

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/DALJ/OHC
2019 JUL 30 PM4:20

In re:)	
)	
Clinton Livestock Auction, LLC)	P&S Docket No. 19-J-0091
)	
and)	
)	
Sandra Berry,)	P&S Docket No. 19-J-0092
)	
and)	
)	
Jack Blake Berry,)	P&S Docket No. 19-J-0093
)	
Respondents)	Consent Decision and Order

This proceeding was instituted under the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (the Act) by a Complaint filed by the Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service (AMS), United States Department of Agriculture, alleging that the Respondents willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*) (Regulations). This consent decision is entered pursuant to the consent decision provision of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

Respondents Clinton Livestock Auction LLC, Sandra Berry, and Jack Blake Berry admit the jurisdictional allegations in paragraph I of the Complaint and specifically admit that the Secretary has jurisdiction in this matter, admit the remaining allegations as set forth herein as findings of fact and conclusions of law but deny that conduct was willful, waive oral hearing and further procedure, waive all rights to seek judicial review and otherwise challenge or contest the validity of this decision, including waiving challenges to the Administrative Law Judge's authority to enter this Decision and Order under the Administrative Procedure Act and the Constitution of the United States, and waive any action against the United States Department of Agriculture under

the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 *et seq.*) for fees and other expenses incurred by respondents in connection with this proceeding or any action against any USDA employee in their individual capacity, and consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this consent decision.

Complainant agrees to the entry of this consent decision.

Findings of Fact

(a) Respondent Clinton Livestock Auction (Respondent Clinton) is a limited liability company with a mailing address of 10191 U.S. Highway 183, Clinton, Oklahoma 73601.

(b) Respondent Clinton is, and at all times material herein was:

(1) Engaged in the business of, and operating as, a stockyard posted under and subject to the provisions of the Act;

(2) Engaged in the business as a market agency selling livestock on a commission basis in commerce; and

(3) Registered with the Secretary of Agriculture as a market agency to sell livestock on a commission basis in commerce.

(c) Sandra Berry (Respondent S. Berry) is, and at all times material herein was:

(1) Fifty percent (50%) owner of Respondent Clinton;

(2) Engaged in the business of, and operating as, a stockyard posted under and subject to the provisions of the Act;

(3) Engaged in the business as a market agency selling livestock on a commission basis in commerce; and

(4) Responsible for the direction, management and control of Respondent Clinton.

(d) Jack Blake Berry (Respondent J.B. Berry) is, and at all times material herein was:

- (1) Fifty percent (50%) owner of Respondent Clinton;
- (2) Engaged in the business of, and operating as, a stockyard posted under and subject to the provisions of the Act;
- (3) Engaged in the business as a market agency selling livestock on a commission basis in commerce; and
- (4) Responsible for the direction, management and control of Respondent Clinton.
- (e) Respondents, during the period of February 28, 2018, through June 5, 2018, failed to properly use and maintain their Custodial Account for Shippers' Proceeds (Custodial account), thereby endangering the faithful and prompt accounting of shippers' proceeds and the payments due the owners or consignors of livestock, in that:

- (1) As of February 28, 2018, Respondents had \$657,433.07 in outstanding checks drawn on its custodial account and had, to offset these checks, a \$271,284.71 custodial account balance, no deposits in transit, and \$295,620.01 in current proceeds receivable, resulting in a \$90,528.35 custodial account shortage.

- (2) As of May 25, 2018, Respondents had outstanding checks in the amount of \$211,571.72, and had, to offset these checks, a custodial account balance of \$66,091.50, no deposits in transit, and current proceeds receivable of \$66,069.80, resulting in a custodial account shortage of \$79,410.42.

- (3) As of June 5, 2018, Respondents had outstanding checks in the amount of \$55,693.17, and had, to offset these checks, a custodial account balance of -\$589.25, no deposits in transit, and no current proceeds receivable, resulting in a custodial account shortage of \$56,282.42.

(4) The custodial account shortages described herein were due in part to Respondents' failure to deposit in the custodial account, within the time prescribed by the regulations, an amount equal to the proceeds receivable for sales of consigned livestock.

Conclusions of Law

(a) Respondents willfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213(a)) and section 201.42 of the regulations (9 C.F.R. § 201.42).

(b) Respondents Clinton, S. Berry and J.B. Berry having admitted the jurisdictional facts, and the parties having agreed to the entry of this consent decision, the consent decision will be entered.

Order

(a) Respondents Clinton, S. Berry, and J.B. Berry, their agents and employees, directly or through any corporate or other device, in connection with their operations subject to the Act, shall cease and desist from:

(1) Failing to deposit into its Custodial Account for Shippers' Proceeds an amount equal to the proceeds receivable from the sale of consigned livestock within the time prescribed by section 9 C.F.R. § 201.42(c) of the Regulations; and

(2) Failing to otherwise maintain the Custodial Account for Shippers' Proceeds in strict conformity with the Act and section 201.42 of the Regulations (9 C.F.R. § 201.42).

(b) In accordance with sections 307 and 312(a) of the Act (7 U.S.C. §§ 208 and 213(a)) and section 201.42 of the Regulations (9 C.F.R. § 201.42), Respondents are assessed, jointly and severally, a civil penalty in the amount of twenty-thousand dollars (\$20,000.00), of which twelve thousand five hundred dollars (\$12,500) shall be held in abeyance, provided that

the respondents, pay the remaining civil penalty in accordance with the payment provisions in this Consent Decision and Order.

(c) The remaining civil penalty of seven thousand five hundred dollars (\$7,500.00) shall be paid, as follows:

(1) Two thousand five hundred dollars (\$2500.00) of this sum shall be paid in installments.

(2) Respondents shall make an initial payment of five hundred dollars (\$500.00) upon signing of this Consent Decision and Order by Respondents. Respondent shall send the payment for five hundred dollars (\$500.00), made payable to the Treasurer of the United States, along with this signed Consent Decision and Order, by certified mail to: USDA, AMS, FTTP, PSD, P.O. Box 979064, St. Louis, MO 63197-9000.

(3) Subsequent monthly payments of five hundred dollars (\$500.00) shall be due on or before the first day of each month thereafter, from September 1, 2019 to December 1, 2019.

(4) The remaining five thousand dollars (\$5,000.00) shall be paid as a lump sum, due by January 1, 2020.

(d) Each payment shall be paid by a certified check, cashier's check, or money order made payable to the "Treasurer of the United States" and include the docket numbers of this proceeding, P & S Docket Nos. 19-J-0091, 19-J-0092, and 19-J-0093, on the check or money order. The initial payment shall be sent as described above. All other payments shall be sent to USDA, AMS, FTTP, PSD, P.O. Box 979064, St. Louis, MO 63197-9000.

(e) If Respondents fail to make any of the payments of the seven thousand five hundred dollars (\$7,500) on a timely basis in accordance with the terms of this Consent Decision

and Order, then the entire civil penalty including the sum in abeyance will become immediately due and payable.

(f) Respondents expressly waive any further procedure related to this enforcement action including waiver of any procedure in connection with its compliance or non-compliance with the terms of this Consent Decision and Order.

This Order shall have the same force and effect as if entered after a full hearing. The provisions of this Order shall become effective on the day after service of this order on the Respondents.

Copies of this decision and Order shall be served upon the parties.

Done at Washington, D.C.

this 30 day of JULY, 2019

Respondent,

Clinton Livestock LLC

[Redacted Signature]

Jill S Clinton, Acting, for

By: [Redacted]

Chief Judge Channing Strother
Administrative Law Judge

Title: Co-owner

[Redacted Signature]

Sandra Berry
Respondent

[Redacted Signature]

Mai Dinh
Attorney for Complainant

[Redacted Signature]

Jack Blake Berry
Respondent