

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

P & S Docket No. D-04-0005

In re: LITTLE JOE LIVESTOCK MEATS, INC., and  
JOSEPH PAGLIUSO, JR.

Respondents

**DECISION AND ORDER**

This is the third action was brought by the Grain Inspection Packers and Stockyards Administration (GIPSA) against the Respondents for violations of the provisions of the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. § 181, *et seq.*) hereinafter referred to as the “Act” and the Regulations issued pursuant to the Act.<sup>1</sup> The Respondents have generally denied the allegations of the Complaint and a hearing was held in New York City, New York on November 8, 2005. The Complainant was represented by Ruben Rudolph, Esquire, Office of the General Counsel, United States department of Agriculture, Washington, D.C.

The Complaint alleges that between May 24, 2000 and January 8, 2001, the corporate Respondent, Little Joe Livestock Meats, Inc. and Respondent Joseph Pagliuso, Jr., its President and sole shareholder willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §213(a) and 7 U.S.C. § 228b) by issuing checks in payment for livestock without having sufficient funds on deposit and available in the account upon which to pay such checks when presented, and by failing to pay, when due, the full purchase price of

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<sup>1</sup> CX 4 and CX 5.

the purchased livestock. The Respondents are also alleged to have violated section 401 of the Act (7 U.S.C. § 221) by failing to maintain adequate records that fully and correctly disclose all transactions involved in its business.

7 U.S.C. § 213(a) provides:

It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with the receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing or handling of livestock.

7 U.S.C. § 228b requires payment of the full purchase price of livestock before the close of the next business day:

Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full amount of the purchase price.....

The record keeping requirements for licensees involved in the business of purchase and sale of livestock are contained in 7 U.S.C. § 221:

Every packer, any live poultry dealer, stockyard owner, market agency, and dealer shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business....

The Respondents failed to appear at the hearing, either in person or by counsel,<sup>2</sup> and although a default decision could have been entered, the Complainant elected to

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<sup>2</sup> The Respondents' Answer was submitted by Paul Aloï, an attorney who entered his appearance as counsel for the Respondents. After filing the Answer, he raised the possibility of settlement with government counsel. Thereafter, he failed to return telephone calls from the Administrative Law Judge's Secretary concerning his availability for participation in a Pre Hearing Conference or from government counsel concerning either settlement or dates for a hearing, he failed to comply with the Order concerning the filing of witness and exhibit lists with the Hearing Clerk and available dates with the Administrative Law Judge and Hearing Clerk, (Docket Entry No. 10, Notice of Exchange Dates entered July 18, 2005, modified by Docket Entry No. 13, Order entered on August 17, 2005), he failed to provide a witness or exhibit list or copies of any exhibits to government counsel and only in the late afternoon on the day before the hearing (after the Administrative Law Judge had departed for New York) without filing a Motion for a Continuance or Postponement of the hearing advised the Administrative Law Judge's office of his inability to appear

introduce the testimony of witnesses and produced documentary evidence which amply support the general allegations of both issuing checks which were returned unpaid by the bank upon which they were drawn as a result of insufficient funds being on deposit and failing to pay for cattle in a timely manner as alleged in the Complaint.<sup>3</sup> The transcript of the November 8, 2005 hearing (hereafter “Tr.”) was filed on November 23, 2005. The Respondents were advised of their opportunity to inspect the transcript or to secure a copy from the Hearing Reporter, as well as being given an opportunity to respond to a Proposed Decision submitted by the Complainant; however no response has been received. A brief summary of the evidence introduced at the hearing follows.

The Complainant called Cindy J. Bertoli, a Resident Agent with the Packers and Stockyards Program, (hereinafter “P & SP”) who testified concerning her investigation of the Respondents. Agent Bertoli testified that the investigation was initiated after her office received information that the Respondents had issued a number of checks which had been returned for insufficient funds. (Tr. at 12). She identified Exhibits CX 1-6 as information obtained from the records maintained by P & SP and the Respondents pertaining to Little Joe’s Livestock Meats, Inc. (hereinafter “Little Joe”) and Joseph Pagliuso, Jr. (hereinafter “Pagliuso”).<sup>4</sup> As part of her investigation, she went to

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based upon oral surgery which apparently had been performed on November 3, 2005. Under these circumstances, the hearing was conducted as scheduled without postponement. Even though no Order was entered granting a continuance or postponement of the hearing, neither of the Respondents nor anyone else appeared on their behalf.

<sup>3</sup> As will be discussed, the documentary evidence does not fully support all of the allegations of the Complaint as there is some disparity in the proof as to the dates that NSF checks were issued; however, the general nature of the violations was clearly established. The evidence actually demonstrates that there were more instances of NSF checks being issued than were alleged.

<sup>4</sup> Included in those records were CX 1 which was described as the PS & P Business Report which was downloaded from the P & SP records database and a copy of the original Application for Registration for Little Joe’s Livestock Meats, Inc. dated June 17, 1972 which reflected that Joseph Pagliuso, Jr. owned 100% of the stock of the corporation. CX 2 consists of copies of annual reports filed by the Respondent corporation for the year ended December 31, 1996, 2001, 2002 and 2004. (Tr. at 20). CX 3 included a copy of information downloaded from the New York State Department of State, identifying the entity

Pagliuso's business office and requested information concerning his cattle transactions. Pagliuso was able to provide the Cattle Transactions Logbook mandated by the State of New York and some of the requested information, but was unable to produce all of the records requested. Agent Bertoli was referred to Pagliuso's accountant who provided additional records but again not all of the information which had been requested. She then proceeded to contact the livestock exchanges where the Respondents had transacted business, Finger Lakes Livestock Exchange, Inc. (hereinafter "Finger Lakes") and the two locations of Empire Livestock Marketing, LLC. (Bath, New York and Pavilion, New York) (hereinafter "Empire"). (Tr. at 12-17).

At Finger Lakes, Agent Bertoli interviewed the office manager, Barbara Parker. (Tr. at 15). Ms. Parker produced additional records which were pertinent to the Respondents' transactions and explained the handwritten notations which had been made on the records. (Tr. at 15-16). Agent Bertoli also went to the locations of Empire and interviewed Robin Cross, the senior accountant and the two office managers at the two locations who provided records concerning their transactions with the Respondents and explained the notations on their records. (Tr. at 16-17). After obtaining the additional records from Finger Lakes and Empire, Agent Bertoli prepared two summaries, Exhibit CX 7, which summarized the instances of issuing Not Sufficient Funds ("NSF") checks for the purchases of cattle and Exhibit CX 14 which summarizes the instances of failure to pay for the purchases of cattle in a timely manner. (Tr. at 28, 69-70). Exhibits CX 8-13

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information on file with the New York Department of State and copies of the stock certificates reflecting ownership of the corporation by Joseph Pagliuso, Jr. obtained from Mr. Pagliuso and his accountant. (Tr. at 23-24). CX 4 and 5 are copies of the prior Consent Decisions entered on May 15, 1987 and November 14, 1996. (Tr. at 22). CX 6 is a copy of the certified letter dated October 6, 1997 sent to the Respondents following a visit to them on September 10, 1997 to determine compliance with the Consent Decision and to determine whether the Respondents were eligible to request the modification of the suspension imposed by the Consent Decision dated November 14, 1996. (Tr. at 27).

contain copies of the documents supporting the summary in Exhibit CX 7, including copies of the deposit slips reflecting a deposit of check(s) from the Respondents, copies of the bank statements reflecting charge backs of the amounts of the checks with the handwritten notations referencing that the charge backs were those written by the Respondents as well as copies of the NSF checks themselves bearing the bank stamps reflecting that the checks had been returned for insufficient funds.

In Paragraph II (a) of the Complaint, the Complainant identified purchases made on five dates for which the Respondents issued checks in payment for livestock purchases which were returned unpaid by the Respondents' bank. At the hearing, the Complainant entered into evidence copies of five checks issued by Respondents (CX 11, pgs 5, 8; CX 12 pgs 2, 7; CX 13 pg 2) and the corresponding bank statements from the parties that deposited those checks (CX 11; CX 12; CX 13) demonstrating that Respondents' checks were dishonored by the bank upon which they were drawn. During her investigation, Agent Bertoli was able to locate physical copies of five dishonored checks issued by the Respondents in payment for cattle; however, the bank records of the Finger Lakes indicate that Respondents' payments for livestock were dishonored for insufficient funds many additional times. (Tr. at 32-43, 50-62, 64-67; CX 11; CX 12; CX 13).

The proof adduced at the hearing differs slightly from the allegations contained in the complaint to the extent that the evidence reflects a single aggregate check in the amount of \$3,612.99 written for the transactions for the purchase of livestock on May 24, 2000, May 31, 2000 and June 7, 2000. (CX 8, 9, 10). There is no evidence as to the date when the first check purporting to pay for these purchases might have been written or whether other checks were written for these three transactions; however, the evidence

does reflect \$3,612.99 being deposited by Finger Lakes as early as June 15, 2000 and Finger Lakes being advised by their bank that \$3,612.99 was charged back against their account as being returned unpaid on June 23, 2000 due to insufficient funds in the Respondents' account.<sup>5</sup> Agent Bertoli testified that based upon information provided by Finger Lakes, the payment in the amount of \$3,612.99 was for the three transactions dated May 24, 2000, May 31, 2000 and June 7, 2000, (Tr. at 33-34), and that amount is the sum of the three invoices.

Similarly, the evidence reflects Check Number 4696 dated July 5, 2000 in the amount of \$3,014.16 for a purchase of livestock made by the Respondents on June 28, 2000. (CX 12-2).<sup>6</sup> Last, Check Number 4911 dated October 24, 2000 in the amount of \$2,295.88 was issued by the Respondents in payment of a purchase of livestock made on October 18, 2000. It was deposited on October 24, 2000 by Finger Lakes (Exhibit CX 13-2) and Finger Lakes was advised of its charge back on November 8, 2000. (Exhibits CX 13-3 and 13-4).<sup>7</sup> The evidence additionally reflected multiple other instances of NSF checks being issued by the Respondents for purchases of livestock; however, as they are not alleged in the Complaint, Complainant has requested no findings as to those transactions.

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<sup>5</sup> The evidence reflects that Finger Lakes attempted to deposit \$3,612.99 eleven times by the notation on Exhibits CX 11-2 and 11A-2 before being satisfied on November 29, 2000. Of the eleven deposits, the documentary evidence reflects ten charge backs of \$3,612.99. (Exhibits CX 11-3, 11-4, 11-6, 11-7, 11-9, 11-10, 11-11, 11-12 and 12-17, 11-13 and 11-14). Although the check deposited on June 15, 2000 was not introduced into evidence, two later checks in that amount dated July 5, 2000 and July 26, 2000 (Check Numbers 4695 and 4812) bearing the stamps denoting being returned for NSF were admitted. (Exhibits CX 11-5 and 11-8).

<sup>6</sup> The documentary evidence reflects that Finger Lakes deposited \$3,014.16 on July 6, 2000 (Exhibit CX 12-3) and again on July 17, 2000 (Exhibit CX 12-5) and was advised of charge backs being made by their bank on their account for the checks being returned on July 12, 2000 (Exhibit CX 11-6) and again on July 20, 2000. (Exhibit CX 11-7). The check (Exhibit CX 12-2 and 18-2) bears the NSF stamp.

<sup>7</sup> The check bearing the NSF stamp was admitted as Exhibit 13-2.

Agent Bertoli then turned to the documents supporting the allegations concerning the failure of the Respondents to pay, when due, the full purchase price of the livestock they purchased. As previously noted, Exhibit CX 14 is a summary of those ten transactions where livestock were not paid for in a timely manner. For each such transaction, she identified the sales invoice(s) and the corresponding documents demonstrating how and when the purchase price was ultimately paid. (Exhibits CX 15-24).

The foregoing evidence, with the pattern of NSF checks and untimely settlement of the obligations for the purchase of livestock amply demonstrate that the Respondents abjectly failed to maintain anything even remotely resembling minimally adequate records that fully and correctly disclose all transactions involved in its business.

The following Findings of Fact and Conclusions of Law are made:

#### **FINDINGS OF FACT**

1. The Respondent, Little Joe Livestock Meats, Inc., is a corporation organized and existing under the laws of the state of New York and has a mailing address of 6808 Slocum Road, Ontario, New York 14519. (CX 1).

2, Little Joe Livestock Meats, Inc. has been registered with the Secretary of Agriculture since December 15, 1972 to buy and sell livestock for its own account as a dealer of livestock in commerce and at all times material to the Complaint that has been filed was engaged in the business of buying and selling for its own account as a dealer of livestock in commerce. (CX 1).

3. The Respondent, Joseph Pagliuso, Jr., is an individual whose business mailing address is identical to that of Little Joe Livestock Meat, Inc. at 6808 Slocum Road, Ontario, New York 14519. (CX 1; CX 2).

4. Joseph Pagliuso, Jr. is the President, Manager and the sole shareholder of Little Joe Livestock Meat, Inc. and is solely responsible for the day to day management, direction and control of the corporation. (Tr. at 20; CX 1; CX 2; CX 3; CX 5).

5. Little Joe and Pagliuso have been disciplined for violations of the Act on two prior occasions and on each such prior occasion entered into a Consent Decision, the first being entered on May 15, 1987 and the second on November 14, 1996.<sup>8</sup>

6. On or about the dates indicated below, Little Joe issued checks to Finger Lakes in the amounts set forth below in payment of livestock purchased on the dates indicated, which checks were returned to Finger Lakes unpaid due to insufficient funds in the Respondents' account:

a. A check in the amount of \$3,612.99 dated on or about June 15, 2000 for the payment of livestock purchased on May 24, 2000, May 31, 2000 and June 7, 2000 with replacement checks dated July 5, 2000 and July 26, 2000 in the same amount, all of which were returned unpaid to Finger Lakes (a total of at least 10 times) due to insufficient funds in the Respondents' account. (CX 7; CX 8; CX 9; CX 10; CX 11).

b. A check in the amount of \$3,014.16 dated July 5, 2000 for the payment of livestock purchased on June 28, 2000 which was returned unpaid to Finger Lakes on July 6, 2000 and July 17, 2000 due to insufficient funds in the Respondents' account. (CX 12).

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<sup>8</sup> On the first occasion, the Respondents were suspended for a twenty-one day period. On the second, they were suspended for a period of five years. (CX 4 and CX 5).

c. A check in the amount of \$2,295.88 dated October 24, 2000 for the payment of livestock purchased on October 18, 2000 which was returned unpaid to Finger Lakes on November 8, 2000 due to insufficient funds in the Respondents' account. (CX 13).

7. On or about the dates and in the transactions listed below, the Respondents failed to pay when due the full purchase price of such livestock:

Purchase Date	Seller	No. Head	Invoice Amount	Date Due	Date Paid	Days Late
05-24-00	Finger Lakes	5	\$1,384.49	05-25-00	11-29-00	189
05-11-00	Finger Lakes	1	306.80	06-01-00	11-29-00	182
06-07-00	Finger Lakes	6	1,921.70	06-08-00	11-29-00	174
06-28-00	Finger Lakes	8	3,014.16	06-29-00	09-27-00	91
10-18-00	Finger Lakes	9	2,295.88	10-19-00	01-10-01	83
11-09-00	Empire	5	2,072.12	11-10-00	11-16-00	6
11-27-00	Empire	7	2,469.80	11-28-00	12-11-00	13
11-30-00	Empire	11	2,986.68	12-01-00	12-07-00	6
12-07-00	Empire	2	595.60	12-08-00	12-21-00	13
01-08-01	Empire	13	2,724.58	01-09-01	01-15-01	6

(CX 11A; CX 14; CX 15; CX 17; CX 18; CX 19; CX 20; CX 21; CX 22; CX 23; CX 24).

8. From May 24, 2000 through January 8, 2001, Respondents failed to maintain adequate records that fully and correctly disclosed all transactions in its business, specifically, failed create invoices for all of its purchases, failed to maintain records of cash transactions and failed to maintain records of returned checks and subsequent payment of such checks. (Tr. at 12-14, 19).

### CONCLUSIONS OF LAW

1. Respondent Joseph Pagliuso, Jr. is the *alter ego* of the Respondent Little Joe Livestock Meats, Inc.

2. Respondents willfully violated sections 312 (a) and 409 of the Act (7 U.S.C. § 213(a) and 228(b) by issuing checks in payment for livestock without sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented, and by failing to pay, when due, the full price of such livestock.

3. Respondents willfully violated section 312 (a) of the Act (7 U.S.C. § 213(a)) by failing to maintain adequate records that fully and correctly disclose all transactions involved in its business, as required by section 401 of the Act. (7 U.S.C. § 221).

### **ORDER**

1. Respondent Little Joe and Respondent Joseph Pagliuso, Jr., their agents and employees, directly or indirectly through any corporate or other device, in connection with their operations subject to the Act, shall cease and desist from:

a. Issuing checks in payment for livestock without sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;

b. Failing to pay, when due, the full purchase price of livestock.

2. Respondents shall maintain adequate records of account as fully and correctly disclose all transactions involved in its business. Specifically, the Respondents shall create invoices for all transactions; shall maintain records of all cash transactions; shall maintain records of its checking and other bank account information to determine when funds for outstanding checks have been presented and disbursed and the debts paid such that Respondents fully and correctly disclose all transactions involved in its business.

3. In accordance with section 312 (b) of the Act (7 U.S.C. § 213(b)), Respondents are jointly and severally assessed a civil penalty of Six Thousand Six Hundred Dollars (\$6,600.00).

The provisions of this **ORDER** shall become effective on the sixth (6<sup>th</sup>) day after service of the same upon the Respondents.

Copies of this Decision and Order shall be served upon the Parties by the Hearing Clerk's Office.

Done at Washington, D.C.  
January 3, 2006

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**PETER M. DAVENPORT**  
Administrative Law Judge

Copies to: Ruben D. Rudolph, Esquire  
Paul M. Aloï, Esquire

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