

# AGRICULTURE DECISIONS

**Volume 75**

**Book Two**

Part Two (P&S)

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



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*No Default Decisions reported.*

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**PACKERS & STOCKYARDS ACT**

**COURT DECISIONS**

**UNITED STATES v. GENTRY.**  
**Civil Action No. 1:12-CV-215-SA-DAS.**  
**Memorandum Opinion of the Court.**  
**Filed August 2, 2016.**

**P&S – Civil monetary penalties – Injunctive relief – Summary judgment – j**

[Cite as: No. 1:12-CV-215-SA-DAS, 2016 WL 4132248 (N.D. Miss. Aug. 2, 2016)].

The Court granted in part and deferred in part the Government’s motion for summary judgment, entering a \$107,550 judgment in favor of the Government. The Court concluded that the defendant failed to produce any evidence to rebut findings that the defendant had violated a 2008 order of the Secretary and was therefore subject to civil penalties under the Act. The Court found that the requested penalties were merited and, accordingly, granted the Government’s request for \$107,550 in civil monetary penalties. Although the Government sought an injunction prohibiting the defendant from operating as a dealer or market agency under the Act until he increased bond coverage and re-registered with USDA as required by the Secretary’s 2008 order, the Court held that it could only award injunctive relief after a “hearing” to determine whether the order was “lawfully made and duly served” and that the defendant did not comply with that order. Accordingly, the Court stated that it would notice a hearing to make the appropriate determinations regarding the injunctive relief sought by the Government.

**United States District Court,  
Northern Division of Mississippi,  
Aberdeen Division.**

**MEMORANDUM OPINION**

**SHARION AYOCK, UNITED STATES DISTRICT JUDGE, DELIVERED  
THE OPINION OF THE COURT.**

Currently pending is the United States’ Motion for Summary Judgment [77], in which it seeks fines and injunctive relief pursuant to the Packers and Stockyards Act, codified at 7 U.S.C. Sections 181-229(b). The Court has considered the motion, relevant authorities, and record evidence, and finds as follows:

**Factual & Procedural Background**

## PACKERS & STOCKYARDS ACT

According to the summary judgment record, Defendant Billy Mike Gentry is a livestock dealer and market agency located in Houston, Mississippi.<sup>1</sup> For a number of years, he has been engaged in the practice of purchasing livestock on behalf of himself and others. Under the Packers and Stockyards Act, Gentry is required to register with the United States Department of Agriculture (“USDA”) and post a reasonable bond to secure his performance. 7 U.S.C. §§ 203, 204; 7 C.F.R. §§ 201.10, 201.29. He is further required to promptly pay for purchased livestock, and late payment or an outright failure to pay is deemed an unfair practice. 7 U.S.C. § 228(b)(c).

In 1990 and again in 2001, the USDA commenced administrative actions against Gentry before the Secretary of Agriculture for failing to timely pay full purchase price for livestock or for failing to maintain adequate bond coverage. The actions resulted in civil monetary penalties and two cease and desist orders prohibiting Gentry from purchasing livestock until he maintained and filed an adequate bond. Nonetheless, Gentry continued to operate with what the USDA considered to be insufficient bond coverage and additionally underreported the cost of livestock he purchased as a dealer and as a market agency buying on a commission.

Therefore, in 2007, the USDA commenced a third administrative action before the Secretary of Agriculture, which is the basis for this lawsuit. The USDA attempted to serve the administrative complaint on Gentry by certified mail, but the complaint was returned unclaimed. He was then served by regular mail at his last known business address. Gentry failed to respond or appear, and the administrative law judge subsequently found against him on the basis of default. That order, which was personally served on Gentry, again suspended Gentry from purchasing livestock without filing and maintaining adequate bond coverage. Gentry sought to appeal the decision, but the attempt was

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<sup>1</sup> The Act defines a “dealer” as “any person ... engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser” and a “market agency” as “any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services.” Packers and Stockyards Act § 301(c), (d).

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subsequently dismissed for procedural deficiencies. The 2008 order from the Secretary of Agriculture became final and effective March 18, 2009.

The Government alleges that between March 18, 2009 and November 30, 2015, Gentry violated the Secretary's order at a prolific pace, purchasing over 17,000 head of cattle for more than \$14,000,000. Based on this alleged failure to comply, the Government filed the present action seeking the imposition of penalties and injunctive relief.

The Court initially entered default judgment against Gentry for \$945,250 and injunctive relief for his failure to answer or otherwise appear. Gentry thereafter retained counsel, successfully moved to set aside the default judgment, and proceeded with discovery in this cause. In March 2016, Gentry's counsel moved to withdraw, representing that the parties had reached a tentative settlement conditional on Gentry's procuring additional bond coverage and making "certain specified payments" to the Government, but that Gentry would not comply with the agreement.

While counsel's motion to withdraw was pending, the Government filed this motion for summary judgment. Thereafter, the Court granted defense counsel's motion to withdraw and required them to serve Gentry with the Court's order on withdrawal. This order permitted Gentry twenty-one days to obtain new counsel or notify the Court of his intent to proceed *pro se*, and it extended the deadline for opposing summary judgment by over a month. Though Gentry was duly served with a copy of the Court's order, he has not obtained new counsel or informed the Court of his intent to proceed *pro se*. And even with the protracted time allotted for opposing summary judgment, Gentry has filed no response. Thus, the Government's motion is now ripe for adjudication.

**Summary Judgment Standard**

Summary judgment is warranted under Rule 56(a) of the Federal Rules of Civil Procedure when the evidence reveals no genuine dispute regarding any material fact and the moving party is entitled to judgment as a matter of law. The rule "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element

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essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L.Ed. 2d 265 (1986).

The party moving for summary judgment "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Id.* at 323, 106 S. Ct. 2548. The nonmoving party must then "go beyond the pleadings" and "set forth 'specific facts showing that there is a genuine issue for trial.'" *Id.* at 324, 106 S. Ct. 2548 (citation omitted). In reviewing the evidence, factual controversies are to be resolved in favor of the nonmovant, "but only when ... both parties have submitted evidence of contradictory facts." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc). Importantly, conclusory allegations, speculation, unsubstantiated assertions, and legalistic arguments have never constituted an adequate substitute for specific facts showing a genuine issue for trial. *TIG Ins. Co. v. Sedgwick James of Wash.*, 276 F.3d 754, 759 (5th Cir. 2002); *SEC v. Recile*, 10 F.3d 1093, 1097 (5th Cir. 1997); *Little*, 37 F.3d at 1075.

### Discussion & Analysis

The Packers and Stockyards Act provides civil monetary penalties for a "stockyard owner, market agency, or dealer who knowingly fails to obey" an order of the Secretary of Agriculture made pursuant to the Act. 7 U.S.C. § 215(a). The offending party "shall forfeit to the United States" a specified sum for each offense. *Id.*

Following the Secretary of Agriculture's 2008 order, the USDA commenced an investigation into Gentry's livestock activities and discovered repeated unlawful purchases by Gentry. The Government has submitted the declaration of Amy R. Blechinger, the Senior Program Policy Analyst in the Litigation and Economic Analysis Division of the Packers and Stockyards Program within the USDA. According to Blechinger, whose department oversaw the investigation, Gentry engaged in the following prohibited transactions in violation of the Secretary's order.

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- 1) From March and April of 2009, Gentry purchased 894 head of cattle in at least 30 separate transactions, totaling \$422,109.55.
- 2) On June 15, 2010, Gentry purchased 59 head of cattle in at least 10 separate transactions, totaling \$23,284.04.
- 3) During the period January through March 29, 2011, Gentry purchased 1,889 head of cattle in at least 69 separate transactions, totaling \$1,173,514.28.
- 4) From September 3, 2012 through October 29, 2012, Gentry purchased 934 head of cattle in 19 transactions, totaling \$639,935.75.
- 5) From December 4, 2012, through April 17, 2013, Gentry purchased 3,715 head of cattle in 137 separate transactions, totaling \$2,620,938.89.
- 6) From September 1, 2014, through October 6, 2014, Gentry purchased 4,434 head of cattle, totaling \$4,941,755.87.
- 7) From November 30, 2015, through April 6, 2016, Gentry purchased 5,554 head of cattle in 220 transactions, totaling \$4,569,594.54.

Gentry has produced no evidence to rebut these findings from the official investigation. Indeed, Gentry's own admissions support the Government's position that he continuously violated the Secretary's 2008 order. For example, Gentry stated in response to interrogatories that he "did not act in bad faith by failing to maintain a \$75,000 bond." He "attempted to maintain the bond, but was unable to do so." Gentry also admitted in answer to interrogatories that he purchased livestock as agent for at least fifteen different principals in at least six different locations from January 2009 until September 2015.<sup>2</sup>

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<sup>2</sup> Gentry failed to timely respond to the Government's requests for admission, and thus is deemed to have admitted *inter alia* that he was violating the Secretary's 2008 order by (1) currently operating as a livestock dealer and market agency, and (2) operating without the bond required by the Secretary's order. FED. R. CIV. P. 36(b). Though these deemed admissions are alone sufficient to support a ruling in the Government's favor, they are superfluous here, as the Court finds additional un rebutted evidence of Gentry's misconduct.

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Thus, the undisputed evidence demonstrates that Gentry violated the Secretary's order and is subject to the civil penalties prescribed by the Act and regulations promulgated thereunder. The Act imposes a fixed penalty "for each offense[,]" but in the "case of a continuing violation each day shall be deemed a separate offense." 7 U.S.C. 215(a). According to 7 C.F.R. § 3.91, the Secretary is directed to adjust civil monetary penalties at least once every four years. At the time Defendant began operating in violation of the Secretary's order in 2009, the statute provided for a penalty of \$650 per day for continuing violations, but the penalty was increased to \$750 per day for violations occurring after May 8, 2010. Pub. L. Nos. 101-410 & 104-134.

The Government contends Gentry committed "ongoing violations" from March 23, 2009 to February 6, 2014 and then again from September 1, 2014 to May 25, 2016. This results in a maximum statutory penalty of \$1,768,000.<sup>3</sup> However, according to the USDA's investigation, Gentry earns only approximately \$61,000 per year through his livestock purchasing activities. In view of this evidence and the USDA's recommended fine, the Government pursues only \$107,550 in civil penalties, approximately six percent of the amount available under the statute.

The Court has reviewed the summary judgment record and finds that the statutory penalties sought are merited. Accordingly, the Government's request for \$107,550 in civil monetary penalties is hereby granted.

### Injunctive Relief

In addition to authorizing civil monetary remedies, the Packers and Stockyards Act provides for mandatory injunctive relief as follows:

If after hearing the court determines that the order was lawfully made and duly served and that such person is in

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<sup>3</sup> (March 23, 2009 to May 7, 2010: 410 days x \$650 per day = **\$266,500**) + (May 8, 2010 to February 6, 2014: 1,370 days x \$750 per day = **\$1,027,500**) + (September 1, 2014 to May 25, 2016: 632 days x \$750 = **\$474,000**) = Total: **\$1,768,000**

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disobedience of the same, the court *shall* enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person, his officers, agents, or representatives from further disobedience of such order or to enjoin upon him or them obedience to the same.

7 U.S.C. § 216 (emphasis added).

The Government seeks an injunction prohibiting Defendant from operating as a dealer or market agency under the Packers and Stockyards Act until he increases his bond coverage and re-registers with USDA as required by the Secretary's 2008 order. Although imposing permanent injunctive relief typically requires the Court to weigh considerations such as irreparable injury and the inadequacy of a legal remedy, *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312, 102 S. Ct. 1798, 72 L.Ed. 2d 91 (1982), that analysis does not apply where "a statute clearly mandates injunctive relief for a particular set of circumstances." *Bedrossian v. Nw. Mem. Hosp.*, 409 F.3d 840, 843 (7th Cir. 2005).

However, as the Government recognizes, the Court may only award the statutorily prescribed injunctive relief after a "hearing" to determine whether the Secretary's order was "lawfully made and duly served" and that Gentry is in disobedience of that order.<sup>4</sup> 7 U.S.C. § 216. Accordingly, by separate docket entry, the Court will notice a hearing to make the appropriate determinations regarding the sought injunctive relief.

### **Conclusion**

For the reasons set forth above, the Government's Motion for Summary Judgment [77] is GRANTED IN PART and DEFERRED IN PART. Judgment in favor of the Government in the amount of \$107,550 is entered. The Government's request for an injunction will be entertained at a hearing to be noticed by separate docket entry.

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<sup>4</sup> The Court previously held a hearing prior to entering default judgment against Gentry. Because the Court set aside that default judgment in its entirety, the findings from that hearing are not binding going forward.

**PACKERS & STOCKYARDS ACT**

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**PACKERS & STOCKYARDS ACT**

**DEPARTMENTAL DECISIONS**

**In re: THOMAS H. HODGE, JR., d/b/a PEOPLE'S LIVESTOCK AUCTION, HODGE CATTLE CO., and HODGE 21 RANCH.**

**Docket No. 16-0063.**

**Decision and Order.**

**Filed September 6, 2016.**

**P&S-D.**

Thomas N. Bolick, Esq., for Complainant.<sup>1</sup>

Sidra P. Winter, Esq., for Respondent.

Decision and Order entered by Jill S. Clifton, Administrative Law Judge.

**DECISION AND ORDER ON THE WRITTEN RECORD**

**Decision Summary**

1. For Respondent Thomas H. Hodge, Jr.'s failures to comply with the Packers and Stockyards Act, I impose: (a) **cease and desist orders**; *see* paragraph 13; and (b) civil penalties totaling **\$20,500.00** (twenty thousand five hundred dollars); *see* paragraph 14.

**Parties and Allegations**

2. The Complainant is the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration [GIPSA], United States Department of Agriculture [frequently herein Packers and Stockyards or Complainant].

3. The Respondent is Thomas H. Hodge, Jr., an individual [also Thomas Hodge or Respondent Hodge or Respondent Thomas Hodge or Respondent].

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<sup>1</sup> 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].

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4. The Complaint, filed on February 25, 2016, alleged there is reason to believe that the Respondent Thomas H. Hodge, Jr. willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181, *et seq.*) [frequently herein the Packers and Stockyards Act or the Act], and the regulations promulgated thereunder, 9 C.F.R. § 201.1 *et seq.*

5. The Respondent Thomas H. Hodge, Jr. filed his Answer (a general denial) on March 29, 2016.

#### **Procedural History**

6. Packers and Stockyards filed a Motion for Summary Judgment on June 17, 2016. The Respondent, Thomas H. Hodge, Jr., failed to respond.

#### **Findings of Fact**

7. The Respondent Thomas H. Hodge, Jr. is an individual doing business as People's Livestock Auction, Hodge Cattle Co., and Hodge 21 Ranch, with a mailing address of [REDACTED] Mississippi [REDACTED].\*

8. The Respondent Thomas H. Hodge, Jr., at all times material herein,
- (a) was engaged in the business of a market agency buying and selling livestock on a commission basis;
  - (b) was engaged in the business of a dealer buying and selling livestock in commerce; and
  - (c) was registered with the Secretary of Agriculture as a market agency to sell livestock in commerce.

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\* Redacted by the Editor for personal privacy considerations.

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9. During March 3, 2011 through April 30, 2011, in eighteen (18) transactions involving six (6) different livestock auctions, the Respondent Thomas H. Hodge, Jr. purchased a total of 484 head of livestock for a total purchase price of \$301,212.50, but failed to pay, when due, the full purchase price of the livestock.

### Conclusions

10. The Secretary of Agriculture has jurisdiction over the parties and the subject matter.

11. Respondent Thomas H. Hodge, Jr. purchased livestock for which full payment was not timely made, thereby engaging in an “unfair practice” in violation of section 312(a) of the Act (7 U.S.C. §213(a)), and a violation of section 409(a) of the Act (7 U.S.C. §228b(a)); and section 201.43 of the regulations (9 C.F.R. § 201.43). *See* paragraph 9.

12. My Conclusions include its entirety The Declaration of Jeana Harbison (CX-24 filed June 17, 2016), incorporated herein by this reference and attached as Exhibit B.

### ORDER

13. Respondent Thomas H. Hodge, Jr. and his agents and employees, directly or indirectly through any corporate or other device, in connection with activities subject to the Packers and Stockyards Act, **shall cease and desist** from purchasing livestock and failing to **pay the full purchase price** of livestock **when due** (normally before the close of the next business day following each purchase of livestock); as required by section 409 of the Act (7 U.S.C. §228b) and section 201.43 of the regulations (9 C.F.R. § 201.43).

14. Respondent Thomas H. Hodge, Jr. shall pay civil penalties totaling **\$20,500.00** (twenty thousand five hundred dollars) in accordance with section 312(b) of the Act (7 U.S.C. § 213(b)). The civil penalty payment instrument(s) shall be made payable to the order of the **U. S. Department of Agriculture**, marked with **PS-D No. 16-0063** and sent to:

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USDA-GIPSA  
P.O. Box 790335  
St. Louis, Missouri 63179-0335

Payment(s) shall be **completed within sixty (60) days** from the date this Order is final and effective.

**Finality**

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

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

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**In re: THOMAS H. JODGE, JR., d/b/a PEOPLE'S LIVESTOCK AUCTION, HODGE CATTLE CO., and HODGE 21 RANCH.  
Docket No. 16-0063.  
Supplemental Order.  
Filed November 2, 2016.**

**P&S-D.**

Thomas N. Bolick, Esq., for Complainant.<sup>1</sup>  
Sidra P. Winter, Esq., for Respondent.  
Supplemental Order entered by Jill S. Clifton, Administrative Law Judge.

**SUPPLEMENTAL ORDER**

The Respondent Thomas H. Hodge, Jr. has requested modification, and Packers and Stockyards does not object so long as certain language

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<sup>1</sup> 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].

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is included, of paragraph 14 of the Decision and Order on The Written Record issued on September 6, 2016. The requested modification is GRANTED, as follows.

Paragraph 14 is modified:

14. Respondent Thomas H. Hodge, Jr. shall pay civil penalties **totaling \$20,500.00** (twenty thousand five hundred dollars) in accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), payable in **4 monthly installments of \$5,125.00, beginning by January 23 (Mon) 2017**. I conclude there is good cause for the additional time, through April 24, 2017, to liquidate the debt. Payments may of course be made earlier than when due without penalty. But if payments are made late or are less than the scheduled amount, then the remaining balance will become due immediately and in full upon request by the government.

Each payment shall be paid by a certified check, cashier's check, or money order, made payable to the order of the **U. S. Department of Agriculture**, marked with **PS-D No. 16-0063** and sent to:

USDA-GIPSA  
P.O. Box 790335  
St. Louis, Missouri 63179-0335

Copies of this "Supplemental Order" modifying paragraph 14 of the Decision and Order on The Written Record issued September 6, 2016 shall be sent by the Hearing Clerk to each of the parties (by email; and, to both Respondent's attorney and to Respondent Thomas H. Hodge, Jr. himself, by ordinary mail in addition to those email addresses the Hearing Clerk has).

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Lake Odessa Livestock Auction, Inc.; La Verne Lettinga;  
Paul Lettinga; and Randy Lettinga  
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**In re: LAKE ODESSA LIVESTOCK AUCTION, INC.; LA VERNE  
LETTINGA; PAUL LETTINGA; and RANDY LETTINGA.  
Docket Nos. 14-0122, 14-0123, 14-0124, 14-0125.  
Decision and Order.  
Filed November 9, 2016.**

**P&S-D.**

Ciarra A. Toomey, Esq., and Elizabeth Kruman, Esq., for Complainant.<sup>1</sup>  
Gerard D. Eftink, Esq., for Respondents.  
Decision and Order entered by Jill S. Clifton, Administrative Law Judge.

## **DECISION AND ORDER**

### **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.

### **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].

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<sup>1</sup> 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].

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### 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 three 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.

Lake Odessa Livestock Auction, Inc.; La Verne Lettinga;  
Paul Lettinga; and Randy Lettinga  
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9. The amount of the certificates of deposit (or portions thereof) designated as custodial funds for Lake Odessa Livestock varied among the three 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

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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.

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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 [sic] 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

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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 at 2) on the custodial account to Larry Recker, Jr., which should not have happened. Larry Recker, Jr. did nothing wrong in asking Verne Lettinga for \$5,000.00 so that Mr. Recker could pay a feed bill. Mr. Recker testified that he had known Verne Lettinga for about thirty-five years, and that he told Verne Lettinga he had five 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 Larry Recker, Jr. would be selling the five heifers through Lake Odessa Livestock.

13. IF the \$5,000.00 had been loaned to Larry Recker, Jr. 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 Larry Recker, Jr. from the general account, the misuse of the custodial account would not have happened.

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14. Verne Lettinga testified that he told the bookkeeper to send Larry Recker, Jr. 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 Larry Recker, Jr. as if Larry Recker, Jr. 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. Recker 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* Larry J. Recker, Jr.’s 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.

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- (b) *Custodial accounts for shippers' proceeds.* Every market agency engaged in selling livestock on a commission or agency basis shall establish and maintain a separate bank account designated as "Custodial Account for Shippers' Proceeds," or some similar identifying designation, to disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.
- (c) *Deposits in custodial accounts.* The market agency shall deposit in its custodial account before the close of the next business day (the next day on which banks are customarily open for business whether or not the market agency does business on that day) after livestock is sold (1) the proceeds from the sale of livestock that have been collected, and (2) an amount equal to the proceeds receivable from the sale of livestock that are due from (i) the market agency, (ii) any owner, officer, or employee of the market agency, and (iii) any buyer to whom the market agency has extended credit. The market agency shall thereafter deposit in the custodial account all proceeds collected until the account has been reimbursed in full, and shall, before the close of the seventh day following the sale of livestock, deposit an amount equal to all the remaining proceeds receivable whether or not the proceeds have been collected by the market agency.
- (d) *Withdrawals from custodial accounts.* The custodial account for shippers' proceeds shall be drawn on only for payment of (1) the net proceeds to the consignor or shipper, or to any person that the market agency knows is entitled to payment, (2) to pay lawful charges against the consignment of livestock which the market agency shall, in its capacity as agent, be required to pay, and (3) to obtain any sums due the market agency as compensation for its services.
- (e) *Accounts and records.* Each market agency shall keep such accounts and records as will disclose at all times

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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

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

23. The witnesses (and portions of the Transcript where their testimony is found) are shown on Appendix A attached. A copy of the Consent

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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

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Odessa Livestock's records, looking back, Adam Fast concluded, and I agree, that **Lake Odessa Livestock's trust account was \$141,945.71 short 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 \$239,333.82 short on May 31, 2012.** CX-54 at 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 \$376,163.60 short on June 29, 2012.** CX-54 at 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.

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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

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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.

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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

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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?

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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 [sic] 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?

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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 at 2) was written on the custodial account to Larry Recker, Jr. in **anticipation** that Larry Recker, Jr. would be selling five 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. Recker had sold the heifers on consignment, but that is what happened. Tr. 598-99. When Mr. Recker changed his mind and decided to keep the five 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 Larry Recker, Jr. See RX-34, RX-35, Tr. 585-92; and Larry J. Recker, Jr.’s testimony, Tr. 485-95.

53. Neither Paul Lettinga nor Randy Lettinga had anything to do with the bungled \$5,000.00 Larry Recker, Jr. 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

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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 401 of 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.

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60. Lake Odessa Livestock may transfer out of the trust account into the general account money to loan to customers such as Larry Recker, Jr., 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

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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

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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

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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 thirty (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.

**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

## **PACKERS & STOCKYARDS ACT**

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

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Ravenna Auction, LLC; Paul Lettinga; and Randy Lettinga  
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**In re: RAVENNA AUCTION, LLC; PAUL LETTINGA; and  
RANDY LETTINGA.  
Docket Nos. 14-0126, 14-0127, 14-0128.  
First Amended Decision and Order.  
Filed November 9, 2016.**

**P&S-D.**

Ciarra Toomey, Esq., and Elizabeth Kruman, Esq., for Complainant.<sup>1</sup>  
Gerard D. Eftink, Esq., for Respondents.  
Decision and Order entered by Jill S. Clifton, Administrative Law Judge.

### **FIRST AMENDED DECISION AND ORDER**

#### **Decision Summary**

1. Each of the three Respondents [herein occasionally the Ravenna Auction Respondents] violated the Packers and Stockyards Act as alleged in the Complaint filed May 13, 2014. This Decision focuses on the nature of those violations and the appropriate remedy for each Respondent. The remedy is stronger for Ravenna Auction, L.L.C., which in August 2011 resolved by Consent Decision a similar case that had been filed in 2010. The two brothers Paul Lettinga and Randy Lettinga have not been subject to prior sanction, and for each of them, a cease and desist order and a \$5,000.00 civil penalty suffices, payable in equal monthly installments beginning by April 25 (Tues) 2017. *See* paragraphs 58-59. For Ravenna Auction, L.L.C., a cease and desist order and a \$25,000.00 civil penalty suffices, payable in equal monthly installments beginning by April 25 (Tues) 2017; EXCEPT THAT, at its option Ravenna Auction may choose instead to serve two seven-day periods of suspension, not necessarily consecutive, each period to be completed prior to April 25, 2017, with each seven-day period chosen by Ravenna Auction and communicated in writing in advance to Packers and Stockyards, attn.: Mr. Timothy Hansen. *See* paragraph 57.

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<sup>1</sup> 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 & STOCKYARDS ACT

### Overview

2. Ravenna Auction, L.L.C. [herein frequently, Ravenna Auction] holds livestock sales (cattle and hogs). Ravenna Auction must keep its trust account “in balance” to ensure, at all times, that livestock sellers (“shippers” or “consignors”) are paid.

3. In 2012, the year in question, Ravenna Auction was required, as in every year since Ravenna Auction’s inception in about 1999, under 9 C.F.R. § 201.42, to keep its trust account “in balance,” as Packers and Stockyards defines “in balance.”

4. The trust account is a separate bank account known as a “Custodial Account for Shippers’ Proceeds.” 9 C.F.R. § 201.42.

5. Ravenna Auction’s “shippers” or “consignors” were all timely paid; no checks bounced. Ravenna Auction borrowed money when needed to make up for buyers who paid a week later at the next sale, or even later than that, or not at all. Ravenna Auction borrowed regularly from its principal owner, La Verne Lettinga,<sup>2</sup> who placed certificates of deposit into the trust account to shore it up.

6. Nevertheless, the Packers and Stockyards audit in 2012 showed that Ravenna Auction was not in compliance with Packers and Stockyards’ strict requirements for the trust account on either date that was checked, May 31, 2012, or June 29, 2012. *See* Paragraph III of the Complaint.

7. Ravenna Auction maintained a \$97,000.00 bond in 2012 (Tr. 63-64, CX-31). The bond is insurance and in no way substitutes for the requirement to keep the trust account “in balance.” Tr. 383-84.

8. Further, Ravenna Auction, in 2012, failed to handle repayment of a loan properly. *See* Paragraph V of the Complaint. The loan, \$75,000.00, came from Mr. Marvin Jay (“Marv”) Zylstra, who loaned Ravenna Auction \$75,000.00 in late June 2012 when Randy Lettinga called and asked him to. Tr. 476-84.

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<sup>2</sup> In 2012 La Verne Lettinga owned 99.5% of Ravenna Auction, L.L.C.; one of his sons Randy C. Lettinga owned 0.5%. CX 33.

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9. Mr. Zylstra did nothing wrong, made no money on the transaction, and was merely helping the Lettinga family, who own and operate Ravenna Auction, and who had been his friends for forty years. Tr. 484.

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

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

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

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

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

Here is the regulation:

**§ 201.42 Custodial accounts for trust funds.**

## PACKERS & STOCKYARDS ACT

- (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

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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.

## PACKERS & STOCKYARDS ACT

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

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

9 C.F.R. § 201.42.

15. Ravenna Auction's livestock sales are generally once a week on Mondays (starting at 5:30 p.m., lasting on average until 9:30 p.m. or 10:00 p.m.), with an additional livestock sale once a month on a Thursday (starting at 12:30 p.m. or 1:00 p.m.). Tr. 424-26. Ravenna Auction holds livestock sales even on snow days (in Ravenna, Michigan), even on holidays - - off only on Christmas and New Year's. At times, not off even on New Year's. Tr. 439.

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

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

18. Ravenna Auction's Monday night sales occur after the bank has closed. Thus, the bank closes before the close of Ravenna Auction's seventh day. Ravenna Auction cannot get a bank-stamped deposit slip after the bank has closed. (And attempts at electronic depositing delayed the processing of the deposits.) A bank-stamped deposit slip

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would be preferred, but Packers and Stockyards will accept a “deposit in transit” for analysis of the trust account. Tr. 379.

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

**Parties and Counsel**

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

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

**Procedural History**

22. Two Complaints were consolidated for Hearing; this Decision addresses one of those two Complaints. Ravenna Auction is alleged: (a) to have failed to maintain and properly use its custodial account (trust account); and (b) to have failed to comply with a Consent Decision and Order entered in *In re Ravenna Auction, L.L.C., and La Verne Lettinga*, P&S Docket No. D-10-0459; and (c) to have engaged in unfair and

## **PACKERS & STOCKYARDS ACT**

deceptive practices regarding fictitious paperwork showing a sale of livestock when there was none (the repayment to Mr. Zylstra as if Mr. Zylstra were being paid for cattle). The Complaint, filed on May 13, 2014, cites sections 307, 312(a), and 401 of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 208, 7 U.S.C. § 213(a), and 7 U.S.C. §221); and section 201.42 of the regulations (9 C.F.R. § 201.42).

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

24.The witnesses (and portions of the Transcript where their testimony is found) are shown on Appendix A attached. A copy of the Consent Decision is Appendix B attached. 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 (not applicable to Paul Lettinga or Randy Lettinga). 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.

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

### **Findings of Fact**

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

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

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

29. Adam Fast concluded, and I agree, that Ravenna Auction's trust account was \$92,636.41 short on June 29, 2012. CX 40. Tr. 154. Adam Fast used the June 29, 2012 date, because he had the custodial account bank statement for Ravenna dated June 29, 2012. See CX 41-CX 45. Tr. 155-63.

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

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

32. Ms. Ciarra Toomey obtained Mr. Adam Fast's explanation of the trust account:

(Tr. 78):

## PACKERS & STOCKYARDS ACT

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

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

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

Mr. Fast: No.

Ms. Toomey: Who's (sic) money is it?

Mr. Fast: The consignor.

Tr. 78.

33. For market agencies such as Ravenna Auction, the banking calendar has cycles that begin with each sale, as established by 9 C.F.R. § 201.42. The seventh day following a sale is significant for the purpose of balancing a custodial account and consequently for the purpose of auditing a custodial account. 9 C.F.R. § 201.42(c). When “proceeds receivable” become “accounts receivable”, at the close of the seventh day following the sale of livestock, Packers and Stockyards no longer regards those receivables as assets (debits) in the custodial account. CX -34. Tr. 455.

34. From August 11, 2011 through August 10, 2012, Mr. La Verne P. (“Verne”) Lettinga was prohibited from exercising any management, direction, and control of Ravenna Auction. Consent Decision issued August 11, 2011; *see* Appendix C. At the time of the Consent Decision, Ravenna Auction was owned 100% by Mr. La Verne P. (“Verne”) Lettinga.

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

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

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

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

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

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

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

42. No custodial account checks bounced, during the time at issue here. Tr. 417. One reason the checks did not bounce, is that the Bank paid the checks. Tr. 465. The Bank charged non-sufficient funds fees. Tr. 465. No consignors were damaged. Tr. 417.

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

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

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45. Further, under Packers and Stockyards interpretation, the market agency holding a once-a-week sale after banking hours, can replace that proceeds receivable with the buyer's payment at the next sale OR its own money only by preparing "deposits in transit" (Tr. 377-79):

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

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buyers from the previous weeks [sic] 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.

Tr. 377-79.

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

### **Conclusions**

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

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

(a) It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with the receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock.  
7 U.S.C. § 213(a).

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

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

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

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

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

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

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

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

**ORDER**

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

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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).

57. Respondent Ravenna Auction, L.L.C. shall pay civil penalties **totaling \$25,000.00** (twenty-five thousand dollars) in accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), payable in equal monthly installments beginning by April 25 (Tues) 2017. I conclude there is good cause for five years, through April 25, 2022, to liquidate the debt. Payments may of course be made earlier than when due without penalty. OR, Ravenna Auction may opt (instead of paying civil penalties totaling \$25,000.00) to serve two seven-day periods of suspension, not necessarily consecutive, each to occur prior to April 25, 2017, with each

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seven-day period chosen by Ravenna Auction and communicated in writing at least one week in advance to USDA, GIPSA, Packers and Stockyards Program, Litigation & Economic Analysis Division, attn.: Mr. Timothy Hansen. Email or FAX will suffice: [timothy.b.hansen@gipsa.usda.gov](mailto:timothy.b.hansen@gipsa.usda.gov) OR FAX 202-690-3207. [To confirm receipt of FAX telephone 202-690-3209]

58. Respondent Paul Lettinga shall pay civil penalties **totaling \$5,000.00** (five thousand dollars) in accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), payable in equal monthly installments beginning by April 25 (Tues) 2017. I conclude there is good cause for five years, through April 25, 2022, to liquidate the debt. Payments may of course be made earlier than when due without penalty.

59. Respondent Randy Lettinga shall pay civil penalties **totaling \$5,000.00** (five thousand dollars) in accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), payable in equal monthly installments beginning by April 25 (Tues) 2017. I conclude there is good cause for five years, through April 25, 2022, to liquidate the debt. Payments may of course be made earlier than when due without penalty.

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

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

**Finality**

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

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Copies of this First Amended 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 Lake Odessa Livestock Auction, Inc. and to Mr. La Verne P. ("Verne") Lettinga.

### 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 Ravenna Auction

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

Mr. Adam Fast (Tr. 377 - 402), called by Packers and Stockyards  
Mr. Randy C. Lettinga (Tr. 404 - 474), called by Ravenna Auction  
Mr. Marvin Jay Zylstra (Tr. 476 - 484), called by Ravenna Auction  
Mr. Larry J. Recker, Jr. (Tr. 485 - 495), called by Ravenna Auction  
Mr. Paul Jay Lettinga (Tr. 496 - 528), called by Ravenna Auction  
Mr. La Verne P. ("Verne") Lettinga (Tr. 530 - 630), called by Ravenna Auction  
Mr. John Figg (Tr. 632 - 672), called by Ravenna Auction

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

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

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

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

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

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

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## MISCELLANEOUS ORDERS & DISMISSALS

## MISCELLANEOUS ORDERS & DISMISSALS

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

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No Miscellaneous Orders & Dismissals reported.

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Default Decisions & Orders  
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**DEFAULT DECISIONS & ORDERS**

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

**PACKERS AND STOCKYARDS ACT**

No Default Decisions reported.

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**CONSENT DECISIONS**

**CONSENT DECISIONS**

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**Stephen Smeal, d/b/a Fatted Calf Cattle Farms #6.**

Docket No. 16-0130.

Filed August 2, 2016.

**Ayah Slaughter House, LLC (a cancelled Virginia entity), d/b/a Lebanese Butchers Slaughter House (an unregistered Virginia entity); Samir Rababeh; and Kheder Rababeh.**

Docket Nos. 16-0111, 16-0112, 16-0113.

Filed August 29, 2016.

**Mount Airy Stockyard, Inc.; Venancio Torres; and Debroah Torres.**

Docket Nos. 16-0100, 16-0101, 16-0102.

Filed August 18, 2016.

**Casper Joe Ringlestein, III, d/b/a S.W. Livestock Sales Co.**

Docket No. 16-0140.

Filed September 23, 2016.

**Alejandro Moreno & Nora Picazo, d/b/a Moreno Slaughter.**

Docket No. 16-0141.

Filed September 28, 2016.

**Tyson Fresh Meats, Inc.**

Docket No. 16-0188.

Filed September 30, 2016.

**Noah's Ark Processors, LLC.**

Docket No. 16-0143.

Filed November 3, 2016.

**T&J Meat Packing, Inc.**

Docket No. 16-0131.

Filed December 12, 2016.

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**Gregg Paskewitz, d/b/a Paskewitz Livestock.**  
Docket No. 16-0135.  
Filed December 16, 2016.

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