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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) P. & S. Docket No. D-08-0024  
)  
John (Jack) W. McGuinness )  
d/b/a Billings Livestock Commission, )  
)  
Respondent ) Complaint

There is reason to believe that the financial condition of John (Jack) W. McGuinness, named as Respondent herein, does not meet the requirements of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.) (hereinafter referred to as the "Act"), and that Respondent has willfully violated provisions of the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.) (hereinafter referred to as the "regulations"), and, therefore, this complaint is issued alleging the following:

I

(a) John (Jack) W. McGuinness (hereinafter, "Respondent"), is an individual doing business as Billings Livestock Commission. At all times material herein, Respondent's business address was P.O. Box 31533, Billings, Montana 59107. Respondent's current address is 2443 N. Frontage Road, Billings, Montana 59101.

(b) Respondent was at all times material herein:

- (1) A posted stockyard subject to the provisions of the Act;
- (2) Engaged in the business of a market agency, selling livestock on a commission basis; and
- (3) Registered with the Secretary of Agriculture as a market agency to sell livestock on a commission basis.

## II

(a) In a letter to Respondent dated March 11, 2002, and received on March 13, 2002, Complainant advised Respondent that an investigation had determined that Respondent's custodial account reflected shortages due to Respondent's failure to timely reimburse the custodial account for market purchases and for delinquent customer purchases. Complainant also advised Respondent that the investigation had determined that proceeds due the custodial account from the sale of livestock were deposited to Respondent's general account. Complainant informed Respondent that Respondent's failure to properly maintain its custodial account, failure to deposit the proceeds from the sale of livestock directly to the custodial account, and failure to reimburse the account timely for delinquent customer purchases and for market support purchases was a violation of the Act and Regulations.

(b) In a letter dated April 14, 1993, and received on April 19, 1993, Complainant advised Respondent that an investigation had determined that Respondent's custodial account reflected shortages due to Respondent's failure to timely reimburse the custodial account for owner and market support purchases, for delinquent customer purchases, and for employee purchases from consignment. Complainant informed Respondent that its failure to properly maintain its custodial account was a violation of the Act and Regulations.

(c) In a letter dated July 7, 1992, and received on July 13, 1992, Complainant advised that an investigation had determined that Respondent's custodial account reflected shortages due to Respondent's failure to timely reimburse the custodial account for delinquent customer purchases and market support purchases. Complainant informed Respondent that its failure to properly maintain its custodial account was a violation of the Act and Regulations.

### III

During the period November 29, 2002, through January 31, 2003, Respondent failed to maintain and use properly its Custodial Account for Shippers' Proceeds (hereinafter "custodial account"), thereby endangering the faithful and prompt accounting therefor and payments of the portions thereof due the consignors of livestock, in that:

(a) As of November 29, 2002, Respondent had outstanding checks and drafts drawn on its custodial account in the amount of \$1,510,349.87 and, to offset these obligations, had a balance in its custodial account in the amount of \$590,129.49, certificates of deposit or savings accounts designated as custodial funds in the amount of \$6,196.41, and current proceeds receivable in the amount of \$94,192.23, for a total of \$690,518.13, resulting in a deficiency of \$819,831.74 in funds available to pay shippers' proceeds;

(b) As of December 31, 2002, Respondent had outstanding checks and drafts drawn on its custodial account in the amount of \$946,118.62 and, to offset these obligations, had a balance in its custodial account in the amount of \$553,351.22, certificates of deposit or savings accounts designated as custodial funds in the amount of \$6,198.77, and current proceeds receivable of \$58,124.00, for a total of \$617,673.99, resulting in a deficiency of \$328,444.63 in funds available to pay shippers' proceeds;

(c) As of January 31, 2003, Respondent had outstanding checks and drafts drawn on its custodial account in the amount of \$1,070,539.56 and, to offset these obligations, had a balance in its custodial account in the amount of \$652,690.23, certificates of deposit or savings accounts designated as custodial funds in the amount of \$6,201.72, and current proceeds

receivable of \$305,166.21, for a total of \$964,058.16, resulting in a deficiency of \$106,481.40 in funds available to pay shippers' proceeds;

(d) Such deficiencies were caused, in part, by the failure of Respondent, to deposit in its custodial account within the time prescribed in section 201.42(c) of the regulations (9 C.F.R. § 201.42(c)), amounts equal to the proceeds receivable from the sale of consigned livestock.

#### IV

During the period November 2002 through December 2002, Respondent misused its custodial account, thereby endangering the faithful and prompt accounting for custodial account proceeds and the payment of portions of the proceeds due the owners and consignors of livestock, by collecting and depositing custodial proceeds receivables into Respondent's general bank account instead of the custodial bank account.

During the period November 2002 through December 2002, Respondent deposited custodial proceeds receivables into its general bank account, commingled custodial proceeds receivables with general bank account funds, and used the general bank account funds for purposes other than payment: 1) of net proceeds to the consignors or shippers, or to any person that the Respondent knew was entitled to payment; 2) for payment of lawful charges against the consignment of livestock which Respondent, in its capacity as agent, is required to pay; 3) for payment of sums due Respondent as compensation for its services; 4) for any other lawful purpose.

V

(a) As of December 31, 2002, Respondent had current assets of \$1,016,713.29 and current liabilities of \$2,013,416.99, resulting in an excess of current liabilities over current assets in the amount of \$996,703.69.

(b) As of January 31, 2003, Respondent had current assets of \$519,903.49 and current liabilities of \$1,513,630.84, resulting in an excess of current liabilities over current assets in the amount of \$993,727.35.

(c) During the period December 31, 2002, through January 31, 2003, Respondent engaged in the business of a market agency, notwithstanding the fact that its current liabilities exceeded its current assets.

VI

By reason of the facts alleged in paragraphs III and IV herein, Respondent has willfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208 and 213(a)), and section 201.42 of the regulations (9 C.F.R. § 201.42).

By reason of the facts alleged in paragraph V herein, Respondent's financial condition does not meet the requirements of the Act (7 U.S.C. § 204) and Respondent has willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)).

WHEREFORE, it is hereby ordered that for the purpose of determining whether Respondent has in fact willfully violated the Act and the regulations thereunder, this complaint shall be served upon Respondent. Respondent shall file answers with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, in accordance with the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary

Under Various Statutes (7 C.F.R. § 1.130 et seq.) (hereinafter, "Rules of Practice"). Failure to file an answer shall constitute an admission of all the material allegations of this complaint.

The Packers and Stockyards Program, GIPSA, requests:

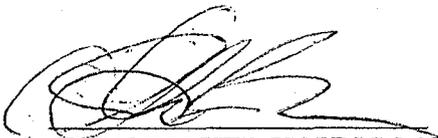
1. That unless Respondent fails to file an answer within the time allowed therefor, or files an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in accordance with the Rules of Practice; and
2. That such order or orders be issued, including an order requiring Respondent to cease and desist from the violations found to exist, assessing such civil penalties as are authorized by the Act and warranted in the premises, or suspending Respondent as a registrant under the Act.

Done at Washington, D.C.

this 27 day of November 2007



ALAN R. CHRISTIAN  
Deputy Administrator  
Packers and Stockyards Program  
Grain Inspection, Packers and Stockyards  
Administration



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