

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:

Wilson Horse & Mule Sale, Inc.,

Respondent

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P&S Docket No. 12-0535

Complaint

There is reason to believe that the respondent named herein 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 is issued alleging the following:

I.

(a) Respondent Wilson Horse & Mule Sale, Inc. is a corporation organized under the laws of the State of Tennessee, with a mailing address of 1050 West Cemetery Road, Cookeville, Tennessee 38506.

(b) Respondent Wilson Horse & Mule Sale, Inc., is, and at all times material herein was:

- (1) Engaged in the business of conducting and operating Wilson Horse & Mule Sale, Inc., a stockyard posted under and subject to the provisions of the Act;
- (2) Engaged in the business of a market agency selling consigned livestock on a commission basis in commerce; and
- (3) Registered with the Secretary of Agriculture as a market agency to sell livestock on a commission basis in commerce.

II.

(a) On October 7, 2009, the Grain Inspection, Packers and Stockyards Administration (GIPSA) sent a Notice of Violation (NOV) via certified mail to respondent. The NOV was

claimed and signed for on October 14, 2009. The NOV advised that the annual report covering the respondent's operation for the year ending December 31, 2008, disclosed that respondent had current assets of \$48,163 and current liabilities of \$60,055, or an excess of current liabilities over current assets of \$11,892. The NOV informed respondent that operating with current liabilities exceeding current assets violates section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)) and failure to comply with the Act and regulations would result in appropriate disciplinary action.

(b) On April 15, 2010, GIPSA sent a NOV via certified mail to respondent. The NOV was delivered on April 22, 2010. The NOV informed respondent that a GIPSA review of respondent's records indicated that respondent failed to properly maintain its custodial account. The NOV specified that respondent's custodial account had shortages of \$2,396.43 and \$10,493.81 as of February 28, 2010, and March 31, 2010 respectively. The NOV informed respondent that operating with a custodial account shortage is a violation of the Packers and Stockyards Act and section 201.42 of the regulations (9 C.F.R. § 201.42), and failure to comply with the Act and regulations would result in appropriate disciplinary action. A deposit of \$10,500 was made into the custodial account on April 5, 2010, to correct the shortage.

### III.

During the period of May 31, 2010, through July 15, 2010, respondent failed to properly use and maintain its custodial account, thereby endangering the faithful and prompt accounting of shippers' proceeds and the payments due the owners or consignors of livestock, in that:

(a) As of May 31, 2010, respondent had outstanding checks drawn on its custodial account in the amount of \$19,263.58 and had, to offset such checks, a negative bank balance in

the custodial account of \$160.93, current proceeds receivable in the amount of \$457.00, with no deposits in transit, resulting in a custodial account shortage in the amount of \$18,967.51

(b) As of June 30, 2010, respondent had outstanding checks drawn on its custodial account in the amount of \$23,704.14 and had, to offset such checks, a bank balance in the custodial account of \$1,520.28, current proceeds receivable in the amount of \$3,148.00 with no deposits in transit, resulting in a custodial account shortage in the amount of \$19,035.86.

(c) As of July 15, 2010, respondent had outstanding checks drawn on its custodial account in the amount of \$15,950.00 and had, to offset such checks, a bank balance in the custodial account of \$986.97, current proceeds receivable in the amount of \$3,392.00, with no deposits in transit, resulting in a custodial account shortage in the amount of \$11,571.03.

(d) 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 the regulations, an amount equal to the proceeds receivable for sales of consigned livestock and due in part to respondent's misuse of shippers' funds in the custodial account to pay bank fees.

#### IV.

By reason of the facts alleged in paragraphs II and III, 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).

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.*).

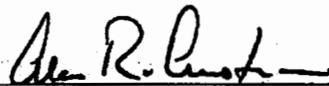
Allegations not answered shall be deemed admitted for the purpose of this proceeding. Failure to file an answer will constitute an admission of all the material allegations of this complaint.

The Grain Inspection, Packers and Stockyards Administration requests:

1. That unless respondent fails to file an answer within the time allowed, or 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 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 is authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 18 day of July, 2012



Alan R. Christian  
Deputy Administrator  
Packers and Stockyards Program

Lauren C. Axley  
Attorney for the Complainant  
Marketing, Regulatory, and Food Safety Programs Division  
Office of the General Counsel  
United States Department of Agriculture  
Room 2319, South Building  
1400 Independence Ave., S.W.  
Washington, D.C. 20250-1400  
Phone: 202-720-5143  
Fax: 202-690-4322