

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) P&S Docket No. D-12-0164
)
 Jeffrey H. Auerbach,)
)
)
 Respondent) Complaint and Notice of Hearing

There is reason to believe that the respondent named herein has willfully violated the Packers & 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, therefore, this complaint and notice of hearing is issued alleging the following:

I.

(a) Jeffrey H. Auerbach, referred to herein as respondent, is an individual whose home address is in the State of Colorado. In order to protect the personal privacy of respondent his address is not included in this Complaint and Notice of Hearing but has been provided to the Hearing Clerk for the purpose of effectuating service of process.

(b) The respondent at all times material herein was:

(1) The president, manager and owner of 100% of the voting stock of Lyco Meat Company, a corporation organized under the laws of the State of Colorado.

Lyco Meat Company was also known as Auerbach's Lyco Meat Company, Auerbach Meats, Auerbach's Kosher Meats, Auerbach's Kosher Foods, Auerbach's Colorado Choicemeats, Colorado Kosher Ltd, Auerbach's Meat Solutions, Inc., Auerbach's Meat Company and Rocky Mountain Kosher. Lyco Meat Company was voluntarily dissolved on or about October 11, 2010, and no longer operates;

(2) Responsible for the direction, management and control of Lyco Meat Company and therefore the *alter ego* of Lyco Meat Company;

(3) Engaged in the business of buying livestock in commerce for the purposes of slaughter;

(4) Engaged in the business of manufacturing or preparing meat and meat food products for sale or shipment in commerce;

(5) A packer within the meaning of and subject to the provisions of the Act.

II.

Respondent was placed on notice, by certified mail received by him on or about January 26, 2010, that on or about January 11, 2010, the Regional Director, Western Regional Office, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA) sent respondent a Notice of Violation (NOV). The NOV stated that a GIPSA review of respondent's records indicated that on or about October 28, 2009, respondent failed to pay, when due, for livestock purchases in violation of section 409(a) of the Act (7 U.S.C. § 228b(a)), and

that respondent extended payment terms without obtaining written credit agreements with formal trust waivers from livestock sellers, in violation of section 409(b) of the Act (7 U.S.C. § 228b(b)) and 9 C.F.R. § 201.200.

III.

On or about the dates and in the transactions set forth in Appendix A, incorporated herein by reference, respondent purchased livestock and failed to pay, when due, the full purchase price of such livestock. As of the date of the issuance of this complaint, to the best of complainant's knowledge, respondent owes \$114,589.23 to livestock sellers.

IV.

Respondent was placed on notice, by certified mail received by him on or about November 30, 2009, that on or about November 24, 2009, the Western Regional Office, Packers and Stockyards Program, GIPSA, sent respondent written notice to indicate that respondent's surety bond was going to terminate on December 23, 2009. The notice further stated that unless respondent secured a new bond or bond equivalent by December 23, 2009, respondent must discontinue all livestock operations for which bonding is required under the Act.

V.

From about January 31, 2010, through April 27, 2010, in approximately 22 transactions, as described in Appendix A which is incorporated herein by reference, respondent engaged in the business of a packer purchasing livestock in commerce without maintaining a bond or bond equivalent.

VI.

On or about August 30, 2010, respondent filed a Voluntary Petition pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. § 701 *et seq.*) in the United States Bankruptcy Court for the District of Colorado. The petition was designated Case No. 10-32117-MER.

Respondent, in his bankruptcy pleading and schedule, admitted that each of the three sellers listed in Appendix A of this Complaint and Notice of Hearing held unsecured claims for unpaid livestock debt owed by respondent. Respondent's bankruptcy pleading admitted that he had outstanding debts to the three livestock sellers.

VII.

By reason of the facts alleged in paragraphs I, II, and III of this Complaint and Notice of Hearing, respondent has willfully violated sections 202(a) and 409 of the Act (7 U.S.C. §§ 192(a) and 228b).

By reason of the facts alleged in paragraphs I, IV and V of this Complaint and Notice of Hearing, respondent has willfully violated section 202(a) of the Act (7 U.S.C. § 192(a), 7 U.S.C. § 204, 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, this Complaint and Notice of Hearing shall be served upon Respondent. Respondent shall have twenty (20) days after receipt of this Complaint and Notice of Hearing 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.). Failure to file an answer shall constitute an admission of all the material allegations of this Complaint and Notice of Hearing.

Respondent is hereby notified that unless hearing is waived, either expressly or by failure to answer and request a hearing, a hearing will be held in accordance with the Rules of Practice, at a place and time to be designated later. At the hearing, respondent will have the right to appear and show cause why an appropriate Order should not be issued in accordance with the provisions of the Act which requires that respondent cease and desist from violating the Act with respect to matters alleged herein and assesses such civil penalties as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 6 day of January, 2012



Alan R. Christian
Deputy Administrator
Packers and Stockyards Program

Krishna Ramaraju
Attorney for Complainant
Office of the General Counsel
United States Department of Agriculture
South Building, Room 2319
1400 Independence Avenue, S.W.
Washington, D.C. 20250-1400
Phone: (202) 690-0672
Fax: (202) 690-4322
kris.ramaraju@ogc.usda.gov

Appendix A

Purchased From	Purchase Date	No. of Head of Cattle Purchased	Net Invoice Amount ¹	Payment Due Date per \$409	Payment date ²	Payment Amount	Days Late
Steve Barber	1/31/2010	72	\$94,625.88	2/1/2010	Unpaid	Unpaid	N/A
Steve Barber	2/7/2010	110	\$139,622.40	2/8/2010	3/5/2010	\$33,821.77	25
					3/8/2010	\$18,867.28	28
					3/18/2010	\$16,830.16 ³	38
Plains Feeders, Inc.	3/3/2010	37	\$46,393.50	3/4/2010	3/10/2010	\$46,393.50	6
Plains Feeders, Inc.	3/9/2010	38	\$47,411.66	3/10/2010	3/17/2010 ⁴	\$45,538.19	7
					4/13/2010	\$1,848.47 ⁵	34
Plains Feeders, Inc.	3/16/2010	10	\$12,987.15	3/17/2010	3/23/2010	\$93,439.65 ⁶	6
Plains Feeders, Inc.	3/16/2010	26	\$33,065.98	3/17/2010	3/23/2010		6
Plains Feeders, Inc.	3/17/2010	36	\$47,386.52	3/18/2010	3/23/2010		5
Plains Feeders, Inc.	3/23/2010	38	\$48,587.67	3/23/2010	4/1/2010	\$48,587.67	9
Plains Feeders, Inc.	4/13/2010	42	\$50,846.72	4/14/2010	4/30/2010	\$78,182.72 ⁷	16
Plains Feeders, Inc.	4/13/2010	42	\$52,685.52	4/14/2010	5/10/2010	\$30,000.00 ^{8,9}	26
Plains Feeders, Inc.	4/14/2010	40	\$51,650.48	4/15/2010	5/19/2010	\$40,950.00	34
					5/25/2010	\$65,000.00 ¹⁰	35
Plains	4/19/2010	42	\$52,855.63	4/20/2010	5/25/2010	\$65,000.00 ¹¹	40

¹ These amounts include freight where applicable.

² Respondent made only payment to each of the producers on a given payment date. On certain dates listed in this Appendix respondent sent a payment to cover in whole or in part more than one purchase.

³ The payments for the 2/7/2010 purchases from Steve Barber were made by Double J Meat Packing, Inc., which slaughtered and sold meat for respondent.

⁴ On 3/17/2010 respondent paid only \$45,538.19 of the \$47,411.66 total amount due. \$25 of this payment was used to pay the fees for sending a wire payment. For the purposes of this Appendix, Complainant is disregarding this \$25 deficit.

⁵ This payment was for the balance due to Plains Feeders for the 3/9/2010 sale.

⁶ The \$93,439.65 payment made on 3/23/2010 was for all of the 03/16/2010-03/17/2010 purchases from Plains Feeders, Inc..

⁷ The full \$78,182.72 amount was applied to the April 13, 2010, transactions. After the April 30, 2010 payment \$25,349.52 remained due.

⁸ The \$25,349.52 portion of this payment that was applied to the balance due from the April 13, 2010, purchase was 26 days late. The \$4,650.48 balance of the payment that was applied to the April 14, 2010 purchase was 25 days late.

⁹ \$6,050.00 was still owed after the 5/19/2010 payment.

¹⁰ \$6,050.00 of the 5/25/2010 payment was applied to pay off the balance owed due to the 4/14/2010 purchases.

Feeders, Inc.							
Plains Feeders, Inc.	4/20/2010	36	\$51,168.93	4/21/2010	5/25/2010	\$65,000.00	34
					6/3/2010	\$42,000.00	Trust claim payment
					6/17/2010	\$29,000.00	Trust claim payment
Plains Feeders, Inc.	4/26/2010	40	\$50,844.42	4/27/2010	6/17/2010	\$29,000.00 ¹²	51
Plains Feeders, Inc.	4/27/2010	35	\$51,148.38	4/28/2010	7/14/2010	\$11,000.00	Trust claim payment
					7/29/2010	\$8,000.00	Trust claim payment
					8/9/2010	\$9,000.00	Trust claim payment
					8/23/2010	\$8,000.00	Trust claim payment
					9/3/2010	\$6,000.00	Trust claim payment
					9/23/2010	\$4,500.00	Trust claim payment
					11/18/2010	\$5,000.00	Trust claim payment
					12/14/2010	\$11,000.00	Trust claim payment
					3/3/2011	\$1,050.00 ¹³	Trust claim payment
Atwood Commercial Feedlot	3/3/2010	40	\$38,403.40	3/4/2010	3/10/2010	\$38,403.40	6
Atwood Commercial Feedlot	3/10/2010	40 ¹⁴	\$40,385.40	3/11/2010	3/17/2010	\$40,385.40	6
Atwood Commercial Feedlot	3/23/2010	40	\$43,831.33	3/24/2010	4/1/2010	\$43,831.33	8
Atwood Commercial Feedlot	4/13/2010	40	\$46,280.46	4/14/2010	4/22/2010	\$46,280.46	8
Atwood Commercial Feedlot	4/20/2010	40	\$45,982.09	4/21/2010	5/5/2010	\$40,000 ¹⁵	14
Atwood Commercial Feedlot	4/21/2010	40	\$43,591.39	4/22/2010	5/19/2010	\$22,050.00 ¹⁶	25 and 27
					5/25/2010	\$35,000.00 ¹⁷	Trust claim

¹¹ The \$58,950.00 balance from the 5/25/2010 payment was applied to the 4/19/2010 and 4/20/2010 purchases.

¹² The \$25,925.44 balance from the 6/17/2010 payment was applied to the 4/26/2010 transaction.

¹³ As of the date of filing of this complaint and notice of hearing, respondent owes \$12,517.36 to Plains Feeders, Inc..

¹⁴ Purchases from Atwood Commercial Feedlot were on a dressed carcass basis, while the purchases from Steve Barber and Plains Feeders involved live cattle.

¹⁵ \$5,982.09 remained due after the 5/5/2010 payment from respondent.

¹⁶ \$5,892.09 of the 5/19/2010 payment was applied to respondent's debt from the 4/20/2010 purchase, and the \$16,067.91 balance of the 5/19/2010 payment was applied to the 4/21/2010 purchase.

Atwood Commercial Feedlot	4/26/2010	80	\$84,372.51	4/27/2010	5/25/2010	\$35,000.00 ¹⁸	payment 28
					6/3/2010	\$23,000.00	Trust claim payment
					6/17/2010	\$14,500.00	Trust claim payment
					7/14/2010	\$5,500.00	Trust claim payment
					7/29/2010	\$4,000.00	Trust claim payment
					8/9/2010	\$4,500.00	Trust claim payment
					8/23/2010	\$4,000.00	Trust claim payment
					9/3/2010	\$3,000.00	Trust claim payment
					9/23/2010	\$2,500.00	Trust claim payment
					11/18/2010	\$2,500.00	Trust claim payment
					12/9/2010	\$5,500.00	Trust claim payment
					3/3/2011	\$450.00	Trust claim payment ¹⁹

¹⁷ The \$27,523.48 remaining due from the 4/21/2010 purchase was paid off with the 5/25/2010 payment.

¹⁸ The remaining \$7,476.52 balance from the 5/25/2010 payment was applied to the 4/27/2010 purchase debt.

¹⁹ As of the date of filing of this complaint and notice of hearing, respondent owes \$7,445.99 to Atwood Commercial Feedlot.