

AGRICULTURE DECISIONS

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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

AGRICULTURE DECISIONS

Agriculture Decisions is an official publication by the Secretary of Agriculture consisting of decisions and orders issued in adjudicatory administrative proceedings conducted for the Department under various statutes and regulations. Selected court decisions concerning the Department's regulatory programs are also included. The Department is required to publish its rules and regulations in the *Federal Register* and, therefore, they are not included in *Agriculture Decisions*.

Beginning in 1989, *Agriculture Decisions* is comprised of three Parts, each of which is published every six months. Part One is organized alphabetically by statute and contains all decisions and orders other than those pertaining to the Packers and Stockyards Act and the Perishable Agricultural Commodities Act, which are contained in Parts Two and Three, respectively.

The published decisions and orders may be cited by giving the volume number, page number and year, e.g., 1 Agric. Dec. 472 (1942). It is unnecessary to cite a decision's docket number, e.g., AWA Docket No. 99-0022, and the use of such references generally indicates that the decision has not been published in *Agriculture Decisions*.

Consent decisions entered subsequent to December 31, 1986, are no longer published in *Agriculture Decisions*. However, a list of consent decisions is included in the printed edition. Since Volume 62, the full text of consent decisions is posted on the USDA/OALJ website (See url below). Consent decisions are on file in portable document format (pdf) format and may be inspected upon request made to the Hearing Clerk, Office of Administrative Law Judges (ALJ).

Beginning in Volume 63, all **Initial Decisions** decided in the calendar year by the Administrative Law Judge(s) will be arranged by the controlling statute and will be published chronologically along with appeals (if any) of those ALJ decisions issued by the Judicial Officer.

Beginning in Volume 60, each part of *Agriculture Decisions* has all the parties for that volume, including consent decisions, listed alphabetically in a supplemental List of Decisions Reported. The Alphabetical List of Decisions Reported and the Subject Matter Index (from the beginning of the annual Volume) are included in a separate volume, entitled Part Four.

Volumes 57 (circa 1998) through the current volume of *Agriculture Decisions* are also available online at <http://www.usda.gov/da/oaljdecisions/> along with links to other related websites. Volumes 39 (circa 1980) through Volume 56 (circa 1997) have been scanned and will appear in pdf on the same OALJ website. Beginning on July 1, 2003, current ALJ Decisions will be displayed in pdf format on the OALJ website in chronological order.

A compilation of past volumes on Compact Disk (CD) of *Agriculture Decisions* will be available for sale at the US Government Printing Office On-line Bookstore at <http://bookstore.gpo.gov/>.

Direct all inquiries regarding this publication to: Editor, Agriculture Decisions, Office of Administrative Law Judges, U.S. Department of Agriculture, Room 1057 South Building, Washington, D.C. 20250-9200, Telephone: (202) 720-6645, Fax (202) 690-0790, and e-mail address of Editor.OALJ@usda.gov.

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PACKERS AND STOCKYARDS ACT of 1920

DEPARTMENTAL DECISIONS

**In Re: HARRINGTON CATTLE CO. L.L.C.
P&S Docket No D-03-0013.
Default Decision.
Filed April 12, 2006.**

P&S – Default.

Jonathon Gordy, for Complainant.
Respondent Pro se.
Decision and Order by Chief Administrative Law Judge Marc J. Hillson.

**DECISION WITHOUT HEARING
BY REASON OF DEFAULT**

Preliminary Statement

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.) (“Act”), by a Complaint filed on May 25, 2005, by the Deputy Administrator, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that the Respondent willfully violated the Act and regulations promulgated thereunder (9 C.F.R. § 201.1 et seq.). The complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 et seq.) (“Rules of Practice”) were mailed by certified mail to Respondent's business mailing address. On June 14, 2005, the Complaint came back as other than “unclaimed” or “refused.” On January 5, 2006, an employee of the Department of Agriculture, Lowell E. Phelps, served the Complainant on the Nebraska Secretary of State's Agent of Record for Respondent, Robert William Chapin, Jr., by personal service as is permitted by the Rules of Practice section 1.147(3)(i) (7 C.F.R. § 1.147(c)(3)(I)) at 421 South 9th Street, Suite 245, Lincoln, Nebraska 68508.

Accompanying the Complaint was a cover letter informing

Respondent that an answer must be filed within twenty (20) days of service and that failure to file an answer would constitute an admission of all the material allegations in the complaint and a waiver of the right to an oral hearing.

Respondent failed to file an answer within the time period required by the Rules of Practice (7 C.F.R. § 1.136), and the material facts alleged in the complaint, which are admitted by Respondent's failure to file an answer, are adopted and set forth in this decision as findings of fact.

This Decision and Order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Harrington Cattle Company, L.L.C. (hereinafter "Respondent") is a limited liability company organized and existing under the laws of the State of Nebraska. Respondent's business mailing address is Post Office Box 108, Hickman, Nebraska 68372.
2. The Respondent is, and at all times material herein was:
 - (1) Engaged in the business of a market agency, buying on commission; and
 - (2) Registered with the Secretary of Agriculture as a market agency buying on commission, and as a dealer to buy and sell livestock in commerce for its own account.
3. The Respondent was notified by letter dated May 25, 2001 that its trust fund agreement would terminate on June 15, 2001. That same letter stated that Respondent was required to obtain a new bond or bond equivalent in the amount of \$20,000 on or before June 15, 2001 to secure the performance of its livestock obligations under the Act. Notwithstanding that notice, the Respondent continued to engage in the business of a market agency buying on commission without maintaining an adequate bond or its equivalent

Conclusions

By reason of the facts alleged in Finding of Fact 3, Respondent has willfully violated section 312(a) of the Act (7 U.S.C. §213(a)), and

sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29 and 201.30). Respondent did not file an answer within the time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), which constitutes an admission of all the material allegations in the Complaint. Complainant has moved for the issuance of a Decision Without Hearing by Reason of Default, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Accordingly, this decision is entered without hearing or further procedure.

Order

Respondent Harrington Cattle Co., L.L.C., its agents and employees, directly or indirectly through any corporate or other device, in connection with its operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations, without filing and maintaining an adequate bond or equivalent, as required by the Act and the regulations.

Respondent is suspended as a registrant under the Act until it complies fully with the bonding requirements under the Act and the regulations. Provided, however, that upon application to the Packers and Stockyards Administration, a supplemental order will be issued in this proceeding terminating the suspension upon Respondent's demonstration that it is in full compliance with the bonding requirements of the Act.

In accordance with section 312(b) of the Act (7 U.S.C. § 213 (b)), Respondent is assessed a civil penalty in the amount of one thousand dollars (\$1 000).

This decision and order shall become final and effective without further proceedings thirty-five days (35) after service on Respondent, if it is not appealed to the Judicial Officer by a party to the proceeding within thirty (30) days, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies of this order shall be served on the parties.

In re: GFI AMERICA, INC., d/b/a NICOLLET CATTLE TRADING, GARY GOLDBERGER, AND NICOLLET CATTLE COMPANY, INC.

P. & S. Docket No. D-06-0016.

Default Decision.

Filed July 12, 2006.

P&S – Default.

Eric Paul for Complainant
Respondent Pro se.

Decision and Order by Administrative Law Judge Peter M. Davenport.

**DECISION AND ORDER AS TO RESPONDENT GFI
AMERICA, INC., D/B/A NICOLLET CATTLE TRADING,
UPON ADMISSION OF FACTS BY REASON OF DEFAULT**

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (U.S.C. § 181 *et seq.*), herein referred to as the Act, instituted by a complaint and notice to show cause filed by the Administrator, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, charging that the Respondents GFI America, Inc., d/b/a Nicollet Cattle Trading, and Gary Goldberger wilfully violated the Act; and giving Respondent Nicollet Cattle Company, Inc., an opportunity to show cause why its application for registration should not be denied.

Copies of the Complaint and Notice to Show Cause, and the Rules of Practice (7 C.F.R. § 1.130 *et seq.*) governing proceedings under the Act, were served upon Respondents. Respondents Gary Goldberger and Nicollet Cattle Company, Inc. filed an answer, and Respondent Nicollet Cattle Company, Inc., withdrew its application for registration as a dealer under the Act. Service was made on Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, by certified mail delivered to its Chapter 11 Trustee, Mr. Phillip Kunkel, on April 24, 2006. During a subsequent telephone call, Complainant's attorney reviewed the terms of the order Complainant seeks against Respondent GFI America, Inc.,

d/b/a Nicollet Cattle Trading with Mr. Kunkel; and Mr. Kunkel advised Mr. Paul that as the Chapter 11 proceeding was going to be converted into a Chapter 7 proceeding, he did not intend to file an answer on behalf of Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading. By letter dated May 5, 2006, Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, was notified that it had failed to file an answer with the Hearing Clerk within the allotted time.

Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted by Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading's failure to file an answer, are adopted and set forth herein as findings of fact.

Findings of Fact

1. Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, is a Minnesota corporation whose official address and registered office is 2815 Blaisdell Avenue South, Minneapolis, MN 55408, and whose business operations are now being conducted during a Chapter 11 bankruptcy proceeding by a Trustee, Phillip L. Kunkel, whose mailing address is Phillip L. Kunkel, Esq., Gray, Plant, Mooty & Bennett, P.A., 1010 West St. Germain, Suite, Suite 600, St. Cloud, MN 56301.

2. Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, at all times material herein was:

(a) Engaged in the business of a dealer, buying and selling livestock in commerce for its own account.

(b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce, and as a market agency buying on commission.

3. Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, on or about the dates and in the transactions set forth below, purchased livestock and failed to pay the full purchase price of such livestock.

Livestock Seller	Purchase Date	No. of Head	Livestock Amount	Invoice Amount after deductions and additions*	Date Payment Due per § 409(a)	Pro Rata Dealer Bond Distribution in 2006	Amount Remaining Unpaid
Gregory A. Jensen Hamlin, IA	4/18/05	34	\$37,146.15	\$37,112.15	4/19/05	\$2,479.11	\$34,633.04 (note 1)
Whempner Bros. Wilmont, SD	4/19/05	84	\$92,278.72	\$92,194.72	4/20/05	\$6,158.65	\$86,036.07 (note 1)
Sisseton Livestock Auction, Inc. Sisseton, SD	4/21/05 4/21/05	116 320	\$148,301.52 \$373,474.06	\$148,676.46 <u>\$390,340.26</u> \$539,016.72	4/22/05 4/22/05	\$36,007.25	(note 2) (note 1) \$503,009.47
Francis Pravacek Scotland, SD	4/26/05	76	\$100,206.82	\$100,130.82	4/27/05	\$6,688.79	\$93,442.03 (note 1)
Marion Blom Corsica, SD	4/20/05	40	\$46,811.00	\$46,811.00	4/21/05	\$3,127.00	\$43,684.00 (note 1)

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Wayne Raymond Zych d/b/a W- Zych Cattle Co. Beardsley, MN	4/25/05	216	\$237,904.82	\$237,688.82	4/26/05	\$15,877.73	\$221,811.09 (note 1)
Dam's Farm, Inc. Hooper, NE	4/25/05	40	\$46,185.02	\$46,145.02	4/26/05	\$3,082.51	\$43,062.51 (note 2)
Roger V. Stotts Appleton, MN	4/28/05	213	\$232,233.68	\$232,020.68	4/29/05	\$15,497.72	\$216,522.96
Michael Currence Sisseton, SD	4/24/05	59	\$72,524.76	\$72,465.76	4/25/05	\$4,840.75	\$67,625.01 (note 1)
Robert Nienow Farm, Inc. Mapleton, MN	4/17/05	115	\$140,871.75	\$140,756.75	4/18/05	\$9,410.30	\$131,346.45
Brandon O. Schweigert Edgely, ND	4/13/05	2	\$2,451.60	\$2,449.60	4/14/05	\$163.63	\$2,285.97
South Dakota Livestock Sales Watertown, SD	4/27/05	79	\$96,559.10	\$100,349.10	4/28/05	\$6,704.04	\$93,645.06

Livestock Seller	Purchase Date	No. of Head	Livestock Amount	Invoice Amount after deductions and additions*	Date Payment Due per § 409(a)	Pro Rata Dealer Bond Distribution in 2006	Amount Remaining Unpaid
Central Livestock Association, Inc. St. Paul, MN (Central Order Buyers)	4/20/05 4/26/05 4/26/05 4/27/05	14 79 30 30	\$16,307.71 \$88,850.15 \$34,838.36 \$35,116.37	\$16,307.71 \$88,850.15 \$34,838.36 <u>\$35,164.07</u> \$175,160.29	4/21/05 4/27/05 4/27/05 4/28/05	\$11,700.79	\$163,459.50
Holtzen Farms LTD	4/23/05	30	\$29,287.44	\$29,287.44	4/25/05	no bond claim filed	\$29,287.44
Jim & Abe Mach Sturgeon Lake, MN	4/24/05	35	\$36,654.36	\$36,619.36	4/25/05	\$2,446.19	\$34,173.17
Fredin Brothers, Inc. Springfield, MN	4/25/05 4/26/05	80 525	\$ 96,268.22 \$638,606.86	\$ 96,178.22 <u>\$638,071.86</u> \$734,250.08	4/26/05 4/27/05	\$49,048.29	(note 1) (note 1) \$685,201.79
Keith J. Kvistero Milan, MN	4/28/05	252	\$267,878.05	\$267,626.05	4/29/05	\$17,877.55	\$249,748.50

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Equity Cooperative Livestock Sales Association Baraboo, WI	4/27/05	39	\$43,596.33	\$43,586.33	4/28/05	\$2,912.26	\$40,674.07 (note 1)
O&S Cattle Company, Inc. South St. Paul, MN	4/27/05	77	\$89,481.97	\$93,645.55	4/28/05	\$5,977.44	\$87,668.11 (note 1)
TOTALS:			\$3,003,834.82	\$3,027,316.24		\$200,000.00	\$2,827,316.24

* Deductions were made for beef promotion check off, and for the sending of payment checks by Federal Express. Additions were made for buying commission and trucking obligations paid by seller on behalf of buyer and added to invoices.

Note 1 This livestock seller has also filed statutory trust and bond claims against National Beef Packing Co., claiming that Nicollet Cattle Trading was buying livestock in this transaction as an agent for National Beef Packing Co., a disclosed principal.

Note 2 This livestock seller has also filed statutory trust and bond claims against Creekstone Farms Premium Beef, LLC, claiming that Nicollet Cattle Trading was buying livestock in this transaction as an agent for Creekstone Farms Premium Beef, LLC., a disclosed principal.

4. Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, had agreed with the livestock sellers that payment for the above livestock purchases was to come from Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, although the livestock was almost always shipped directly to packers whose identity had been fully disclosed to the livestock sellers. In two thirds of these transactions, the packers were billed by Nicollet Cattle invoice for the same livestock purchase amounts plus an itemized buying commission (generally twenty-five cents per hundredweight), and in some instances an additional itemized “clearing expense.”

5. Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, in purported payment for the livestock purchases set forth in paragraph II above, issued checks which were returned unpaid because there were insufficient funds on deposit and available in the account upon which they were drawn when the checks were presented for payment. The information regarding the checks appears below:

Livestock Seller Payee	Check Date	Check No.	Check Amount	Date Returned	Reason Shown for Return
Greg Jensen	4/19/05	402485	\$37,112.15	5/04/05	Insufficient funds
Whempner Bros	4/20/05	402504	\$92,194.72	5/03/05	Insufficient funds
Sisseton Livestock Auction, Inc.	4/22/05	402531	\$148,676.46	5/03/05	Insufficient funds
Sisseton Livestock Auction, Inc.	4/22/05	402532	\$390,340.26	5/03/05	Insufficient funds
Marion Blom	4/22/05	402535	\$46,811.00	5/03/05	Insufficient funds

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Brandon Schweigert	4/22/05	402539	\$2,449.60	5/11/05	Refer to maker
Mike Currence	4/25/05	402544	\$72,465.76	5/03/05	Insufficient funds
Jim & Abe Mach	4/25/05	402547	\$36,619.36	5/03/05	Insufficient funds
W-Zych Cattle Co.	4/25/05	402548	\$237,688.82	5/03/05	Insufficient funds & refer to maker
Fredin Bros	4/25/05	402549	\$96,178.22	5/03/05	Insufficient funds
Fredin Bros	4/27/05	402572	\$638,071.86	5/03/05	Insufficient funds
Robert Nienow Farm, Inc.	4/27/05	402574	\$140,756.75	5/05/05	Insufficient funds & refer to maker
Central Livestock Association, Inc.*	4/27/05	402575	\$88,850.15	5/05/05	Insufficient funds & refer to maker
Livestock Seller Payee	Check Date	Check No.	Check Amount	Date Returned	Reason Shown for Return
Central Livestock Association, Inc.*	4/27/05	402576	\$34,838.36	5/05/05	Insufficient funds & refer to maker
Central Livestock Association, Inc.*	4/27/05	402586	\$35,164.07	5/05/05	Insufficient funds & refer to maker

Central Livestock Association, Inc.*	4/29/05	402596	\$16,307.71	5/05/05	Insufficient funds & refer to maker
Holtzen Farms LTD	4/27/05	402578	\$29,287.44	5/06/05	Insufficient funds
Dams Farms, Inc.	4/27/05	402580	\$46,145.02	5/04/05	Insufficient funds
Francis Pravacek	4/27/05	402581	\$100,130.82	5/02/05	Insufficient funds
Equity Cooperative Livestock Sales	4/28/05	402587	\$43,586.33	5/03/05	Insufficient funds
O&S Cattle Co.	4/28/05	402588	\$93,645.55	5/03/05	Insufficient funds & refer to maker
South Dakota Livestock Sales	4/28/05	402589	\$100,349.10	5/03/05	Insufficient funds
Roger Stotts	4/28/05	402591	\$232,020.68	5/05/05	Insufficient funds & refer to maker
Keith Kvistero	4/28/05	402592	\$267,626.05	5/05/05	Insufficient funds & refer to maker
TOTAL:			\$3,027,316.24		

* named Central Order Buyers on check

6. Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, knew, at the time the livestock was purchased and the above payment checks were issued, that Respondent had consistently been in default

with respect to its secured loan agreement with Wachovia Capital Finance Corporation (Wachovia). Wachovia had given Respondent written notice on April 20, 2005, that Wachovia's forbearance with Respondent's defaults was at an end. Wachovia gave Respondent this notice due to Respondent's admission to Wachovia that approximately \$1,390,151.33 of the Accounts Respondent had reported to secure new advances on the Wachovia loan agreement were in fact the same Accounts previously reported to secure prior loan agreement advances.

7. Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, knew, or should have known, that Respondent's defaults provided Wachovia with good reason to apply all livestock payments received by Respondent from packers, and deposited to the lockbox account required by Wachovia, to reduce Respondent's secured debt, instead of transferring such funds to the checking account on which Respondent drew checks to pay livestock sellers from whom Respondent had obtained the livestock.

Conclusions

By reason of the facts found in Findings of Fact 3 through 7 above, Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, has wilfully violated section 312 (a) of the Act (7 U.S.C. §§ 213(a)).

Order

Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, directly or through any corporate or other device, in connection with its operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to pay the full purchase price of livestock; and
2. Issuing checks in payment for livestock without sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, is suspended as a registrant for the period of five years.

This decision shall become final and effective without further

proceedings 35 days after the date of service upon the Respondent, unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies of this decision shall be served upon the parties.

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CONSENT DECISIONS
(Not published herein - Editor)
See also www.usda.gov/da/oaljdecisions

PACKERS AND STOCKYARDS ACT OF 1920

Sun City Packing, Inc. and Ke-Long "Fred" Chow P&S Docket No. D-05-0011, 07/08/05.

Dale T. Smith & Sons Meat Packing Company Inc., Darrell H Smith and Dennis H. Smith P.& S Docket No D-05-0007, 0719/05.

Mike Bamrick dba Bamrick and MJ Cattle Company P.&S. Docket No. D-05-0016 09/19/05.

Ferndale Foods, Inc. and Margaret M. Kent P&S Docket No D-04-0004 10/05/05.

Tim Reece dba Reese Cattle Co. P.&S. Docket No. D-05-0009 10/26/05.

Washington Livestock Market Center, Inc. d/b/a Quincy Livestock Market and John Rodrick Nuckolls P&S /Docket No. D-05-0001 10/28/05.

Seabrite, Corp. P.&S. Docket No. D-05-0014 12/14/05.

Gulf Coast Livestock Commission Co. and Victor J. Garcia P&S Docket D-06-0001 12/20/05.