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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P & S Docket No. -10-0109
)
Empire Kosher Poultry, Inc.,)
)
Respondent) Complaint

There is reason to believe that the Respondent named herein has willfully violated the provisions of the Packers & Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), hereinafter referred to as the "Act," and therefore this Complaint is issued alleging the following:

I.

(a) Empire Kosher Poultry, Inc., hereinafter the "Respondent," is a Delaware corporation whose business mailing address is R.R. # 5, Box 228, Mifflintown, PA 17059. Respondent's registered agent for service of process in Pennsylvania is: CT Corporation System, 116 Pine Street, Suite 329, Harrisburg, PA 17101.

(b) Respondent is, and at all times material herein was:

1. Engaged in the business of obtaining live poultry by purchase or under poultry growing arrangements for the purpose of slaughter;
2. Shipping processed poultry products in commerce; and
3. Operating as a live poultry dealer subject to the provisions of the Act.

II.

On May 20, 2008, Respondent was put on notice of the prompt pay provisions in section 410 of the Act (7 U.S.C. § 228b-1) by a written "Notice of Violation" from the United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Packers and Stockyards Program ("Packers and Stockyards Program"). Respondent received the Notice of Violation following a compliance investigation conducted by Packers and Stockyards Program on April 3, 2008.

III.

(a) On or about the dates and in the transactions set forth below, Respondent failed to pay, when due, for turkeys that it purchased, received, and accepted from Koch's Turkey Farm, of Tamaqua, Pennsylvania:

Purchase/ Delivery Dates	No. of Turkeys	Sale Price (@ \$0.70 per pound)	Credit Agreement in Place Prior to Cash Sale Due Date Per 7 U.S.C. § 228b-1(a)	Cash Sale Payment Due Date per 7 U.S.C. § 228b-1(a)	Unpaid Poultry Amount as of 10/07/08
08/20 - 21/08	8002	\$98,084.00	NO	08/22/08	\$37,464.00
08/13 - 14/08	1820	\$21,588.00	NO	08/15/08	\$21,588.00
09/03 - 04/08	8708	\$98,630.00	NO	09/05/08	\$98,630.00
09/04 - 05/08	5586	\$68,040.00	NO	09/08/08	\$68,040.00
09/08 - 09/08	5502	\$71,162.00	NO	09/10/08	\$71,162.00
<i>Totals:</i>	29,618	\$357,504.00			\$296,884.00

(b) At the close of the Packers and Stockyards Program's field investigation on October 7, 2008, Respondent had failed to pay Koch's Turkey Farm \$296,884.00 in connection with the turkey purchases set forth in paragraph (a) above.

(c) After the time for payment in cash sales had passed in the transactions set forth in paragraph (a) above, as set forth in section 410(a) of the Act (7 U.S.C. § 228b-1), Koch's Turkey Farm invoiced Respondent for the turkeys it had delivered to

Respondent's processing plant based on scale weights that Koch's Turkey Farm received from the plant.

(d) The invoices from Koch's Turkey Farm to Respondent proposed a 14-day credit period for payment. Respondent rejected the 14-day payment terms that were proposed by Koch's Turkey Farm.

(e) On September 26, 2008, Respondent negotiated an extended payment plan with Koch's Turkey Farm for the amounts due in the transactions set forth in paragraph (a) above.

IV.

By reason of the facts alleged in paragraph III herein, Respondent has willfully violated section 410 of the Act (7 U.S.C. § 228b-1) by delaying payments to a poultry seller.

WHEREFORE, it is hereby ordered that this Complaint shall be served on Respondent for the purpose of determining whether Respondent has willfully violated the Act. Respondent shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §1.130 *et seq.*; hereinafter the "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 therefore, 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 governing proceedings under the Act.

2. That an order be issued requiring Respondent to cease and desist from the violations found to exist and assessing such civil penalties as are authorized and warranted under the circumstances.

Done at Washington, D.C.

this 4 day of February 2010



ALAN R. CHRISTIAN
Deputy Administrator,
Packers & Stockyards Program



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