

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0134

In re: Perkins Livestock, LLC,  
and Robb Taylor,

Respondents

**DECISION AND ORDER**

**Preliminary Statement**

This is a disciplinary proceeding brought pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.) (Act) and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151) (Rules of Practice). Complainant, the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), initiated this proceeding against Perkins Livestock, LLC (Respondent Perkins) and Robb Taylor (jointly, Respondents) by filing a disciplinary complaint on December 26, 2012.

Copies of the Complaint and the Rules of Practice were served upon Respondents by certified mail. The Complaint alleged that Respondent Perkins, under the direction, management, and control of Respondent Robb Taylor, failed to properly maintain its custodial account for shippers' proceeds (custodial account) by operating with custodial account shortages in violation of sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213(a)) and section 201.42 of the regulations issued under the Act (9 C.F.R. § 201.42) (Regulations).

By letter dated January 29, 2013, the Hearing Clerk's Office informed Respondents that as of the date of the letter, an Answer had not been filed within the time allotted by section 1.136

of the Rules of Practice (7 C.F.R. § 1.136). On February 1, 2013, Amanda Hickman, Office Manager for Respondent Perkins, sent a multi-page fax to the Hearing Clerk's Office. The fax included an Answer to the Complaint entitled Response to P&S Docket No. 13-0134. In the Answer, Respondents admitted the allegations in the Complaint.

In response to Respondents' Answer, Complainant moved for a Decision Without Hearing By Reason of Admissions pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). After considering the record, Complainant's motion will be granted and 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).

### **Discussion**

Respondents filed an Answer admitting the allegations in the Complaint including admission that as of May 26, 2011 and October 6, 2011, Respondents had custodial account shortages in the amounts of \$97,999.98 and \$74,913.03, respectively. In their defense, Respondents claim that (1) the shortages were caused by the failure of others to pay Respondents and (2) no one went unpaid during the time periods of the shortages.

While the fact that the custodial account shortages may have been largely attributable to the failure of a buyer to pay for livestock purchases, that fact does not excuse Respondents' violation of the Act and the Regulations. "When the market agency chooses to sell to a type of buyer who might pose a greater than normal risk of not paying, it is the market agency who must bear the risk of non-payment." *In re Cobb*, 48 Agric. Dec. 234, 255 (1989), *aff'd sub nom. Cobb v. Yeutter* 889 F.2d 724 (6th Cir. 1989). If the proceeds receivable from livestock sales cannot be collected and deposited into a market's custodial account by the close of the seventh day after the sale, then the market must make up the shortfall and reimburse the custodial account. See, 9

C.F.R. § 201.42(c). By failing to timely reimburse the custodial account, Respondents impermissibly shifted the risk of non-payment to the livestock consignors. See, *Cobb*, 889 F.2d at 730. The fact that a buyer may have failed to pay the market for purchases is no defense to this regulatory requirement. See, *In re Simmons*, 66 Agric. Dec. 731 (2007) (rejecting similar buyer nonpayment defense).

Similarly, Respondents' second defense, "[t]he argument that there is no evidence of any particular shipper not being paid, is without merit. It is the duty of a regulatory agency to prevent potential injury by stopping unlawful practices in their incipiency. Proof of a particular injury is not required. *Daniels v. United States*, 242 F.2d 39, 41-42 (7th Cir. 1957), *cert. denied*, 354 U.S. 939 (1957); see also, *In re Wooten*, 58 Agric. Dec. 944, 975 (1999); *In re George County Stockyard, Inc.*, 45 Agric. Dec. 2342, 2349 (1986). "The fact that Respondents caused no harm to consignors by issuing insufficient funds checks does not relieve Respondents from the responsibility for maintaining and operating their custodial account in strict conformity with the Act and the Regulations." *Wooten*, 58 Agric. Dec. at 976.

Respondents' operation subject to the Act with custodial account shortages is a willful violation of the Act and the Regulations. A violation is willful under the Administrative Procedure Act (5 U.S.C. § 558(c)) "if a prohibited act is done intentionally, irrespective of evil intent, or done with a careless disregard of statutory requirements." *In re Marysville Enterprises, Inc.*, 59 Agric. Dec. 299, 309 & n.5 (2000). Operating with custodial account shortages, is a violation of sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213(a)) and section 201.42 of the Regulations (9 C.F.R. § 201.42). *In re Porter*, 47 Agric. Dec. 656, 672 (1988); *In re Blackfoot Livestock Comm'n Co.*, 45 Agric. Dec. 590, 604 (1986), *aff'd*, 810 F.2d 916 (9th Cir. 1987); *In re Powell*, 41 Agric. Dec. 1354, 1361 (1982). Respondents admitted that

they operated with custodial account shortages on more than one occasion. This admission alone is sufficient to demonstrate that Respondents' violation of the Act and the Regulations was willful.

The Fourth and Tenth Circuits require a more stringent standard of willfulness requiring that there must be "such gross neglect of a known duty as to be the equivalent" of an intentional misdeed. *Capital Produce Co. v. USDA*, 930 F.2d 1077, 1079-80 (4th Cir. 1991); *Capitol Packing Co. v. USDA*, 350 F.2d 67, 78-79 (10th Cir. 1965). Even applying the more stringent standard, Respondents' violation of the Act and the Regulations was willful. Respondents admitted that they received a Notice of Violation (NOV) letter from GIPSA in November 2008 notifying them that Respondent Perkins had custodial account shortages in June, August, and September of 2008 and that operating with a custodial account shortage was a violation of sections 307 and 312(a) and the Act (7 U.S.C. §§ 208, 213(a)) and section 201.42 of the Regulations (9 C.F.R. § 201.42). Respondents also admitted that they entered a Civil Penalty Stipulation Agreement with GIPSA in September 2010 to resolve, among other things, additional findings of custodial account shortages in November 2009 and January 2010. Based on these admissions, Respondents were familiar with the requirements of the Act and Regulations regarding custodial accounts and had a history of operating with custodial account shortages and therefore, Respondents knew or should have known that they were operating with custodial account shortages in May and October of 2011.

It is the policy of the Department to impose sanctions for violations of any of the regulatory programs administered by the Department that are serious and repeated in order to serve as an effective deterrent not only to the named respondents, but to future violators as well. *See Wooton*, 58 Agric. Dec. at 980. The Act authorizes the Secretary to suspend a registrant

under the Act “for a reasonable specified period.” *Syverson v. USDA*, 601 F.3d 793, 805 (8th Cir. 2010) (quoting 7 U.S.C. § 204). In determining the length of the suspension, it is the Secretary’s policy to: “(1) to examine the nature of the violations in relation to the remedial purposes of the PSA, (2) to consider all relevant circumstances, and (3) to give appropriate weight to the recommendations of the administrators of the PSA.” *Id.* at 804 (citing *In re S.S. Farms Linn County, Inc.*, 50 Agric. Dec. 476, 497 (1991), *aff’d sub nom.*, *Hickey v. USDA*, 991 F.2d 803 (9th Cir. 1993)). Applying these guidelines to the circumstances of this case, Complainant’s requested sanction of a cease and desist Order, an Order suspending Respondent Perkins for a period of 21 days and thereafter until Respondents demonstrate that the custodial account shortages have been corrected, and an Order prohibiting Respondent Taylor from registering under the Act during the time period of Respondent Perkins’ suspension is warranted and entirely appropriate.

Although it was Respondents’ “duty and obligation under the Act and regulations to see to it that there were funds in the custodial account at all times in an amount sufficient to cover all outstanding obligations,” Respondents operated with custodial account shortages on May 26, 2011 and again on October 6, 2011 in violation of these requirements. *In re Lufkin Livestock Exch., Inc.*, 27 Agric. Dec. 596, 606-07 (1968). Operating with custodial account shortages is a serious violation of the Act and the Regulations. See, e.g., *In re Cobb, supra* at 48 Agric. Dec. 255 (1989), (*aff’d*, 889 F.2d 724 (6th Cir. 1989)); *In re George County Stockyard*, 45 Agric. Dec. at 2351. Suspending Respondent Perkins is consistent with the sanction that has been imposed in past cases involving custodial account violations. See, e.g., *In re Barnesville Livestock, LLC*, No. 10-0058, 2012 WL 441415, at \*6 (USDA Jan. 22, 2012); *In re Fowler Livestock Auction*,

*Inc.*, 52 Agric. Dec. 558, 571-72 (1993); *In re Finger Lakes Livestock Exch., Inc.*, 48 Agric. Dec. 390, 407-08 (1989); *In re Powell, supra* at 1366; *In re Miller*, 33 Agric. Dec. 53, 87-88 (1974).

Respondents claim in their Answer that it would be a hardship to shut their business down or to even fine them. Nevertheless, the Judicial Officer has

long held that collateral effects of a sanction on a violator and on a violator's community, customers, employees, and creditors are given no weight in determining the sanction to be imposed for violations of the Packers and Stockyards Act since the national interest of having fair conditions in the livestock industry must prevail over a violator's interests and the interests of the violator's community, customers, employees, and creditors.

*Syverson, supra* at \*2 (decision on reconsideration) (footnote omitted), *aff'd*, 666 F.3d 1137 (8th Cir. 2012); see also *Barnesville, supra* at \*6; *Marysville, supra* at 328; *In re Hines & Thurn Feedlot, Inc.*, 57 Agric. Dec. 1408, 1430 (1998). Accordingly, this argument is rejected.

An Order prohibiting Respondent Taylor from registering under the Act during the time period of Respondent Perkins' suspension is also warranted and appropriate. The Secretary "routinely issues orders applicable to the owners and officers of corporations when the evidence shows that these individuals were responsible for the corporate violations, including orders prohibiting the registration . . . of the responsible owners and officers." *In re Chatham Area Auction Coop., Inc.*, 49 Agric. Dec. 1043, 1076 (1990). In addition, "the corporate device cannot immunize individual [respondents] from liability" once they are found to be market agencies, dealers, or packers under the Act. See *Fillippo v. S. Bonaccorso & Sons, Inc.*, 466 F.Supp. 1008, 1018 (E.D. Pa. 1978). By Respondent Taylor's own admissions, he is liable for the violations of the Act and the Regulations because he was both the sole member and owner exerting direction, management, and control over Respondent Perkins and a market agency under the Act.

As the Respondents' Answer presents no *bona fide* dispute as to the material facts, no hearing is required in this matter and the following Findings of Fact, Conclusions of Law and Order will be entered.

**Findings of Fact**

1. Perkins Livestock, LLC is a limited liability company organized under the laws of the State of Oklahoma with a mailing address in Perkins, Oklahoma.
2. Respondent Perkins, under the direction, management, and control of Respondent Robb Taylor, is, and at all times material to the Complaint was:
  - (a) Engaged in the business of conducting and operating Perkins Livestock, LLC, a stockyard posted under and subject to the provisions of the Act;
  - (b) Engaged in the business of a market agency selling livestock in commerce on a commission basis; and
  - (c) Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis.
3. Robb Taylor is an individual with a mailing address in Perkins, Oklahoma.
4. Respondent Robb Taylor is, and at all times material to the Complaint was:
  - (a) Sole member of Respondent Perkins;
  - (b) Owner of 100% of Respondent Perkins;
  - (c) Registered agent of Respondent Perkins; and
  - (d) Responsible for the direction, management, and control of Respondent Perkins.
5. Respondent Robb Taylor is, and at all times material to the Complaint was:
  - (a) Engaged in the business of conducting and operating Perkins Livestock,

LLC, a stockyard posted under and subject to the provisions of the Act; and

- (b) Engaged in the business of a market agency selling livestock in commerce on a commission basis.

6. On November 25, 2008, GIPSA sent an NOV via certified mail to Respondents. The NOV was delivered on or about December 1, 2008. The NOV informed Respondents, among other things, that Respondent Perkins had a shortage in its custodial account of \$7,195.17, \$34,350.06, and \$37,736.86 as of June 30, 2008, August 29, 2008, and September 30, 2008, respectively. The NOV informed Respondents that the shortage was caused, in part, by Respondents' failure to timely reimburse the custodial account for unpaid buyer payments. The NOV further informed Respondents that operating with a custodial account shortage is a violation of sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213(a)) and section 201.42 of the Regulations (9 C.F.R. § 201.42), and that failure to comply with the Act and the Regulations would result in appropriate disciplinary action.

7. On September 13, 2010, Respondents and GIPSA entered into a Civil Penalty Stipulation Agreement (Agreement) to resolve, among other things, additional findings that Respondents had custodial account shortages on November 15, 2009, and January 24, 2010. The Agreement assessed a civil penalty against Respondents in the amount of \$5,750.00.

8. Respondent Perkins, under the direction, management, and control of Respondent Robb Taylor, failed to properly use and maintain its custodial account.

9. As of May 26, 2011, Respondents had outstanding checks drawn on their custodial account in the amount of \$186,785.27, and had, to offset such checks, a bank balance in the custodial account of \$33,352.79, current proceeds receivable in the amount of \$55,432.50, with no deposits in transit, resulting in a custodial account shortage in the amount of \$97,999.98.

10. As of October 6, 2011, Respondents had outstanding checks drawn on their custodial account in the amount of \$444,858.44, and had, to offset such checks, a bank balance in the custodial account of \$63,491.89, deposits in transit of \$36,703.12, and current proceeds receivable in the amount of \$269,750.40, resulting in a custodial account shortage in the amount of \$74,913.03.

11. The custodial account shortages were due, in part, to Respondents' failure to reimburse the custodial account for Respondent Robb Taylor's purchases and for livestock purchases made by buyers who had not paid by the close of the seventh business day following the sale of the livestock.

### **Conclusions of Law**

1. The Secretary has jurisdiction in this matter.
2. Respondents willfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213(a)) and section 201.42 of the Regulations (9 C.F.R. § 201.42) by operating with custodial account shortages.

### **Order**

1. Respondent Perkins and Respondent Robb Taylor, their agents and employees, directly or through any corporate or other device, in connection with their operations subject to the Act, shall cease and desist from failing to properly maintain their custodial account in strict conformity with the Act and section 201.42 of the Regulations (9 C.F.R. § 201.42).
2. Respondent Perkins is suspended as a registrant under the Act for a period of 21 days and thereafter until Respondents demonstrate to the satisfaction of the Packers and Stockyards Program that their custodial account shortages have been corrected. After the expiration of the initial 21 day suspension period, and provided that Respondents have demonstrated that their

custodial account shortages have been corrected, upon application to the Packers and Stockyards Program, a supplemental order may be issued terminating the suspension. Respondent Robb Taylor is prohibited from registering under the Act during the time period of Respondent Perkins' suspension in accordance with section 201.11 of the Regulations (9 C.F.R. § 201.11).

3. The provisions of this Order shall become effective on the sixth day after service of this Decision and Order on Respondents.

4. This Decision and Order shall become final without further proceedings thirty-five (35) days after service on Respondents, 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.

April 24, 2013

*Peter M. Davenport*

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**Peter M. Davenport**  
Chief Administrative Law Judge