

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



In re:)
) P&S Docket No. 15-0033
Don Forester)
)
and)
)
Athens Commission Company, Inc.) P&S Docket No. 15-0034
)
)
Respondents) Complaint

There is reason to believe that the respondents named herein have willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (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, Athens Commission Co., Inc., is a corporation organized under the laws of the State of Texas, with its principal place of business located 2800 Highway 31 West, Athens, TX 75751. The respondent corporation's mailing address is P.O. Box 183, Athens, TX 75751. Its registered agent for service of process is Don Forester, P.O. Box 183, Athens, Texas 75751.

(b) Respondent, Athens Commission Co., Inc., under the direction, management, and control of Respondent Don Forester, is, and at all times material 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 selling livestock in commerce on a commission basis.

(c) Respondent Don Forester is an individual. The respondent's mailing address will not be provided in the complaint to protect the privacy of Mr. Forester, but will be provided to the Hearing Clerk's Office, United States Department of Agriculture, for the purpose of service of this complaint and future documents.

(d) Respondent Don Forester is, and at all times material herein was:

- (1) A 50% owner of respondent Athens Commission Co., Inc.; and
- (2) Responsible for the day-to-day direction, management and control of respondent Athens Commission Co., Inc., including the acts and practices referred to in this complaint.

II

On dates specified in this paragraph respondents were provided with notice that they had failed to maintain and use properly their custodial account for shippers' proceeds, hereinafter referred to as "custodial account", thereby endangering the faithful and prompt accounting of shippers' proceeds and the payments due the owners and consignors of livestock.

(a) On January 22, 2009, respondents were advised by the Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA) that as of November 24, 2008 respondents had operated with a shortage in their custodial account in the amount of \$331,854.82 in violation of sections 307(a) and 312(a) of the Act (7 U.S.C. § 208 and 213) and section 201.42(c) of the regulations (7 C.F.R. 201.42(c)); and that the failure to immediately correct the shortage would result in appropriate disciplinary action.

(b) In a notice dated September 11, 2009, Respondents were advised by the Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA) that based on the Status of Custodial Bank Account for Shippers' Proceeds Special Report filed on August 3, 2009, respondents were operating with a shortage in their custodial account in the amount of \$21,844.94 in violation of sections 307(a) and 312(a) of the Act (7 U.S.C. § 208 and 213) and section 201.42(c) of the regulations (7 C.F.R. 201.42(c)); and that the failure to immediately correct the shortage would result in appropriate disciplinary action.

(c) On August 15, 2012, respondents were advised by the Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA) that based on their 2011 Annual Report, respondents had operated with a self-reported shortage in their custodial account in the amount of \$8,336.86 in violation of sections 307(a) and 312(a) of the Act (7 U.S.C. § 208 and 213) and section 201.42(c) of the regulations (7 C.F.R. 201.42(c)); and that the failure to immediately correct the shortage would result in appropriate disciplinary action.

III

(a) During the period from October 29, 2012 through December 31, 2012, as specified in this paragraph and paragraph II above, respondents failed to maintain and use properly their custodial account, thereby endangering the faithful and prompt accounting of shippers' proceeds and the payments due the owners or consignors of livestock in that:

(1) As of October 29, 2012, respondents had outstanding checks drawn on their custodial account in the amount of \$966,542.42, and had, to offset such checks, a bank balance in the custodial account in the amount of \$308,035.25, a certificate of deposit designated as custodial funds in the amount of \$0, deposits in transit in the amount of \$0 and current proceeds receivable

in the amount of \$532,101.56, resulting in a custodial account shortage in the amount of \$140,709.58.

(2) As of December 31, 2012, respondents had outstanding checks drawn on their custodial account in the amount of \$378,067.41, and had, to offset such checks, a bank balance in the custodial account in the amount of \$274,318.21, a certificate of deposit designated as custodial funds in the amount of \$0, deposits in transit in the amount of \$0 and current proceeds receivable in the amount of \$0, resulting in a custodial account shortage in the amount of \$103,749.20.

(3) The 2011 Annual Report dated March 14, 2012 documented a custodial account shortage totaling \$8,336.86.

(b) The custodial account shortages described herein were due in part to respondents' withdrawals for payment other than (i) net proceeds to the consignor or shipper, or to any person that the market agency knows is entitled to payment; (ii) to pay lawful charges against the consignment of livestock which the market agency shall be required to pay; or (iii) to obtain any sums due the market agency as compensation for its services. Respondents issued and failed to reimburse the custodial account for checks drawn on the custodial account under the name of Henderson Livestock Auction and for withdrawal of bank fees/charges from the custodial account.

IV

The respondents during the period from September 14, 2012 through December 31, 2012, misused custodial account funds, in that they failed to reimburse the custodial account for \$1,960.00 in bank charges for overdraft fees and returned check fees.

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

WHEREFORE, it is hereby ordered that this complaint shall be served upon the respondents for the purpose of determining whether the 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, Room 1031 - South Building, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 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.

The Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration requests:

1. That unless the 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 the respondents to cease and desist from the violations of the Act found to exist, suspending respondents as registrants under the Act for a reasonable specified period and thereafter until such time as the violations of the custodial account regulations have been corrected, assessing civil penalties and such other and further relief as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 25th day of November, 2014

Susan B. Keith

Susan B. Keith
Deputy Administrator
Packers and Stockyards Program

DARLENE M. BOLINGER
Attorney for the Complainant
Office of the General Counsel
Marketing, Regulatory and
Food Safety Programs Division
Room 2319, South Building
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250-1400
Telephone: (202) 720-2028