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UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

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In re: ) P & S Docket No. D-12-0029  
 )  
 Shirley Dance, )  
 )  
 Mike Whitfield, )  
 )  
 N.B. Hutchinson, Jr., )  
 )  
 Pete Pingrey, )  
 )  
 d.b.a. Gowan Stockyards )  
 )  
 )  
 Respondents ) Complaint and Order to Show Cause

There is reason to believe that respondents Mike Whitfield, N.B. Hutchinson, Jr. and Pete Pingrey, doing business as Gowan Stockyards, have willfully violated the Packers and Stockyards Act, 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 that the application of Shirley Dance, Mike Whitfield, N.B. Hutchinson, Jr., and Pete Pingrey, doing business as Gowan Stockyards, for registration under the Act should be denied. Therefore, this Complaint and Order to Show Cause is issued alleging the following:

I.

(a) Shirley Dance, Mike Whitfield, N.B. Hutchinson, Jr., and Pete Pingrey are partners doing business as Gowan Stockyards, with their principal place of business located at 2484 Attala Road 3034, Kosciusko, Mississippi, 39090. Their business mailing address is P.O. Box 336, Kosciusko, Mississippi, 39090.

ECM# 100017

(b) Respondents Mike Whitfield, N.B. Hutchinson, Jr., and Pete Pingrey are, and at all times material herein were:

- (1) Engaged in the business of conducting and operating Gowan Stockyards, a stockyard posted under and subject to the provisions of the Act;
- (2) Engaged in the business of buying and selling livestock in commerce on a commission basis and buying and selling livestock in commerce for their own account; and
- (3) Registered with the Secretary of Agriculture as a market agency buying and selling livestock in commerce on a commission basis and as a dealer to buy and sell livestock in commerce.

c) Respondent Shirley Dance is not currently registered with the Secretary of Agriculture under the Act and regulations, but has an application for registration pending as described below in paragraph II.

## II.

(a) Prior to approximately March 1, 2011, respondents Mike Whitfield, N.B. Hutchinson, Jr., and Pete Pingrey, in a partnership with Clifford F. Dance, Jr., operated the Gowan Stockyards. Clifford F. Dance, Jr. is now deceased. In March 2011, respondent Shirley Dance replaced Clifford F. Dance, Jr. as a partner in the Gowan Stockyards partnership and has entered into partnership with respondents Mike Whitfield, N.B. Hutchinson, Jr., and Pete Pingrey as an owner of the Gowan Stockyards.

(b) On or about August 15, 2011, respondents Shirley Dance, Mike Whitfield, N.B.

Hutchinson, Jr., and Pete Pingrey, doing business as Gowan Stockyards, submitted an application for registration with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis at Gowan Stockyards. This application reflects respondent Shirley Dance replacing Clifford F. Dance, Jr., as a partner with respondents Mike Whitfield, N.B. Hutchinson, Jr., and Pete Pingrey in the business of conducting and operating Gowan Stockyards, and as a market agency selling livestock on a commission basis in commerce.

### III.

(a) On June 25, 2009, respondents Clifford F. Dance, Jr. and Mike Whitfield agreed to a consent decision and order *In re: Clifford F. Dance, Jr. and Mike Whitfield d.b.a. Gowan Stockyards*, P&S Docket No. D-07-0163 (hereinafter Decision). The Decision required respondents, their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Act, to cease and desist from:

- (1) Failing to fully reimburse the custodial account within the times prescribed in section 201.42 of the regulations (9 C.F.R. § 201.42);
- (2) Failing to otherwise maintain the custodial account in strict conformity with the provisions of section 201.42 of the regulations (9 C.F.R. § 201.42);
- (3) Using funds received from the sale of consigned livestock for payment of banking fees, general operating expenses or for any purpose other than for  
  - (1) 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.

Additionally, pursuant to section 312(b) of the Act (7 U.S.C. § 213(b)), respondents were assessed jointly and severally a civil penalty of fourteen thousand dollars (\$14,000), six thousand (\$6,000) of which was held in abeyance pending compliance with the terms of the Understanding with Respect to Civil Penalty entered into by the parties to the Decision.

#### IV.

(a) On June 14, 2010, respondents Clifford F. Dance, Jr. and Mike Whitfield were advised by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA) that reports and documentation submitted by respondents indicated that they failed to properly maintain their custodial account. The letter specified that respondents' custodial account had shortages of \$119,574 on October 31, 2009; \$123,575 on November 30, 2009, and \$3,321 on December 31, 2009. The letter stated that as a result of these shortages in their custodial account, respondents were in violation of the cease and desist order contained in the consent decision and order, 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). The letter was received by H. Donald Brock, Esq., counsel for respondents Clifford F. Dance, Jr. and Mike Whitfield, on June 18, 2010.

V.

Respondents Mike Whitfield, N.B. Hutchinson, Jr. and Pete Pingrey, doing business as Gowan Stockyards failed to establish, maintain and use properly their custodial account for shipper's proceeds, thereby endangering the faithful and prompt accounting therefor and payment of the portions thereof due the owners, consignors, and shippers of livestock, in that:

(a) During the period from at least January 1, 2011, and continuing to at least March 1, 2011, respondents failed to designate their custodial bank account as "Custodial Account for Shippers' Proceeds" or an equivalent identifying designation on their banking account statements and checks to disclose that the depositor was acting as a fiduciary and that the funds in the account were trust funds.

(b) As of January 7, 2011, respondents had outstanding checks in the amount of \$168,734.86 drawn on their custodial account, and had, to offset these checks, a negative bank balance of -\$91,879.70, and current proceeds receivable in the amount of \$164,359.99, resulting in a custodial account shortage of \$96,254.57.

(c) As of February 1, 2011, respondents had outstanding checks in the amount of \$87,040.77 drawn on their custodial account, and had, to offset these checks, a negative bank balance of -\$11,076.17, and current proceeds receivable in the amount of \$12,528.85, resulting in a custodial account shortage of \$85,588.09.

(d) As of February 25, 2011, respondents had outstanding checks in the amount of \$237,342.45 drawn on their custodial account, and had, to offset these checks, a bank balance of \$82,998.21, deposits in transit in the amount of \$73,659.57,

and current proceeds receivable in the amount of \$27,291.38, resulting in a custodial account shortage of \$53,393.29.

(e) During the period beginning approximately June 9, 2010, through February 9, 2011, respondents permitted approximately \$13,185.29 in bank fees to be charged to their custodial account. On or about the dates of January 25, 2011, and February 1, 2011, respondents used custodial account funds to repay loans from respondent N.B. Hutchinson, Jr., in the amounts of \$8,500 and \$9,250, respectively.

(f) The custodial account shortages were due in part to respondents' failure to deposit in the custodial account, within the time prescribed by the regulations, an amount equal to the proceeds receivable for sales of consigned livestock; and respondents' use of shippers' funds in the custodial account to pay bank fees and to repay loans to themselves.

## VI.

By reason of the facts alleged in paragraphs III, IV and V, respondents Mike Whitfield, N.B. Hutchinson, Jr. and Pete Pingrey, doing business as Gowan Stockyards, 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 paragraphs III, IV and V, respondents are unfit to engage in activity as a market agency selling livestock on commission and, therefore, respondents' application for registration under the Act as a market agency should be denied.

WHEREFORE, it is hereby ordered that this Complaint and Order to Show Cause shall be served upon the respondents for the purpose of determining whether respondents have willfully violated the Act and regulations and for the purpose of determining whether their application for registration as a market agency to sell livestock on commission should be denied. Respondents shall have twenty (20) days after receipt of this Complaint and Order to Show Cause 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 and Order to Show Cause.

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 Mike Whitfield, N.B. Hutchinson, Jr., and Pete Pingrey as registrants under the Act, prohibiting the registration of respondents until such time as the violations of the custodial account regulations have been corrected and their application for registration is

accepted by the Packers and Stockyards Program, and assessing such civil penalties against respondents as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 19 day of October, 2011

  
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Alan R. Christian  
Deputy Administrator  
Packers and Stockyards Program

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