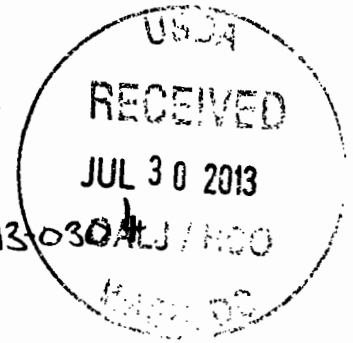


UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE



In re: ) P&S Docket No. 13030ALJ/HOO  
)  
) Charles Delbert Cole, II, dba  
) Weston Livestock Marketing,  
)  
) Respondent  
)  
) Complaint

There is reason to believe that the respondent named herein 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 Charles Delbert Cole, II, doing business as Weston Livestock Marketing is an individual with a mailing address of P.O. Drawer 1048, Weston, WV 26452.
- (b) Respondent Charles Delbert Cole, II, is, and at all times material herein was:
  - (1) Engaged in the business of a market agency selling livestock on a commission basis in commerce; and
  - (2) Registered with the Secretary of Agriculture as a market agency to sell livestock on a commission basis in commerce.

II.

- (a) On August 25, 2011, the Grain Inspection, Packers and Stockyards Administration (GIPSA) sent a Notice of Violation (NOV) via certified mail to respondent. The NOV was claimed and signed for on August 30, 2011. The NOV advised that the Status of Custodial Bank Account for Shippers' Proceeds Special Report as of May 31, 2011, disclosed that the respondent had a shortage in his custodial account of \$144,091.81. The NOV informed respondent that

operating with a custodial account shortage is a violation of the Packers and Stockyards Act and section 201.42 of the regulations (9 C.F.R. § 201.42), and failure to comply with the Act and regulations may result in appropriate disciplinary action.

### III.

During the period of February 27, 2012, through April 30, 2012, respondent failed to properly use and maintain its custodial account, thereby endangering the faithful and prompt accounting of shippers' proceeds and the payments due the owners or consignors of livestock, in that:

(a) As of February 27, 2012, respondent had outstanding checks drawn on his custodial account in the amount of \$313,555.39 and had, to offset such checks, a bank balance in the custodial account of \$156,531.14, current proceeds receivable in the amount of \$28,645.54, with no deposits in transit, resulting in a custodial account shortage in the amount of \$128,378.71.

(b) As of March 30, 2012, respondent had outstanding checks drawn on its custodial account in the amount of \$220,284.95 and had, to offset such checks, a negative bank balance in the custodial account of \$67,146.42, current proceeds receivable in the amount of \$89,538.79 with no deposits in transit, resulting in a custodial account shortage in the amount of \$197,892.58.

(c) As of April 30, 2012, respondent had outstanding checks drawn on its custodial account in the amount of \$281,883.50 and had, to offset such checks, a bank balance in the custodial account of \$8,492.62, current proceeds receivable in the amount of \$76,691.03, with no deposits in transit, resulting in a custodial account shortage in the amount of \$196,699.85.

(d) The custodial account shortages described herein were due in part to respondent's 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 and due in part to respondent's misuse of shippers' funds in the custodial account to pay for other expenses.

#### IV.

By reason of the facts alleged in paragraphs II and III, respondent 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).

WHEREFORE, it is hereby ordered that this complaint shall be served upon the respondent for the purpose of determining whether respondent willfully violated the Act and regulations. Respondent 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 respondent fails 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 respondent to cease and desist from the violations of the Act and the regulations found to exist, suspending

respondent as a registrant under the Act for a specified period of time, and assessing such civil penalties against respondent as is authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 29<sup>th</sup> day of July, 2013

Susan B. Keith

Susan B. Keith  
Deputy Administrator  
Packers and Stockyards Program

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