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UNITED STATES DEPARTMENT OF AGRICULTURE 002 SEP 19 12:38

BEFORE THE SECRETARY OF AGRICULTURE

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| In re:                        | ) | P. & S. Docket No. D-02-0008             |
|                               | ) |  |
| Waite & Waite Company, L.L.C. | ) |  |
| Ralph B. Waite, Sr.           | ) |  |
| Ralph Waite, Jr.              | ) |  |
|                               | ) |  |
| Respondents                   | ) | <b>Decision Without Hearing</b>          |
|                               | ) | <b>by Reason of Default</b>              |
|                               | ) | <b>as to Corporate Respondent</b>        |
|                               | ) | <b>Waite &amp; Waite Company, L.L.C.</b> |

**Preliminary Statement**

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*)(hereinafter referred to as the "Act"), instituted by a Complaint filed on March 1, 2002, by the Deputy Administrator, Packers and Stockyards Programs, GIPSA, United States Department of Agriculture. The Complaint alleged that during the period January 3, 2001, through January 13, 2001, Waite & Waite Company, L.L.C., hereinafter referred to as the Corporate Respondent, issued checks in payment for livestock purchases which checks were returned unpaid by the bank upon which they were drawn, because Corporate Respondent did not have and maintain sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented. The Complaint further alleged that Corporate Respondent purchased livestock during that same period and failed to pay, when due, the full purchase price of such livestock to nine (9) sellers for

eleven (11) transactions. As of the date of the issuance of the complaint, there remained unpaid \$69,681.09 for the livestock purchases referred to herein.

A copy of the Complaint was served on Corporate Respondent, and Corporate Respondent has not responded. The time for filing an Answer having expired, and upon motion of the Complainant for the issuance of a Default Order, the following Decision and Order shall be issued without further procedure pursuant to Section 1.139 of 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").

### **Findings of Fact**

1. Waite & Waite Company, L.L.C., hereinafter referred to as the Corporate Respondent, is a limited liability company organized and doing business in the State of Oklahoma, with a mailing address of 913 North 161<sup>st</sup> East Avenue, Tulsa, Oklahoma 74116.
2. The Corporate Respondent, at all times material herein, was engaged in the business of a dealer buying and selling livestock in commerce for its own account and for the account of others and registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce.
3. The Secretary has jurisdiction over Respondent and the subject matter involved herein.
4. As set forth in paragraph II, subpart (a), of the Complaint, during the period January 3, 2001, through January 13, 2001, Corporate Respondent issued checks in payment for livestock purchases which checks were returned unpaid by the bank upon which they were drawn, because Corporate Respondent did not have and maintain sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

5. As set forth in paragraph II, subpart (b), of the Complaint, during the period January 3, 2001, through January 13, 2001, Corporate Respondent purchased livestock and failed to pay, when due, the full purchase price of such livestock to nine (9) sellers for eleven (11) transactions. As of the date of the issuance of the complaint, there remained unpaid \$69,681.09 for the livestock purchases referred to herein.

### **Conclusions**

Corporate Respondent's issuance of checks in payment for livestock purchases without sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented, and Corporate Respondent's failure to make full payment promptly with respect to the 11 transactions set forth in Finding of Fact No. 4 above, constitute wilful violations of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b) for which the Order below is issued.

### **Order**

Respondent Waite & Waite Company, L.L.C., its agents and employees, directly or through any corporate or other device, in connection with its operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to pay the full purchase price of livestock;
2. Failing to pay, when due, the full purchase price of livestock; and
3. Issuing checks in payment for livestock purchases without sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented.

In accordance with 7 U.S.C. § 204, the registration of Respondent Waite & Waite Company, L.L.C. is suspended for a period of five (5) years. Provided, however, that should full

restitution be made to all unpaid sellers identified in the Complaint, a supplemental order may be issued terminating the suspension at any time after 125 days of suspension.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in Sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

Done at Washington, D.C.

this 19<sup>th</sup> day of September 2002

September 19, 2002

  
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Administrative Law Judge