

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P & S Docket No. D-12-0361
J. Cuiksa, Inc.,)
)
and)
)
Jason Cuiksa)
)
Respondents) Complaint

There is reason to believe that respondents J. Cuiksa, Inc., and Jason Cuiksa 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), and, therefore, this Complaint is issued alleging the following:

I.

(a) Respondent J. Cuiksa, Inc. is a corporation organized and existing under the laws of the State of Kansas. The corporation's last known business mailing address, on file the Secretary of State of Kansas, is 811 N Main Street, South Hutchinson, Kansas 67505. Respondent J. Cuiksa, Inc.'s agent for service of process, on file with the Secretary of State of Kansas, is Jason Cuiksa, 811 N Main Street, South Hutchinson, Kansas 67505.

(b) Respondent J. Cuiksa, Inc., under the direction, management, and control of respondent Jason Cuiksa, at all times material to the allegations herein was:

(1) Engaged in the business of a market agency selling livestock in commerce on a commission basis; and

(2) Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis.¹

(c) Respondent Jason Cuiksa is an individual and his mailing address is in the State of Kansas. In order to protect the personal privacy of respondent Jason Cuiksa his address is not included in this Complaint but has been provided to the Hearing Clerk for purpose of effectuating service of process. Respondent Jason Cuiksa, at all times material to the allegations herein was, the owner, president, vice-president, secretary, treasurer, and manager of respondent J. Cuiksa, Inc., and responsible for the day-to-day direction, management and control of respondent J. Cuiksa, Inc.

(d) Respondent Jason Cuiksa was, at all times material herein, engaged in the business of a market agency selling livestock in commerce on a commission basis.

II.

On or about December 10, 2010, the Western Regional Office of the P&S Program sent respondents a Notice of Violation letter informing them of the results of an investigation performed in September 2010. The investigation documented that respondents were operating with custodial account shortages of \$31,258.62 on July 30, 2010 and \$42,059.68 on September 30, 2010, in violation of section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.42 of the regulations (9 C.F.R. § 201.42). The notice explained that the shortages were caused, in part, by the respondents' failure to reimburse the custodial account by the close of the seventh day following purchase, the issuance of multiple checks for the same livestock transactions, and the failure to keep track of and collect receivables. The respondents were also notified that they had failed

¹ On July 25, 2011, respondents stated that they had discontinued livestock operations, and the entity's registration was made inactive.

to keep and maintain records which fully and correctly disclosed all the transactions involved in its business as a market agency as required by section 401 of the Act (7 U.S.C. § 221).

Notwithstanding this notice, respondents continued to (1) operate with a custodial account shortage; and (2) to fail to maintain records, which fully and correctly disclose all transactions involved in the business.

III.

Respondents, during the time period of January 31, 2011 through March 31, 2011, failed to properly maintain their 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 January 31, 2011, respondents had outstanding checks drawn on its custodial account in the approximate amount of \$147,452.76 and had to offset such checks, a balance in its custodial account of \$45,759.41 and proceeds receivable of \$45,135.35, resulting in a deficiency of approximately \$56,558.00.

(b) As of March 31, 2011, respondents had outstanding checks drawn on its custodial account in the approximate amount of \$337,828.60 and had to offset such checks, a balance in the custodial account of \$45,834.75 and proceeds receivable of \$216,256.39, resulting in a deficiency of approximately \$75,737.46.

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.

Respondents, in connection with their operations subject to the Act, failed to keep and maintain records which fully and correctly disclosed all the transactions involved in their business as a market agency as required by section 401 of the Act (7 U.S.C. § 221), including, but not limited to, an outstanding check listing, a current balance sheet, income statements, check register, accounts receivable listing, sales invoices and buyer recaps, bank statements, and all bank notices regarding its custodial account.

V.

By reason of the facts alleged in paragraph I, respondent Jason Cuiksa is the alter ego of respondent J. Cuiksa, Inc.

By reason of the facts alleged in paragraphs II and III, 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 IV, respondents have willfully violated sections 312(a) and 401 of the Act (7 U.S.C. §§ 213(a), 221), by failing to keep and maintain records that fully and correctly disclosed all transactions involved in their

business.

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, an order requiring respondents to keep and maintain all accounts, records, and memoranda that fully and accurately disclose all transactions involved in their business, as required by section 401 of the Act, 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 12 day of April, 2012



Alan R. Christian
Deputy Administrator
Packers and Stockyards Program

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