern Colorado, under the direction, management, and control of Respondent Malouff, during the period of June 2013 through July 2013, failed to properly maintain their custodial account, thereby endangering the faithful and prompt accounting of shippers' proceeds and the payments due the owners or consignors of livestock, in that:

1. As of June 30, 2013, Respondent Southern Colorado had outstanding checks drawn on its custodial account totaling \$570,248.79 and to offset such checks, had a bank balance in the custodial account of \$313,210.22, proceeds on hand of \$101,951.50, current proceeds receivable of \$84,070.78, and one deposit in transit for credit card purchases of \$730.94. Southern Colorado had no CDs or savings accounts designated as custodial fund. This resulted in a custodial account shortage of approximately \$70,285.35.

2. As of July 31, 2013, Respondent Southern Colorado had outstanding checks drawn on its custodial account totaling \$286,442.62. To offset such checks, it had a bank balance in the custodial account of \$173,406.90, current proceeds receivable of approximately \$52,920.58, no deposits in transit, no CDs or savings accounts designated as custodial funds, and no proceeds on hand, resulting in a custodial account shortage of approximately \$60,115.14.

The shortages in Respondent Southern Colorado's custodial account were due, in part, to Respondents' failure to timely deposit into the custodial account an amount equal to the proceeds receivable from the sale of consigned livestock in accordance with section 201.42 of the Regulations (9 C.F.R. § 201.42).

IV.

Respondent Southern Colorado, under the direction, management, and control of Respondent Malouff, in connection with its operations subject to the Act, engaged in unfair and deceptive practices. Specifically, on June 29, 2013, Respondents misused custodial funds by writing a check in the amount of \$34,075 against the custodial account in purported advanced payment of the net proceeds from the sale of consigned livestock when in fact no livestock were consigned or sold prior to respondents issuing the check. Account shortages during the period from June through July 2013, as set forth in paragraph III above, were due, in part, to this misuse of custodial account funds.

V.

By reason of the facts alleged in paragraphs II, III and IV herein, Respondents willfully 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).

WHEREFORE, it is hereby ordered that for the purpose of determining whether Respondents have in fact willfully violated the Act and Regulations issued thereunder, this Complaint shall be served upon Respondents. Respondents shall have twenty (20) days after receipt of this Complaint in which to file an answer with the Hearing Clerk to be mailed to the Hearing Clerk at: Room 1031, South Building, United States Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250-9200, in accordance with the Rules of Practice (7 C.F.R. § 1.130 *et seq.*). 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 Respondents fail to file an answer within the time allowed, or file 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 an order be issued requiring Respondents to cease and desist from violating the Act and Regulations with respect to the matters alleged herein, suspending Respondents as registrants under the Act, and assessing such civil penalties against Respondents, jointly and severally, as are authorized by the Act and warranted under the circumstances.

Done at Washington, DC

this 16th day of December, 2016

[REDACTED]

Susan B. Keith
Deputy Administrator
Packers and Stockyards Program

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