

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:) P. & S. Docket No. 12-0550
)
David Byrd)
)
d/b/a DB Cattle Co)
d/b/a AD Byrd Cattle)
)
Respondent) Complaint

There is reason to believe that the respondent named herein has 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, therefore, this complaint is issued alleging the following:

I

Respondent David Byrd is an individual who does business as DB Cattle Co. and as AD Byrd Cattle. Respondent has a home address in the State of Oklahoma. In order to protect the personal privacy of Respondent Byrd, his home address is not included in this Complaint but has been provided to the Hearing Clerk for the purpose of effectuating service of process. Respondent Byrd, doing business as DB Cattle Co., and also doing business as AD Byrd Cattle, at all times material herein was:

- (1) Engaged in the business of a dealer buying and selling livestock in commerce;
- (2) Engaged in the business of a market agency buying livestock in commerce on a commission basis;
- (3) A dealer within the meaning of and subject to the provisions of the Act;
- (4) A market agency within the meaning of and subject to the provisions of the Act; and
- (5) Not registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce nor as a market agency to buy livestock in commerce on a commission basis.

II

On or about July 1, 2009, the Grain Inspection, Packers and Stockyards Administration (GIPSA) sent respondent Byrd a Notice of Default (NOD). The NOD was personally served on respondent on July 15, 2010. The NOD stated that GIPSA had information indicating that Byrd was engaged in the business of buying and selling livestock in commerce. The NOD informed respondent that buying and selling livestock in commerce without being properly registered with GIPSA and without filing a bond or bond equivalent are violations of the Act and regulations issued thereunder. The NOD stated that failure to comply with the registration and bonding requirements would result in appropriate disciplinary action.

III

(a) On or about the dates and in the transactions set forth in Appendix A, incorporated herein by reference, respondent issued checks in payment for livestock purchases which were returned unpaid by the bank upon which they were drawn because respondent did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay them when presented.

(b) By reason of the facts alleged above in subsection (a) of this paragraph, respondent purchased livestock and failed to pay, when due, for such livestock.

(c) On or about the dates and in the transactions set forth in Appendix A, respondent purchased livestock and failed to pay for such livestock.

(d) As of April 30, 2011, approximately \$229,337.77 remained unpaid by respondent for livestock purchases.

IV

(a) On or about the dates and in the transactions described in Appendices A and B, incorporated herein by reference, respondent engaged in the business of a market agency buying livestock in commerce on a commission basis without properly being registered with the Secretary and without maintaining a bond or bond equivalent as required by the Act and regulations.

(b) On or about the dates and in the transactions described in Appendix C, incorporated herein by reference, respondent engaged in the business of a dealer buying and selling livestock in commerce without properly being registered with the

Secretary and without maintaining a bond or bond equivalent as required by the Act and regulations.

V

By reason of the facts alleged in paragraph III, respondent willfully violated sections 312(a) (7 U.S.C. § 213(a)) and 409 (7 U.S.C. § 228b) of the Act.

By reason of the facts alleged in paragraphs II and IV, respondent willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) 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 this complaint shall be served upon respondent for the purpose of determining whether respondent has 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 Packers and Stockyards Program, 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, prohibiting respondent from being registered and engaging in business in any capacity for which registration is required 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, 2012



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Packers and Stockyards Program

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Appendix A

Date of Sale	Sale	Number of Animals Sold	Net Proceeds (Amount)	Gross Proceeds (Amount)	Payment Received (Date)	Date of Payment (Date)	Date of Payment (Date)
11/16/2010	Waurika Livestock Commission Company, Inc.	207	\$119,437.55	\$119,437.55	11/17/2010	11/19/2010	11/24/2010
11/17/2010	Hobart Stockyard, Inc.	129	\$78,796.01	\$78,796.01	11/18/2010	11/22/2010	11/26/2010
11/18/2010	Comanche Livestock Auction, Inc.	90	\$53,629.19	\$53,629.19	11/19/2010	11/24/2010	12/3/2010 ¹

¹ Respondent subsequently paid approximately \$21,000 of his debt for the livestock purchases at the Comanche Livestock Auction on or about December 6, 2010.

Appendix B

Event Date	Number of Animals	Event Total Amount	Seller/Company Name	Personnel Name(s)	Commission Amount
10/21/2010	90	\$52,237.83	Comanche Livestock Auction, Inc.	David Ballou, Tony High	\$626.00
10/28/2010	120	\$76,326.34	Comanche Livestock Auction, Inc.	David Ballou, Tony High	\$903.00
11/2/2010	29	\$14,717.96	Waurika Livestock Commission Company	Tony High	\$290.00
11/3/2010	18	\$9,942.65	Hobart Stockyard, Inc.	Tommy Elder	\$20.00
11/4/2010	247	\$143,802.57	Comanche Livestock Auction, Inc.	David Ballou, G.W. Thomas, III	\$1,693.00
11/9/2010	71	\$37,856.98	Waurika Livestock Commission Company	Stan Scherler, Marvin Scherler, Tony High, Dee Bowen	\$806.00
11/16/2010	85	\$47,562.10	Waurika Livestock Commission Company	Tony High, Stan Scherler, Marvin Scherler	\$960.00
12/2/2010	124	\$72,514.03	Comanche Livestock Auction, Inc.	G.W. Thomas, III, Sylvia Edgmon, Tony High, Norm Shaffer	\$869.00
12/16/2011	85	\$48,280.88	Comanche Livestock Auction, Inc.	Jim Edgmon, Tony High, G.W. Thomas, III	\$585.50
1/6/2011	76	\$45,136.52	Comanche Livestock Auction, Inc.	Tony High, G.W. Thomas, III	\$515.00
1/27/2011	26	\$19,592.01	Comanche Livestock Auction, Inc.	G.W. Thomas, III	\$156.00
2/17/2011	15	\$12,378.80	Comanche Livestock Auction, Inc.	G.W. Thomas, III	\$90.00

Appendix C

Purchase Date	Supplier Name	Invoice Date	Number Headed (Cattle Sold)	Invoice Amount Sold	Group
11/2/2010	Waurika Livestock Commission Company	11/4/2010	14	\$10,099.99	Preferred Beef Group
11/9/2010	Waurika Livestock Commission Company	11/10/2010	7	\$3,469.94	Preferred Beef Group