

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE



In re: ) P & S Docket No. 13- 0302  
)  
Petaluma Livestock Auction Yard, Inc., ) 13-0303  
)  
and )  
)  
Manuel A. Brazil, )  
)  
Respondents ) Complaint

There is reason to believe that respondents Petaluma Livestock Auction Yard, Inc. and Manuel A. Brazil have willfully violated the Packers and 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 Petaluma Livestock Auction Yard, Inc. is a corporation organized under the laws of the State of California, which has a business operating address of 84 Corona Road, Petaluma, CA 94975 and a mailing address of P.O. Box 750115, Petaluma, CA 94975.
- (b) Respondent Manuel A. Brazil is an individual whose business mailing address is P.O. Box 750115, Petaluma, CA 94975.
- (c) Respondent Petaluma Livestock Auction Yard, Inc. under the direction, management, and control of respondent Manuel A. Brazil, at all times material herein was:

- (1) Engaged in the business of conducting and operating Petaluma Livestock Auction Yard Inc., a stockyard posted under and subject to the provisions of the Act;
  - (2) Engaged in the business of a market agency selling livestock on a commission basis in commerce and as a dealer to buy and sell livestock in commerce;
  - (3) Registered with the Secretary of Agriculture as a market agency to sell livestock on a commission basis in commerce and as a dealer to buy and sell livestock in commerce;
  - (4) Engaged in the business of buying livestock in commerce for the purposes of slaughter and of manufacturing and preparing meats or meat food products for sale or shipment in commerce at a facility in Newnan, California; and
  - (5) A packer within the meaning of and subject to the provisions of the Act.
- (d) Respondent Manuel A. Brazil at all times material herein was:
- (1) President of respondent Petaluma Livestock Auction Yard, Inc.;
  - (2) Owner of 100% of the stock issued by respondent Petaluma Livestock Auction Yard, Inc.; and
  - (3) Responsible for the direction, management and control of respondent Petaluma Livestock Auction Yard, Inc.

## II

- a) On or about August 20, 2001, the Grain Inspection, Packers and Stockyards Administration (GIPSA), sent Respondents a letter in which the agency informed them, *inter alia*, that a packer subject to the Act may not have common ownership with a

market agency selling livestock on a commission basis, and that such conduct was prohibited by the Act and section 201.67 of the Regulations.

- b) On March 4, 2011, respondents entered into a civil penalty stipulation agreement (Stipulation Agreement) with GIPSA. The Stipulation Agreement was to resolve alleged violations of the Packers and Stockyards Act and section 201.42 of the regulations promulgated thereunder. The Stipulation Agreement alleged that respondents operated with custodial account shortages from April 30, 2008, through July 2008 due to failure to reimburse the custodial account timely. Respondents agreed to pay a civil penalty to resolve the alleged violations.

### III

Respondents, notwithstanding the facts alleged in paragraph II-B., failed to maintain and use properly their custodial account for shipper's proceeds, thereby endangering the faithful and prompt accounting therefor and payment of the portions thereof due the owners, consignors, and shippers of livestock, in that:

(a) As of April 30, 2011, respondents had outstanding checks in the amount of \$230,707.83 drawn on their custodial account, and had, to offset these checks, a custodial account bank balance in the amount of \$15,826.38, resulting in a custodial account shortage of \$214,881.45.

(b) As of May 31, 2011, respondents had outstanding checks in the amount of \$319,220.94 drawn on their custodial account, and had, to offset these checks, a custodial

account bank balance of \$37,257.00, and \$10,713.03 in current proceeds receivable resulting in a custodial account shortage of \$271,250.91.

(c) 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.

#### IV

Respondents, notwithstanding the facts alleged in paragraph II-A., since at least March 12, 2010, had common ownership in, had common management, and operated as a packer subject to the Act and as a market agency selling livestock on a commission basis.

#### V

By reason of the facts alleged in paragraphs II-B. and III of this Complaint, 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 paragraphs II-A. and IV of this Complaint, respondents have willfully violated sections 202(a), 307 and 312(a) of the Act (7 U.S.C. §§ 192(a), 208, 213(a)) and section 201.67 of the regulations (9 C.F.R. § 201.67).

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

Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing 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 of this Complaint.

The 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 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 Respondent Petaluma Livestock Auction Yard, Inc. as a registrant under the Act for a specified period of time, prohibiting Respondent Brazil from being registered and engaging in any activities for which registration is required under the Act for a specified period of time, and assessing such civil penalties against respondents as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 25<sup>th</sup> day of July, 2013

Susan B. Keith  
Susan B. Keith  
Deputy Administrator  
Packers and Stockyards Program

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