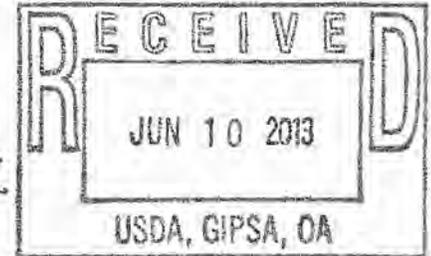


UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



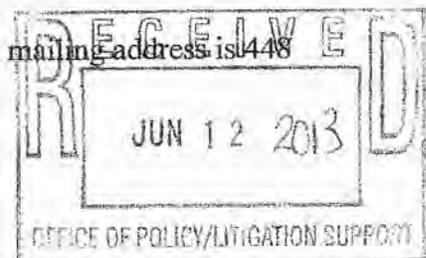
In re:) P&S Docket No.
)
) F & F Farms & Cattle, Inc., and) 13 - 0261
) Todd Fortner,) 13 - 0262
)
) Respondents) Complaint



There is reason to believe that the respondents named herein have willfully violated the Packers & Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*) and, therefore, this complaint is issued alleging the following:

I.

- (a) Respondent F & F Farms & Cattle, Inc. is a corporation organized under the laws of the State of Georgia, with a mailing address of 448 Harrison Road, Kite, GA 31049-7804.
- (b) Respondent F & F Farms & Cattle, Inc., under the direction, management, and control of respondent Todd Fortner, is, and at all times material herein was:
 - (1) Engaged in the business of a dealer buying and selling livestock in commerce and as a market agency buying livestock in commerce on a commission basis; and
 - (2) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce and as a market agency to buy livestock in commerce on a commission basis.
- (c) Respondent Todd Fortner is an individual whose business mailing address is 448 Harrison Road, Kite, GA 31049-7804.



- (d) Respondent Todd Fortner is, and at all times material herein was:
- (1) President of respondent F & F Farms & Cattle, Inc.;
 - (2) Sole owner of respondent F & F Farms & Cattle, Inc.; and
 - (3) Responsible for the direction, management and control of Respondent F & F Farms & Cattle, Inc.

- (e) Respondent Todd Fortner is, and at all times material herein was:
- (1) Engaged in the business of conducting and operating F & F Farms & Cattle, Inc.;
and
 - (2) Engaged in the business of a dealer buying and selling livestock in commerce and as a market agency buying livestock on a commission basis in commerce.

II.

Respondents, during the time period of August 9, 2011, through October 25, 2011, in approximately 10 transactions involving approximately 41 head of livestock, caused to be generated purchase invoices with false information. Specifically, Respondents purchased livestock at Dixie Livestock Market, Inc. (Dixie) of Collins, Georgia, a posted stockyard, and directed Dixie personnel to generate purchase invoices that (1) represented that Respondents had resold approximately 41 head of livestock at Dixie that they had purchased at Dixie earlier the same day when in fact Respondents had not resold the livestock through the ring at Dixie and had only electronically transferred the livestock onto new purchase invoices for Respondents' customers; and (2) listed purchase prices for these 41 head of livestock that were higher than the actual purchase prices. Respondents then transmitted the invoices with the marked up prices to their customers on whose behalf Respondents were procuring the livestock. Respondents collected profits of approximately \$4,080.77, as a result of the marked up prices on the false purchase invoices, in addition to the commissions that they charged their customers.

III.

Respondents, from August 1, 2011, through October 18, 2011, in approximately 9 transactions involving approximately 29 head of livestock, caused to be generated purchase invoices with false information. Specifically, Respondents purchased livestock at Dixie and directed Dixie personnel to generate purchase invoices that (1) represented that Respondents had resold approximately 29 head of livestock at Dixie that they had purchased at Dixie earlier the same day when in fact Respondents had not resold the livestock through the ring at Dixie and had only electronically transferred the livestock onto new purchase invoices under buyer numbers that belonged to Mr. Fortner or F&F Farms; and (2) listed purchase prices for these 29 head of livestock that were higher than the actual purchase prices.

IV.

Respondents, from August 23, 2011, through October 11, 2011, in approximately 6 transactions, involving approximately 20 head of livestock, caused to be generated purchase invoices with false information. Specifically, Respondents purchased cow/calf pairs at Dixie and directed Dixie personnel to generate purchase invoices that (1) split the cow/calf pairs and represented that one of the animals from each pair had been kept by Respondents and that Respondents had resold the other animal at Dixie later the same day when in fact Respondents had not resold the animal through the ring at Dixie and had only electronically transferred the animal onto new purchase invoices for their customers; and (2) listed fabricated weights for the split cow/calf pairs by arbitrarily assigning each animal of the split pair a portion of the total original combined weight of the cow/calf pair; and (3) listed fabricated prices for the animals that Respondents had electronically transferred onto new purchase invoices for their customers.

Respondents then transmitted the invoices with the fabricated weights and prices to their customers on whose behalf Respondents were procuring the livestock.

V.

(a) Respondents, from August 9, 2011, through September 27, 2011, in approximately 12 transactions involving approximately 86 head of livestock, sold livestock from Respondent Fortner's farm to one of their customers, Harrison Farms, using documentation from Dixie, even though the livestock had not been consigned to Dixie nor sold through the ring at Dixie. Instead of consigning the livestock to Dixie, Respondents took state-issued back tag numbers from Dixie, applied them to cattle on Respondent Fortner's farm, and provided Dixie's personnel with a list of back tag numbers along with fabricated weights and fabricated prices for the livestock. Dixie personnel then took this information and at Respondent Fortner's direction, added it to the bills Respondents provided to Harrison Farms.

(b) Therefore, Respondents, in the transactions described in subparagraph (a) above, directed Dixie's personnel to generate accounts of sale that (1) represented that Respondents had consigned to Dixie, and sold through the ring at Dixie under the accounts of F & F Farms or BF Livestock,¹ the 86 head of livestock when in fact the livestock had neither been consigned to Dixie nor sold through the ring at Dixie; (2) listed fabricated weights for the 86 head of livestock; and (3) listed fabricated prices for the 86 head of livestock.

VI.

Respondents, in connection with their operations subject to the Act, by reason of the facts alleged in paragraphs II through V above, failed to keep and maintain accounts, records, and memoranda that fully and correctly disclosed all transactions involved in their business subject to

¹ BF Livestock is operated by Respondent Fortner's father, Bobby Gene Fortner.

the Act as required by section 401 of the Act (7 U.S.C. § 221) and as more fully specified in section 203.4 of the Statements of General Policy Under the Act (9 C.F.R. § 203.4).

VII.

By reason of the facts alleged in paragraph II herein, Respondents willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) and sections 201.44 and 201.53 of the regulations (9 C.F.R. §§ 201.44, 201.53).

By reason of the facts alleged in paragraph III herein, Respondents willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.53 of the regulations (9 C.F.R. § 201.53).

By reason of the facts alleged in paragraph IV herein, Respondents willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) and sections 201.44, 201.53, and 201.55 of the regulations (9 C.F.R. §§ 201.44, 201.53, 201.55).

By reason of the facts alleged in paragraph V herein, Respondents willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) and sections 201.53 and 201.55 of the regulations (9 C.F.R. §§ 201.53, 201.55).

By reason of the facts alleged in paragraphs II through VI herein, Respondents willfully violated section 401 of the Act (7 U.S.C. § 221).

WHEREFORE, it is hereby ordered that for the purpose of determining whether the Respondents have in fact willfully violated the Act and regulations issued thereunder, this complaint shall be served upon the respondents. The Respondents shall have twenty (20) days following receipt of this complaint to file an answer with the Hearing Clerk, Room 1031 - South

Building, United States Department of Agriculture, 1400 Independence Ave., S.W., Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing the proceedings under the Act (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 in this complaint and a waiver of hearing.

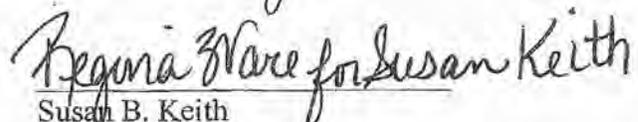
The Grain Inspection, Packers and Stockyards Administration requests:

(1) That unless the Respondents fail 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) That an order be issued requiring the Respondents to cease and desist from the violations of the Act and the regulations found to exist, requiring Respondents to keep and maintain all accounts, records, and memoranda that fully and accurately disclose all transactions involved in their business subject to the Act, suspending Respondent F & F Farms & Cattle, Inc. as a registrant under the Act for a specified period of time, prohibiting Respondent Fortner from registering subject to the Act for a specified period of time, and assessing civil penalties against the Respondents, jointly and severally, in accordance with the Act and as warranted by the facts and circumstances of this case.

Done at Washington, D.C.

this 6 day of June 2013


Susan B. Keith
Deputy Administrator
Packers and Stockyards Program

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