

AGRICULTURE DECISIONS

Volume 75

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Part Two (P&S)

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THIS IS A COMPILATION OF DECISIONS ISSUED BY THE
SECRETARY OF AGRICULTURE AND THE COURTS
PERTAINING TO STATUTES ADMINISTERED BY THE
UNITED STATES DEPARTMENT OF AGRICULTURE

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JANUARY – JUNE 2016

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DEPARTMENTAL DECISIONS

In re: RAVENNA AUCTION, LLC; PAUL LETTINGA; & RANDY LETTINGA.

Docket Nos. 14-0126, 14-0127, 14-0128.

Decision and Order.

Filed May 4, 2016.

P&S-D.

Ciara A. Toomey, Esq. and Elizabeth Kruman, Esq. for Complainant.
Gerard D. Etfink, Esq. for Respondents.
Initial Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

I. DECISION SUMMARY

1. Each of the three Respondents [herein occasionally “the Ravenna Auction Respondents”] violated the Packers and Stockyards Act as alleged in the Complaint filed May 13, 2014. This Decision focuses on the nature of those violations and the appropriate remedy for each Respondent.

The remedy is stronger for Ravenna Auction, L.L.C., which in August 2011 resolved by Consent Decision a similar case that had been filed in 2010. The two brothers Paul Lettinga and Randy Lettinga have not been subject to prior sanction, and for each of them, a cease and desist order and a \$5,000.00 civil penalty suffices, payable in five annual installments beginning by October 25, 2016. For Ravenna Auction, L.L.C., a cease and desist order and a \$25,000.00 civil penalty suffices, payable in 5 annual installments beginning by October 25, 2016; EXCEPT THAT, at its option Ravenna Auction may choose instead to serve two seven-day periods of suspension, not necessarily consecutive, each period to be completed prior to October 25, 2016, with each seven-day period chosen by Ravenna Auction and communicated in writing in advance to Packers and Stockyards, 263tnn.: Mr. Timothy Hansen. *See* ¶ 57.

A. Overview

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2. Ravenna Auction, L.L.C. [herein frequently, “Ravenna Auction”] holds livestock sales (cattle and hogs). Ravenna Auction must keep its trust account “in balance” to ensure, at all times, that livestock sellers (“shippers” or “consignors”) are paid.
3. In 2012, the year in question, Ravenna Auction was required, as in every year since Ravenna Auction’s inception in about 1999, under 9 C.F.R. § 201.42, to keep its trust account “in balance,” as Packers and Stockyards defines “in balance.”
4. The trust account is a separate bank account known as a “Custodial Account for Shippers’ Proceeds.” 9 C.F.R. § 201.42.
5. Ravenna Auction’s “shippers” or “consignors” were all timely paid; no checks bounced. Ravenna Auction borrowed money when needed to make up for buyers who paid a week later at the next sale, or even later than that, or not at all. Ravenna Auction borrowed regularly from its principal owner, La Verne Lettinga,¹ who placed certificates of deposit into the trust account to shore it up.
6. Nevertheless, the Packers and Stockyards audit in 2012 showed that Ravenna Auction was not in compliance with Packers and Stockyards’ strict requirements for the trust account on either date that was checked: May 31, 2012, or June 29, 2012. *See* Compl. ¶ III.
7. Ravenna Auction maintained a \$97,000.00 bond in 2012 (Tr. 63-64, CX-31). The bond is insurance and in no way substitutes for the requirement to keep the trust account “in balance.” Tr. 383-84.
8. Further, Ravenna Auction, in 2012, failed to handle repayment of a loan properly. *See* Compl. ¶ V. The loan, \$75,000.00, came from Mr. Marvin Jay (“Marv”) Zylstra, who loaned Ravenna Auction \$75,000.00 in late June 2012 when Randy Lettinga called and asked him to. Tr. 476-84.
9. Mr. Zylstra did nothing wrong, made no money on the transaction, and was merely helping the Lettinga family, who owns and operates Ravenna

¹ In 2012 La Verne Lettinga owned 99.5% of Ravenna Auction, L.L.C.; one of his sons, Randy C. Lettinga, owned 0.5%. CX-33.

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Auction and who had been his friends for forty years. Tr. 484.

10. As the means of repayment Ravenna Auction gave Mr. Zylstra five \$15,000.00 checks, on or about the same day he loaned the \$75,000.00. Mr. Zylstra was to cash the checks during the following thirty days (the first check in a couple of days; the remaining checks, one a week). Tr. 478. Mr. Zylstra did as requested; thereby, Mr. Zylstra was fully repaid, promptly, with no interest. No collateral was required; paperwork was minimal.

11. Ravenna Auction should have given Mr. Zylstra general account checks, but instead, wrongly, wrote those five \$15,000.00 checks on the trust account: "Custodial Account - Shippers Proceeds." This management-and-bookkeeping-blunder created a misuse of the trust account.

12. Even if all the borrowed money had gone into the trust account, the repayment to Mr. Zylstra should have come out of the general account. Even if the only account that carried a balance exceeding \$15,000.00 consistently, week after week, was the trust account, the repayment to Mr. Zylstra should still have come out of the general account.

13. Worse, Ravenna Auction created fictitious paperwork to show the repayment to Mr. Zylstra out of the trust account as if Mr. Zylstra were being paid for cattle, which he was not. CX-51 at 2.

14. Learning how to apply 9 C.F.R. § 201.42 is difficult. First, the legal concepts are peculiar. Second, a market agency such as Ravenna Auction is expected to come up with its own funds, even where there is no danger of its checks bouncing, to make up the shortfall caused by livestock buyers who pay late or not at all. Here is the regulation:

§ 201.42 Custodial accounts for trust funds.

(a) *Payments for livestock are trust funds.* Each payment that a livestock buyer makes to a market agency selling on commission is a trust fund. Funds deposited in custodial accounts are also trust funds.

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(b) *Custodial accounts for shippers' proceeds.* Every market agency engaged in selling livestock on a commission or agency basis shall establish and maintain a separate bank account designated as "Custodial Account for Shippers' Proceeds," or some similar identifying designation, to disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.

(c) *Deposits in custodial accounts.* The market agency shall deposit in its custodial account before the close of the next business day (the next day on which banks are customarily open for business whether or not the market agency does business on that day) after livestock is sold (1) the proceeds from the sale of livestock that have been collected, and (2) an amount equal to the proceeds receivable from the sale of livestock that are due from (i) the market agency, (ii) any owner, officer, or employee of the market agency, and (iii) any buyer to whom the market agency has extended credit. The market agency shall thereafter deposit in the custodial account all proceeds collected until the account has been reimbursed in full, and shall, before the close of the seventh day following the sale of livestock, deposit an amount equal to all the remaining proceeds receivable whether or not the proceeds have been collected by the market agency.

(d) *Withdrawals from custodial accounts.* The custodial account for shippers' proceeds shall be drawn on only for payment of (1) the net proceeds to the consignor or shipper, or to any person that the market agency knows is entitled to payment, (2) to pay lawful charges against the consignment of livestock which the market agency shall, in its capacity as agent, be required to pay, and (3) to obtain any sums due the market agency as compensation for its services.

(e) *Accounts and records.* Each market agency shall keep such accounts and records as will disclose at all times the handling of funds in such custodial accounts for

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shippers' proceeds. Accounts and records must at all times disclose the name of the consignors and the amount due and payable to each from funds in the custodial account for shippers' proceeds.

(f) *Insured banks.* Such custodial accounts for shippers' proceeds must be established and maintained in banks whose deposits are insured by the Federal Deposit Insurance Corporation.

(g) *Certificates of deposit and/or savings accounts.* Funds in a custodial account for shippers' proceeds may be maintained in an interest-bearing savings account and/or invested in one or more certificates of deposit, to the extent that such deposit or investment does not impair the ability of the market agency to meet its obligations to its consignors. The savings account must be properly designated as a party of the custodial account of the market agency in its fiduciary capacity as trustee of the custodial funds and maintained in the same bank as the custodial account. The certificates of deposit, as property of the custodial account, must be issued by the bank in which the custodial account is kept and must be made payable to the market agency in its fiduciary capacity as trustee of the custodial funds.

(Approved by the Office of Management and Budget under control number 0580-0015)

[47 FR 32696, July 29, 1982, as amended at 54 FR 26349, June 23, 1989; 68 FR 75388, Dec. 31, 2003]

9 C.F.R. § 201.42.

15. Ravenna Auction's livestock sales are generally once a week on Mondays (starting at 5:30 p.m., lasting on average until 9:30 p.m. or 10:00 p.m.), with an additional livestock sale once a month on a Thursday (starting at 12:30 p.m. or 1:00 p.m.). Tr. 424-26. Ravenna Auction holds livestock sales even on snow days (in Ravenna, Michigan), even on holidays -- off only on Christmas and New Years -- and, at times, not off

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even on New Years. Tr. 439.

16. When Ravenna Auction sells livestock, it deposits into the trust account what the livestock buyers pay. If a livestock buyer has not yet paid, Ravenna Auction deposits into the trust account what that livestock buyer should have paid, so that the money is there for the seller (“shipper” or “consignor”). There is an exception. For the first seven days after the livestock sale, until the close of the seventh day, Ravenna Auction may regard the “proceeds receivable” from a buyer who has not yet paid as “money in the bank” for purposes of balancing the trust account. 9 C.F.R. § 201.42.

17. The regulation (9 C.F.R. § 201.42) gives Ravenna Auction the first seven days following a sale day to deposit sales amounts into the trust account. A “proceeds receivable” becomes an “account receivable” after seven days. Under Packers and Stockyards requirements for the trust account, “accounts receivable” are NOT counted toward the trust account balance. Tr. 378.

18. Ravenna Auction’s Monday night sales occur after the bank has closed. Thus, the bank closes before the close of Ravenna Auction’s seventh day. Ravenna Auction cannot get a bank-stamped deposit slip after the bank has closed. (And attempts at electronic depositing delayed the processing of the deposits.) A bank-stamped deposit slip would be preferred, but Packers and Stockyards will accept a “deposit in transit” for analysis of the trust account. Tr. 379.

19. To illustrate, for Monday night sales, if the buyer pays at the next sale a week later, Ravenna Auction will need to prepare a deposit slip that night (if the sale ends at 9:30 p.m. or 10:00 p.m., someone will have to stay late to do the bookkeeping). The deposit slip showing buyers’ payments received that night (the “deposit in transit”), which will count toward the trust account balance even though the bank is closed. Tr. 379. The “deposit in transit” will include Ravenna Auction’s own funds to make up for any shortfall in buyers’ payments. Otherwise, Ravenna Auction will run afoul of Packers and Stockyards requirements to keep the trust account in balance. Clearly, Ravenna Auction has to keep meticulous records available for audit of each “deposit in transit” prepared before the close of Ravenna Auction’s seventh day.

B. Parties and Counsel

20. The Complainant is the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture [“Packers and Stockyards” or “Complainant”]. Packers and Stockyards is represented by Ciarra A. Toomey, Esq. and Elizabeth Kruman, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington D.C.

21. There are three Respondents: Ravenna Auction, L.L.C., a limited liability company in Ravenna, Michigan; and Paul Lettinga and Randy Lettinga, who are brothers, who work at Ravenna Auction, L.L.C. [(jointly, “the Ravenna Auction Respondents”)].

II. PROCEDURAL HISTORY

22. Two Complaints were consolidated for Hearing; this Decision addresses one of those two Complaints. Ravenna Auction is alleged: (a) to have failed to maintain and properly use its custodial account (trust account); (b) to have failed to comply with a Consent Decision and Order entered in *Ravenna Auction, L.L.C., & La Verne Lettinga*, P&S Docket No. D-10-0459; and (c) to have engaged in unfair and deceptive practices regarding fictitious paperwork showing a sale of livestock when there was none (the repayment to Mr. Zylstra as if Mr. Zylstra were being paid for cattle). The Complaint, filed on May 13, 2014, cites sections 307, 312(a), and 401 of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 208, 7 U.S.C. § 213(a), and 7 U.S.C. § 221); and section 201.42 of the regulations (9 C.F.R. § 201.42).

23. The first three days of the Hearing were October 8 - 10, 2014, in Grand Rapids, Michigan; and the last day of the Hearing was January 14, 2015, by audio-visual telecommunication among three locations (Washington, D.C.; Grand Rapids, Michigan; and St. Joseph, Missouri).

24. The witnesses (and portions of the Transcript where their testimony is found) are shown on Appendix A, attached. A copy of the Consent Decision is Appendix B, attached. Copies of 2007 documents, including

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a warning letter to La Verne Lettinga (Exhibit CX-55), is Appendix C, attached (included to show that it is not applicable to the Ravenna Auction Respondents). CX-55 was filed February 20, 2015, attached to Complainant's Fourth Amended Witness and Exhibit Lists. Complainant's Exhibits CX-1 through CX-52, plus CX-53 through CX-55, are admitted into evidence. Respondents' Exhibits RX-1 through RX-50 are admitted into evidence.

25. The parties filed briefs: March 26, 2015 (Ravenna Auction's Opening Brief, 79 pages); March 31, 2015 (Packers and Stockyards' Opening Brief, 66 pages); May 29, 2015 (Ravenna Auction's Reply Brief, 25 pages); May 29, 2015 (Packers and Stockyards' Reply Brief, 54 pages).

III. FINDINGS OF FACT

26. During a 2012 audit, Packers and Stockyards found Ravenna Auction's trust account ("Custodial Account for Shippers' Proceeds") to have been out-of-balance on May 31, 2012 and to have been out-of-balance on June 29, 2012.

27. Adam Fast, Senior Auditor, a Grain Inspection, Packers and Stockyards Administration [GIPSA] employee, did his on-site review on July 31, 2012 and continued to analyze into August 2012. Using Ravenna Auction's records, looking back, Adam Fast concluded, and I agree, that Ravenna Auction's trust account was \$80,003.14 short on May 31, 2012. CX -34. Tr. 140, Tr. 145. Adam Fast used the May 31, 2012 date, because he had the custodial account bank statement for Ravenna dated May 31, 2012. *See* CX 35-CX 39. Tr. 141-54.

28. Adam Fast's method and analysis was fair and thorough and recognized debits such as "deposits in transit" and "proceeds receivable" so that it was not necessary that he utilize the seventh day following a sale (or the eighth day following a sale) as the date to determine whether Ravenna Auction's trust account was in balance. Adam Fast is a CPA (Certified Public Accountant) since 2005 (Tr. 50) as well as a Senior Auditor. Tr. 48.

29. Adam Fast concluded, and I agree, that Ravenna Auction's trust account was \$92,636.41 short on June 29, 2012. CX-40. Tr. 154.

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Adam Fast used the June 29, 2012 date, because he had the custodial account bank statement for Ravenna dated June 29, 2012. *See* CX 41-CX 45. Tr. 155-63.

30. Ravenna Auction is a “market agency.” A “market agency” is any person engaged in the business of: (1) buying or selling in commerce livestock on a commission basis; or (2) furnishing stockyard services. 7 U.S.C. § 201(c), Packers and Stockyards Act, 1921, as amended and supplemented.

31. Ravenna Auction’s custodial account is a trust account, out of which the sellers (owners or consignors) or shippers are paid. Consignors or shippers sell livestock at Ravenna Auction’s sale and are due to be paid for what they sold.

32. Ms. Ciarra Toomey obtained Mr. Adam Fast’s explanation of the trust account: (Tr. 78):

Ms. Toomey: And what is a custodial bank account?

Mr. Fast: A custodial bank account is a trust account established by market agencies selling on commission that’s established to hold the proceeds of the sale for the benefit of the consignors.

Ms. Toomey: So, is it the market’s money in this custodial account?

Mr. Fast: No.

Ms. Toomey: Who’s (sic) money is it?

Mr. Fast: The consignor.

Tr. 78.

33. For market agencies such as Ravenna Auction, the banking calendar has cycles that begin with each sale, as established by 9 C.F.R. § 201.42. The seventh day following a sale is significant for the purpose of balancing

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a custodial account and consequently for the purpose of auditing a custodial account. 9 C.F.R. § 201.42(c). When “proceeds receivable” become “accounts receivable”, at the close of the seventh day following the sale of livestock, Packers and Stockyards no longer regards those receivables as assets (debits) in the custodial account. CX 34. Tr. 455. 34. From August 11, 2011 through August 10, 2012, Mr. La Verne P. (“Verne”) Lettinga was prohibited from exercising any management, direction, and control of Ravenna Auction. Consent Decision issued August 11, 2011; *see* Appendix C. At the time of the Consent Decision, Ravenna Auction was owned 100% by Mr. La Verne P. (“Verne”) Lettinga.

35. In 2012 Mr. La Verne P. (“Verne”) Lettinga owned 99.5% of Ravenna Auction, L.L.C.; one of his sons Randy C. Lettinga owned 0.5%. CX-33. Tr. 531.

36. During May and June, 2012, Mr. La Verne P. (“Verne”) Lettinga exercised NO management, direction, or control of Ravenna Auction.

37. Mr. Randy C. Lettinga became manager of Ravenna Auction at about the time his father’s suspension began, in 2011. Tr. 409.

38. Paul Lettinga and Randy Lettinga, who are brothers, worked at Ravenna Auction, L.L.C. during May and June, 2012.

39. Mr. Paul Lettinga is a farmer. When working at Ravenna Auction, Paul Lettinga organized the livestock, marketed the livestock to the auction ring, made sure the cattle were presentable, and then got the cattle back out to the buyers. Tr. 506-07.

40. Both Paul Lettinga and Randy Lettinga are impressive: they are hard-working, decent, honest, and productive, and each of them already had plenty to do, when it became necessary to assume also their father’s role, during his suspension.

41. Dairy farmers were struggling and not sending their checks in (to Ravenna Auction), during the time at issue here.

42. No custodial account checks bounced, during the time at issue here.

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Tr. 417. One reason the checks did not bounce is that the Bank paid the checks. Tr. 465. The Bank charged non-sufficient funds fees. Tr. 465. No consignors were damaged. Tr. 417.

43.No competitors were damaged, during the time at issue here, based on the evidence before me. Tr. 417.

44.Packers and Stockyards' interpretation of its own regulation is entitled to "deference"; accordingly, to maintain a balanced trust account, the market agency may need to replace - - with its own cash deposit into the trust account - - an "aged out" "proceeds receivable" - - which will become an "account receivable" at the close of the seventh day and no longer be used to balance the trust account.

45.Further, under Packers and Stockyards interpretation, the market agency holding a once-a-week sale after banking hours, can replace that proceeds receivable with the buyer's payment at the next sale OR its own money only by preparing "deposits in transit": (Tr. 377):

Ms. Toomey: Mr. Fast, if the custodial account has not been reimbursed by the seventh day by proceeds from the previous week's sale, must the market put their own money in to ensure that the account is in balance?

Mr. Fast: Yes.

Ms. Toomey: Is this true even if none of the buyers have paid what is due the market?

Mr. Fast: Yes.

Ms. Toomey: Why is this burden placed on the market?

Mr. Fast: The market is held to the standard that they must reimburse the custodial account for uncollected receivables.

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- Ms. Toomey: And what standard is that?
- Mr. Fast: As far as, if proceeds receivable is not collected within seven days, they must reimburse the custodial account.
- Ms. Toomey: And why is that?
- Mr. Fast: That's per the, I guess, per the regulation, after seven days it's no longer a proceed receivable.
- Ms. Toomey: And if there is a sale at 5:00 on the seventh day and you know that the proceeds are going to be coming in from buyers from the previous weeks sale, what should the market do in that situation, knowing that they won't have the proceeds in hand by the time the bank closes that day?
- Mr. Fast: They should reimburse the custodial account for that amount. If the receivables are collected later on, I mean, if the account hadn't been reimbursed, I mean, they, potentially could be a deposit in transit if they're not received at that point, they should make a deposit themselves and transfer the money as well.
- Ms. Toomey: And you would count that in your analysis as a deposit in transit if it was listed on a deposit slip, but not yet deposited?
- Mr. Fast: Correct.

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Ms. Toomey: And so it would be considered a debit still?

Mr. Fast: Yes.

46. Regarding Ravenna Auction's failure, in 2012, to handle repayment of the \$75,000.00 loan from Mr. Marvin Jay ("Marv") Zylstra properly, I incorporate herein paragraphs 8 through 13. *See also* Tr. 412-16, Tr. 477, Tr. 484, CX-51 at 2.

IV. CONCLUSIONS

47. The Packers and Stockyards Act makes it unlawful for any market agency to engage in or use any unfair practice (7 U.S.C. § 213), as follows:

§ 213. Prevention of unfair, discriminatory, or deceptive practices

(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.

7 U.S.C. § 213(a).

48. It is reasonable to conclude, and I do conclude, that Ravenna Auction's failure to maintain the "Custodial Account for Shippers' Proceeds" in strict conformity with the Packers and Stockyards Act and the provisions of 9 C.F.R. § 201.42 is an unfair or deceptive practice within the meaning of section 312 (a) of the Packers and Stockyards Act, 7 U.S.C. § 213(a).

49. I conclude that the allegations of the Complaint are proved, that the Ravenna Auction Respondents violated sections 307, 312 (a), and 401 of the Packers and Stockyards Act, 7 U.S.C. §§ 208, 213(a), and 221; and 9 C.F.R. § 201.42.

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50. Ravenna Auction must at all times (but taking into account that for the first seven days after a livestock sale, until the close of the seventh day, Ravenna Auction may regard the “proceeds receivable” from a buyer who has not yet paid as “money in the bank” for purposes of balancing the trust account, *see* 9 C.F.R. § 201.42) maintain the trust account in an amount equal to or greater than the obligations to the consignors, which Ravenna Auction failed to do on May 31, 2012, and on June 29, 2012.

51. Ravenna Auction may not have bank account charges deducted from the trust account. The bank can be expected to cooperate by applying those charges to the general account.

52. Ravenna Auction may transfer out of the trust account into the general account its commissions and other compensation for its services, but only if so doing so will not cause the trust account to be lower than the obligations to the consignors.

53. Ravenna Auction may transfer out of the trust account into the general account loaned money, such as \$60,000.00 of the Marv Zylstra \$75,000.00 loan, but only if so doing will not cause the trust account to be lower than the obligations to the consignors.

54. Ravenna Auction may remove from the trust account loaned money, such as pledged certificates of deposit, but only if so doing will not cause the trust account to be lower than the obligations to the consignors.

55. See the Order below for the remedies for each of the Ravenna Auction Respondents which I conclude are commensurate with the violations and adequate to deter future violations. *See also* Tr. 436-440 and Tr. 516. Ravenna Auction clearly is important to the community it serves; a lengthy suspension of Ravenna Auction would likely harm the community it serves.

ORDER

56. Respondents Ravenna Auction, L.L.C., Paul Lettinga, and Randy Lettinga, and their agents and employees, directly, or through any corporate or other device, in connection with their activities subject to the

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Packers and Stockyards Act, shall cease and desist from:

(a) Failing to deposit in the “Custodial Account for Shippers’ Proceeds”, within the time prescribed by 9 C.F.R. § 201.42, amounts equal to the outstanding proceeds received **or due** from the sale of consigned livestock;

(b) Failing to maintain a balance in the “Custodial Account for Shippers’ Proceeds” (within the time-frame of 9 C.F.R. § 201.42, which permits seven days from a sale to establish that balance), adequate to pay the consignors the proceeds from the sale of their livestock, even though maintaining that balance may require deposit of borrowed money from the general account, to substitute for slow-pay or no-pay buyers, into the “Custodial Account for Shippers’ Proceeds”;

(c) Failing to otherwise maintain the “Custodial Account for Shippers’ Proceeds” in strict conformity with the Packers and Stockyards Act and the provisions of 9 C.F.R. § 201.42;

(d) Using “Custodial Account for Shippers’ Proceeds” funds for any purpose other than authorized by 9 C.F.R. § 201.42, such as

- (i) Using custodial funds to pay bank fees;
- (ii) Misusing custodial funds in purported payment of the net proceeds from the sale of consigned livestock when in fact no livestock were consigned or sold, thereby engaging in unfair and deceptive practices; and
- (iii) Falsifying records by generating false invoices and generating and issuing checks in purported payment for livestock purchases that did not occur in order to disguise the payment in preceding paragraph (ii); and

(e) Failing to keep accounts, records, and memoranda that fully and correctly disclose all transactions involved in their business, as required by section 401 of the Act (7 U.S.C. § 221).

57. Respondent Ravenna Auction, L.L.C. is assessed a \$25,000.00 civil

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penalty, payable in five annual installments beginning by October 25, 2016; OR, Ravenna Auction may opt instead to serve two seven-day periods of suspension, not necessarily consecutive, each to occur prior to October 25, 2016, with each seven-day period chosen by Ravenna Auction and communicated in writing at least one week in advance to USDA, GIPSA, Packers and Stockyards Program, Litigation & Economic Analysis Division, attn.: Mr. Timothy Hansen. Email or FAX will suffice: timothy.b.hansen@gipsa.usda.gov OR FAX 202-690-3207. [To confirm receipt of FAX telephone 202-690-3209]

58. Respondent Paul Lettinga is assessed a \$5,000.00 civil penalty, payable in five annual installments beginning by October 25, 2016.

59. Respondent Randy Lettinga is assessed a \$5,000.00 civil penalty, payable in five annual installments beginning by October 25, 2016.

60. Each payment shall be paid by a certified check, cashier's check, or money order, marked with the docket number (14-0126 for Ravenna Auction, L.L.C.) (14-0127 for Paul Lettinga) (14-0128 for Randy Lettinga), payable to order of "Treasurer of the United States" and delivered to USDA - GIPSA, P.O. Box 790335, St. Louis, Missouri 63179.

61. See next paragraph for when this Decision and Order becomes final.

FINALITY

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

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties (to Respondent's counsel by certified mail; to Packers and Stockyards' counsel by in-person delivery to an Office of the General Counsel representative). The Hearing Clerk shall in addition send courtesy copies by ordinary mail to counsel for Lake Odessa Livestock Auction, Inc. and to Mr. La Verne P. ("Verne") Lettinga.

APPENDIX A

Ravenna Auction, LLC, et al.
75 Agric. Dec. 263

WITNESSES

The four-day Hearing was held October 8 - 10, 2014, and January 14, 2015.

The transcript is in four (4) volumes; pages are shown below for witnesses' testimony:

Day 1, October 8 (Wed) 2014, pp. 1 - 370:

Mr. Adam Fast (Tr. 46 - 284), called by Packers and Stockyards

Mr. William Cowles (Tr. 286 - 334) called by Ravenna Auction

Day 2, October 9 (Thur) 2014, pp. 371 - 705:

Mr. Adam Fast (Tr. 377 - 402), called by Packers and Stockyards

Mr. Randy C. Lettinga (Tr. 404 - 474), called by Ravenna Auction

Mr. Marvin Jay Zylstra (Tr. 476 - 484), called by Ravenna Auction

Mr. Larry J. Recker, Jr. (Tr. 485 - 495), called by Ravenna Auction

Mr. Paul Jay Lettinga (Tr. 496 - 528), called by Ravenna Auction

Mr. La Verne P. ("Verne") Lettinga (Tr. 530 - 630), called by Ravenna Auction

Mr. John Figg (Tr. 632 - 672), called by Ravenna Auction

Day 3, October 10 (Fri) 2014, pp. 706 - 791:

Mr. John Figg (Tr. 715 - 725; 740-771), called by Ravenna Auction

Day 4, January 14 (Wed) 2015, pp. 792 - 981:

Mr. John Figg (Tr. 801 - 811), called by Ravenna Auction

Mr. Adam Fast (Tr. 812 - 839), called by Packers and Stockyards

Mr. Timothy Hansen (Tr. 840 - 954), called by Packers and Stockyards

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MISCELLANEOUS ORDERS & DISMISSALS

MISCELLANEOUS ORDERS & DISMISSALS

Editor's Note: This volume continues the new format of reporting Administrative Law Judge orders involving non-precedent matters [Miscellaneous Orders] with the sparse case citation but without the body of the order. Miscellaneous Orders (if any) issued by the Judicial Officer will continue to be reported here in full context. The parties in the case will still be reported in Part IV (List of Decisions Reported – Alphabetical Index). Also, the full text of these cases will continue to be posted in a timely manner at: www.dm.usda.gov/oaljdecisions].

PACKERS & STOCKYARDS ACT

**In re: HUBERT DENNIS EDWARDS.
Docket No. 15-0057.
Miscellaneous Order.
Filed February 10, 2016.**

P&S – Administrative procedure – Appeal, time for filing.

Darlene M. Bolinger, Esq., for Complainant.
Respondent, pro se.
Initial Decision and Order by Janice K. Bullard, Acting Chief Administrative Law Judge.
Order entered by William G. Jenson, Judicial Officer.

ORDER DENYING LATE APPEAL

PROCEDURAL HISTORY

Susan B. Keith, Deputy Administrator, Packers and Stockyard Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [the Deputy Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on January 15, 2015. The Deputy Administrator instituted the proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [the Packers and Stockyards Act]; the regulations issued pursuant to the Packers and Stockyards Act (9 C.F.R. pt. 201) [the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture Under Various Statutes (7 C.F.R. §§ 1.130-.151) [the Rules of Practice].

The Deputy Administrator alleges Hubert Dennis Edwards willfully

Miscellaneous Orders & Dismissals
75 Agric. Dec. 280 – 283

violated the Packers and Stockyards Act and the Regulations.² On February 11, 2015, Mr. Edwards filed an answer in which he denied the material allegations of the Complaint. On June 23, 2015, the Deputy Administrator filed a Motion for Summary Judgment, and on August 14, 2015, Mr. Edwards filed a response in opposition to the Deputy Administrator's Motion for Summary Judgment.

On December 15, 2015, Acting Chief Administrative Law Judge Janice K. Bullard [the Chief ALJ] issued a Decision and Order on Grant of Summary Judgment [Decision and Order]: (1) concluding Mr. Edwards willfully violated the Packers and Stockyards Act and the Regulations, as alleged in the Complaint; (2) ordering Mr. Edwards to cease and desist from violating the Packers and Stockyards Act and the Regulations; (3) prohibiting Mr. Edwards from engaging in activities for which registration is required under the Packers and Stockyards Act until Mr. Edwards demonstrates to the Grain Inspection, Packers and Stockyards Administration that he has an adequate bond or bond equivalent and is in full compliance with the Packers and Stockyards Act; and (4) assessing Mr. Edwards a \$12,500 civil penalty.³

On December 21, 2015, the Hearing Clerk served Mr. Edwards with the Chief ALJ's Decision and Order by certified mail.⁴ On January 28, 2016, Mr. Edwards appealed the Chief ALJ's Decision and Order to the Judicial Officer. On February 2, 2016, the Deputy Administrator filed Complainant's Response in Opposition to Respondent's Appeal Petition. On February 4, 2016, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

CONCLUSIONS BY THE JUDICIAL OFFICER

The Rules of Practice limit the time during which a party may appeal an administrative law judge's written decision to the Judicial Officer to a thirty-day period after the party receives service of the administrative law judge's written decision.⁵ The Hearing Clerk served Mr. Edwards with

² Compl. ¶¶ II-V.

³ Chief ALJ's Decision and Order at 18-19.

⁴ United States Postal Service Tracking for article number XXXX 7640.

⁵ 7 C.F.R. § 1.145(a).

MISCELLANEOUS ORDERS & DISMISSALS

the Chief ALJ's Decision and Order on December 21, 2015;⁶ therefore, Mr. Edwards was required to file an appeal petition with the Hearing Clerk no later than January 20, 2016. Instead, Mr. Edwards filed his appeal petition with the Hearing Clerk on January 28, 2016. Therefore, I find Mr. Edwards's appeal petition is late-filed.

Moreover, in accordance with the Rules of Practice, the Chief ALJ's Decision and Order became final thirty-five days after the Hearing Clerk served Mr. Edwards with the Chief ALJ's Decision and Order,⁷ and, under the Rules of Practice, the Judicial Officer has no jurisdiction to hear an appeal that is filed after an administrative law judge's decision becomes final.⁸ The Hearing Clerk served Mr. Edwards with the Chief ALJ's

⁶ See *supra* note 3.

⁷ 7 C.F.R. § 1.142(c)(4); Chief ALJ's Decision and Order at 19.

⁸ See, e.g., Rosberg, Nos. 14-0094, 14-0095, 2014 WL 7405834 (U.S.D.A. Sept. 10, 2014) (Order Den. Late Appeal) (dismissing the respondents' appeal petition filed one day after the administrative law judge's decision became final); Piedmont Livestock, Inc., No. 13-0087, 2013 WL 8214626 (U.S.D.A. Apr. 29, 2013) (Order Den. Late Appeal) (dismissing Piedmont Livestock, Inc.'s appeal petition filed three days after the chief administrative law judge's decision became final and dismissing Joseph Ray Jones's appeal petition filed one day after the chief administrative law judge's decision became final); Custom Cuts, Inc., Nos. 12-0443, 12-0444, 2013 WL 8213598 (U.S.D.A. Feb. 20, 2013) (Order Den. Late Appeal) (dismissing the respondents' appeal petition filed one month and twenty-seven days after the chief administrative law judge's decision became final); Self, 71 Agric. Dec. 1169 (U.S.D.A. 2012) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed eighteen days after the chief administrative law judge's decision became final); Mays, 69 Agric. Dec. 631 (U.S.D.A. 2010) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed one week after the administrative law judge's decision became final); Noble, 68 Agric. Dec. 1060 (U.S.D.A. 2009) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed one day after the administrative law judge's decision became final); Edwards, 66 Agric. Dec. 1362 (U.S.D.A. 2007) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed six days after the administrative law judge's decision became final); Tung Wan Co., 66 Agric. Dec. 939 (U.S.D.A. 2007) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed forty-one days after the chief administrative law judge's decision became final); Gray, 64 Agric. Dec. 1699 (U.S.D.A. 2005) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed one day after the chief administrative law judge's decision became final); Mokos, 64 Agric. Dec. 1647 (U.S.D.A. 2005) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed six days after the chief administrative law judge's decision became final); Blackstock, 63 Agric. Dec. 818 (U.S.D.A. 2004) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed two days after the administrative law judge's decision became final); Gilbert, 63 Agric. Dec. 807 (U.S.D.A. 2004) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed one day after the administrative law

Miscellaneous Orders & Dismissals
75 Agric. Dec. 280 – 283

Decision and Order on December 21, 2015;⁹ therefore, the Chief ALJ's Decision and Order became final on January 25, 2016. Mr. Edwards filed his appeal petition on January 28, 2016. Therefore, I have no jurisdiction to hear Mr. Edwards's appeal petition.

The Rules of Practice do not provide for an extension of time (for good cause or excusable neglect) for filing an appeal petition after an administrative law judge's decision has become final. The absence of such a provision in the Rules of Practice emphasizes that jurisdiction has not been granted to the Judicial Officer to extend the time for filing an appeal after an administrative law judge's decision has become final. Therefore, under the Rules of Practice, I cannot extend the time for Mr. Edwards's filing an appeal petition after the Chief ALJ's Decision and Order became final. Accordingly, Mr. Edwards's appeal petition must be denied.

For the foregoing reasons, the following Order is issued.

ORDER

1. Mr. Edwards's appeal petition, filed January 28, 2016, is denied.
2. The Chief ALJ's Decision and Order, issued December 15, 2015, is the final decision in this proceeding.

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CARL MENDES, JR.
Docket No. 16-0064.
Miscellaneous Order.
Filed May 27, 2016.

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judge's decision became final); Nunez, 63 Agric. Dec. 766 (U.S.D.A. 2004) (Order Den. Late Appeal) (dismissing the respondent's appeal petition filed on the day the administrative law judge's decision became final).

⁹ See *supra* note 3.

DEFAULT DECISIONS

DEFAULT DECISIONS

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PACKERS & STOCKYARDS ACT

**JOE JOHN GARCIA, d/b/a ISLETA FEED AND LIVESTOCK.
Docket No. 16-0012.
Default Decision and Order.
Filed January 14, 2016.**

Consent Decisions
75 Agric. Dec. 285 – 286

CONSENT DECISIONS

PACKERS & STOCKYARDS ACT

Johnson County Cattle, LLP, d/b/a Johnson County Cattle Auction.

Docket No. 15-0134.
Filed January 28, 2016.

R.A. Cantrall, a/k/a Bo Cantrall.

Docket No. 15-0135.
Filed January 28, 2016.

Patsy Cantrell.

Docket No. 15-0136.
Filed January 28, 2016.

Leah Davis.

Docket No. 15-0137.
Filed January 28, 2016.

George Davis, Jr., jointly f/d/b/a Johnson County Cattle Auction.

Docket No. 15-0138.
Filed January 28, 2016.

Lonnie Martin.

Docket No. 16-0055.
Filed February 18, 2016.

Richard Reece.

Docket No. D-15-0133.
Filed March 8, 2016.

American Pacific, Inc. – International.

Docket No. 16-0043.
Filed March 14, 2016.

Riata Cattle Company, Inc. & Porfirio (a/k/a “Fedo”) Garcia.

Docket Nos. D-16-0044, D-16-0045.
Filed March 18, 2016.

CONSENT DECISIONS

4J Cattle Co., LLC & Randy Stewart.

Docket Nos. D-16-0085, D-16-0086.

Filed April 6, 2016.

Superior Canadian Livestock Auction, Ltd.; Barbara Bezan; & Layton Bezan.

Docket Nos. 16-0013, 16-0014, 16-0015.

Filed May 26, 2016.

JCO Livestock, LP; Fray Enterprises, Inc.; R. Renee Davis; & Jay Davis.

Docket Nos. 16-0051, 16-0052, 16-0053, 16-0054.

Filed May 27, 2016.

Thomas B. Welch, d/b/a TBW Cattle.

Docket No. 16-0099.

Filed June 23, 2016.

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