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UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-07-0055 RECEIVED
)
Wharton Livestock Auction, Inc. and)
Herman W. (Billy) Schwertner)
)
Respondents) Complaint

There is reason to believe that the Respondents named herein have wilfully 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.*)(the regulations), and, therefore, this complaint is issued alleging the following:

I

(a) Wharton Livestock Auction, Inc., (hereinafter "Corporate Respondent"), is a corporation organized and existing under the laws of the State of Texas, with a mailing address of 3230 North Richmond Rd., P.O. Box 973, Wharton, Texas 77488-0973.

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

(1) Engaged in the business of conducting and operating a posted stockyard subject to the provisions of the Act (hereinafter "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 or account of others; and

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

(c) Herman W. (Billy) Schwertner, (hereinafter "Individual Respondent"), at all times material herein was:

- (1) President of Corporate Respondent;
- (2) 100 percent shareholder of Corporate Respondent;
- (3) The manager of Corporate Respondent; and
- (4) Responsible for the day to day direction, management and control of

Corporate Respondent.

II

Corporate Respondent, under the direction, management, and control of Individual Respondent, during the period of October 2, 2002, through November 20, 2002, engaged in unfair and deceptive practices by misusing its Custodial Account for Shippers' Proceeds ("custodial account"), in that:

(a) Corporate Respondent, on or about the dates and in the transactions set forth below, issued checks drawn on the custodial account to make advances/loans to its auctioneer, F.B. Moore, and not for the payment of net proceeds to a consignor or shipper or anyone entitled to payment, to pay lawful charges against consignment that Corporate Respondent was required to pay, or to obtain sums due to Corporate Respondent for its services.

Date of Check	Payee	Check Number	Amount of Check
10/02/02	F. B. Moore	2077	\$13,000.00
10/09/02	F. B. Moore	2082	\$13,000.00
10/16/02	F. B. Moore	2087	\$13,000.00
10/22/02	F. B. Moore	2093	\$13,000.00
10/30/02	F. B. Moore	2098	\$13,000.00

Date of Check	Payee	Check Number	Amount of Check
11/06/02	F. B. Moore	2106	\$13,000.00
11/13/02	F. B. Moore	2112	\$13,000.00
11/20/02	F. B. Moore	2117	\$15,000.00
Total			\$106,000.00

(b) Corporate Respondent issued the checks to its auctioneer outlined in paragraph (a) above during a period in which its custodial account was not in balance, in that:

(1) As of October 31, 2002, Corporate Respondent had outstanding checks drawn on the custodial account in the amount of \$646,333.33. Corporate Respondent had to offset such checks a balance in the custodial account of \$121,018.42, CD's/savings accounts designated as custodial funds in the amount of \$4,646.05, proceeds on hand in the amount of \$8,101.95, and proceeds receivable in the amount of \$276,634.73, resulting in a shortage of \$235,932.18 in funds available to pay shippers their net proceeds.

(2) As of November 30, 2002, Corporate Respondent had outstanding checks drawn on the custodial account in the amount of \$555,002.22. Corporate Respondent had to offset such checks a balance in the custodial account of \$333,873.39, deposits in transit in the amount of \$103,031.45, and CD's/savings accounts designated as custodial funds in the amount of \$4,654.63, resulting in a shortage of \$113,442.75 in funds available to pay shippers their net proceeds.

III

By reason of the facts alleged in paragraph I herein, Individual Respondent is the *alter ego* of Corporate Respondent.

By reason of the facts alleged in paragraph II herein, Respondents 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).

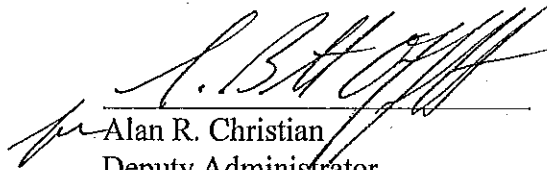
WHEREFORE, it is hereby ordered that for the purpose of determining whether Respondents have in fact willfully violated the Act and the regulations thereunder, this complaint will be served upon Respondents. Respondents shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 *et seq.*). Failure to file an answer will constitute an admission of all the material allegations of this complaint.

Packers and Stockyards Program, GIPSA, requests:

1. That unless Respondents fail to file an answer within the time allowed therefor, 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 governing proceedings under the Act; and
2. That such order or orders be issued, including an order requiring Respondents to cease and desist from the violations found to exist, suspending Respondents as a registrant under the Act, and assessing such civil penalties as are authorized by the Act and warranted in the premises.

Done at Washington, D.C.

this 26th day of January 2007



Alan R. Christian
Deputy Administrator
Packers and Stockyards Program

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