

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 10-0458

In re: Randall J. Unger, d/b/a,  
Lake Area Livestock Marketing,

Respondent

**Default Decision and Order**

**Preliminary Statement**

This is a disciplinary proceeding 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 September 30, 2010 by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that Randall J. Unger d/b/a Lake Area Livestock Marketing, (Respondent), willfully violated the Act. The Complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130), (Rules of Practice), were served on Respondent by certified mail on October 7, 2010. On October 25, 2010, the Hearing Clerk received a letter from the Respondent which has been filed as the Respondent's Answer to the Complaint.

Section 1.136(b) of the Rules of Practice (7 C.F.R. § 1.136(b)) requires that Respondent "(c)learly admit, deny or explain each of the allegations in the Complaint." 7 C.F.R. § 1.136(b). A failure to "deny or otherwise respond to an allegation" is deemed to be an admission. 7 C.F.R. §1.136(c). Respondent's Answer failed to clearly admit, deny, or explain the allegations in the Complaint and therefore, constitutes an admission of all the material allegations of fact contained in the Complaint.

Upon Complainant's motion, the following Findings of Fact, Conclusions of Law and Order will

be entered pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

**Findings of Fact**

1. Randall J. Unger, doing business as Lake Area Livestock Marketing, (Respondent) is an individual whose mailing address is in Watertown, South Dakota.
2. At all times material herein, Respondent was:
  - a. Engaged in the business of buying and selling livestock in commerce;
  - b. Registered with the Secretary of Agriculture as a dealer buying and selling livestock; and
  - c. Operating as a dealer within the jurisdiction of the Secretary.
3. On the dates and in the transactions set forth in this paragraph, Respondent purchased livestock and failed to pay the full purchase price of the livestock.

SELLER	TRANSACTION DATE	NO. OF HEAD	PURCHASE AMOUNT
Aberdeen Livestock Sales Co.	11/24/08	84	\$62,809.39
Atkinson Livestock Market, LLC	11/21/08	55	\$47,248.19
	11/22/08	117	\$98,857.76
Bagley Livestock Exchange, Inc.	11/13/08	38	\$32,985.05
Cronin Farms	11/18/08	240	\$171,615.21
Herreid Livestock Auction	12/05/08	85	\$50,655.47
Hub City Livestock Auction, Inc.	11/26/08	128	\$101,187.16
Olson Cattle Co.	09/12/08	66	\$54,024.30
	09/24/08	119	\$101,337.39
	11/21/08	90	\$53,106.78
	11/25/08	198	\$129,422.20
	11/30/08	104	\$62,212.22
	12/02/08	98	\$54,721.20
Rudebusch, Danny	10/17/08	128	\$133,120.00
S&W Farms	09/24/08	180	\$189,017.01
Watertown Livestock Auction, Inc.	12/02/08	105	\$72,215.10
	<b>Totals</b>	<b>1835</b>	<b>\$1,414,534.43</b>

4. On or about the dates and in the transactions listed below, Respondent issued checks in payment for livestock purchases which were returned unpaid by the bank upon which they were drawn. These checks were returned because Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented.

<b>SELLER</b>	<b>TRANSACTION DATE</b>	<b>NO. OF HEAD</b>	<b>PURCHASE AMOUNT</b>	<b>CHECK AMOUNT</b>	<b>CHECK NUMBER</b>	<b>RETURN DATE (S)</b>
Aberdeen Livestock Sales Co.	11/24/08	84	\$62,809.39	\$62,809.39	5805	12/4/08
Hub City Livestock Auction, Inc.	11/26/08	128	\$101,187.16	\$101,187.16	5806	12/15/08 <sup>1</sup>
Olson Cattle Co.	11/21/08	90	\$53,106.78	\$52,564.58	5854	12/2/08
<b>TOTALS</b>		<b>302</b>	<b>\$154,293.94</b>	<b>\$216,561.13</b>		

5. On December 12, 2008, Respondent filed a Voluntary Petition pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. § 701 *et seq.*) in the United States Bankruptcy Court District of South Dakota. The petition was designated Case No. 08-10174.

6. Respondent, in its bankruptcy pleading and schedule, admitted that 7 of the 10 sellers listed in paragraph III of the Complaint held unsecured claims for unpaid livestock debt. Respondent's bankruptcy pleading admitted that it owed \$1,098,738.05 to the 7 sellers. Respondent did not allege in its Schedule F that any of the claims set forth therein are disputed.

**Conclusions of Law**

1. The Secretary has jurisdiction in this matter.
2. Respondent willfully violated sections 312(a) and 409(a) of the Act (7 U.S.C. § 213(a), 228b(a)).

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<sup>1</sup> The check was returned for the first time on 12/5/2008.

**Order**

1. Respondent, Randall J. Unger d/b/a Lake Area Livestock Marketing, directly or through any corporate or other device, in connection with his activities subject to the Act, shall cease and desist from:
  - a. Failing to pay for livestock purchases;
  - b. Issuing checks in purported payment of livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented.
2. Respondent Randall J. Unger d/b/a Lake Area Livestock Marketing is suspended as a Registrant under the Act for a period of five years.
3. This Decision and Order shall become final and effective without further proceedings thirty-five (35) days after service on Respondent, unless appealed to the Judicial Officer by a party to the proceeding within thirty (30) days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139, 1.145).

Copies of this Decision and Order shall be served upon the parties.

February 9, 2012

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Peter M. Davenport  
Chief Administrative Law Judge