

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
Colorado City Livestock Market, LLC,)	P&S Docket No. D-07-0073
and James W. "Jim" Calvert,)	
)	Decision and Order
Respondents)	By Reason of Default

The Complaint, filed on March 5, 2007, alleged that the Respondents willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) ("the Act" or "the Packers and Stockyards Act").

Parties and Counsel

The Complainant is the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration ("GIPSA"), United States Department of Agriculture (frequently herein "Complainant" or "Packers and Stockyards"). Eric Paul, Esq., with the Office of the General Counsel, Trade Practices Division, United States Department of Agriculture, South Building Room 2309, 1400 Independence Avenue, SW, Washington, D.C. 20250-1413, represents the Complainant.

The Respondents are Colorado City Livestock Market, LLC, a Texas Limited Liability Company (frequently herein "Respondent" or "Respondent Colorado City"), and James W. "Jim" Calvert, an individual (frequently herein "Respondent" or "Respondent Calvert"). Respondent Colorado City and Respondent Calvert are collectively referred to as "Respondents."

No answer to the Complaint has been received. The time for filing answers expired in late March 2007.

The Complainant's Motion for Decision Without Hearing by Reason of Default is before me. The Rules of Practice provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. § 1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. Accordingly, the material allegations in the Complaint, which are admitted by Respondents' default, are adopted and set forth herein as Findings of Fact. This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

Findings of Fact

1. Colorado City Livestock Market, LLC, is a Texas Limited Liability Company whose business address, until it ceased operations on or about August 22, 2006, was 1630 West Point, Colorado City, TX 79512.

2. Respondent Colorado City at all times material herein was:

(a) Engaged in the business of selling livestock in commerce on a commission basis; and

(b) Registered with the Secretary of Agriculture as a market agency to sell livestock on commission.

3. James W. "Jim" Calvert is an individual whose address is 11214 South Highway 208, Dunn, TX 79516.

4. Respondent Calvert is and at all times material herein was:

- (a) President and one hundred percent owner of Respondent Colorado City;
 - (b) The individual who managed, directed, and controlled the daily operations of Respondent Colorado City;
 - (c) A market agency selling livestock in commerce on a commission basis;
- and
- (d) Not individually registered with the Secretary of Agriculture in any capacity under the Act.

5. The Respondents failed to maintain and use properly their custodial accounts for shippers' proceeds, endangering the faithful and prompt accounting therefor and the payment of portions thereof due the owners and consignors of livestock, in that:

- (a) As of May 31, 2005, Respondents had outstanding checks drawn on the custodial account in the amount of \$210,518.00, and had to offset those checks a balance in the custodial account in the amount of \$67,439.37 and proceeds receivable in the amount of \$19,411.92, resulting in a deficiency of \$123,666.71 in funds available to pay shippers their proceeds;

- (b) As of July 31, 2005, Respondents had outstanding checks drawn on the custodial account in the amount of \$198,173.22 and a negative \$32,918.43 balance in the custodial account, and had to offset these checks and negative balance proceeds receivable in the amount of \$34,829.80, resulting in a deficiency of \$196,261.85 in funds available to pay shippers their proceeds; and

- (c) As of August 22, 2005, Respondents had outstanding checks drawn on the custodial account in the amount of \$195,978.49, and had to offset those checks a zero balance

in the closed custodial account, resulting in a deficiency of \$195,978.49 in funds available to pay shippers their proceeds.

6. Such deficiencies were due, in part, to Respondents' failure to deposit in the custodial account for shippers' proceeds, within the time prescribed by the regulations, an amount equal to the proceeds receivable from the sale of livestock consigned to the market on a commission basis.

7. On or about the dates and in the transactions set forth below, the Respondents willfully misused the custodial account, and proceeds received from the sale of consigned livestock, in that they permitted the American State Bank to take NSF check charges and other fees from the custodial account as follows:

Date	Custodial Account Shortage	Monthly Service Charge	NSF Check Fees	Wire Transfer Charge	Total Monthly Charges
5/31/05	-\$123,666.71				
6/03/05 6/10/05 6/30/05		\$417.73	\$500.00	\$10.00	[on June Statement] \$927.73

7/05/05			\$325.00		
7/06/05			\$275.00		
7/07/05			\$325.00		
7/08/05			\$350.00		
7/11/05			\$325.00		
7/12/05			\$100.00		
7/13/05			\$175.00		
7/18/05			\$325.00		
7/20/05			\$ 50.00		
7/26/05			\$ 25.00		
7/27/05			\$275.00		[on July
7/28/05			\$350.00		Statement]
7/31/05	-\$196,261.85	\$1,003.15			\$3,903.15
7/29/05			\$350.00		
8/01/05			\$275.00		
8/02/05			\$175.00		
8/03/05			\$125.00		
8/09/05			\$ 50.00		
8/10/05			\$175.00		
8/31/05	-\$195,978.49				\$1,150.00
3 Month Totals		\$1,420.88	\$4,550.00	\$10.00	\$5,980.88

8. Respondents failed to maintain and use properly the custodial account on and about the dates set forth in Findings of Fact 5 and 6 above, and misused the custodial account on or about the dates set forth in Finding of Fact 7 above, despite having been placed on notice by a certified mail letter dated January 26, 2005, that shortages found in the custodial accounts were due to (1) failures to reimburse the account for owner and market support purchases by the close of the next business day, and for proceeds receivable not collected from other buyers within seven days of the sale; and (2) for NSF check charges and other bank fees. Respondents were notified that operating with shortages in the custodial account and failure to timely reimburse the custodial account are considered unfair trade practices in violation of

Sections 307(a) and 312(a) of the Act, and section 201.42(c) of the regulations; and that section 201.42(d) of the regulations does not permit NSF check and bank fees to be paid using custodial account funds.

9. On or about the dates and in the transactions set forth below, Respondents issued custodial account checks in purported payment of the net proceeds from the sale of consigned livestock to the shippers of such livestock which were returned unpaid because Respondents failed to maintain sufficient funds in the custodial account for shippers' proceeds to pay such checks when presented, and because the custodial account on which such checks were drawn was closed before checks were presented for payment.

Sale Date/ Check Date	Livestock Consignor/ Payee	No. of Head	Check No.	Net Proceeds/ Check Amount	Bond Claim Distribution	Unpaid Balance
5/18/05	Borden Spade Ranch	35	5951	\$ 25,296.83	no claim	\$25,296.83
6/01/05	Henry Hoyle	1	6074	704.71	no claim	704.71
7/13/05	Tom Willingham	2	6517	1,048.33	\$562.78	485.55
7/13/05	Gaylon Sorrells	2	6521	1,290.32	692.69	597.63
7/20/05	Bobby Nobles	1	6566	847.51	454.98	392.53
7/27/05	W. T. Henderson	5	6649	2,999.76	1,610.39*	1,389.37*
	* Unpaid seller W. T. Henderson	will	receive this bond	distribution as soon	as he executes	a bond claim release.
8/03/05 8/10/05	Tulia Feedlot Tulia Feedlot	1 2	6699 6824	547.39 <u>997.83</u> 1,545.22	829.53	715.69

8/03/05	Max Drum	7	6705	5,423.56	2,911.58	2,511.98
8/03/05 sale 8/08/05 ck	J. C. Stroman, Jr.	1	6780	768.00	412.29	355.71
8/10/05	Hontas Hines	2	6788	1,521.80	816.96	704.84
8/10/05	Bullard Ranch	1	6789	210.22	no claim	210.22
8/10/05	Waldon Millican	5	6796	3,134.48	1,682.71	1,451.77
8/10/05	C & Y Cattle	3	6799	1,314.64	705.75	608.89
8/10/05	Shot Branham	1	6815	** 377.13	375.79	** 1.34
8/10/05	Roddy Harrison	145	6844	90,427.84	48,545.22	41,882.62
8/10/05	Powell Ranch	47	6847	28,724.23	15,420.30	13,303.93
8/10/05	Larry Wilson	<u>25</u>	6848	<u>14,876.62</u>	<u>7,986.35</u>	<u>6,890.27</u>
	Total:	286		\$180,511.20	\$83,007.32	\$97,503.88

** Unpaid seller Shot Branham filed a \$700.00 bond claim for proceeds from the sale of a 600 lb. bull. Respondents issued the \$377.13 dishonored check to remit proceeds from the sale of a 475 lb. bull. The unpaid balance stated is the undisputed minimum amount owed.

10. Respondents' failure to remit net proceeds from the sale of consigned livestock to shippers in the above transactions was reduced to \$97,503.88 by bond proceed distributions.

11. Respondents failed to keep such accounts, records, and memoranda that fully and correctly disclosed all transactions involved in their business subject to the Act, in that they failed to: (1) issue checks in numerical sequence; (2) prepare reconciled sale summaries for given sale days; (3) fully document the voiding of checks and the issuance of replacement or correcting checks; (4) maintain a record of the identity of the livestock owner for all livestock sold; and (5) maintain full documentation for livestock transactions, and for balance sheet accounts and general ledger accounts. Respondents also failed to keep such records as

they did prepare for the required two year record retention period.

Conclusions

1. Respondent Calvert is the alter ego of Respondent Colorado City. *See* Findings of Fact Nos. 1 through 4.

2. Respondents have wilfully violated section 312(a) of the Act (7 U.S.C. § 213(a) and section 201.42 of the regulations (9 C.F.R. § 201.42). *See* Findings of Fact Nos. 5 through 10.

3. Respondents have failed to keep records required by section 401 of the Act (7 U.S.C. § 221) and have wilfully violated section 312(a) of the Act (7 U.S.C. § 213(a)). *See* Finding of Fact No. 11.

Order

1. Respondent Colorado City Livestock Market, LLC, its officers, directors, agents and employees, successors and assigns, directly or through any corporate or other device, and Respondent James W. “Jim” Calvert, his agents and employees, directly or through any corporate or other device, in connection with their operations subject to the Packers and Stockyards Act, shall cease and desist from:

a. Failing to deposit in the Custodial Account for Shippers’ proceeds within the times prescribed in section 201.42 of the regulations (9 C.F.R. § 201.42) amounts equal to the outstanding proceeds receivable due from the sale of consigned livestock;

b. Failing to otherwise maintain the Custodial Account for Shippers’ proceeds in strict conformity with section 201.42 of the regulations (9 C.F.R. § 201.42);

c. Failing to reimburse the Custodial Account for Shippers’ Proceeds by the close of

the next business day for purchases made by the Individual Respondent;

d. Using funds received from the sale of consigned livestock for the payment of NSF check charges and other bank fees, or for any purpose other than payment to consignors of the amount due from the sale of their livestock and the payment of lawful marketing charges;

e. Issuing checks in payment of net proceeds from the sale of consigned livestock without having sufficient funds on deposit and available in the custodial accounts for shippers' proceeds upon which the checks were drawn to pay the checks when presented for payment.

2. Respondents, in connection with the operations of Respondent Colorado City or any other market agency selling livestock on a commission basis that they may subsequently operate, shall keep and maintain such accounts, records, and memoranda as fully and correctly disclose their transactions subject to the Act and the regulations, including but not limited to those required to be kept under Section 401 of the Packers and Stockyards Act, 7 U.S.C. § 221, and including: (a) checks issued in numerical sequence; (b) reconciled sale summaries for given sale days; (c) full documentation of the voiding of checks and the issuance of replacement or correcting checks; (d) a record of the identity of the livestock owner for all livestock sold; and (e) full documentation for livestock transactions, and for balance sheet accounts and general ledger accounts. Respondents shall keep all records prepared for the required two year record retention period.

3. Respondent Colorado City Livestock Market, LLC, and Respondent James W. "Jim" Calvert as its *alter ego*, are suspended as registrants under the Act for a period of five (5) years, and thereafter until they demonstrate that any custodial account for shippers'

proceeds required to operate as a market agency selling on commission is in conformity with section 201.42 of the regulations, *provided*, the five (5) year definite period of suspension may be terminated by the issuance of a supplemental order at any time after the first 210 days of the suspension have been served upon demonstration that full payment of unpaid balances of net proceeds has been made to livestock consignors.

Finality

This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 16th day of October 2007

Jill S. Clifton
Administrative Law Judge

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