

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) P & S Docket No. D-12- 0241  
New Wilmington Livestock )  
Auction, Inc. and )  
Thomas R. Skelton )  
Respondents ) Complaint

There is reason to believe that the financial condition of respondent New Wilmington Livestock Auction, Inc., does not meet the requirements of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (Act), and that respondents New Wilmington Livestock Auction, Inc. and Thomas R. Skelton have willfully violated provisions of 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 alleging the following:

I

(a) Respondent New Wilmington Livestock Auction, Inc. is a corporation organized and existing under the laws of the State of Pennsylvania, with a street address of 2006 Mercer -New Wilmington Rd., New Wilmington, P A 16142, and a mailing address of P.O. Box 296, Canfield, OH 44406.

(b) Respondent Thomas R. Skelton is an individual whose current mailing address is identical to the mailing address provided in subsection (a) above.

(c) Respondent New Wilmington Livestock Auction, Inc., under the direction, management, and control of respondent Thomas R. Skelton, 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;
  - (2) Engaged in the business of a market agency selling livestock in commerce on a commission basis; and
  - (3) Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis.
- (d) Respondent Thomas R. Skelton at all times material herein was:
- (1) The one hundred percent owner and president of respondent New Wilmington Livestock Auction, Inc.; and
  - (2) Responsible for the day-to-day direction, management and control of respondent New Wilmington Livestock Auction, Inc.

## II

(a) Section 201.42 of the regulations (9 C.F.R. § 201.42), issued by the Secretary of Agriculture under the Packers and Stockyards Act, requires market agencies selling livestock on commission to maintain a custodial account for shippers' proceeds (custodial account). A 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. The proceeds from livestock sales at regulated auction markets must be deposited into custodial accounts. If the proceeds receivable from livestock sales cannot be 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.

(b) On or about September 18, 2009, the Eastern Regional Office, Packers and Stockyards Program, GIPSA (P&S Program) sent respondents a Notice of Violation letter informing them that their annual report for the year ending December 31, 2008, disclosed

they were operating with a custodial account shortage totaling \$129,204.35. Respondents were notified of the provisions of sections 201.42(c) and (d) of the regulations (9 C.F.R. §§ 201.42 (c), (d)) and further informed that failure to take immediate steps to correct the violations and bring their operations in compliance with the Act could result in administrative action.

(c) On or about September 18, 2009, respondents were informed by the Eastern Regional Office of the P&S Program that a review of respondents' annual report for the year ending December 31, 2008, indicated that respondents' current liabilities exceeded its current assets. The letter specified that respondents had current assets of approximately \$215,508.00 and current liabilities of approximately \$240,558.00 resulting in an excess of current liabilities over current assets in the approximate amount of \$25,050.00. Accordingly, respondents were advised that they were in violation of the Act and were required to correct their insolvency.

(d) On or about October 6, 2011, the Eastern Regional Office of the P&S Program sent respondents a Notice of Violation letter informing them that their annual report for the year ending May 31, 2011, disclosed that respondents were operating with a custodial account shortage, totaling \$169,070.45 in violation of section 201.42 of the regulations (9 C.F.R. §§ 201.42). The letter informed respondents that they were required to correct the shortage and requested that respondents, on or before November 30, 2011, file a special report that showed a custodial account analysis as of October 31, 2011. Respondents submitted their special report on November 30, 2011, and it disclosed that respondents were operating with a custodial account shortage totaling \$194,000.00.

### III

Respondent New Wilmington Livestock Auction, Inc., under the direction, management and control of respondent Thomas R. Skelton, during the time period of June

30, 2010, through October 31, 2010, failed to maintain properly its custodial account, thereby endangering the faithful and prompt accounting of shippers' proceeds and the payment due the owners or consignors of livestock in that:

(a) As of June 30, 2010, respondent New Wilmington Livestock Auction, Inc. had outstanding checks drawn on its custodial account in the approximate amount of \$248,335.30 and had to offset such checks, a balance in its custodial account of \$433.55, and proceeds receivable in the amount of \$117,738.99 resulting in a deficiency of approximately \$130,162.76.

(b) As of September 30, 2010, respondent New Wilmington Livestock Auction, Inc. had outstanding checks drawn on its custodial account in the approximate amount of \$274,639.02 and had to offset such checks, a balance in the custodial account of \$25,501.29 and proceeds receivable of \$101,497.67 resulting in a deficiency of approximately \$147,640.06.

(c) As of October 31, 2010, respondent New Wilmington Livestock Auction, Inc. had outstanding checks drawn on its custodial account in the approximate amount of \$239,310.89 and had to offset such checks, a balance in its custodial account of \$68,964.07, deposits in transit of \$2,574.00, and proceeds receivable of \$29,663.81 resulting in a deficiency of approximately \$138,109.01.

(d) The custodial account shortages described herein were due in part to respondents' failure to deposit in the custodial account, within the time prescribed by the regulations, an amount equal to the proceeds receivable for sales of consigned livestock. The custodial account shortages described herein were also due in part to respondents' withdrawal of funds from their custodial account for purposes other than (1) payment of the net proceeds to the consignor or shipper, or to any person that the market agency knows is entitled to payment, (2) to pay lawful charges against the consignment of livestock which

the market agency shall, in its capacity as agent, be required to pay, or (3) to obtain any sums due the market agency as compensation for its services.

#### IV

The shortages in respondent New Wilmington Livestock Auction, Inc.'s custodial account, during the period of June 30, 2010, through October 31, 2010, as set forth in paragraph III above, were also due, in part, to the misuse of custodial account funds. Respondent New Wilmington Livestock Auction, Inc., under the direction, management and control of respondent Thomas R. Skelton, on or about the dates and in the transactions set forth in Appendix A and incorporated herein by reference, misused its custodial account by using custodial account funds to make payments on the line of credit; its deposit of custodial funds into its general account; and the deduction of bank charges from the custodial account.

#### V.

(a) As of June 30, 2010, respondent New Wilmington Livestock Auction, Inc. had current assets of \$51,844.11 and current liabilities of \$236,481.28, resulting in an excess of current liabilities over current assets in the amount of \$184,637.17.

(b) As of September 30, 2010, respondent New Wilmington Livestock Auction, Inc. had current assets of \$35,986.67 and current liabilities of \$255,799.54, resulting in an excess of current liabilities over current assets in the amount of \$219,812.87.

(c) As of October 31, 2010, respondent New Wilmington Livestock Auction, Inc. had current assets of \$23,919.35 and current liabilities of \$254,599.36, resulting in an excess of current liabilities over current assets in the amount of \$230,680.01.

(d) As of October 31, 2011, respondent New Wilmington Livestock Auction, Inc. had current assets of \$51,844.11 and current liabilities of \$236,481.28, resulting in an excess of current liabilities over current assets in the amount of \$184,637.17.

(e) During the period June 30, 2010, through October 31, 2010, and to the present, respondent New Wilmington Livestock Auction Inc., under the direction, management and control of respondent Thomas R. Skelton, engaged in the business of a market agency selling livestock in commerce on a commission basis while its current liabilities exceeded its current assets.

## VI

By reason of the facts alleged in paragraph I, respondent Thomas R. Skelton is the alter ego of respondent New Wilmington Livestock Auction, Inc.

By reason of the facts alleged in paragraphs III and IV, respondents have 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).

By reason of the facts alleged in paragraph V, the financial condition of respondent New Wilmington Livestock Auction, Inc., does not meet the requirements of the Act (7 U.S.C. § 204) and, as a result, respondents have wilfully violated section 312(a) of the Act (7 U.S.C. § 213(a)).

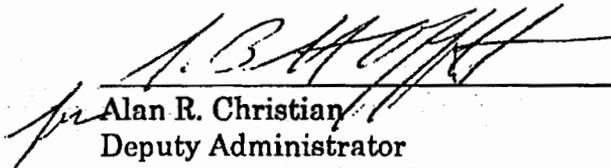
WHEREFORE, it is hereby ordered that this complaint shall be served upon respondents for the purpose of determining whether respondents have willfully violated the Act and the regulations. Respondents shall have twenty (20) days after receipt of this complaint in which to file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250, 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 (GIPSA), 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 such order or orders be issued, including an order requiring respondents to cease and desist from the violations of the Act and the regulations found to exist, 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 in the circumstances.

Done at Washington, D.C.

this 17<sup>th</sup> day of February, 2012

  
Alan R. Christian  
Deputy Administrator  
Packers and Stockyards Program

CIARRA A. TOOMEY  
Attorney for Complainant  
Office of the General Counsel  
United States Department of Agriculture  
1400 Independence Avenue, S.W.  
Room 2019, South Building  
Washington, D.C. 20250  
Telephone: (202) 720-3779  
Fax: (202) 690-4322  
[ciarra.toomey@ogc.usda.gov](mailto:ciarra.toomey@ogc.usda.gov)

**Appendix A**

**New Wilmington Livestock Auction, Inc., and Thomas R. Skelton**

**Schedule of Misuse of Custodial Account**

<b>Date</b>	<b>Description</b>	<b>Amount</b>
8/2/2010	Payment to line of Credit	\$36,000
8/3/2010	NSF Fee	\$90
8/16/2010	Payment to line of Credit	\$379.11
8/20/2010	Transfer to General Account( A/C # 1528565)	\$2,500
8/24/2010	Fee for Printing Checks	\$73.50
8/31/2010	Service Charge	\$120
9/2/2010	NSF Fee	\$30
9/9/2010	Payment to line of Credit	\$78,000
9/10/2010	NSF Fee	\$30
9/13/2010	Returned Item Fee	\$10
9/16/2010	NSF Fee	\$30
9/21/2010	Returned Item Fee	\$10
9/24/2010	Transfer to General Account( A/C # 1528565)	\$1,000
9/29/2010	Returned Item Fee	\$10
9/30/2010	Service Charge	\$104
9/30/2010	NSF Fee	\$210
10/7/2010	Returned Item Fee	\$10
10/15/2010	Returned Item Fee	\$10
10/15/2010	Payment to line of Credit	\$359.80
10/19/2010	NSF Fee	\$300
10/20/2010	NSF Fee	\$30
10/29/2010	Service Charge	\$80
<b>TOTAL</b>		<b>\$119,386.41</b>