

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/HCO
2022 MAY 23 4:24 PM

In re:)	
)	
Clinton Livestock Auction, LLC)	P&S Docket No. D-22-J-0032
d/b/a Clinton Livestock Auction,)	
)	
and)	
)	
Jack Berry,)	P&S Docket No. D-22-J-0033
)	
and)	
)	
Sandra Berry,)	P&S Docket No. D-22-J-0034
)	
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 (USDA), alleging that the Respondents willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 20 I. I *et seq.*) (Regulations). This Consent Decision and Order is entered pursuant to the consent decision provision of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

The Respondents admit the jurisdictional allegations in paragraph I of the Complaint and specifically admit that the Secretary of Agriculture 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 USDA 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 and Order.

Findings of Fact

(a) Clinton Livestock Auction, LLC (Respondent Clinton), d/b/a Clinton Livestock Auction, is a limited liability company with a mailing address of P.O. Box 1780, Clinton, OK 73601, and physical address of 10191 US Highway 183, Clinton, OK 73601.

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

- (1) Engaged in the business of, and operating as, a posted stockyard under and subject to the provisions of the Act;
- (2) Engaged in the business of a market agency selling livestock on a commission in commerce; and
- (3) Registered with the Secretary of Agriculture as a market agency selling livestock on a commission basis in commerce.

(c) Jack Berry (Respondent J. Berry) is an individual whose current address is in the [REDACTED]. His address will not be stated in the Consent Decision and Order to protect Respondent J. Berry's privacy but will be provided to the Hearing Clerk, USDA, for the purpose of service of this Consent Decision and Order.

(d) Respondent J. 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) Sandra Berry (Respondent S. Berry) is an individual whose current address is in the [REDACTED]

[REDACTED] Her address will not be stated in the Consent Decision and Order to protect Respondent S. Berry's privacy but will be provided to the Hearing Clerk, USDA, for the purpose of service of this Consent Decision and Order.

(f) 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.

(g) Respondents, during the period of June 21, 2020, through July 26, 2020, 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 to the owners or consignors of livestock, in that:

- (1) As of June 21, 2020, Respondents had outstanding checks drawn on its custodial account in the amount of \$205,880.58 and had, to offset such checks, a balance in

the custodial account of \$78,049.03, no deposits in transit, and proceeds receivable of \$50,654.88 resulting in a custodial account shortage in the amount of \$77,176.67.

(2) As of July 26, 2020, Respondents had outstanding checks drawn on its custodial account in the amount of \$163,630.62 and had, to offset such checks a balance in the custodial account of \$77,987.73, no deposits in transit, and proceeds receivable of \$58,935.01, resulting in a custodial account shortage in the amount of \$26,707.88.

(h) The shortages in Respondents' custodial account described herein were due, in part, to Respondents' failure to deposit into the custodial account an amount equal to the proceeds receivable from the sale of consigned livestock within the time prescribed by section 201.42 of the Regulations.

Conclusions of Law

(a) Respondents have willfully violated 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).

(b) Respondents having admitted the jurisdictional facts, and the parties having agreed to the entry of this Consent Decision and Order, the Consent Decision and Order will be entered.

Order

(a) Respondents, 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) Pursuant to 7 U.S.C. § 204, Respondents are suspended as a registrant under the Act for a period of seven (7) consecutive days and thereafter until its custodial account shortage is proven to have been corrected. Respondents' suspension as a registrant shall commence on May 27th, 2022. Respondents shall not set any special or additional sales the week before the suspension begins or during the week after the suspension ends in order to avoid or nullify the effect of the suspension.

This Consent Decision and Order shall have the same force and effect as if entered after a full hearing. The provisions of this Order shall become final and effective upon the sixth (6th) day after service of this Consent Decision and Order on Respondents.

Copies of this Decision shall be served upon the parties forthwith.

Clinton Livestock Auction, LLC d/b/a Clinton Livestock Auction
Respondent

By Jack Berry:


/

Date: 5-21-2022

Title:

owner

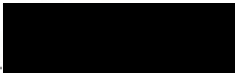
By Sandra Berry:


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Date: 5-21-2022

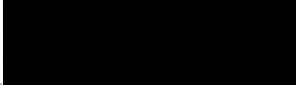
Title:

owner


/

Jack Berry
Respondent

Date: 5-21-2022


/

Sandra Berry
Respondent

Date: 5-21-2022

**SAMANTHA
DORSEY**


Digitally signed by
SAMANTHA DORSEY
Date: 2022.05.23 15:43:10
-04'00'

Date: 5-23-2022

Samantha M. Dorsey
Attorney for the Complainant

Done at Washington, D.C.

this 23 day of May, 2022


/

Tierney Carlos

Administrative Law Judge