

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Lynchburg Livestock Market, Inc.,) P & S Docket No 15-0028
)
C. Matthew Fariss, and) P & S Docket No 15-0029
)
Duane D. Gilliam,) P & S Docket No 15-0030
)
Respondents) Complaint

There is reason to believe that Lynchburg Livestock Market, Inc., C. Matthew Fariss, and Duane D. Gilliam, (collectively respondents) have willfully violated the provisions 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 the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*), hereinafter referred to as the "regulations." Therefore, the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture issues this complaint alleging the following:

I.

(a) Respondent Lynchburg Livestock Market, Inc. is a corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business located at 243 Livestock Road, Rustburg, Virginia 24588. Its mailing address is P.O. Box 4122, Lynchburg, Virginia 24502.

(b) Leighton S. Houck is identified as the Registered Agent for Respondent Lynchburg Livestock Market, Inc. The mailing address for the registered agent is P.O. Box 6320, Lynchburg, VA 24505.

(c) Respondent Lynchburg Livestock Market, Inc. under the direction, management, and control of C. Matthew Fariss and Duane D. Gilliam, is, and at all times material herein was:

- (i) Engaged in the business of conducting and operating Lynchburg Livestock Market, Inc., a stockyard posted under and subject to the provisions of the Act;
- (ii) Engaged in the business of a market agency selling and buying livestock in commerce on a commission basis;
- (iii) Engaged in the business of a dealer buying or selling livestock in commerce; and
- (iv) Registered with the Secretary of Agriculture as a market agency to buy and sell livestock on a commission basis in commerce and as a dealer to buy or sell livestock in commerce.

(d) Respondent C. Matthew Fariss is an individual and his business mailing address is P.O. Box 4122, Lynchburg, Virginia 24502. C. Matthew Fariss is, and at all times material herein was, fifty percent owner and Vice President of respondent Lynchburg Livestock Market, Inc., and, in conjunction with Duane D. Gilliam, formulated, directed, and controlled the policies, practices and activities of respondent Lynchburg Livestock Market, Inc., including the acts and practices alleged in this complaint.

(e) Respondent Duane D. Gilliam is an individual and his business mailing address is P.O. Box 4122, Lynchburg, Virginia 24502. Duane D. Gilliam is, and at all times material herein was, fifty percent owner and Vice President of respondent Lynchburg Livestock Market, Inc., and, in conjunction with C. Matthew Fariss, formulated, directed, and controlled the

policies, practices and activities of respondent Lynchburg Livestock Market, Inc., including the acts and practices alleged in this complaint.

II.

(a) On or about October 18, 2006, GIPSA notified Respondent C. Matthew Fariss and Respondent Lynchburg Livestock Market, Inc. that as of April 30, 2006, their custodial account for shipper's proceeds (custodial account) contained a shortage of \$222,067.16. The shortage was caused by the respondents allowing the bank to withdraw funds from the custodial account for an overnight investment account that was not FDIC insured and was not part of the custodial account. Respondents were required to take immediate action to correct the shortage.

(b) On or about July 22, 2008, GIPSA notified Respondent Lynchburg Livestock Market, Inc. that as of May 30, 2008, the custodial account contained a shortage of \$61,055.07. Respondents were required to take immediate action to correct the shortage.

III.

(a) During the period from April 12, 2013 through June 20, 2013, as specified in this paragraph, 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:

(i) As of April 12, 2013, respondents had outstanding checks drawn on their custodial account in the amount of \$1,560,156.07, and had, to offset such checks, a bank balance in the custodial account in the amount of \$1,974.55, deposits in transit in the amount of \$189,190.87 and current proceeds receivable in the amount of \$851,976.45, resulting in a custodial account shortage in the amount of \$517,014.20.

(ii) As of June 20, 2013, respondents had outstanding checks drawn on their custodial account in the amount of \$1,213,794.66, and had, to offset such checks, a bank balance in the custodial account in the amount of \$94,573.97, and current proceeds receivable in the amount of \$703,162.48, resulting in a custodial account shortage in the amount of \$416,058.21.

(b) The shortages in respondents' custodial account were due, in part, to respondents failure to deposit in the custodial account, within the times 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.

IV.

The corporate respondent, under the direction, management and control of the individual respondents, engaged in unfair and deceptive practices in that on the dates and in the amounts set forth below, respondents misused the custodial account by allowing its custodial bank to withdraw funds, totaling \$3,536,208.06, from the custodial account for purposes unrelated to paying consignors or lawful livestock market charges from April 15, 2013 through June 20, 2013.

(a) On April 15, 2013, \$125,186.96 was transferred out of the custodial account and applied to the balance of a line of credit.

(b) On April 23, 2013, \$282,513.77 was transferred out of the custodial account and applied to the balance of a line of credit.

(c) On April 29, 2013, \$340,960.02 was transferred out of the custodial account and applied to the balance of a line of credit.

(d) On May 6, 2013, \$183,662.46 was transferred out of the custodial account and applied to the balance of a line of credit.

(e) On May 9, 2013, \$185,491.94 was transferred out of the custodial account and applied to the balance of a line of credit.

(f) On May 30, 2013, \$1,000,354.90 was transferred out of the custodial account and applied to the balance of a line of credit.

(g) On June 4, 2013, \$126,511.75 was transferred out of the custodial account and applied to the balance of a line of credit.

(h) On June 6, 2013, \$64,694.22 was transferred out of the custodial account and applied to the balance of a line of credit.

(i) On June 11, 2013, \$337,720.46 was transferred out of the custodial account and applied to the balance of a line of credit.

(j) On June 19, 2013, \$444,335.25 was transferred out of the custodial account and applied to the balance of a line of credit.

(k) On April 30, 2013, a bank fee in the amount of \$50.00 was withdrawn from the custodial account.

(l) On May 8, 2013, an interest payment of \$238.90 was withdrawn from the custodial account.

(m) On May 31, 2013, a bank fee of \$50.00 was withdrawn from the custodial account.

(n) On June 20, 2013, \$444,437.43 was transferred out of the custodial account and applied to the balance of a line of credit.

V.

The corporate respondent, under the direction, management and control of respondents Duane D. Gilliam and C. Matthew Fariss, in connection with its operations subject to the Act

sold livestock and failed to transmit or deliver to the consignor the net proceeds received from the sale within the time period required by the regulations and the Act.

<u>Sale Date</u>	<u>Seller</u>	No. Head	Livestock Amount	Date Due	Date Paid
03/15/2013	James B. Gregory, Jr.	51	\$58,349.31	03/18/2013	03/26/2013
06/27/2013	G & E Farm	72	\$71,671.21	06/28/2013	07/02/2013
06/28/2013	G & E Farm	64	\$65,290.14	07/01/2013	07/02/2013
06/28/2013	G & E Farm	59	\$62,130.75	07/01/2013	07/02/2013
06/28/2013	G & E Farm	55	\$59,985.00	07/01/2013	07/02/2013
06/28/2013	G & E Farm	51	\$60,053.56	07/01/2013	07/02/2013
06/28/2013	G & E Farm	78	\$67,080.12	07/01/2013	07/02/2013

VI.

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

By reason of the facts alleged in paragraph V, respondents have willfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208 and 213(a)) and section 201.43 of the regulations thereunder, (9 C.F.R. § 201.43).

Wherefore, it is hereby ordered for the purpose of determining whether the respondents have willfully violated the Act and regulations issued thereunder, this complaint shall be served upon the respondents. The 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, S.W., Washington, D.C. 20250-

9200, in accordance with the Rules of Practice governing 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 of this Complaint.

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

1. That unless 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 respondents to cease and desist from the violations of the Act and the regulations found to exist, suspending respondents as a registrant under the Act, and assessing such civil penalties against respondents as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 20th day of November, 2014

Susan B. Keith

Susan B. Keith
Deputy Administrator
Packers and Stockyards Program

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