

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0162

In re: Cambridge Valley Livestock
Market, Inc.

Respondent

Default Decision and Order

Preliminary Statement

This disciplinary proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (Act), by a Complaint filed on January 18, 2013, by the Acting Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (Complainant), alleging that Cambridge Valley Livestock Market, Inc. (Respondent) willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*) (Regulations).

On January 23, 2013, a copy of the Complaint and the Rules of Practice under these proceedings were mailed to Respondent by certified mail. Respondent received the documents on February 1, 2013. Complainant's attorney also sent a letter dated February 5, 2013, and a proposed consent decision to Respondent by certified mail. Respondent received the documents on March 1, 2013. Respondent was informed in the letter that he could file an answer to the Complaint and request a hearing or that he could dispose of the matter by signing the proposed consent decision.

In a letter dated February 22, 2013, Respondent was advised by the Hearing Clerk that it had not filed an answer within the time allotted by section 1.136 of the Rules of Practice

Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.136) (Rules of Practice) and that it would be informed of the proceedings regarding this matter. Respondent failed to file an answer to the Complaint and failed to respond to the February 5, 2013 letter from Complainant's attorney or the February 22, 2013 letter from the Hearing Clerk.

As Respondent failed to file an answer within the time period prescribed by the Rules of Practice (7 C.F.R. § 1.136), 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. Cambridge Valley Livestock Market, Inc., is a corporation organized under the laws of the State of New York with a mailing address in Cambridge, New York.
2. Respondent is, and at all times material to the Complaint was:
 - (a) Engaged in the business of conducting and operating Cambridge Valley Livestock Market, Inc., 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 and as a dealer to buy and sell livestock in commerce for its own account.¹

¹ Respondent's initial registration with the Packers and Stockyards Program expired pursuant to section 201.10 of the Regulations (9 C.F.R. § 201.10) due to Respondent's failure to file an Annual Report of Market Agency – SOC for the fiscal year ending September 30, 2011. A registration Expiration Notice dated February 9, 2012 was delivered to Respondent on February 16, 2012. Respondent subsequently filed a complete annual report and a new application for registration. Respondent was re-registered effective December 17, 2012.

3. On May 7, 2007, GIPSA sent a letter via certified mail to Respondent. The letter was delivered on May 22, 2007. The letter informed Respondent that a review of its operations disclosed that Respondent had failed to properly maintain its custodial account for shippers' proceeds (custodial account) and had failed to keep accurate records. Specifically, the letter informed Respondent that the review of its operations disclosed that multiple checks were returned by Respondent's bank for insufficient funds and had to be re-deposited or replaced and that the records necessary to reconcile Respondent's custodial account were missing or inaccurate. The letter further informed Respondent that its actions were violations of sections 312(a) and 401 of the Act (7 U.S.C. §§ 213(a), 221) and section 201.42 of the Regulations (9 C.F.R. § 201.42) and that failure to bring its operations into compliance with the Act and the Regulations could result in legal action.

4. Respondent, during the period of January 11, 2011 through March 18, 2011, failed to properly use and maintain its custodial account.

5. As of January 11, 2011, Respondent had outstanding checks drawn on its custodial account in the amount of \$354,691.86, proceeds due shippers in the amount of \$138,011.55, and expense items remaining in the custodial account in the amount of \$3,345.00, and had, to offset such checks, proceeds due shippers, and expense items, a bank balance in the custodial account of \$122,699.31, current proceeds receivable in the amount of \$173,974.54, with no deposits in transit, resulting in a custodial account shortage in the amount of \$199,374.56.

6. As of March 18, 2011, Respondent had outstanding checks drawn on its custodial account in the amount of \$413,621.70 and expense items remaining in the custodial account in the amount of \$4,561.00, and had, to offset such checks and expense items, a bank balance in the

custodial account of \$161,641.34, current proceeds receivable in the amount of \$68,424.07, with no deposits in transit, resulting in a custodial account shortage in the amount of \$188,117.29.

7. The custodial account shortages were due, in part, to Respondent’s failure to deposit in the custodial account, within the time prescribed by the Regulations, an amount equal to the proceeds receivable for sales of consigned livestock and due, in part, to Respondent’s misuse of custodial account funds by permitting the withdrawal of bank charges from the custodial account, and by using custodial account funds to pay a utility bill and an Internal Revenue Service tax levy and processing fee.

8. The Packers and Stockyards Program prepared an analysis of Respondent’s custodial account as of September 30, 2011, to verify the amounts reported in its 2011 Annual Report. The analysis showed that Respondent had corrected the shortage and had a custodial account overage in the amount of \$218,070.31.

9. Respondent, on or about the dates and in the transactions set forth below, misused its custodial account by permitting the withdrawal of bank charges from the custodial account, and by using custodial account funds to pay a utility bill and an Internal Revenue Service tax levy and processing fee.

Date of Withdrawal	Amount	Date Cleared	Remarks
8/2/2010	\$360.99	8/2/2010	The custodial account bank statement shows \$360.99 was transferred out of the account on 8/2/2010. “NationalGrid 259262510225C” refers to the transfer of funds. These funds were for payment of a utility bill.
11/5/2010	\$43,050.92	11/5/2010	The custodial account bank statement shows \$43,050.92 was transferred out of the account on 11/5/2010. “Levy #264982 L IRS Tax Levy – Fee” refers to the transfer of funds. These funds were for payment of an IRS tax levy.

11/5/2010	\$125.00	11/5/2010	The custodial account bank statement shows \$125.00 was transferred out of the account on 11/5/2010. "Levy #264982 Processing Fee" refers to the transfer of funds. These funds were for payment of an IRS tax levy processing fee.
11/16/2010	\$15.00	11/16/2010	The custodial account bank statement shows \$15.00 was withdrawn from the account on 11/16/2010. "Dep Return Fee" refers to a bank charge.
11/24/2010	\$15.00	11/24/2010	The custodial account bank statement shows \$15.00 was withdrawn from the account on 11/24/2010. "Dep Return Fee" refers to a bank charge.
11/29/2010	\$25.00	11/29/2010	The custodial account bank statement shows \$25.00 was withdrawn from the account on 11/29/2010. "Draw on Uncol" refers to a bank charge.

\$43,591.91

10. In a sworn affidavit signed on April 4, 2011, by Verity Thomas, Respondent's office manager and the daughter of Respondent's owners, Glen and Jean McLenithan, Ms. Thomas admitted that she is "responsible for handling the custodial account" and that "[t]here have been withdrawals from the custodial account including a National Grid payment, an IRS levy, and various bank charges."

11. Respondent, in connection with consignments of livestock for sale on a commission basis, during the period from January 11, 2011 through February 15, 2011, in 30 transactions, sold 132 head of livestock resulting in net proceeds due consignors in the total amount of \$83,779.40, and failed to remit, when due, the net proceeds due to the consignors from the sale of their livestock on a commission basis. Consignors were paid from 2 to 16 days late.

12. In the sworn affidavit signed by Ms. Thomas on April 4, 2011, Ms. Thomas admitted that consignors were not paid by the close of the next business day following the sale of their livestock. Specifically, Ms. Thomas admitted that the market's sale was on Tuesday, but that she

did not issue consignor checks until Thursday or Friday and sometimes issued checks even later when consignors requested the market hold the checks for them.

13. Respondent, in connection with its operations subject to the Act, failed to keep and maintain records which fully and correctly disclosed all the transactions involved in its business as a market agency as required by section 401 of the Act (7 U.S.C. § 221). Specifically, Respondent failed to keep and maintain accurate check registers, copies of all issued, voided, and replacement checks, an accurate receivables journal, all invoices demonstrating the buying and selling activities at the market, and all sale summary sheets.

14. In the sworn affidavit signed by Ms. Thomas on April 4, 2011, Ms. Thomas admitted that she “was not maintaining records for the custodial account.” Specifically, Ms. Thomas admitted that she “did not keep an outstanding check list, copies of the checks [she] had written, or voided check copies.” Ms. Thomas further admitted that the check register was unreliable, and that she did not keep a record of re-issued checks or accounts receivable records.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Respondent 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 and misusing custodial account funds.

3. Respondent willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.43 of the Regulations (9 C.F.R. § 201.43) by failing to remit, when due, the net proceeds due to consignors from the sale of their livestock.

4. Respondent willfully violated section 401 of the Act (7 U.S.C. § 221) by failing to keep and maintain records that fully and correctly disclosed all transactions involved in its business subject to the Act.

Order

1. Respondent Cambridge Valley Livestock Market, Inc., its agents, officers, and employees, directly or through any corporate or other device, in connection with its operations subject to the Act, shall cease and desist from:

a. Failing to properly maintain its Custodial Account for Shippers' Proceeds in strict conformity with the Act and section 201.42 of the Regulations (9 C.F.R. § 201.42);

b. Using funds received from the sale of consigned livestock for any purpose other than those specifically permitted by section 201.42(d) of the Regulations (9 C.F.R. § 201.42(d)); and

c. Failing to remit, when due, the proceeds of livestock sales to consignors in strict conformity with section 201.43 of the Regulations (9 C.F.R. § 201.43).

2. Respondent Cambridge Valley Livestock Market, Inc. shall keep and maintain accounts, records, and memoranda, which fully and correctly disclose the true nature of all transactions involved in its business subject to the Act as required by section 401 of the Act (7 U.S.C. § 221), including, but not limited to, accurate check registers, copies of all issued, voided, and replacement checks, an accurate receivables journal, all invoices demonstrating the buying and selling activities at the market, and all sale summary sheets.

3. Respondent Cambridge Valley Livestock Market, Inc. is assessed a civil penalty in the amount of Thirty-Six Thousand Five Hundred Dollars (\$36,500.00).

4. 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.

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge