

# UNITED STATES DEPARTMENT OF AGRICULTURE

## BEFORE THE SECRETARY OF AGRICULTURE

P & S DOCKET NO. D-06-0020

In re: MICHAEL CLAUDE EDWARDS, D/B/A  
MICHAEL CLAUDE EDWARDS LIVESTOCK

Respondent

### DECISION AND ORDER

This is the second action brought by the Grain Inspection Packers and Stockyards Administration (GIPSA) against the Respondent 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 Respondent filed his Answer on July 3, 2006, claiming that he purchased the livestock for another individual in the livestock business, Bert Smith, IV<sup>2</sup>, and that Smith was liable for the purchase price of the livestock.

A hearing was held in Greensboro, North Carolina on February 21, 2007.<sup>3</sup> The Complainant was represented by Andrew Y. Stanton, Esquire, and Leah C. Battaglioli, Esquire, both of the Office of the General Counsel, United States Department of Agriculture, Washington, D.C. The Respondent who appeared after the hearing had commenced was not represented by counsel.

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<sup>1</sup> A consent decision was previously entered against Michael C. Edwards and others in *In re Narrows Livestock Auction Market, Inc.* P & S Docket No. 6880 (March 18, 1988). CX 3 at 15-16

<sup>2</sup> Bert Smith IV has a prior case under this Act. *See* 61 Agric. Dec. 794 (2002).

<sup>3</sup> At the hearing, four witnesses testified for the Complainant and Exhibits CX 1-42 were admitted into evidence. The Respondent testified, but did not submit any documentary evidence at the hearing.

The Complaint alleged that Respondent violated the Act as follows:

1. In three separate transactions occurring on September 20, 2003, September 26, 2003, and September 29, 2003, respectively, the Respondent purchased livestock from two sellers, for a total of \$1,155,967.16, and failed to pay the full amount of the purchase price for the livestock within the time period required by the Act, with the total amount remaining unpaid of \$550,325.75,<sup>4</sup> in willful violation of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

2. On July 8, 2004, Respondent filed an Annual Report of Dealer or Market Agency Buying on Commission (hereinafter “Annual Report”) covering the calendar year 2003 that did not accurately reflect the total cost of livestock that Respondent purchased as a dealer during 2003 in willful violation of section 312(a) of the Act (7 U.S.C. § 213(a)) and definitions of “dealer” at 7 U.S.C. § 201(d).

3. The Respondent failed to keep such records as fully and correctly disclosed all transactions involved in his business as required by section 401 of the Act (7 U.S.C. § 221) in that Respondent failed to maintain a separate custodial account in a bank and failed to retain copies of the third-party checks that he used to pay for his livestock purchases in willful violation of section 312(a) of the Act (7 U.S.C. § 213(a)).

The Respondent had previously entered into a Consent Decision with the Secretary<sup>5</sup> agreeing to cease and desist from failing to make timely payment for livestock purchases and had been sent a warning letter from Complainant concerning his failure to keep records that fully and correctly disclosed all transactions involved in his business. As a result of Respondent’s violations, the Complaint requested that an order be issued

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<sup>4</sup> To conform to the proof, this amount was changed at the hearing to at least \$520,000.00.

<sup>5</sup> See 47 Agric. Dec. 650 (1988).

requiring Respondent to cease and desist from the violations of the Act found to exist and suspending Respondent as a registrant<sup>6</sup> under the Act.

The Complainant called Karen Collins, a Senior Auditor with the Packers and Stockyards Program, United States Department of Agriculture in Atlanta, Georgia as the first witness. Her testimony established that in October of 2003, based upon information received by the Program that the Respondent had failed to pay for livestock purchases, she conducted an investigation. Tr. 20-26. After assembling documents from the Packers and Stockyards Program Access Database,<sup>7</sup> Ms. Collins attempted to contact the Respondent, both by mail and telephone, first reaching his ex-wife and eventually the Respondent. A meeting with the Respondent was arranged in Absher, North Carolina, where Ms. Collins hand delivered a second appointment letter which set forth a list of records that she needed for the investigation. CX 41, Tr. 42-45. The Respondent advised her that he only had records from May of 2003 to November of 2003, that he no longer maintained a checking account due to problems with his ex-wife and that many of the requested records had been burned by his ex-wife. Tr. 45. The records that were produced by the Respondent were copied and returned to him and an affidavit was taken from him. CX 8, 10-15, 19-23, 25, 29, 32, 34, 38, Tr. 46-55.

Ms. Collins then proceeded to contact the livestock markets where the Respondent had made purchases,<sup>8</sup> obtained their records of the Respondent's transactions<sup>9</sup> and prepared a summary of those transactions.<sup>10</sup>

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<sup>6</sup> A dealer must be a registrant under the Act . *See* 7 U.S.C. § 203.

<sup>7</sup> CX 1-3

<sup>8</sup> CX 6 and CX 7.

<sup>9</sup> CX 5-7, 11, 16-18, 24, 26-28, 30-31, 33, 35-37, 38-40.

<sup>10</sup> CX 9

The Complainant next introduced the testimony of Rick Barrett, the manager of Abingdon Stockyard and Tri-State Livestock Market who testified concerning his market's transactions with the Respondent and indicated that Abingdon Stockyard had eventually been paid for the livestock purchased by the Respondent, but that Tri-State Livestock Market was still owed in excess of \$520,000.00. Tr. 111-12. He went on to testify that as a result of the Respondent's failure to pay for his purchases in a timely manner, the markets had to change banks and borrow \$1.2 million to cover amounts paid to consigners. Tr. 112-13.

Lloyd Franklin Blair was also called and testified that he used to run the Abingdon market, that he had known the Respondent for 25 or 30 years and that as a disinterested party he had witnessed the Respondent's re-signature on a document on December 11, 2003. Tr. 118-122; CX 8.

The Respondent also testified, reiterating his position that he didn't owe money for the livestock purchases he made, but rather Bert Smith IV was responsible "because he took all of the cattle and all of the money and I didn't get nothing." Tr. 125. He also admitted filing a false Annual Report of Dealer, explaining that he didn't think he had to include the purchases he made for Smith "because I though[t] you had to get a commission to be a dealer." Tr. 127-28, 140.

On the basis of the testimony at the hearing, the documentary evidence received into evidence and the entire record, the allegations contained in the Complaint are amply supported and the following Findings of Fact, Conclusions of Law and Order will be entered.

## FINDINGS OF FACT

1. Respondent, Michael Claude Edwards d/b/a Michael Claude Edwards Livestock (hereinafter “Respondent”), is an individual whose address is P.O. Box 783, Jefferson, North Carolina 28640-0783. (Compl. ¶ I(a); Answer ¶ I; CX 1 at 1.) Respondent has been working in the livestock industry for 30 years. CX 2 at 11.

2. Respondent is, and at all times material herein was, engaged in the business of a dealer, buying and selling livestock for his own account and/or the account of others. Compl. ¶ I(b)(1); CX 1 at 1; CX 8 at 2.

3. Respondent is registered with the Secretary of Agriculture as a dealer, buying and selling livestock for his own account. Compl. ¶ I(b)(2); CX 1 at 1; CX 8 at 2. At all times material herein, Respondent had a trust fund agreement, in lieu of a bond, in the amount of \$10,000.00. Tr. 29-30.

4. On March 18, 1988, a Consent Decision with Respect to Michael C. Edwards was issued in an administrative disciplinary proceeding which Complainant had filed against a livestock market and several individuals, including Respondent. *In re: Narrows Livestock Auction Market, Inc.* (P. & S. Docket No. 6880); Compl. ¶ II(a); CX 3 at 14-16. Respondent signed the Consent Decision and agreed to cease and desist from, among other things, failing to pay, when due, the full purchase price of livestock. Compl. ¶ II(a); Answer ¶ II(a); CX 3 at 15-16. Respondent was also suspended as a registrant for three months and assessed a civil penalty in the amount of \$5,000.00. Comp. ¶ II(a); Answer ¶ II(a); CX 3 at 16.

5. In a certified letter dated January 26, 2000, served upon Respondent on February 12, 2000, John D. Barthel, Assistant Regional Supervisor of Complainant’s

Atlanta, Georgia regional office, informed Respondent that a recent investigation of Respondent's records disclosed that Respondent was failing to keep records that fully and correctly disclosed all transactions involved in Respondent's livestock business, in violation of section 401 of the Act (7 U.S.C. § 221). Compl. ¶ II(b); CX 3 at 1-2. Respondent was advised in the certified letter that if he continued to fail to keep and maintain adequate records, he could be subject to formal disciplinary action. Compl. ¶ II(b); CX 3 at 1.

6. In August or early September 2003, Rick Barrett, president, manager, and part-owner of Abingdon Stockyard Exchange, Inc. (hereinafter "Abingdon") and Tri-State Livestock Market (hereinafter "Tri-State"), both located in Abingdon, Virginia (Tr. 105-106), had a meeting in Abingdon's barn with Respondent and Bert Smith IV. Tr. 107. Respondent had asked Mr. Barrett for two separate bid numbers for his purchases; the first bid number would be for Respondent's own livestock purchases and the second bid number would be for livestock purchases that Respondent made for Mr. Smith. Tr. 107-08. Mr. Barrett agreed to the arrangement because Respondent said "[h]e was going to be sure that we got paid for our cattle." Tr. 109. Mr. Barrett would not have agreed to the arrangement with Mr. Smith alone, because Mr. Smith "beat a lot a people out of money in the cattle business. Got a bad reputation." Tr. 109. At the time of the meeting, Respondent had a clearing arrangement with Mr. Smith, which meant that Respondent agreed to be responsible for Mr. Smith's purchases of livestock. Tr. 135-36.

7. In August 2002, by order of the Secretary, Mr. Smith was suspended as a registrant for a period of 10 years for failing to make payment for livestock purchases. Tr. 148-49; CX 42.

8. In October 2003, Ms. Karen D. Collins, senior auditor with the Atlanta, Georgia regional office of the Packers and Stockyards Program, was assigned by her supervisor, Mr. Robert Schmidt, to investigate whether Respondent had failed to make timely payment for livestock purchases. Tr. 20-21, 25-26.

9. Ms. Collins prepared an appointment letter and mailed it to Respondent. Tr. 39. The appointment letter requested that Respondent make bank records, invoices, and all other records related to Respondent's livestock business available to Ms. Collins. Tr. 42-43; CX 41 at 1.

10. On or about November 3, 2003, Ms. Collins traveled to Absher, North Carolina, to the place designated by Respondent as the location where his business records were kept. Tr. 43-44. Upon arrival, Ms. Collins hand-delivered the appointment letter to Respondent. Tr. 44; CX 41. Ms. Collins requested that Respondent provide the records set forth in the appointment letter. Tr. 44-45.

10. Respondent only had records from May 2003 through November 2003. Tr. 45; CX 8 at 7. Respondent gave Ms. Collins some buyers' and sellers' invoices, but Respondent did not have all of the requested records.<sup>11</sup> Tr. 46. In particular, Respondent did not have a checking account or copies of the third-party checks that he used to pay for his livestock purchases. Tr. 45, 142-44; CX 8 at 8; CX 41 at 2. Ms. Collins made copies of the records Respondent did have and returned them to Respondent. Tr. 46.

11. In November and December 2003, Ms. Collins contacted several auction markets to obtain copies of records relating to purchases made by Respondent. Tr. 55-56. Ms. Collins obtained records of Respondent's livestock purchases during the year 2003 from Kilby's Livestock Market, Inc., North Wilkesboro, North Carolina, and CV

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<sup>11</sup> *Infra* at page 3.

Livestock, Inc., Woodlawn, Virginia. Tr. 56. Ms. Collins also obtained livestock purchase invoices and banking records from 2003 from Abingdon and Tri-State. Tr. 76, 88.

12. On December 11, 2003, Respondent signed a written statement, witnessed by Lloyd Blair, former manager of Abingdon, in which Respondent acknowledged that he did not disclose to Tri-State that the livestock purchases he made on September 26, 2003, and September 29, 2003, were made for Mr. Smith. Tr. 118-22; CX 8 at 11.

13. On September 20, 2003, Respondent purchased livestock from Abingdon in the total amount of \$500,343.22. CX 5 at 1-59. The livestock was purchased for "Oak Grove Cattle Company." CX 5 at 1-59. Respondent uses the name "Oak Grove Cattle Co." when he purchases livestock for Mr. Smith. Tr. 84; CX 5 at 1-59; CX 8 at 4. Respondent used two third-party checks to pay for the livestock. Tr. 81-82; CX 5 at 60-62. The checks were returned for insufficient funds on October 3, 2003. Tr. 81-82; CX 5 at 60-62. Wire transfers to Abingdon from B4 Cattle Company, a name used by Mr. Smith (Tr. 84), were made in various amounts totaling \$495,641.41 on October 8, 9, 15, and 22, 2003, November 19, 26, and 28, 2003, December 23, 2003, February 20, 2004, and March 2, 2004, in payment for the September 20, 2003 purchase. Tr. 82-87; CX 4 at 1; CX 5 at 63-106. The balance owed by Respondent for the September 20, 2003, purchase was paid to Abingdon subsequent to March 2004. Tr. 115.

14. On September 26, 2003, Respondent purchased livestock from Tri-State in the total amount of \$362,239.80. CX 4 at 1; CX 6 at 1-46. Tri-State was partially paid for the September 26, 2003, purchase with three separate cashier's checks from B4 Cattle Company dated August 20, 2004, August 27, 2004, and September 8, 2004, totaling



\$110,000.00. Tr. 90-91; CX 4 at 1; CX 6 at 47-55. Tri-State has not received the balance of the purchase price for Respondent's September 26, 2003, purchase. Tr. 111-12.

15. On September 29, 2003, Respondent purchased livestock from Tri-State in the total amount of \$293,384.14. CX 4 at 1; CX 7 at 1-18. Tri-State has not received any payment for Respondent's September 29, 2003, purchase. Tr. 93, 111-12.

16. Abingdon and Tri-State did not have a written agreement with Respondent authorizing Respondent to pay for livestock purchases on credit, in excess of the time period set forth in section 409(a) of the Act (7 U.S.C. § 228b(a)). Tr. 110-11.

17. As of the date of the hearing, February 21, 2007, Respondent still owed Tri-State at least \$520,000.00 for Respondent's September 26 and 29, 2003, livestock purchases. Tr. 111-12.

18. Abingdon and Tri-State experienced significant financial problems as a result of Respondent's failure to make timely payment for his livestock purchases. Tr. 112-13. Abingdon and Tri-State were forced to borrow money to cover the approximately \$1.2 million worth of checks that they were required to issue to pay the consignors for the livestock purchases Respondent made in September of 2003 for which Respondent did not make timely payment. Tr. 113-14. As a result of Respondent's failure to make timely payment, the bank with which Abingdon and Tri-State had their custodial accounts gave them 30 days to close their accounts and find a new bank. Tr. 113.

19. Respondent submitted an Annual Report to GIPSA covering the calendar year 2003. Tr. 30-32; CX 2 at 1-4. Section 2(a) of the Annual Report seeks information regarding the "total cost of livestock purchased on a dealer basis for registrant's account."

CX 2 at 2. In section 2(a) of the Annual Report, Respondent indicated that over the course the year, he had purchased livestock for his own account for a cost of \$2,609,963.61. Section 2(b) of the Annual Report seeks information regarding the “total cost of livestock purchased for the accounts of others” and includes the following explanatory language: “Include livestock purchased by registrant but, which was billed directly to customer by seller and paid for by customer to seller.” CX 2 at 2. In section 2(b), Respondent indicated that over the course of the year, he had purchased livestock for the accounts of others for a cost of \$1,217,858.03, for a total cost of \$3,827,821.60.<sup>12</sup> The Annual Report contains Respondent’s signature under a statement which reads: “I certify that this report has been prepared by me or my direction, and to the best of my knowledge and belief, this report correctly reflects the operation of the reporting firm.” CX 2 at 1.

20. During the approximately three month period from August 1, 2003, through October 27, 2003, Respondent purchased livestock, on a dealer basis, in the amount of \$6,635,643.69. Tr. 95-100; CX 9-40.

### **CONCLUSIONS OF LAW**

1. The Secretary has jurisdiction in this matter.
2. In three separate transactions occurring on September 20, 2003, September 26, 2003, and September 29, 2003, respectively, the Respondent purchased livestock from two sellers for a total of \$1,155,967.16, and failed to pay the full amount of the purchase price for the livestock within the time period required by the Act, with the total amount remaining unpaid of \$550,325.75 (subsequently amended at the hearing to

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<sup>12</sup> The amounts included by Respondent actually total \$3,827,821.64.

“at least \$520,000.00” to conform to the proof) in willful violation of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

3. On July 8, 2004, Respondent filed an Annual Report of Dealer or Market Agency Buying on Commission (hereinafter “Annual Report”) covering the calendar year 2003 that did not accurately reflect the total cost of livestock that Respondent purchased on a dealer basis during 2003 in willful violation of section 312(a) of the Act (7 U.S.C. § 213(a)).

4. The Respondent failed to keep such records as fully and correctly disclosed all transactions involved in his business as required by section 401 of the Act (7 U.S.C. § 221) in that Respondent failed to maintain a separate custodial account in a bank and failed to retain copies of the third-party checks that he used to pay for his livestock purchases in willful violation of section 312(a) of the Act (7 U.S.C. § 213(a)).

### **ORDER**

1. Respondent, Michael Claude Edwards d/b/a Michael Claude Edwards Livestock, his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Act, shall cease and desist from:

a. Failing to pay the full amount of the purchase price for livestock within the time period required by the Act; and

b. Filing any false information or report, including any false Annual Report.

2. Respondent shall keep accounts, records, and memoranda which fully and correctly disclose all transactions conducted subject to the Act; specifically Respondent

shall maintain a checking account and retain copies of the third-party checks that Respondent uses to pay for his livestock purchases.

3. Respondent is suspended as a registrant under the Act for a period of five (5) years; provided, however, that upon application to the Packers and Stockyards Program, a supplemental order may be issued terminating the suspension at any time after one year of the suspension term, upon demonstration of circumstances warranting modification of the Order; provided, further, that this Order may be modified upon application to the Packers and Stockyards Program to permit Respondent's salaried employment by another registrant or packer after the expiration of one year of the suspension term and upon demonstration of circumstances warranting modification of the Order.

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

Done at Washington, D.C.  
May 3, 2007

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**PETER M. DAVENPORT**  
Administrative Law Judge

Copies to: Andrew Y. Stanton, Esquire  
Leah C. Battaglioli, Esquire  
Michael Claude Edwards

Hearing Clerk's Office  
U.S. Department of Agriculture  
1400 Independence Avenue SW  
Room 1031, South Building  
Washington, D.C. 20250-9203

Appendix  
**Pertinent Statutory and Regulatory Provisions**

1. Section 301(c) of the Packers and Stockyards Act (7 U.S.C. § 201(c)):

The term “market agency” means any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services.

2. Section 301(d) of the Packers and Stockyards Act (7 U.S.C. § 201(d)):

The term “dealer” means any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser.

3. Packers and Stockyards Act, 7 U.S.C. § 204 (in pertinent part):

[A]nd whenever, after due notice and hearing the Secretary finds any registrant is insolvent or has violated any provisions of said Act he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect within not less than five days, unless suspended or modified or set aside by the Secretary or a court of competent jurisdiction.

4. Section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)):

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.

5. Section 401 of the Packers and Stockyards Act (7 U.S.C. § 221):

Every packer, any swine contractor, and 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, including the true ownership of such business by stockholding or otherwise. Whenever the Secretary finds that the accounts, records, and memoranda of any such person do not fully and correctly disclose all transactions involved in his business, the Secretary may prescribe the manner and form in which such accounts, records, and memoranda shall be kept, and thereafter any such person who fails to keep such accounts, records, and memoranda in the manner and form prescribed or approved

by the Secretary shall upon conviction be fined not more than \$5,000, or imprisoned not more than three years, or both.

6. Section 409 of the Packers and Stockyards Act (7 U.S.C. § 228(b)):

(a) 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: *Provided*, That each packer, market agency, or dealer purchasing livestock for slaughter shall, before the close of the next business day following purchase of livestock and transfer of possession thereof, actually deliver at the point of transfer of possession to the seller or his duly authorized representative a check or shall wire transfer funds to the seller's account for the full amount of the purchase price; or, in the case of a purchase on a carcass or "grade and yield" basis, the purchaser shall make payment by check at the point of transfer of possession or shall wire transfer funds to the seller's account for the full amount of the purchase price not later than the close of the first business day following determination of the purchase price: *Provided further*, That if the seller or his duly authorized representative is not present to receive payment at the point of transfer of possession, as herein provided, the packer, market agency or dealer shall wire transfer funds or place a check in the United States mail for the full amount of the purchase price, properly addressed to the seller, within the time limits specified in this subsection, such action being deemed compliance with the requirement for prompt payment.

(b) Notwithstanding the provisions of subsection (a) of this section and subject to such terms and conditions as the Secretary may prescribe, the parties to the purchase and sale of livestock may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required in subsection (a). Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction.

(c) Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an "unfair practice" in violation of this Act. Nothing in this section shall be deemed to limit the meaning of the term "unfair practice" as used in this Act.

Section 201.97 (9 C.F.R. § 201.97):

Every packer, live poultry dealer, stockyard owner, market agency, and dealer (except a packer buyer registered to purchase livestock for slaughter only) shall file annually with the Administration a report on prescribed forms not

later than April 15 following the calendar year end or, if the records are kept on a fiscal year basis, not later than 90 days after the close of his fiscal year. The Administrator on good cause shown, or on his own motion, may grant a reasonable extension of the filing date or may waive the filing of such reports in particular cases.