

USDA
OAL:JHC

201 SEP 15 PM 2:12

RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) P & S Docket No. D-11-0412
)
) Ashville Stockyard, Inc., and
) Bradley and Tilda Plunkett,
)
) Respondents) 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.*; hereinafter Regulations), and, therefore, this complaint is issued alleging the following:

I.

- a) Ashville Stockyard, Inc. (hereinafter Respondent Ashville), is a corporation organized and existing under the laws of the State of Alabama whose business address is 18390 U.S. Highway 11 South, Ashville, Alabama 35953 and whose mailing address is P.O. Box 580, Ashville, Alabama 35953.
- b) At all times material herein, Respondent Ashville was:
 1. Engaged in the business of a dealer buying and selling livestock for its own account or account of others and as a market agency buying and selling livestock in commerce on a commission basis;
 2. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock and as a market agency to buy and sell livestock on a commission basis.
- c) Bradley Plunkett (hereinafter Respondent Bradley Plunkett) is an individual. Respondent Bradley Plunkett's mailing address is a home address, and will not be stated in this complaint to

protect his privacy, but will be provided to the Hearing Clerk's Office, United States Department of Agriculture, for the purposes of service of this complaint.

d) Respondent Bradley Plunkett is and at all times material herein was:

1. President and 100% shareholder of Respondent Ashville.
2. The person who, together with Respondent Tilda Plunkett, has managed, directed, and controlled Respondent Ashville.
3. Not individually registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce or as a market agency to buy on commission.

e) Tilda Plunkett (hereinafter Respondent Tilda Plunkett) is an individual. Respondent Tilda Plunkett's mailing address is a home address, and will not be stated in this complaint to protect his privacy, but will be provided to the Hearing Clerk's Office, United States Department of Agriculture, for the purposes of service of this complaint.

f) Respondent Tilda Plunkett is and at all times material herein was:

1. Secretary and Treasurer of Respondent Ashville.
2. The person who, together with Respondent Bradley Plunkett, has managed, directed, and controlled Respondent Ashville.
3. Not individually registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce or as a market agency buying on commission.

II.

Respondents were placed on notice, by certified mail received on May 14, 1998, that operating with a Custodial Account for Shippers' Proceeds (hereinafter custodial account) shortage is considered an unfair practice in violation of section 312(a) of the Act (7 U.S.C. § 213(a)). In that same letter, Respondents were also placed on notice that failure to timely reimburse the custodial

account is a violation of section 201.42(c) of the Regulations (9 C.F.R. § 201.42(c)).

Respondents were placed on notice, by certified mail received on February 18, 2000, that operating with a custodial account shortage is considered an unfair and deceptive practice in violation of section 312(a) of the Act (7 U.S.C. § 213(a)). In that same letter, Respondents were also placed on notice that failure to timely reimburse the custodial account is a violation of section 201.42(c) of the Regulations (9 C.F.R. § 201.42(c)); and that withdrawal of bank charges from the custodial account is a violation of section 201.42(d) of the Regulations (9 C.F.R. § 201.42(d)).

On November 12 and 13, 2007, two representatives of Packers and Stockyards Program conducted an investigation of Respondent Ashville's custodial account and found a shortage. On November 19, 2007, one of the representatives discussed the results of this investigation with Respondents Bradley and Tilda Plunkett. On November 21, 2007, Respondent Bradley Plunkett stated in an affidavit "I understand that proceeds in the custodial account can only be used for limited purposes. I understand and agree that under the regulations of the Packers & Stockyards Administration, the custodial account can only be used to pay consignors of livestock, or person entitled to the proceeds for the sale of livestock, or lawful charges against the consignment of livestock, or sums due the market agency as compensation for its services." Notwithstanding such notice, Respondents have continued operations with custodial account shortages.

III.

Respondent Ashville, under the direction, management and control of Respondents Bradley and Tilda Plunkett, during the period of November 23, 2007, through March 24, 2008, failed to maintain properly its custodial account, thereby endangering the faithful and prompt accounting of shippers' proceeds and the payment due the owners or consignors of livestock in that:

- a) As of November 23, 2007, Respondent Ashville had outstanding checks drawn on its custodial account in the amount of \$246,572.05, and expense items remaining in the account

in the amount of \$3,552.32, and had to offset such checks and expenses, a balance in the custodial account of \$229,530.93, and proceeds receivable of \$0.00 resulting in a deficiency of \$20,593.44.

- b) As of February 4, 2008, Respondent Ashville had outstanding checks drawn on its custodial account in the amount of \$497,243.89, and expense items remaining in the account in the amount of \$1,034.53 and had to offset such checks and expenses, a balance in the custodial account of \$191,888.70 and proceeds receivable of \$238,429.73 resulting in a deficiency of \$67,959.99.
- c) As of March 24, 2008, Respondent Ashville had outstanding checks drawn on its custodial account in the amount of \$453,501.91, and expense items remaining in the account in the amount of \$4,904.74 and had to offset such checks and expenses, a balance in the custodial account of \$164,710.05 and proceeds receivable of \$217,692.26 resulting in a deficiency of \$76,004.34.
- d) As of May 31, 2011, Respondent Ashville had outstanding checks drawn on its custodial account in the amount of \$217,589.18 and had to offset such checks, a balance in the custodial account of \$26,128.87, deposits in transit of \$17,590.40, and proceeds receivable of \$155,132.68 resulting in a deficiency of \$18,737.23.
- e) Such deficiencies were due, in part, to the failure of the Respondents 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 to the Respondents and others. Such deficiencies were also due to withdrawing funds for a purpose other than (1) for payment of the net proceeds to the consignor or shipper, or to any person that the market agency knows is entitled to payment, (2) to pay lawful charges against the consignment of livestock which the market agency shall, in its

capacity as agent, be required to pay, or (3) to obtain any sums due the market agency as compensation for its services.

IV.

Respondent Ashville, under the direction, management and control of Respondents Bradley and Tilda Plunkett, misused its custodial account by issuing check no. 73909 to Ashville Stockyard, Inc., in the amount of \$5,000.00 for commissions on February 4, 2008, while a shortage existed in the custodial account.

V.

- a) Respondent Ashville, under the direction, management, and control of Respondents Bradley Plunkett and/or Tilda Plunkett, on or about the dates and in the transactions set forth in Appendix A and incorporated herein by reference, sold livestock on a commission basis and in purported payment of the net proceeds thereof issued checks to consignors or shippers of such livestock which were returned unpaid by the bank upon which they were drawn because Respondent did not have sufficient funds available in the account upon which such checks were drawn to pay such checks when presented.
- b) Respondent Ashville, under the direction, management, and control of Respondents Bradley Plunkett and Tilda Plunkett, on or about the dates and in the transactions set forth in Appendix A and incorporated herein by reference, failed to remit, when due, the net proceeds due from the sale price of such livestock on a commission basis.

VI.

By reason of the facts alleged in paragraph I, Respondent Ashville is the alter ego of Respondent Bradley Plunkett and Respondent Tilda Plunkett.

By reason of the facts alleged in paragraphs III-IV, Respondents 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, Respondents have willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.43 of the Regulations (9 C.F.R. § 201.43).

WHEREFORE, it is hereby ordered that this Complaint shall be served upon Respondent for the purpose of determining whether the Respondent has willfully violated the Act.

Respondent shall have twenty (20) days after receipt of this complaint in which to file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, 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 shall constitute an admission of all the material allegations of this Complaint.

The Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), 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 registrants 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 15 day of September, 2011



Alan R. Christian
Deputy Administrator
Packers and Stockyards Program

Ciarra A. Toomey
Attorney for Complainant
Office of the General Counsel, Regulatory Division
United States Department of Agriculture
Room 2309, Stop 1413
1400 Independence Avenue, S.W.
Washington, D.C. 20250-1413
Phone: (202) 720-3779
Fax: (202) 690-1539
CIARRA.TOOMEY@OGC.USDA.GOV

Appendix A

CONSIGNOR	LIVESTOCK AMOUNT	SALE DATE	DUE DATE PER \$409 (a)	CHECK AMOUNT	CHECK NUMBER	DATE CHECK REISSUED	DATE CHECK CLEARED	DAYS LATE
J. Trotter	\$884.80	10/22/07	10/23/07	\$850.61	71617	11/9/07	11/14/07	22
J. Bailey	\$811.93	10/22/07	10/23/07	\$754.57	71673	11/9/07	11/15/07	23
Denaburg Ranch	\$2,476.60	10/22/07	10/23/07	\$2,378.97	71795	11/9/07	11/15/07	23
R. Martin	\$2,289.85	10/29/07	10/30/07	\$2,190.62	71859	11/9/07	11/30/07	31
B. Kennedy	\$1,433.45	10/29/07	10/30/07	\$1,364.76	71861	11/9/07	11/19/07	20
L. Welch	\$3,062.70	10/29/07	10/30/07	\$2,903.16	71869	11/9/07	11/15/07	16
Opal Kitchens	\$4,494.50	10/29/07	10/30/07	\$4,298.28	71872	11/9/07	11/14/07	15
JH Williamson	\$499.50	10/29/07	10/30/07	\$459.86	71884	11/9/07	11/27/07	28
2 J Cattle Co.	\$264.00	10/29/07	10/30/07	\$250.56	71909	11/9/07	11/16/07	17
R. Abernathy	\$2,579.45	10/29/07	10/30/07	\$2,346.11	71917	11/9/07	11/15/07	16
S. Jackson	\$560.00	11/05/07	11/06/07	\$533.77	71984	NONE	11/20/07	14
J&J Farm	\$1,315.23	11/05/07	11/06/07	\$1,254.63	72005	11/5/07	11/19/07	13
5 K Farm	\$540.20	11/05/07	11/06/07	\$519.49	72013	11/5/07	11/15/07	9
T. Echols	\$1,352.15	11/05/07	11/06/07	\$1,297.07	72018	11/5/07	11/13/07	7
R. Sanders	\$2,021.60	11/05/07	11/06/07	\$1,942.44	72020	11/5/07	11/15/07	9
J. Simpson	\$1,681.30	11/05/07	11/06/07	\$1,611.07	72022	11/5/07	11/15/07	9
B. Sanders	\$2,550.30	11/05/07	11/06/07	\$2,450.73	72024	11/5/07	11/15/07	9
S. Reed	\$1,734.50	11/05/07	11/06/07	\$1,662.88	72030	11/5/07	11/14/07	8
S. Pass	\$6,240.75	11/05/07	11/06/07	\$5,985.59	72040	11/5/07	11/15/07	9
V. Cash	\$897.15	11/05/07	11/06/07	\$860.55	72041	11/5/07	11/14/07	8
C. Stewart	\$606.95	11/05/07	11/06/07	\$577.98	72043	NONE	11/14/07	8
Martroianni	\$1,008.60	11/05/07	11/06/07	\$969.07	72072	11/5/07	11/14/07	8
B. Watson	\$3,174.75	11/05/07	11/06/07	\$3,032.23	72076	11/5/07	11/13/07	7
L. Scoggins	\$1,726.70	11/05/07	11/06/07	\$1,625.29	72079	11/5/07	11/15/07	9
R. Wooden	\$442.00	11/05/07	11/06/07	\$423.88	72084	11/5/07	11/14/07	8
J. Saffels	\$1,855.75	11/05/07	11/06/07	\$1,774.43	72090	11/5/07	11/14/07	8
R. Todd	\$6,686.60	11/05/07	11/06/07	\$6,349.22	72092	11/5/07	11/15/07	9
E. Nolen	\$5,799.35	11/05/07	11/06/07	\$5,563.79	72098	11/5/07	11/13/07	7
J. Bloodworth	\$1,923.45	11/05/07	11/06/07	\$1,846.86	72105	11/5/07	11/14/07	8
J. Williams	\$1,486.35	11/05/07	11/06/07	\$413.25	72133	11/5/07	11/21/07	15
TOTALS	\$62,400.46			\$58,491.72		Average Days Late		13.1