

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 10-0058

In re: Barnesville Livestock, LLC, and
Darryl Watson,

Respondents

Decision and Order

Appearances: Charles E. Spicknall, Esquire, Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant
Miles D. Fries, Esquire and Susan J. McDonald, Esquire, Gottlieb, Johnston, Beam & Dal Ponte, PLL, Zanesville, Ohio, for the Respondents

Preliminary Statement

This is a disciplinary proceeding brought under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §181, *et seq.*) (Act), instituted by a Complaint filed on December 10, 2009 by Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture. The Complaint alleges that Barnesville Livestock, LLC and Darryl Watson (Respondents) willfully violated section 312(a) of the Act, 7 U.S.C. §213(a) and sections 201.42 and 201.43 of the Regulations, 9 C.F.R. §201.42 and §201.43 by failing to correct shortages in their custodial account for shipper's proceeds and by failing to timely pay consignors of livestock sold on a commission basis at the auction market that they operate in Barnesville, Ohio.

Copies of the Complaint were served upon the Respondents by certified mail. On December 29, 2009, a corrected Complaint¹ was filed which was also served upon the Respondents by certified mail. On January 11, 2010, Respondents filed their Answer, admitting the general allegations as to the identity of the Respondents, their operation of the auction market and its location, but denying violations of the Act. The Answer additionally raised the defense that any acts complained of were isolated and thus not an unfair practice, the affirmative defense of failure to afford due process, and lack of personal jurisdiction. A substantially identical Answer was filed to the Corrected Complaint on January 26, 2010.

On July 27, 2010, Complainant filed a Motion to set a hearing date. On March 22, 2011, a scheduling teleconference was conducted, exchange deadlines for exhibits and witness lists were established and the matter was set for oral hearing to commence on August 2, 2011 in Columbus, Ohio. On July 28, 2011, the parties filed a Joint Stipulation wherein the Respondents admitted violating the Act and Regulations as alleged in the Complaint, leaving only the imposition of an appropriate sanction unresolved. As a result of the simplification of the proceedings, following a teleconference, the hearing was changed to a telephonic hearing, with the Complainant in Washington, DC and the Respondents participating from their attorneys' offices in Ohio. The parties were invited to file post hearing briefs; however, only the Complainant did so.

In assessing the appropriate sanction in this action, I considered the impact that a suspension of the length sought by the Complainant would have upon the Respondents' ability to remain in business and the resulting impact upon their employees and the consignors in the area that the auction market serves. In this regard, I have taken note of

¹ The corrected Complaint merely added an appendix that had been omitted at the time of the initial filing.

the obvious and continued loyalty of those consignors to the auction market despite an unacceptably high volume issuance of NSF checks and delays in payment that individual consignors experienced, all of whom apparently now have been paid. I also considered the fact that the cause of the problems experienced by the Respondents was attributable to the defalcation by a single individual against whom no action has been taken to date by the Department. Other mitigating factors considered include the full and open cooperation that the Respondents provided to GIPSA in its investigation and in admitting their wrongdoing. I also considered the seriousness of the violations and the lengthy and protracted duration of the period of misuse of the custodial fund as well as the number of NSF checks issued to cosignors.

On the basis of the testimony of the parties at the telephonic hearing and the entire record,² the following Findings of fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Barnesville Livestock, LLC is an Ohio limited liability company with a business mailing address in New Concord, Ohio. The registered agent for service of process is Darryl L. Watson of Norwich, Ohio.
2. Respondent Barnesville Livestock operates a livestock auction market in Barnesville, Ohio, and at all times material to the allegations in this action, was:
 - a. Engaged in the business of conducting and operating a posted stockyard subject to the provisions of the Act.
 - b. Engaged in the business of a market agency selling consigned livestock in commerce on a commission basis at the stockyard; and

² GIPSA's exhibits (CX-1 through CX 449) were stipulated as being pre-marked and exchanged, admissible as evidence and made a part of the record of proceedings. Joint Stipulation, Docket Entry 18.

c. Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis and as a market agency buying livestock on commission.

3. Respondent Darryl Watson is an individual residing in the State of Ohio. Watson was:

a. The sole member and owner of Barnesville Livestock, LLC;

b. The individual responsible for day to day direction, management and control of Barnesville Livestock's business operations.

4. On October 28, 2008, the Packers and Stockyards Program notified the Respondents via certified mail that its operation with a custodial account shortage is an unfair practice and a violation of the Act.

5. Notwithstanding the above notice, Respondents Barnesville Livestock and Watson, during the period of October 31, 2008 and May 31, 2011, failed to properly use and maintain its custodial account, thereby endangering the faithful and prompt accounting of shipper's proceeds and the payment due the owners or consignors of livestock.

6. As of October 31, 2008, Respondents had outstanding checks drawn on its custodial account in the amount of \$285,548.03. On that same date, the custodial account had a negative balance of \$58,381.28, with proceeds receivable of \$109,957.85, leaving a custodial account shortage of \$233,971.46.

7. As of December 31, 2008, Respondents had outstanding checks drawn on its custodial account in the amount of \$281,043.28. On that same date, the custodial account

had a negative balance of \$3,454.86, with proceeds receivable of \$17,749.53, leaving a custodial account shortage of \$266,748.61.

8. As of June 30, 2009, Respondents had outstanding checks drawn on its custodial account in the amount of \$165,417.78. On that same date, the custodial account had a negative balance of \$25,268.52, with proceeds receivable of \$19,723.21, leaving a custodial account shortage of \$170,963.09.

9. As of April 29, 2011, Respondents had outstanding checks drawn on its custodial account in the amount of \$181,176.11. On that same date, the custodial account had a balance of \$29,672.96, with proceeds receivable of \$15,634.98, leaving a custodial account shortage of \$135,868.17.

10. As of May 31, 2011, Respondents had outstanding checks drawn on its custodial account in the amount of \$258,409.34. On that same date, the custodial account had a balance of \$107,890.60, with proceeds receivable of \$19,325.00, leaving a custodial account shortage of \$131,193.74.

11. The shortages in the Respondents' custodial account were due, in part, to Respondents' failure to deposit into the account amounts equal to the proceeds receivable from the sale of consigned livestock within the time prescribed by section 201.42 of the Regulations, 9 C.F.R. §201.42.

12. The shortages in the Respondents' custodial account, during the period of October 31, 2008 through May 31, 2011, were also due, in part, to the misuse of custodial account funds.

13. Respondents, during the period of October 6, 2008 through December 26, 2008, permitted \$137.00 in bank fees to be charged to the custodial account.

14. Respondents, during the period of October 3, 2008 through December 30, 2008, transferred \$78,785.71 in custodial funds to Respondents' general account.

15. Respondents, on October 31, 2008, deposited proceeds in the amount of \$5,723.52 from the sale of livestock sold on a commission basis into an account other than Respondents' custodial account.

16. Respondents, during the period of September 13, 2008 through August 15, 2009, sold livestock on a commission basis and in purported payment of the net proceeds thereof issued at least 350 NSF checks to consignors that were returned by the bank upon which they were drawn because Respondents failed to maintain a sufficient balance in the custodial account for the checks to be honored when presented for payment and in so doing failed to remit, when due, the net proceeds due from the sale price of such livestock on a commission basis.

17. Respondents have fully cooperated with GIPSA's investigation of issues concerning the custodial account for shipper's proceeds at the auction market.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Barnesville Livestock, LLC was at all times pertinent to the violations a market agency selling consigned livestock within the meaning of and subject to the provisions of the Act.

3. Respondent Darryl Watson is the alter ego of Respondent Barnesville Livestock, LLC.

4. Respondents willfully violated section 312(a) of the Act, 7 U.S.C. §213(a) and sections 201.42 of the Regulations, 9 C.F.R. §201.42 by failing to maintain and properly use the custodial account for shippers' proceeds at the auction market.

5. Respondents willfully violated section 312(a) of the Act, 7 U.S.C. §213(a) and sections 201.43 of the Regulations, 9 C.F.R. §201.43 by issuing NSF checks and by failing to timely remit the net proceeds due from the sale of livestock to the consignors.

Order

1. Respondents Barnesville Livestock, LLC and Darryl Watson, their agents and employees, directly or through any corporate or other device, in connection with the corporation's activities subject to the Act, shall cease and desist from further violations of section 312(a) of the Act, 7 U.S.C. §213(a) and sections 201.42 and 201.43 of the Regulations, 9 C.F.R. §201.42 and §201.43.

2. Respondent Barnesville Livestock, LLC is suspended as a registrant under the Act for a period of twenty-one days.

3. This Decision and Order shall become final and effective without further proceedings thirty-five days (35) after service on Respondent, unless appealed to the Judicial Officer by a party to the proceeding within thirty (30) days, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies of this Decision and Order will be served upon the parties by the Hearing Clerk.

October 13, 2011

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Charles E. Spicknall, Esquire
Miles D. Fries, Esquire
Susan J. McDonald, Esquire

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue SW
Room 1031, South Building
Washington, D.C. 20250-9203
202-720-4443
Fax: 202-720-9776