

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:

Brack D. Briscoe,

Respondent

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P&S Docket No.

15 - 0064

Complaint



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

I.

(a) Brack D. Briscoe, referred to herein as the respondent, is an individual whose current address is in the State of Indiana. His address will not be stated in the complaint to protect respondent's privacy but will be provided to the Hearing Clerk, United States Department of Agriculture, for the purpose of service of this complaint.

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

(1) Engaged in the business of a dealer buying and selling livestock in commerce for his own account and the account of others;

(2) Engaged in the business of a market agency buying livestock on commission; and

(3) Registered with the Secretary of Agriculture as a dealer buying and selling livestock in commerce for his own account and as a market agency buying livestock on commission. However, Respondent's registration expired on or about September 22, 2013, pursuant to section 201.10(e) of the regulations (9 C.F.R. § 201.10(e)) for failure to timely file

his 2012 Annual Report of Dealer or Market Agency Buying on Commission. Respondent is not currently registered.

II.

From August 27, 2011, through September 22, 2013, Respondent was registered with the Secretary of Agriculture to engage in the business of a dealer buying and selling livestock in commerce and as a market agency buying livestock in commerce on a commission basis. Respondent failed to file a 2012 Annual Report of Dealer or Market Agency Buying on Commission by the due date of April 16, 2013. In a Notice of Default Annual Report letter dated August 20, 2013, and served on Respondent on August 22, 2013, the Packers and Stockyard Program (P&SP), Grain Inspection, Packers & Stockyards Administration, informed Respondent that he had not filed his annual report. In the same letter, P&SP also informed Respondent that he was required to file the report within 30 days of receiving the default notice to prevent his registration from expiring. Respondent did not file a 2012 Annual Report within 30 days of receiving the default notice. In a Registration Expiration Notice letter dated September 24, 2013, and served on Chris Briscoe at Respondent's address on October 7, 2013, P&SP informed Respondent that his failure to file a 2012 Annual Report resulted in the expiration of his registration. The P&SP also informed Respondent that he must file a new application for registration and submit the delinquent annual report if he wished to continue operating as a dealer or market agency. The P&SP further informed Respondent that engaging in any capacity that is subject to the Act without complying with the registration provisions of the Act could subject him to disciplinary action. Respondent filed his 2012 Annual Report on October 14, 2013, by faxing it to the P&SP Central Reporting Unit.

III.

(a) During the period from January 14, 2013, through June 15, 2013, in 46 transactions involving 30 different livestock sellers, respondent purchased 1,272 head of livestock for a total purchase price of \$1,060,004.22 and failed to pay, when due, the full purchase price of the livestock within the time period required by the Act.

(b) In 26 of the transactions referenced in paragraph III(a) of this complaint, respondent issued checks totaling \$392,881.89 in payment for the livestock purchased. However, the bank returned the checks unpaid because respondent failed to have and maintain sufficient funds on deposit and available to pay such checks when presented for payment.

IV.

On or about February 11, 2013, and June 10, 2013, respondent purchased 29 head of livestock from Tri-County Livestock Exchange, Inc., of Campbellsburg, Kentucky (Tri-County), and 40 head of livestock from Loogootee-Jasper Livestock Center, Inc., of Loogootee, Indiana (Loogootee-Jasper), respectively, for a total purchase price of \$60,365.10 and failed to pay, when due, the full purchase price of the livestock. As of the filing date of this complaint, respondent still owes \$6,266.42 to Tri-County and \$31,387.30 to Loogootee-Jasper for these purchases.

V.

For the livestock transactions referenced in paragraphs III and IV of this complaint, respondent failed to keep and maintain accurate records related to the dates on which he issued payment checks for livestock purchases.

VI.

(a) On June 18, 2013, the P&SP received two claims against respondent's bond from Mr. Larry Congleton, the President of Tri-County. The bond claims were for a transaction on April

22, 2013, in the amount of \$85,231.61 and a transaction on April 29, 2013, in the amount of \$8,436.25. On June 21, 2013, the P&SP forwarded the bond claims to Fidelity and Deposit Company of Maryland (Fidelity), which was named as the trustee and surety on respondent's bond. On July 15, 2013, the P&SP received a letter dated July 8, 2013, stating that Fidelity was cancelling respondent's bond in its entirety effective thirty (30) days from receipt of the letter. On July 22, 2013, GIPSA sent respondent a Notice of Bond Termination informing him that his clause 2 livestock dealer bond, #LPM8890942, would terminate on August 14, 2013.

The Notice of Bond Termination informed respondent of his obligation to secure a bond if he wished to engage in the business of buying and selling livestock in interstate commerce. It also informed respondent that engaging in business in any capacity that is subject to the Act without filing an adequate bond or bond equivalent is a violation of the Act and regulations and could subject him to disciplinary action. Notwithstanding the Notice of Bond Termination, respondent continued to engage in the business of a dealer buying and selling livestock in commerce without maintaining an adequate bond or bond equivalent as required by the Act and regulations.

(b) During the period from August 25, 2013, through September 16, 2013, in twenty-one (21) transactions involving his purchase of a total of 208 head of livestock from 20 livestock sellers for a total purchase price of \$152,586.71, respondent engaged in the business of a dealer buying and selling livestock in commerce without having and maintaining an adequate bond or bond equivalent.

VI.

By reason of the facts alleged in paragraphs III and IV, respondent has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b) and section 201.43 of the regulations (9 C.F.R. § 201.43).

By reason of the facts alleged in paragraph V, respondent has willfully violated section 401 of the Act (7 U.S.C. § 221).

By reason of the facts alleged in paragraph VI, respondent has willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29 and 201.30).

WHEREFORE, it is hereby ordered that for the purpose of determining whether respondent has in fact willfully violated the Act and regulations issued thereunder, this complaint shall be served upon respondent. Respondent shall have twenty (20) days following receipt of this complaint to file an Answer with the Hearing Clerk, Room 1031 - South Building, United States Department of Agriculture, 1400 Independence Ave., S.W., Washington, D.C. 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 and a waiver of hearing.

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

1. That unless respondent fails to answer within the time allowed, or files an answer admitting all material allegations of this complaint, this proceeding be set for oral hearing in accordance with the Rules of Practice; and
2. That an order be issued requiring respondent to cease and desist from the violations of the Act and the regulations found to exist, prohibiting respondent from engaging in business in any capacity for which registration and bonding are required under the Act and regulations without properly registering and providing such bond, and assessing such civil

penalties against respondent as are authorized by the Act and warranted by the facts and circumstances of this case.

Done at Washington, D.C.

this 29th day of January, 2015


Susan B. Keith
Deputy Administrator
Packers and Stockyards Program

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