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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	[P&S-D]
	)	
Lake Odessa Livestock Auction, Inc.	)	Docket No. **14-0122**
La Verne Lettinga	)	Docket No. **14-0123**
Paul Lettinga and	)	Docket No. **14-0124**
Randy Lettinga	)	Docket No. **14-0125**
	)	
Respondents	)	**Decision and Order**

Appearances:

Ciarra A. Toomey, Esq. and Elizabeth Kruman, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington DC, for the Complainant (Packers and Stockyards) [1] ; and

Gerard D. Eftink, Esq., Van Hooser & Eftink, P.C., Raymore MO, for each Respondent: Lake Odessa Livestock Auction, Inc.; La Verne Lettinga; Paul Lettinga; and Randy Lettinga.

Decision Summary

1. Each of the four Respondents (herein occasionally "the Lake Odessa Livestock Respondents") violated the Packers and Stockyards Act as alleged in the Complaint filed May 13, 2014.

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1. 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").

Parties and Counsel

2. 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.

3. There are four Respondents: Lake Odessa Livestock Auction, Inc., La Verne P. ("Verne") Lettinga (the father); and Paul Lettinga and Randy Lettinga (his sons), who work at Lake Odessa Livestock Auction, Inc. (jointly, "the Lake Odessa Livestock Respondents").

Overview

4. Lake Odessa Livestock Auction, Inc. (herein frequently, "Lake Odessa Livestock") holds sales in Michigan, year-round, on Tuesdays and other days of the week. The sales include livestock and hay, and the livestock sales include cattle and hogs and other livestock. The owner, La Verne P. ("Verne") Lettinga, has been the owner since 1968, and except for some early years when he took on a partner, Verne Lettinga has been the sole owner (100% shareholder), as he was in 2012, the year in question.

5. The Packers and Stockyards audit in 2012 showed that Lake Odessa Livestock was not in compliance with Packers and Stockyards' strict requirements for the trust account on any of the 3 dates that were checked, April 30, 2012, May 31, 2012, or June 29, 2012. *See* Paragraph III of the Complaint.

6. Lake Odessa Livestock must keep its trust account "in balance" as Packers and Stockyards defines "in balance", to ensure, at all times, that livestock sellers ("shippers" or "consignors") are paid. Lake Odessa Livestock is required under a federal regulation, 9 C.F.R. § 201.42, to keep its trust account "in balance".

7. The trust account is a separate bank account known as a "Custodial Account for Shippers' Proceeds". 9 C.F.R. § 201.42. "Trust account" and "custodial account" are used interchangeably in this Decision, and Verne Lettinga testified that he has always called that account the "producers account". Tr. 591-92.

8. Lake Odessa Livestock's "shippers" or "consignors" ("producers", in Verne Lettinga's terminology) were all timely paid; no checks bounced. Tr. 535-36. Lake Odessa Livestock 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. Lake Odessa Livestock's trust account (or custodial account or producers account) borrowed regularly from Verne Lettinga, who placed certificates of deposit containing his own money into the trust account to shore it up, and other funds of his own into the trust account as well. Tr. 538-40.

9. The amount of the certificates of deposit (or portions thereof) designated as custodial funds for Lake Odessa Livestock varied among the 3 dates in 2012 that Lake Odessa Livestock's trust fund was checked. These were Verne Lettinga's certificates of deposit designated as custodial funds for Lake Odessa Livestock:

$200,000.00 as of April 30, 2012 (CX-8);

$150,000.00 as of May 31, 2012 (CX-54, esp. p. 2); and

$ 51,071.73 as of June 29, 2012 (CX-54, esp. p. 3).

10. Verne Lettinga's certificates of deposit designated as custodial funds plus his other infusions of cash were not enough to keep Lake Odessa Livestock's trust account (or custodial account or producers account) "in balance" as Packers and Stockyards defines "in balance", as is discussed below in the Findings of Fact.

11. How did Lake Odessa Livestock's trust account get out of balance? One factor is livestock buyers who paid late or not at all. Verne Lettinga described the impact of the recession (Tr. 536 -39):

Mr. Verne Lettinga: I've always taken pride in the fact that if you get a check from Lake Odessa or Ravenna or with my signature on it, it will be good.

Mr. Eftink: Well, have there been times when buyers that have failed to pay or were slow paying?

Mr. Verne Lettinga: Yes.

Mr. Eftink: Was there a period of time when that was a particular problem?

Mr. Verne Lettinga: Well, we, the dairy industry went through a real downturn in the, in '08 and '09, it was a real severe hard time for the dairy industry and we had a lot of dairymen that went bankrupt and went out of business. And that was very serious.

Mr. Eftink: So, during that period of time, were there buyers who failed to pay your livestock markets?

Mr. Verne Lettinga: Yes.

Mr. Eftink: And --

Mr. Verne Lettinga: And I have a lot of checks that are no good.

Mr. Eftink: Checks from buyers?

Mr. Verne Lettinga: In my safe yet, at my sale barn.

Mr. Eftink: Checks from buyers that are no good?

Mr. Verne Lettinga: From buyers.

Mr. Eftink: So, what did you do?

Mr. Verne Lettinga: There's not much you can do for a check when after the person goes bankrupt and he gives you a bad check.

Mr. Eftink: All right, but not all of them went bankrupt, right?

Mr. Verne Lettinga: Not all of them. Some of them we had to sue and collect.

Mr. Eftink: Okay.

Mr. Verne Lettinga: And we did collect some.

Mr. Eftink: But consignors were paid during that time?

Mr. Verne Lettinga: Excuse me?

Mr. Eftink: Consignors were paid during that time?

Mr. Verne Lettinga: Consignors were always paid.

Mr. Eftink: And how did you arrange to make sure consignors got paid?

Mr. Verne Lettinga: Sometimes we had to put the money in.

Mr. Eftink: Who's (sic) money did you put in?

Mr. Verne Lettinga: Well, I guess it would be called my money. Money that, sometimes I had to borrow it from the bank and sometimes we had money of our own to put in.

Mr. Eftink: Did the financial problems in the diary industry during that period of time continue to cause problems after the economy got a little bit more stable?

Mr. Verne Lettinga: Well, when you have a downturn in the market, this carries on because a lot of these farmers were financed through the bank. And we endorsed the paper to the bank to sell it to the bank to get our funds to keep the custodial count up where it should be and the money coming in. And if they went, they wouldn't keep their loan up, they looked to us to make, make it good. So we had to make up some of them down the road. And so, we're, in fact, we still have some I'm paying on.

Mr. Eftink: What do you mean by that?

Mr. Verne Lettinga: Some notes that the farmer hasn't paid and we're paying them off at the bank.

Tr. 536-39.

12. In 2012, the trust account, besides being out of balance, had a transaction that should not have happened in the trust account. Lake Odessa Livestock, on May 9, 2012, wrote and mailed a $5,000.00 check (CX-28, p. 2) on the custodial account to [redacted], which should not have happened. [redacted] did nothing wrong in asking Verne Lettinga for $5,000.00 so that Mr. [redacted] could pay a feed bill. Mr. [redacted] testified that he had known Verne Lettinga for about 35 years, and that he told Verne Lettinga he had 5 heifers he could sell for the $5,000.00. What should not have happened, was Lake Odessa Livestock using the custodial account to pay Larry Recker, Jr. $5,000.00 in **anticipation** that [redacted] would be selling the 5 heifers through Lake Odessa Livestock.

13. IF the $5,000.00 had been loaned to [redacted] from the general account, the misuse of the custodial account would not have happened. If there had been money in the custodial account available to transfer to Lake Odessa Livestock's general account (as commissions and other compensation for services), so that the $5,000.00 could have been loaned to [redacted] from the general account, the misuse of the custodial account would not have happened.

14. Verne Lettinga testified that he told the bookkeeper to send [redacted] the $5,000.00. Tr. 583. At the time, Verne Lettinga was prohibited from exercising any management, direction, and control of Lake Odessa Livestock (from August 11, 2011 through August 10, 2012, Consent Decision issued August 11, 2011; *see* Appendix B, CX-5).

15. Worse, Lake Odessa Livestock prepared fictitious paperwork to show $5,000.00 proceeds to [redacted] as if [redacted] had already sold 5 heifers at a Lake Odessa Livestock sale and was being paid his proceeds. CX-28. Thus, money came out of the custodial account in purported payment of the net proceeds from the sale of consigned livestock that was not owed to a seller ("shipper" or "consignor") when there was not excess money in the custodial account for paying shippers and consignors.

16. Mr. [redacted] changed his mind and decided to keep the 5 heifers and instead pay installments for heifers on a lease arrangement with a leasing company owned by Verne Lettinga. *See* [redacted] testimony, Tr. 485-95. *See also*, RX-34, RX-35.

17. Lake Odessa Livestock maintained a $115,000.00 bond in 2012 (Tr. 62-63, CX-3, p.2). The bond is insurance and in no way substitutes for the requirement to keep the trust account "in balance". Tr. 383-84.

18. Learning how to apply 9 C.F.R. § 201.42 is difficult. First, the legal concepts are peculiar. Second, a market agency such as Lake Odessa Livestock 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.

(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 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

19. When Lake Odessa Livestock sells livestock, it deposits into the trust account what the livestock buyers pay. If a livestock buyer has not yet paid, Lake Odessa Livestock 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, Lake Odessa Livestock 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.

20. The regulation (9 C.F.R. § 201.42) gives Lake Odessa Livestock 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.

Procedural History

21. Two Complaints were consolidated for Hearing; this Decision addresses one of those two Complaints. Lake Odessa Livestock is alleged (a) to have failed to maintain and properly use its custodial account (trust account); and (b) to have failed to comply with a Consent Decision entered in *In re Lake Odessa Livestock Auction, Inc., and La Verne Lettinga*, P&S Docket No. D-10-0452; and (c) to have engaged in unfair and deceptive practices regarding fictitious paperwork by writing a check on the custodial account on May 9, 2012 in the amount of $5,000.00 in purported payment of the net proceeds from the sale of consigned livestock, and generating a false invoice, when in fact no livestock were consigned or sold. 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).

22. The first 3 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 3 locations (Washington, D.C.; Grand Rapids, Michigan; and St. Joseph, Missouri).

23. 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.

CX-5. A copy of 2007 documents, including both a warning letter to La Verne Lettinga, President, Lake Odessa Livestock Auction, Inc.; and a Notice of Violation to Ravenna Auction, LLC (Exhibit CX-55) is Appendix C attached. 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-54 through CX-55, are admitted into evidence. Respondents' Exhibits RX-1 through RX-50 are admitted into evidence.

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

Findings of Fact

25. Lake Odessa Livestock Auction, Inc., is a Michigan corporation that was incorporated more than 45 years ago, in 1970, and has an address in Lake Odessa, Michigan. (The corporation's formal name shows "Livestock" as two words: "Live Stock", as "Lake Odessa Live Stock Auction, Inc.")

26. La Verne P. ("Verne") Lettinga has been an owner of Lake Odessa Livestock Auction since before its incorporation, since 1968. Tr. 532. Except for some early years when he took on a partner, Verne Lettinga has been the sole owner (100% shareholder), as he was in 2012, the year in question. CX-3, CX-6.

27. The Packers and Stockyards audit in 2012 showed that Lake Odessa Livestock was not in compliance with Packers and Stockyards' strict requirements for the trust account

("Custodial Account for Shippers' Proceeds") on any of the 3 dates that were checked, April 30, 2012, May 31, 2012, or June 29, 2012. *See* Paragraph III of the Complaint.

28. 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 Lake Odessa Livestock's records, looking back, Adam Fast concluded, and I agree, that **Lake Odessa Livestock's trust account was <u>$141,945.71 short</u> on April 30, 2012**. CX-8. (Adam Fast used the April 30, 2012 date, because he had the custodial account bank statement for Lake Odessa Livestock dated April 30, 2012.)

29. Adam Fast concluded, and I agree, that **Lake Odessa Livestock's trust account was <u>$239,333.82 short</u> on May 31, 2012**. CX-54, p.1. (Adam Fast used the May 31, 2012 date because he had the custodial account bank statement for Lake Odessa Livestock dated May 31, 2012.)

30. Adam Fast concluded, and I agree, that **Lake Odessa Livestock's trust account was <u>$376,163.60 short</u> on June 29, 2012**. CX-54, p.1. (Adam Fast used the June 29, 2012 date because he had the custodial account bank statement for Lake Odessa Livestock dated June 29, 2012.)

31. 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 (as a practical matter, looking back from the **eighth** day following a sale) as the date to determine whether Lake Odessa Livestock's trust account

was in balance. Adam Fast was meticulous in determining what **Custodial** Certificates of Deposit or **Custodial** *portions of* Certificates of Deposit to include in the accounting. CX-8, CX-54. Adam Fast is a CPA (Certified Public Accountant) since 2005 (Tr. 50) as well as a Senior Auditor. Tr. 48.

32. Lake Odessa Livestock 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.

33. Lake Odessa Livestock'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 Lake Odessa Livestock's sale and are due to be paid for what they sold.

34. 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.

35. For market agencies such as Lake Odessa Livestock, 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 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.

36. Lake Odessa Livestock 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.

37. The deposit slip showing buyers' payments received after the bank has closed (the "deposit in transit") will count toward the trust account balance even though the bank is closed. Tr. 379. The "deposit in transit" will include Lake Odessa Livestock's own funds to make up for any shortfall in buyers' payments. Otherwise, Lake Odessa Livestock will run afoul of Packers and Stockyards requirements to keep the trust account in balance. Clearly, Lake Odessa Livestock has to keep meticulous records available for audit of each "deposit in transit" prepared before the close of Lake Odessa Livestock's seventh day.

38. From August 11, 2011 through August 10, 2012, Mr. La Verne P. ("Verne") Lettinga was prohibited from exercising any management, direction, and control of Lake Odessa

Livestock. Consent Decision issued August 11, 2011; *see* Appendix B, CX-5. At the time of the Consent Decision, Lake Odessa Livestock was owned 100% by Mr. La Verne P. ("Verne") Lettinga. CX-5.

39. In 2012 Mr. La Verne P. ("Verne") Lettinga owned 100% of Lake Odessa Livestock, L.L.C. CX-6.

40. Paul Lettinga and Randy Lettinga, who are brothers ("Verne" is their father), worked at Lake Odessa Livestock, L.L.C. during the time covered by the Packers and Stockyards audit, in 2012.

41. Mr. Paul Lettinga is a farmer. Tr. 504-05. When working at Lake Odessa Livestock, Paul Lettinga worked the ring, as an auctioneer, organized the livestock, marketed the livestock to the auction ring, made sure the cattle were presentable, talked with the buyers, and got the cattle back out to the buyers. Tr. 500-01.

42. Mr. Paul Lettinga is shown as the manager of Lake Odessa Livestock at about the time his father's suspension began, in 2011; and, during the time covered by the Packers and Stockyards audit, in 2012. *See* CX-6, showing Annual Reports to Packers and Stockyards submitted by La Verne ("Verne") Lettinga, Owner.

43. Mr. Randy Lettinga is also shown as the manager of Lake Odessa Livestock during the time covered by the Packers and Stockyards audit, in 2012. *See* CX-7, a letter to Packers and Stockyards dated August 6, 2012 on Ravenna Auction LLC "letterhead" over the signature of:

Randy Lettinga/Manager
Ravenna Auction LLC
Lake Odessa Livestock Auction

44. Mr. Randy Lettinga described his duties at Lake Odessa as working the ring and penning the cattle, which he also did at Ravenna. Tr. 409. Mr. Randy Lettinga said he was more of a manager at Ravenna: "I guess you could say a field representative." Tr. 409.

45. 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.

46. Dairy farmers were struggling and not sending their checks in (to Lake Odessa Livestock), during the time at issue here.

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

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

49. In 2012, Lake Odessa Livestock Auction, Inc.'s sales volume was $26 million. Tr. 534. Based on a Lake Odessa Livestock Auction weekly sale, about 200 consignors were issued a custodial account check. Tr. 533-34. After 2008, with the difficulties dairy farmers were having paying their bills, "Verne" Lettinga personally lost a lot of money; when asked by Mr. Eftink to estimate how much, he responded: "It would be close to a million dollars." Tr. 539-40. For more than 45 years, Mr. La Verne P. ("Verne") Lettinga has provided valuable services to his community through Lake Odessa Livestock Auction, Inc. Tr. 532. He regarded his customers and his family as number one. Tr. 596.

50. 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.

51. Further, under Packers and Stockyards interpretation, the market agency holding a sale that extends after banking hours can replace a prior week's proceeds receivable with the buyer's payment at the sale a week later 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.

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.

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

Mr. Fast: Yes.

52. On May 9, 2012, during the one-year period in which Mr. La Verne P. ("Verne") Lettinga was to exercise NO management, direction, or control of Lake Odessa Livestock, a $5,000.00 check (CX-28, p. 2) was written on the custodial account to [redacted] in **anticipation** that [redacted] would be selling 5 heifers through Lake Odessa Livestock. Tr. 583. I incorporate herein paragraphs 12 through 16. This bungled

transaction is solely Mr. La Verne P. ("Verne") Lettinga's responsibility, for putting the Lake Odessa Livestock bookkeeper in a perilous situation that she handled all wrong, although Verne Lettinga did NOT direct the bookkeeper to take the $5,000.00 out of the custodial account or to create fictitious paperwork to look like Mr. [redacted] had sold the heifers on consignment, but that is what happened. Tr. 598-99. When Mr. [redacted] changed his mind and decided to keep the 5 heifers and instead pay installments for heifers on a lease arrangement with a leasing company owned by Mr. La Verne P. ("Verne") Lettinga, Verne Lettinga repaid the Lake Odessa Livestock custodial account the money paid to [redacted] *See* RX-34, RX-35, Tr. 585-92; and [redacted] testimony, Tr. 485-95.

53. Neither Paul Lettinga nor Randy Lettinga had anything to do with the bungled $5,000.00 [redacted] transaction, which caused misuse of Lake Odessa Livestock's custodial funds, a violation of the Packers and Stockyards Act for both unfair and deceptive practice.

Conclusions

54. The Packers and Stockyards Act makes it unlawful for any market agency to engage in or use any unfair or deceptive 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).

55. It is reasonable to conclude, and I do conclude, that Lake Odessa Livestock'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).

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

57. Lake Odessa Livestock 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, Lake Odessa Livestock 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 Lake Odessa Livestock failed to do on April 30, 2012, May 31, 2012, and on June 29, 2012.

58. Lake Odessa Livestock 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.

59. Lake Odessa Livestock 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.

60. Lake Odessa Livestock may transfer out of the trust account into the general account money to loan to customers such as [redacted] but only if money in the custodial account is available to transfer to Lake Odessa Livestock's general account (as commissions and other compensation for services); and only if such transfer will not cause the trust account to be lower than the obligations to the consignors.

61. Lake Odessa Livestock 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.

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

Order

63. Respondents Lake Odessa Livestock Auction, Inc., La Verne P. ("Verne") Lettinga, 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 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; and

(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"; and

(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; and

(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).

64. Respondent Lake Odessa Livestock Auction, Inc. shall pay civil penalties **totaling $36,000.00** (thirty-six thousand dollars) in accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), payable in equal monthly installments beginning by February 22 (Wed) 2017. I conclude there is good cause for five years, through February 22, 2022, to liquidate the debt. Payments may of course be made earlier than when due without penalty.

OR, Lake Odessa Livestock may opt (instead of paying civil penalties totaling $36,000.00) to serve three seven-day periods of suspension, not necessarily consecutive, each to occur prior to February 22, 2017, with each seven-day period chosen by Lake Odessa Livestock 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]

65. Respondent La Verne Lettinga shall pay civil penalties **totaling $12,000.00** (twelve thousand dollars) in accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), payable in equal monthly installments beginning by February 22 (Wed) 2017. I conclude there is good cause for five years, through February 22, 2022, to liquidate the debt. Payments may of course be made earlier than when due without penalty.

66. Respondent Paul Lettinga shall pay civil penalties **totaling $6,000.00** (six thousand dollars) in accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), payable in equal monthly installments beginning by February 22 (Wed) 2017. I conclude there is good cause for five years, through February 22, 2022, to liquidate the debt. Payments may of course be made earlier than when due without penalty.

67. Respondent Randy Lettinga shall pay civil penalties **totaling $6,000.00** (six thousand dollars) in accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), payable in equal monthly installments beginning by February 22 (Wed) 2017. I conclude there is good cause for five years, through February 22, 2022, to liquidate the debt. Payments may of course be made earlier than when due without penalty.

68. Each payment shall be paid by a certified check, cashier's check, or money order, marked with the docket number

(14-0122 for Lake Odessa Livestock Auction, Inc.),

(14-0123 for La Verne Lettinga),

(14-0124 for Paul Lettinga), and

(14-0125 for Randy Lettinga),

payable to order of "Treasurer of the United States" and delivered to

USDA GIPSA
PO Box 790335
St. Louis, MO 63179-0335

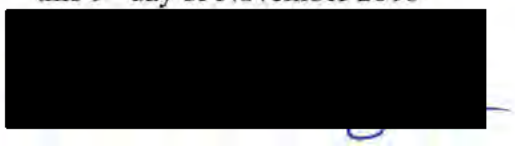
69. See next paragraph for when this Decision and Order becomes final.

Finality

70. 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 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix D).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties (to Respondents' counsel by email and certified mail; to Packers and Stockyards' counsel by email to each attorney with the Office of the General Counsel). The Hearing Clerk shall in addition send a courtesy copy by ordinary mail to counsel for Ravenna Auction, L.L.C.

Done at Washington, D.C.
this 9th day of November 2016



Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
Stop 9203 South Building Room 1031
1400 Independence Ave SW
Washington, DC 20250-9203
202-720-4443
FAX 202-720-9776
OALJHearingClerks@ocio.usda.gov

In re:	)	
	)	[P&S-D]
Lake Odessa Livestock Auction, Inc.	)	Docket No. **14-0122**
La Verne Lettinga	)	Docket No. **14-0123**
Paul Lettinga and	)	Docket No. **14-0124**
Randy Lettinga	)	Docket No. **14-0125**
	)	
Respondents	)	

WITNESSES

The 4-day Hearing was held October 8 - 10, 2014, and January 14, 2015.

The transcript is in 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 Lake Odessa Livestock

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 Lake Odessa Livestock

Mr. Marvin Jay Zylstra (Tr. 476 - 484), called by Lake Odessa Livestock

Mr. Larry J. Recker, Jr. (Tr. 485 - 495), called by Lake Odessa Livestock

Mr. Paul Jay Lettinga (Tr. 496 - 528), called by Lake Odessa Livestock

Mr. La Verne P. ("Verne") Lettinga (Tr. 530 - 630), called by Lake Odessa Livestock

Mr. John Figg (Tr. 632 - 672), called by Lake Odessa Livestock

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

Mr. John Figg (Tr. 715 - 725; 740-771), called by Lake Odessa Livestock

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

Mr. John Figg (Tr. 801 - 811), called by Lake Odessa Livestock

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

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

APPENDIX B

USDA
OALJ/OHC
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RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P & S Docket No. D-10-0452
	)	
Lake Odessa Livestock Auction, Inc. and La Verne Lettinga,	)	
	)	
Respondents	)	
	)	
	and	
	)	
In re:	)	P & S Docket No. D-10-0459
	)	
Ravenna Auction, L.L.C., and La Verne Lettinga,	)	
	)	
Respondents	)	Consent Decision

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*) (Act), by two Complaints[1] filed by the Deputy Administrator, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the Respondents willfully violated the Act and regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*)(regulations). The cases were consolidated for purposes of hearing. This decision is entered pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes applicable to this proceeding (7 C.F.R. § 1.138).

Respondents admit the jurisdictional allegations stated in the Findings of Fact

[1] P & S Docket No. D-10-0452 was filed on September 27, 2010 and the Amended Complaint was filed on October 4, 2010. P & S Docket No. D-10-0459 was filed on September 30, 2010.

and specifically admit that the Secretary has jurisdiction in this matter, neither admit nor deny the remaining allegations, waive oral hearing and further procedure, and consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

Complainant agrees to the entry of this decision.

Findings of Fact

1. Lake Odessa Livestock Auction, Inc., (Respondent Lake Odessa), is a corporation organized and existing under the laws of the State of Michigan, whose mailing address is 3675 W. Tupper Lake Road, Lake Odessa, Michigan 48849.
2. At all times material herein, Respondent Lake Odessa was:
    1. Engaged in the business of a market agency selling livestock in commerce on a commission basis;
    2. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for its own account; and
    3. Registered with the Secretary of Agriculture as a market agency to buy and sell livestock in commerce on a commission basis.
3. Ravenna Auction, LLC, (Respondent Ravenna), is a limited liability company whose business address is 3265 Slocum Road, Ravenna, Michigan 49451 and whose mailing address is P.O. Box 608, Lake Odessa, Michigan 49451.
4. At all times material herein, Respondent Ravenna was:

1. Engaged in the business of a market agency selling livestock in commerce on a commission basis; and
2. Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis.

5. LaVerne Lettinga, (Respondent Lettinga), is an individual. Respondent Lettinga's mailing address is a home address, and will not be stated in this decision to protect his privacy, but will be provided to the Hearing Clerk's Office, United States Department of Agriculture.

6. At all times material herein, Respondent Lettinga was:

    1. President of Respondent Lake Odessa;
    2. General manager of Respondent Lake Odessa;
    3. Director of Respondent Lake Odessa;
    4. Fifty percent owner of Respondent Lake Odessa[2]; and
    5. Responsible for the management, direction, and control of Respondent Lake Odessa
    6. President of Respondent Ravenna;
    7. One hundred percent owner of Respondent Ravenna; and
    8. Responsible for the management, direction, and control of Respondent Ravenna.

[2] As of the date of the complaint, Respondent Lettinga was the 100% owner of Lake Odessa Livestock Auction, Inc.

Conclusions

Respondents having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, the decision will be entered.

Order

Respondent Lake Odessa, Respondent Ravenna, and Respondent Lettinga, their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Act, shall cease and desist from:

1. Failing to deposit in their Custodial Accounts 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 from the sale of consigned livestock;
2. Failing to maintain their Custodial Accounts for Shippers' Proceeds in strict conformity with section 201.42 of the regulations (9 C.F.R. § 201.42);
3. Using funds received from the sale of consigned livestock 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, including, but not limited to:
   a. the payment of NSF check charges and other bank fees,
   b. transferring custodial account proceeds from custodial accounts into general operating accounts,

c. diverting custodial account funds and proceeds from the sales of livestock to non-custodial accounts or other businesses,

d. withdrawing from custodial account funds marketing charges not yet earned;

e. repaying loans, except as permitted by the Act or regulations.

4. Issuing custodial account checks without having sufficient funds on deposit and available in the Custodial Accounts for Shippers' Proceeds upon which the checks are drawn to pay the checks when presented for payment; Failing to remit, when due, the proceeds of livestock sales in strict conformity with section 201.43 of the regulations (9 C.F.R. § 201.43);

5. Misrepresenting to consignors the actual weight and purchase prices of livestock resulting in a monetary loss to consignors; prepared and issued, or caused to be prepared and issued, in connection with the purchase or sale of livestock, accounts of purchase, invoices, billings, or any other documents showing false, inaccurate, or misleading weight and purchase price entries for such livestock; and

6. Failing to keep accounts, records, and memoranda that fully and correctly disclosed all transactions involved in their business, as required by section 401 of the Act (7 U.S.C. § 221), including but not limited to, copies of all buyers' bills and records tracing all buyers' purchases to corresponding payments.

Respondent Lettinga is prohibited from registering under the Act for a suspension period of one year. Additionally, during the period of his suspension, Respondent Lettinga is prohibited from exercising any management, direction, and control of Respondent Lake Odessa and Respondent Ravenna and is prohibited from operating in any capacity subject to the Act.

Respondents Lake Odessa and Ravenna, separately, are suspended for 60 days. Said suspension shall be held in abeyance for one year provided:

1. Respondent Lettinga does not exercise any management, direction, and control of Respondents Lake Odessa or Ravenna, and does not otherwise operate subject to the Act during the 1 year period of his suspension period.
2. Respondents Lake Odessa and Ravenna maintain their custodial accounts in strict conformity with 9 C.F.R. § 201.42, and remit net proceeds to consignors in strict conformity with 9 C.F.R. § 201.43.
3. Respondents Lake Odessa and Ravenna do not misrepresent to consignors the actual weight and purchase prices of livestock sold for consignors.
4. Respondents Lake Odessa and Ravenna do not issue or cause to be issued, regarding the purchase and sale of livestock, accounts of purchase, invoices, billings, or any other documents showing false, inaccurate, or misleading weight and purchase price entries for such livestock.
5. Respondents Lake Odessa and Ravenna maintain complete and adequate records, including, but not limited to, copies of all buyers' bills and records tracing all buyers' purchases to corresponding payments.

At the end of the one-year period, the above suspension as to the Respondents shall be extinguished.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondents are assessed jointly and severally a civil penalty in the total amount of thirty-five thousand dollars ($35,000), ten thousand of which will be held in abeyance for one year pending Respondents' compliance with the provisions of the Understanding Regarding Civil Penalty Payment Terms entered into by the parties.

This Order shall have the same force and effect as if entered after full hearing. The provisions of this Order shall become final and effective upon issuance (7 C.F.R. § 1.138).

Copies of this decision shall be served upon the parties.

Done at Washington, D.C.
this 11th day of August, 2011

[redacted]

Administrative Law Judge

[redacted]

Gerard D. Eftink
Attorney for Respondent

[redacted]

Ciarra A. Toomey
Attorney for Complainant

APPENDIX C

USDA

United States Department of Agriculture

Grain Inspection, Packers and Stockyards Administration

210 Walnut St., Room 317
Des Moines, IA 50309-2110
(515) 323-2579 FAX (515) 323-2590

FEB 16 2007

LaVerne Lettinga, President
Lake Odessa Livestock Auction, Inc.
488 W. Tupper Lake Road
Lake Odessa, MI 48849

CERTIFIED MAIL NUMBER
7004 2510 0000 9893 1973
Return Receipt Requested

Dear Mr. Lettinga:

On December 7, 2006, Leslie Jordan and George Pulwicz, employees of this office, discussed with you and Tracy Langmaack their review of Lake Odessa Livestock Auction, Inc.'s operations and record keeping requirements subject to the Packers and Stockyards Act of 1921, as amended and supplemented and regulations issued thereunder.

The custodial account reconciled as of September 30, 2006, and November 30, 2006, revealed custodial account shortages of $183,451.77 and $381,560.58, respectively. In September 2006, several custodial account checks were returned unpaid due to non-sufficient funds. Operating with a shortage in the custodial account is considered an unfair and deceptive practice under Section 312(a) of the Packers and Stockyards Act. (7 U.S.C. 213)

The review also disclosed collected custodial account funds are not being directly deposited into the custodial account and the custodial account is not being reimbursed by the seventh day for uncollected receivables.
Regulation 201.42(c) provides:

> 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 shall, before the close of the seventh day following the sale of livestock, deposit an amount equal to all remaining proceeds receivable whether or not the proceeds have been collected by the market agency.

The custodial account bank statements show the bank is withdrawing custodial funds for its fees. Regulation 201.42(d) provides:

> 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 . . .

A review of consignor invoices and supporting documents disclosed that you are not retaining scale tickets beyond 90 days, in violation of Regulation 203.4(b) which specifies a period of two (2) years for record retention.

You do not uniformly apply tariff charges to consignors, a violation of regulation 203.17(d).

The practice you employ of offsetting consignors' purchases to their sales does not allow for fully disclosure of the true nature of the transaction, and is a violation of Section 401 of the Act (7 U.S.C. 221) which specifies "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, ..."

You indicated that you now understand the requirements of the Act and would begin implementing corrective actions.

Please advise this office, in writing, within (30) days of the date of this letter as to the actions taken to correct this situation. If the violations described above are not corrected, formal disciplinary action may be initiated and you may be subject to a civil penalty and/or suspension.

If you have any questions, please contact George Pulwicz by telephone at (515) 323-2577.

Sincerely,

[redacted]

Jay A. Johnson
Regional Director

gp:kep

U.S. Department of Agriculture
Grain Inspection, Packers and Stockyards Administration
Packers and Stockyards Program

NOTICE OF VIOLATION

Section 1 -- Violation Summary

CERTIFIED MAIL 7007 0220 0004 0756 9340
RETURN RECEIPT REQUESTED

Name and Address of Alleged Violator:

Ravenna Auction, LLC
P. O. Box 608
Lake Odessa, MI 48849

Date of Violation(s):

July - August 2007

Statute(s) or Regulation(s) Allegedly Violated:

Section 312(a) of the Packers and Stockyards Act, 1921, (7 U.S.C. § 213).
Section 408 of the Packers and Stockyards Act, 1921, (7 U.S.C. § 228a).
Section 201.42(c)(d) of the Regulations under the Packers and Stockyards Act, (9 CFR § 201.42).
Section 401 of the Packers and Stockyards Act, 1921, (7 U.S.C. § 221).

Description of Violation:
A review of Ravenna Auction, LLC balance sheet for the period ended August 31, 2007, disclosed an insolvency of $88,896.12. Operating while insolvent is considered a deceptive trade practice which violates section 312(a) of the Packers and Stockyards Act.

An analysis of the custodial bank account as of July 31, 2007, disclosed a custodial account shortage of $107,641.88. A custodial account shortage is considered a deceptive trade practice which violates section 312(a) of Act.

Custodial account check number 69456 dated June 21, 2007, in the amount of $105,480 was returned unpaid by the bank because Ravenna did not maintain sufficient funds on deposit in the custodial account. This is considered a deceptive trade practice which violates section 312(a) of the Act.

Proceeds from the sale of livestock that have been collected from the sale and proceeds receivable due from buyers were not deposited in the custodial account. Proceeds from the sale of livestock must be deposited in the custodial bank account. Failure to do so is a violation of section 201.42(c) of the regulations.

The July 31, 2007, custodial bank statement shows bank service charges for maintenance, checks, deposited items and NSF fees deducted from the custodial bank account. Withdrawals from the custodial bank account for other purposes than lawful charges against consignment of livestock are a violation of section 201.42(d) of the regulations.

U.S. Department of Agriculture
Grain Inspection, Packers and Stockyards Administration
Packers and Stockyards Program

The August 31, 2007, accounts receivable records prepared by the market do not fully and correctly disclosed all the transactions involved in the business. Mr. Lettinga stated that the accounts receivable records were understated and not correct. Also, bank deposit slips were not found for some of the collection of proceeds receivable. Failure to maintain complete and correct accounts, records, and memoranda is a violation of section 401 of the Act.

Section 2 – Notice of Violation

This serves as official notice that your business practices are in violation of the sections of the Packers and Stockyards Act and/or regulations identified above. You must correct your business practices in order to be considered in compliance. If you do not correct your business practices, continued violations may result in an administrative complaint filed against you charging you with violations of the Act. If, after the filing of the administrative complaint and an opportunity for an administrative hearing, you are found to have operated unlawfully, you will be subject to appropriate sanctions. Sanctions may include an Order to cease and desist from the unlawful conduct, civil penalties of up to $11,000.00 per violation or suspension of your registration, if applicable.

GIPSA Official Signature: [redacted] Date: 11-26-07

Midwestern Regional Office
210 Walnut Street, Room 317
Des Moines, IA 50309
(515) 323-2579
FAX (515) 323-2590
www.gipsa.usda.gov

APPENDIX D

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

. . . .

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER VARIOUS STATUTES

. . .

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145