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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	P&S Docket No. 13-0166
)	
)	
John Michael Loy)	
d/b/a Loy's Sale Barn,)	
)	
)	
Respondents)	Second Amended Complaint

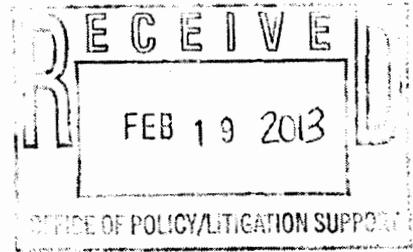
There is reason to believe that the respondents named herein have willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (Act), and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*) (regulations), and, therefore, this complaint is issued alleging the following:

I

(a) John Michael Loy and Donald Loy doing business as Loy's Sale Barn, are partners, (respondents), with a business mailing address of 120 North 800 E, Portland, Indiana 47371.

(b) At all times material herein respondents were:

- (1) Engaged in the business of conducting and operating Loy's Sale Barn, as a stockyard posted under and subject to the provisions of the Act;
- (2) Engaged in the business of a dealer buying and selling livestock in commerce and a market agency selling livestock in commerce on a commission basis; and
- (3) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce and as a market agency to sell livestock in commerce on a commission basis.



(c) Respondent John Michael Loy is an individual whose business mailing address is 120 N. 800 E, Portland, IN 47371.

(d) At all times material herein, Respondent John Michael Loy was:

- (1) Owner of 50% of Respondent Loy's Sale Barn; and
- (2) In conjunction with Respondent Donald Loy, responsible for the direction, management and control of Respondent Loy's Sale Barn;

(e) Respondent Donald Loy, an individual whose business mailing address was 120 N. 800 E, Portland, IN 47371, died on March 3, 2012.

II

Respondents, on March 31, 2011, and again on May 31, 2011, failed to properly maintain and use their "Custodial Account for Shippers' Proceeds" (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 March 31, 2011, respondents had outstanding checks drawn on their custodial account in the amount of \$27,853.63, and had, to offset such checks, a bank balance in the custodial account in the amount of \$12,194.44, with no deposits in transit and no current proceeds receivable, resulting in a custodial account shortage of \$15,659.19.

(b) As of May 31, 2011, respondents had outstanding checks drawn on their custodial account in the amount of \$16,052.65, and had, to offset such checks, a bank balance in the custodial account in the amount of \$12,061.30, with no deposits in transit and no current proceeds receivable, resulting in a custodial account shortage in the amount of \$3,991.35.

(c) The custodial account shortages described herein were due in part to respondents' failure to deposit in the custodial account, within the time prescribed by section 201.42 of the

regulations (9 C.F.R. § 201.42), an amount equal to the proceeds receivable from the sale of consigned livestock and to the withdrawal of bank fees/charges from their custodial account.

III

Respondents, on July 30, 2010; August 31, 2010, and again on September 30, 2010, failed to properly maintain and use the 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 July 30, 2010, respondents had outstanding checks drawn on the custodial account in the amount of \$13,894.58, and had, to offset such checks, a bank balance in the custodial account in the amount of \$1,310.20, with no deposits in transit and no current proceeds receivable, resulting in a custodial account shortage of \$12,584.38.

(b) As of August 31, 2010, respondents had outstanding checks drawn on the custodial account in the amount of \$40,711.18, and had, to offset such checks, a bank balance in the custodial account in the amount of \$26,219.78, with no deposits in transit and no current proceeds receivable, resulting in a custodial account shortage in the amount of \$14,491.40.

(c) As of September 30, 2010, respondents had outstanding checks drawn on the custodial account in the amount of \$25,864.91, and had, to offset such checks, a bank balance in the custodial account in the amount of \$24,112.64, with no deposits in transit and no current proceeds receivable, resulting in a custodial account shortage in the amount of \$1,752.27.

(d) The custodial account shortages described herein were due in part to respondents' failure to deposit in the custodial account, within the time prescribed by section 201.42 of the regulations (9 C.F.R. 201.42), an amount equal to the proceeds receivable from the sale of consigned livestock and to the withdrawal of bank fees/charges from the custodial account.

IV

Respondents, in connection with their operations subject to the Act, failed to keep and maintain records which fully and correctly disclose all the transactions involved in their business as a livestock dealer and market agency as required by section 401 of the Act (7 U.S.C. § 221). Specifically, Respondents failed to keep and maintain all purchase and sales invoices.

V

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

By reason of the facts alleged in paragraph IV, respondents have violated section 401 of the Act (7 U.S.C. § 221).

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 and assessing such civil penalties against the respondents, jointly and severally, as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 15th day of February, 2013

Susan B. Keith
Susan B. Keith
Acting 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