

II.

On or about July 19, 2011, Respondent filed a special report with the Grain Inspection Packers and Stockyards Administration (GIPSA) which showed a shortage in the Respondent's Custodial Account for Shippers' Proceeds (hereinafter known as "custodial account"). On or about August 17, 2011, the Respondent was placed on notice via certified mail that operating with a custodial account shortage is in violation of section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.42(c) of the Regulations (9 C.F.R. § 201.42(c)). Respondent was further informed that failure to take immediate steps to correct the violations and bring his operation into compliance with the Act could result in administrative action.

III.

Respondent, during the period of April 30, 2012, through June 30, 2012, failed to properly maintain his custodial account thereby endangering the faithful and prompt accounting of shippers' proceeds and the payment due to the owners or consignors of livestock in that:

(1) As of April 30, 2012, Respondent had outstanding checks drawn on his custodial account in the amount of \$2,824.70, and had to offset such checks, a balance in the custodial account in the amount of (\$3,397.09), a certificate of deposit designated as custodial funds in the amount of \$0.00, deposits in transit in the amount of \$0.00 and current proceeds receivable of \$0.00, and proceeds receivable of \$0.00, resulting in a custodial shortage in the amount of \$6,221.79.

(2) As of June 30, 2012, Respondent had outstanding checks drawn on his custodial account in the amount of \$937.00, and had to offset such checks, a balance in the custodial account in the amount of \$104.64, a certificate of deposit designated as custodial funds in the

amount of \$0.00, deposits in transit in the amount of \$0.00 and current proceeds receivable of \$0.00, resulting in a custodial account shortage in the amount of \$832.36.

(3) The custodial account shortages described herein were due, in part, to Respondent's 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; his deposit of custodial funds into his general account; and the deduction of bank charges from the custodial account.

IV.

Respondent, during the period from April 4, 2012, through June 12, 2012, misused his custodial account by permitting the withdrawal of bank charges from the custodial account and continuing to withdraw funds for services even though the account was short.

V.

Respondent failed to keep and maintain accounts, records and memoranda as fully and correctly disclose all transactions involved in his business. Respondent failed to maintain documentation needed to determine how buyer payments were applied to calculate a schedule of proceeds receivable.

VI.

By reason of the facts alleged in paragraphs III-IV, Respondent 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 V, Respondent has willfully violated section 401 of the Act (7 U.S.C. § 221), and section 203.4 of the regulations (9 C.F.R. § 203.4).

WHEREFORE, it is hereby ordered that this complaint shall be served upon the Respondent for the purpose of determining whether Respondent willfully violated the Act and Regulations. Respondent 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 Grain Inspection, Packers and Stockyards Administration requests:

1. That unless Respondent fails to file an answer within the time allowed, 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 of the Act and the regulations found to exist, suspending respondent as a registrant under the Act for a specified period of time, and assessing such civil penalties against respondent as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 26th day of July, 2016

Susan B. Keith
Susan B. Keith
Deputy Administrator
Packers and Stockyards Program



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