

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0475

In re:

WEST COAST COMMODITIES, LLC,
doing business as MICHAEL PAUL PARTLOW

and

MICHAEL PAUL PARTLOW,

Respondents.

Appearances:

Darlene Bolinger, Esq. for Complainant

Michael Partlow, pro se, for Respondents

Before:

Janice K. Bullard, Administrative Law Judge

DECISION AND ORDER

This matter is before me pursuant to a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture (“GIPSA”; “Complainant”; “USDA”) against West Coast Commodities, LLC, d/b/a Michael Paul Partlow and its corporate officer, Michael Paul Partlow (“Respondents”), alleging violations of the Packers and Stockyards Act, 7 U.S.C. § 181 et seq. (“the Act”) and prevailing regulations.

This Decision and Order is based upon the pleadings and arguments of the parties, and the documentary and testimonial evidence.

I. ISSUES

1. Whether Respondents were registered as a dealer pursuant to 9 C.F.R. § 201.10;

2. Whether Respondents maintained a bond or bond equivalent as required by the Act;
3. Whether Respondents failed to pay the full purchase price for livestock within the time required by the Act and regulations;
4. Whether Respondents maintained sufficient funds in an account from which a check was made to cover the amount of the check when presented for payment;
5. Whether Respondents maintained accurate and complete records of transactions covered by the Act; and
6. Whether a civil money penalty should be assessed against Respondents, and if so, the amount of the penalty.

II. STATEMENT OF THE CASE

1. Procedural History

On June 15, 2011, Complainant filed a complaint against the Respondents with the Hearing Clerk for the Office of Administrative Law Judges for USDA (“OALJ”). On July 17, 2012, Respondents filed an Answer. By Order issued July 30, 2012, I set the time for the filing of lists and exchange of evidence. I granted Respondents’ motion of September 14, 2012, for an extension of time to exchange and file evidence. Respondents failed to file lists and exchange evidence and by Order issued November 11, 2012, I directed Respondents to show cause why deadlines had not been met. On December 13, 2013, Complainant filed proposed findings of fact pursuant to my Order. On that date, Respondents moved for another extension of time. I held a telephone conference with the representatives for the parties, during which time I allowed Respondents time to submit and exchange evidence and set the hearing to commence on June 13, 2013. The week before the hearing, I learned that Respondents had not yet exchanged evidence with Complainant’s counsel, and I directed Mr.

Partlow to directly send information electronically to me and counsel. He did submit and exchange some documents in advance of the hearing.

The parties convened on the scheduled date, and the hearing commenced by audiovisual connection between Washington, DC, Portland, Oregon, and Denver, Colorado. At the hearing, I admitted to the record¹ Complainant's exhibits identified as CX-1 through CX-29. I admitted Respondents' exhibits identified as RX-1 through RX-12. I excluded from the record several documents that Respondents had failed to exchange with counsel for Complainant. Tr. at 171-175. I admitted to the record Complainant's list of exhibits as ALJX-1. I heard testimony from several witnesses presented by Complainant and from Respondents' representative. I allowed the parties to make oral argument, and I held the record open for the submission of additional written argument.

Complainant filed closing arguments on August 28, 2013. Respondent filed written closing argument on September 27, 2013. On October 30, 2013, Complainant filed a reply brief, objecting to the admission of additional documents and revised versions of the documents that had been admitted. I GRANT that objection. Respondents were given several extensions of time to provide documents to counsel for Complainant during the almost one year spanning the date the complaint was filed and the hearing was held. Since Respondents had argued that GIPSA refused proffered documents at the time it conducted its investigation, those documents should have been easily accessed and exchanged. In addition, at a telephone conference that I held with parties the week before the hearing, I gave detailed instructions to Respondents' representative about what he needed to produce. His explanation

¹ Throughout this Decision and Order, Complainant's exhibits are identified as "CX-#"; Respondent's exhibits are identified as "RX-#"; and references to the transcript of the hearing shall be denoted as "Tr. at [page#]."

at the hearing for not exchanging all of his documents was merely to state, “I failed”. Tr. at 171.

Accordingly, although Respondents’ submissions are part of the record, I have given them no probative weight, and shall rely purely upon the evidence that was marked and entered into the record at the hearing. The record before me is now closed but for the filing of the instant Decision and Order

2. Statutory and Regulatory Authority

Pursuant to 7 U.S.C. § 301(d), a “dealer is any person, not a market agency, engaged in the business of selling in commerce livestock, either on his own account or as the employer or agent of the vendor or purchaser. Every person operating as a market agency or dealer must apply with USDA for registration, pursuant to 9 C.F.R. § 201.10. In addition, every market agency or dealer must obtain reasonable bonds or bond equivalents to secure their obligations to livestock sellers. 9 C.F.R. §§ 201.27 through 201.34. Dealers are required to keep accounts, records and memoranda that fully and correctly disclose all transactions involved in livestock purchasing. 7 U.S.C. § 221.

The Act requires dealers purchasing livestock to deliver to the seller or his representative the full amount of the purchase price before the close of the next business day following the purchase and transfer of livestock. 7 U.S.C. § 228b(a). Failure to pay the full purchase price of livestock when due constitutes an unfair and deceptive practice in willful violation of sections 312(a) and 409 of the Act. 7 U.S.C. §§ 213(a) and 228b(c). Civil penalties of up to \$11,000.00 per violation may be assessed for each instance of failure to pay for purchases promptly. 7 U.S.C. §213(b). In addition, dealers who issue checks that are refused for insufficient funds are considered to have engaged in unfair and deceptive practices, even

where funds cover the amount of the check at a later date. See, In re: Edward Tiemann, 47 Agric. Dec. 1573, 1580 (1988).

Although dealers are generally required to pay for livestock purchases by the close of the following business day, the parties to the purchase and sale of livestock may expressly agree in writing, before such purchase or sale, that payment may be made in a different manner. 7 U.S.C. § 228b(b). Such agreements must be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction. Id.

The Act allows for the assessment of civil money penalties in an amount of up to \$11,000.00 per violation for violations of the Act. 7 U.S.C. § 193(b). The imposition of sanctions in each case should be considered with the purpose of effectuating the remedial purposes of the Act. See, S.S. Farms Linn County, 50 Agric. Dec. 476 (1991).

Summary of the Evidence

A. Admissions

In the filed Answer to the Complaint, Respondents admitted that West Coast Commodities, LLC is a corporation organized under the laws of the State of Oregon, whose President and sole owner at all times pertinent herein was Michael Paul Partlow.

Respondents admit that they bought livestock, but averred that they believed that they were not subject to the Act because they were not “advised of provisions of the act which allows for ‘how the cattle were bought’.” See, Answer to Complainant’s Proposed Findings at page 1.

At the hearing (Tr. at 208) and in his written closing argument, Mr. Partlow admitted that Respondents delayed paying Ollerich Livestock due to a change in banks and late transfer of funds. See, Answer to Complainant's Proposed Findings, at page 3.

B. Documentary Evidence

Complainant's exhibits CX-1 through CX-29 include copies of Respondents' corporate records; documents showing livestock purchases by Respondents; Respondents' bank records; and documents and notices prepared by GIPSA.

Respondents' exhibits identified as RX-1 through RX-12 consist of correspondence to Respondents from various livestock sellers, samples of Cattle Sale (a/k/a Cattle Purchase) Agreements, an article about Respondents' business activities², and statements authored by Respondents' representative.

ALJX-1 represents the list identifying Complainant's exhibits.

C. Testamentary Evidence

Martin Falstad (Tr. at 22-40)

Mr. Falstad held the position of Resident Agent for GIPSA in Yakima, Washington from June, 2009 until March, 2013, when he retired. Mr. Falstad's primary responsibility was to investigate livestock and other dealers throughout many states in the Northwest. His investigations involved whether accounts were maintained in compliance with the Act and prevailing regulations.

In January, 2010, Mr. Falstad began an investigation into Respondents' livestock business, which included instances where Mr. Partlow bought and resold livestock. Mr. Falstad advised Respondents that registration with USDA at its regional office was required,

² Although the copy of the article provided at the hearing and attached to Respondents' answer was incomplete, Respondents' later submissions included a more complete version. Neither version has much probative value.

and that Respondents need to be bonded as a dealer under the Act because of those transactions. Although he did not provide Mr. Partlow with documents for registration, Mr. Falstad explained the requirements for bonding and for keeping records, as well as payment obligations under the Act.

Mr. Partlow did not submit registration documents, and in late May or early June, 2010, Mr. Falstad contacted Mr. Partlow to discuss his business operations. Mr. Falstad believed that following a subsequent conversation between his supervisor and Mr. Partlow, it was determined that Respondents did not need to be registered and bonded so long as they no longer bought and resold livestock within a short period of time. Although Respondents' case was closed at that time, it would be reopened if it was later shown that Respondents bought and resold livestock.

Brian Burk (Tr. at 41 – 105; 215-224)

Since September, 2012, Mr. Burk has worked as a supervisory resident agent with the Western Regional Office of GIPSA, which is responsible for assuring compliance with the Act in the western states of the United States. Mr. Burk assigns investigations to agents, reviews agents' work, and makes decisions regarding investigation outcomes. From April, 2000 until his promotion in 2012, Mr. Burk worked as a senior auditor and was responsible for conducting complex investigations often involving livestock auctions, dealers and packers. He typically performed his duties at the investigation target's offices, where he reviewed documents and accounting records.

Mr. Burk recalled conducting an investigation into an allegation that Respondents had not properly paid a livestock seller, who had been presented a check for which there were insufficient funds. The investigation was unusual in that Respondents did not have a fixed

office site and Mr. Burk and Mr. Partlow were unable to agree on a location to review Respondents' records. Respondents complied with a subpoena issued by USDA, and Mr. Burk and Mr. Partlow eventually met at a USDA office in Portland, Oregon on September 20, 2011 through September 22, 2011. Respondents' records were incomplete and disorganized, but they provided the basis for Mr. Burk to seek additional records from other sources.

Mr. Burk was aware that Respondents had been investigated by Mr. Falstad, who advised Respondents to get bonded and registered to conduct business covered by the Act. GIPSA first became aware of Respondents' activities under the Act because Mr. Partlow had filed a claim against the Packer's Trust fund, alleging that he had not been paid by a company in Colorado. Respondents were not registered as a buyer or seller of livestock, as required by the Act at the time of the claim, and continued to be unregistered at the time of the hearing. In addition, Mr. Burk could not locate evidence that Respondents had received bonding and filed required notices with GIPSA. Respondents would need to get financial surety under a "Clause 2" type of bond to cover activities as a dealer, and would need to be bonded to cover purchases for commission made by Respondents for others. Mr. Burk explained that a Clause 2 bond covers dealer activities and market agencies that buy on commission for others. Clause 1 bonds cover auction houses and Clause 4 bonds covered slaughter activities. Clause 3 bonds cover activities of a person hired by others

Mr. Partlow provided Mr. Burk with documentation of transactions that he believed fell within the Act. See, CX-8 at page 2. Mr. Partlow also discussed Clause 4 types of bonds, which Mr. Burk explained cover sales of cattle for slaughter. He differentiated between cattle "trading", which is covered under the Act, and cattle "feeding" businesses, which are

not. Tr. at 65. The investigation disclosed that Respondents had conducted transactions that were feed type sales and exempt from the Act, and identified eighteen transactions that represented cattle dealing under the Act. See, CX-7.

Mr. Burk concluded that during the period from August 9, 2010 to August 4, 2011, Respondents had purchased 1,405 head of cattle for the aggregate sum of \$1,882,587.50 while not bonded or registered under GIPSA. Mr. Burk assembled a schedule of thirteen transactions that Respondents failed to pay for in compliance with the Act. See, CX-29. He documented the purchases through copies of cattle sale agreements, shipping documents, invoices, and bank records. Mr. Burk acknowledged that the Act allows for payment on a date other than the next business day if a buyer and seller entered into a written agreement before the transaction. In instances where Mr. Burk identified such written agreements, he used the date of invoicing, rather than the date that the actual purchase occurred to determine the due date for payment.

Mr. Burk found examples of sale agreements, but they did not seem to be kept by both parties to transactions, as required by the Act. Moreover, although a valid sale agreement may exempt a purchaser from the rule requiring payment on the next business day, it is the nature of the transaction and not how payment should be made that characterizes transactions that fall within the scope of the Act. During the course of his investigation, Mr. Burk had several conversations in which he advised that Respondents needed to be bonded and registered in compliance with the Act.

At the time Mr. Burk conducted his investigation, Mr. Partlow did not provide him with the copies of agreements that were exchanged with counsel in preparation for the

hearing in this matter. Mr. Burk observed that the agreements that were introduced to the record were not signed by both parties, as required.

Craig Roesch (Tr. at 108 – 139)

Since July, 2012, Mr. Roesch has been the Regional Director of the Western Regional Office of Packers and Stockyards Programs. Prior to his promotion, he was legal specialist for the Region, where he obtained his knowledge about GIPSA programs. As Regional Director, he is responsible for the administration of all of the programs in his region.

Mr. Roesch reviewed Mr. Burk's investigative file of Respondents' case, and concluded that Respondents had operated as a dealer without being bonded or registered, had failed to make timely payments, had issued a check that could not be honored because of nonsufficient funds, and failed to maintain proper records. He concurred with Mr. Burk's assessment that Respondents had bought livestock and resold them within a matter of days, thereby making Respondents dealers under the Act. The fact that Respondents had sale agreements with some sellers would change the date that payment was due, but would not relieve Respondents from being subject to the Act. Respondents would need to make payment in compliance with the terms of the sale agreements to be considered compliant with the requirements for timely payment under the Act. A delay in payment, with or without a purchase agreement, is considered an unfair trade agreement.

Mr. Roesch explained that dealers must be bonded to provide protection to sellers in the event of non-payment, as sellers would then have a claim on the bond. It is important to enforce the requirements for registration and bonding to encourage compliance with the Act. On November 03, 2009, GIPSA issued a "Notice of Default" (CX-4) to the Respondents and directed them to obtain bonding and register as dealers.

According to Mr. Roesch, the provisions requiring prompt payment prevented buyers from using a seller's assets to fund the buyers' business and ensure liquidity in the industry. Mr. Roesch testified that a sales agreement need not take a particular form, but must specifically state the terms when payment would be due.

The investigation revealed that Respondents failed to keep all records supporting transactions, which constitutes a separate violation of the Act. Mr. Roesch considered the amount involved in the transactions significant, and expressed concern about the impact of Respondents' potential inability to pay for purchases.

Mr. Roesch acknowledged that GIPSA had no other complaints about Respondents failing to meet his payment obligations. He did not know if the instant disciplinary action by GIPSA would affect Respondents' ability to secure a bond. He was not familiar with the notice of a thirty (30) day disciplinary period that would have prevented Respondents from applying for a bond. Mr. Roesch testified that he was certain that bonding and surety companies would rely upon a business' financial statements and records before issuing a bond, and conceded that if a company's financial footing was poor, a bond may not be issued. However, a company can set aside its own surety in a secure account, or can use a trust fund agreement associated with a letter of credit from a bank to satisfy the requirements for surety.

Amy Blechinger (Tr. at 142 – 168)

Ms. Blechinger has been a Senior Policy Analyst in the Policy and Litigation Division of GIPSA for six years. She has worked for USDA since 1989. One of her primary duties is to review investigation files and make recommendations regarding enforcement and sanctions. Ms. Blechinger reviewed the file of the investigation into Respondents' business

and concurred with the assessment that Respondents had conducted business as a dealer subject to the Act without securing requisite bonding or registering with GIPSA. Ms. Blechinger observed that Respondents had failed to register despite being informed of the requirement to do so in GIPSA's notice of default issued in 2009. She also agreed that the documentation supported the conclusion that Respondents' recordkeeping was inadequate.

Ms. Blechinger testified that the investigation showed that Respondents willfully violated the Act by not paying people timely. She believed that the issuance of a check without sufficient funds to cover the amount due to the seller demonstrated willfulness. In Ms. Blechinger's opinion, Respondents' conduct undermined the purposes of the Act to promote the integrity of financial transactions in the livestock trade and to assure fair business practices in the trade.

When determining whether a violation warrants a sanction, GIPSA looks at the size of the business, the gravity of the violation, and the ability of the entity being penalized to continue in the business. Ms. Blechinger considered Respondents' actions to be serious violations of the law. Respondents' failure to register and acquire surety put sellers at risk of not being paid if Respondents defaulted entirely. Ms. Blechinger recommended that GIPSA would not accept Respondents' registration to operate as a dealer and bonding information for a period of thirty days. Respondents could secure the bond and file the required paperwork, but GIPSA would not process it for thirty (30) days. If Respondents filed for a bond and registered, they could operate after thirty (30) days from the date the sanction was upheld. The ban on operation would extend beyond thirty days if Respondents could not show proof of a surety. Respondents could resume operations as soon as GIPSA issued a letter approving registration and bond.

Ms. Blechinger recommended a civil penalty of \$14,000.00 for the failure to pay promptly. The law allows a penalty of \$11,000.00 per violation for failure to pay promptly, and Ms. Blechinger explained that the nonsufficient funds transaction constituted failure to pay promptly for which Respondents should be penalized \$1,000.00. The balance of the recommended sanctions were related to the other instances of Respondents' failure to pay promptly. GIPSA also recommended that Respondents be ordered to keep all records pertaining to transactions covered by the Act, such as bank statements and canceled checks.

*Michael Paul Partlow*³ (Tr. at 169 – 215; 224-230)

Mr. Partlow testified that his company's primary focus was on cattle feeding, which is not subject to the Act, and not on cattle dealing. He believed that he was in compliance with the Act because he had agreements with sellers about payments, and paid his sellers according to the agreements. Mr. Partlow did not recall having discussions with GIPSA employees about the prompt pay provisions, but he contended that he sent sale agreements to all of his customers. He conceded that he had not provided copies of all agreements to Mr. Burk, but his customers wrote testimonials that supported his assertion that they were paid in accordance with the agreements. Mr. Partlow explained that he or his secretary signed some of the copies of the cattle purchase agreements in evidence. He enters into agreements orally and then email or fax them to sellers. Many of the sellers don't have fax machines, and he doesn't get signed copies back.

Because he did not have the original copies of the agreements, Mr. Partlow relied upon testimonials from individuals affirming that they were paid in accordance with the agreements. He was not certain whether dates on the agreements represented the date the

³ Portions of the summary of Mr. Partlow's testimony were taken from colloquies he held with witnesses, and are referenced by actual transcript page.

invoice was prepared or the date the agreement was made. The contracts usually call for a shipping date later than the purchase date, which explains two dates “within a couple of weeks” (Tr. at 227-228). He described his notes on sales that indicated whether he paid for the purchase by bank wire. Mr. Partlow stated that he used bank wire to pay for the purchase that was refused for non-sufficient funds.

Mr. Partlow testified that he has an office at his house and would have met auditors there. He did not withhold documents, but found some of the records that Mr. Burk was looking for and offered to give them to him. Mr. Burk declined the records as he had already completed his audit. However, Mr. Partlow believed that the records would show that he made all of his payments timely in accordance with purchase agreements.

Mr. Partlow was aware that he was required to get a bond and had not done so. He filled out the paperwork to be bonded, but believed that it wasn't approved because of the thirty (30) day period preventing him from conducting transactions covered by the Act (Tr. at 131-132).

4. **Discussion**

A. Violations

Failure to register as a dealer with GIPSA and to obtain a bond or bond equivalent

The evidence is uncontroverted that Respondents engaged in dealer activities that were subject to the requirements of the Act. Respondents were aware of the requirement to register and secure bonding. Mr. Falstad advised Mr. Partlow several times that registration and bonding were required to continue to conduct transactions as a dealer. Tr. at 27; 30. Mr. Burk similarly advised Respondents of the requirements of the Act. GIPSA sent Respondents a Notice of Default in 2009 that instructed Respondents to register and acquire appropriate

surety. CX-4. Mr. Partlow acknowledged familiarity with the Notice of Default, because he believed that the letter prohibited Respondents from being registered for thirty (30) days, thereby preventing them from conducting business covered by the Act. Tr. at 158.

When GIPSA did not receive Respondents' registration and proof of bonding, Agent Falstad again contacted Respondents' representative, and learned that Mr. Falstad's supervisor had advised Respondents that they need not register or be bonded so long as they did not perform the activities of a dealer. Tr. at 26-28. Based upon Respondents' representations about their business activities, GIPSA determined that they did not need to be registered or bonded. Tr. at 28-32. Although the majority of Respondents' activities did not fall within the definition of a dealer, individuals need not be engaged only in the business of a dealer to fall within the scope of the Act. Kelly v. U.S., 202 F. 2d 838, 841 (10th Cir. 1953).

I find that Mr. Partlow's insistence that agents for GIPSA told him Respondents did not need to be registered and bonded, and further, that the use of payment agreements exempted them from the Act, is specious and self-serving. I accord weight to the Notice of default and the government's witnesses, who testified that Mr. Partlow was instructed about the need to register and get bonding. Respondents continued to buy and sell livestock as a dealer pursuant to the Act, as evidenced by the complaint lodged by Tom Ollerich of Ollerich Livestock LLC in April, 2011. Tr. at 49; CX-6. Mr. Partlow seemed aware that sales agreements provided an alternate method of payment to the mandatory payment on the day following a purchase. Mr. Burk credibly testified that he talked with Mr. Partlow about the effect of sales agreements on prompt payment provisions. Tr. at 102. Respondents' use of sales agreements suggests that they were aware that they engaged in transactions that made

them dealers, but thought they had found a loophole to escape the law's requirements.

Respondents provided a reference to GIPSA-issued information about how to comply with the Act. See, Answer to Complainant's Proposed Findings

Respondents' arguments imply that they were ignorant of the law, but the record shows otherwise. It is clear that the existence of a written sales agreement providing for payment terms other than cash by the next business day exempts dealers from compliance with that provision, but not from the other requirements of the Act. Respondents have willfully chosen to interpret the law and regulations in a manner favorable to their business practices.

The evidence demonstrates that Respondents were advised by Agent Falstad and Auditor Burk that they were required to secure a bond or bond equivalent, and were given notice of that requirement in GIPSA's notice of default. There is no evidence that Respondents attempted to acquire a bond or bond equivalent as surety for purchases made as a dealer under the Act during the period covered by GIPSA's investigations. Mr. Partlow suggested that he could not get bonding because he was prohibited from registering for thirty (30) days pursuant to the Notice of Default, but he provided nothing to show that he made application for surety that was rejected.

Respondents failed to register and failed to acquire a bond or bond equivalent in violation of the Act.

Failure to Pay Promptly--Non-Sufficient Funds

The evidence is unrefuted that a seller was refused payment by Respondents due to non-sufficient funds. Mr. Partlow admitted that his wire transfer of funds did not cover the amount of the purchase in a timely manner. Accordingly, this allegation is substantiated.

Failure to Pay Promptly—Cattle Sale Agreements

It is not entirely clear that Respondents failed to pay promptly in all of the other transactions alleged as violating prompt payment requirements. Mr. Partlow testified that he entered into oral agreements with sellers, and then sent them his written summary of that communication in the form of a Cattle Sale Agreement. Tr. at 212-213. Mr. Burk testified that he credited Respondents with prompt payment resulting from agreements when he found documents to support that conclusion. Tr. at 84-89. Despite the possibility that Respondents may have paid for some purchases promptly, the evidence of record fails to support that presumption.

The Cattle Sale Agreements in evidence do not reflect when the agreements were made, when the cattle were bought and delivered, and when the transaction was paid (RX-4, 5, 11), and therefore do not meet the regulatory requirements for agreements that constitute a waiver of the requirement to pay for purchases by the day following a sale. The agreements were not signed in advance by both parties as required. See, Burk's testimony at 155. Mr. Partlow could not explain whether the date on an agreement represented the date of the agreement, the date of the purchase, or the date of the invoice. Tr. at 206. He admitted to signing declarations made by other people with their permission. Tr. at 198-199. Moreover, the agreements of record serve only as examples of Respondents' practice, as they do not pertain to any of the transactions that GIPSA concluded were not promptly paid. See, RX-4, Lincoln Provision transaction of 3/31/2010; RX-5, Ollerich Cattle Co., Inc. transaction of 12/10/2010⁴; and RX-11, Calvin Heitzman transaction of 2/6/2009; c.f. CX-29.

⁴ There are transactions with Ollerich from December 2010 (CX-17 and 18), but none of the documents support that the transactions relate to the purchase agreement dated December 10, 2010 at RX-5.

I decline to credit the additional documents provided by Respondents with their closing argument in consideration of the many opportunities they were given to exchange the records with Complainant's counsel. I conclude that Respondents were not prejudiced by Mr. Burk's refusal to review the documents because they had ample opportunity to provide that documentation to Complainant and to me. Mr. Partlow failed to do so. Throughout the entire course of this adjudication, Mr. Partlow was not forthcoming with documents. Further, the unreliable nature of the documents that are meant to buttress Respondents' case make it difficult to rely upon them⁵.

I find that Mr. Partlow's testimony about entering into agreements with sellers and paying within the terms of the agreements is credible and is partially supported by documentary evidence, which shows that he generally paid for purchases within days of a transaction. See, CX-29. However, I accord limited weight to the "testimonials" of the sellers who "signed" statements averring the Respondents had always paid timely for livestock purchases. See, RX-1, 2, 2(a), 3, 6, 7, 9, 10. One of the statements was made by Mr. Ollerich, who complained to GIPSA about the non-sufficient funds check. RX- 3. The statement made by Dennis Helwig of Hub City Livestock Auction, Inc. (RX-7), is contradicted by the evidence demonstrating that a sale made in January, 2010, was not paid in full (CX-29).

Respondents' evidence does not sufficiently rebut Complainant's evidence and conclusions. Respondents' records do not show that they made prompt payments subject to the terms of Agreements. Respondents did not timely produce the records during GIPSA's

⁵ Based upon the testimony of Mr. Partlow and Mr. Burk, I have no reason to believe that the evidence that was excluded due to Respondents' failure to exchange it with Complainant would have been more reliable than what has been admitted to the record.

investigation, and did not produce the records in the year that lapsed since the complaint was filed on June 15, 2012, and the hearing held on June 13, 2013. Respondents' failure to provide documentation of timely payment pursuant to agreements is attributable solely to Mr. Partlow's actions.

Accordingly, I find that Complainant's allegations regarding failure to promptly pay for livestock transactions made as a dealer are sustained.

Recordkeeping Violations

I accord substantial weight to Mr. Burk's testimony describing how he needed to collect records from other sources in order to determine whether Respondents complied with prompt pay provisions because Mr. Partlow did not provide documents when they were requested. Although Mr. Burk refused to inspect records offered by Mr. Partlow months after Mr. Burk initiated his investigation, the record does not establish that those records would have been complete, or that Mr. Partlow told Mr. Burk what they were. Mr. Partlow acknowledged that he did not have copies of sale agreements that were signed by both parties. Tr. at 211-212. The copies submitted to the record of this proceeding are not copies of the originals, but duplicate images of the agreements. RX-4, 5, 11. Mr. Partlow admitted that he signed the names of other parties himself. Tr. at 198-205. Despite being given multiple extensions over almost a year to find and submit documents to Complainant, Respondents failed to provide them until days before the hearing. Respondent failed to exchange all relevant documents, and attempted to include documents that were not exchanged as attachments to written closing argument.

The entirety of the record establishes that Respondents failed to maintain accurate records of transactions conducted pursuant to the Act. Respondents have violated recordkeeping requirements of the Act and regulations.

B. Sanctions

I accord weight to the rationale offered by GIPSA Analyst Amy Blechinger, and find it appropriate to assess the penalties she recommended against Respondents. I find that Respondents willfully violated the Act by failing to make payments when due. The Secretary has concluded that the failure to pay the full amount of the purchase price within the time period required by the Act constitutes an unfair and deceptive practice in willful violation of the Act. In re: Great American Veal, Inc., 48 Agric. Dec. 183, 202-203 (1989). I recognize that Respondents perceived that some of the transactions may have been paid timely within the terms of an Agreement with the sellers. However, Respondents did not timely corroborate their compliance with documentation of valid Agreements despite many opportunities to do so.

I note that Complainant has recommended a reduced monetary sanction, which I find appropriate. Respondents' actions also support the imposition of an Order directing them to cease and desist the practice of late payment, and a further Order directing them to keep adequate records documenting transactions covered by the Act. Moreover, Respondents must register with GIPSA and obtain proper surety for covered transactions.

Respondents' failure to register and secure a bond, and failure to keep adequate records are the direct results of the actions of Michael Paul Partlow. Mr. Partlow refused to follow the direction of GIPSA officials to register and secure a bond while engaging in dealer transactions. Mr. Partlow determined that he was not subject to the Act by misconstruing

alternate payment provisions as exempting Respondents from coverage. Further, Mr. Partlow neglected to properly document transactions to meet the requirements for waiver of prompt pay provisions, and then failed to timely provide records to investigators, auditors, Complainant's counsel, and to me. Liability for Respondents' violations of the Act and regulations should be borne by Mr. Partlow, wholly and severally from the Corporate Respondent, and the Corporate Respondent.

III. FINDINGS OF FACT

1. Respondent West Coast Commodities, LLC, doing business as M. Partlow Co., is a corporation organized under the laws of Oregon, and its principal place of business is at the residence of Michael Paul Partlow (address excluded in the interests of privacy).
2. Respondent Michael Paul Partlow is sole corporate officer of West Coast Commodities, LLC.
3. At all time material herein, the corporate Respondent acted under the direction, management and control of Respondent Michael Paul Partlow, sole corporate officer, and was:
 - (a) Engaged in the business of a dealer, buying and selling livestock in commerce; and
 - (b) Not registered or bonded with the Secretary of Agriculture as a dealer.
4. On November 30, 2009, GIPSA sent Respondents written notification of the requirement to register as a dealer and secure appropriate bond or bond equivalent.
5. During an investigation conducted by GIPSA Agent Falstad, it was noted that Respondents' primary business was not as a dealer, and Respondents were advised

that if they discontinued making transactions as a dealer they did not need to register or secure a bond.

6. Respondents continued to engage in the activities of a dealer.
7. Respondents failed to register or secure surety required by the Act.
8. Respondents purchased livestock under verbal and written agreements that provided for payment terms other than by the close of business on the day following the purchase.
9. Documentation of agreements providing waiver of the requirement to pay by the day following a sale were not signed by both parties and do not specify the date of the sale, the date of delivery of the cattle, or the date of payment.
10. No cattle were shipped to Florida, Illinois, Iowa, or Massachusetts.
11. Respondents purchased livestock and failed to pay the full amount of the purchase price within the time period required by the Act when a payment sent by Respondents to a seller on April 4, 2011 was returned for non-sufficient funds.
12. Respondents failed to make timely payments in other transactions.

IV. CONCLUSIONS OF LAW

1. Respondents failed to keep records required by 9 C.F.R. § 201.43.
2. Respondents' records of sales agreements do not comply with the Act and regulations so as to provide a waiver from the requirement to pay for sales by the close of business on the day following purchases.
3. Respondents failed to register as a dealer in violation of 9 C.F.R. § 201.10.
4. Respondents failed to secure a bond or bond equivalent in violation of 9 C.F.R. §§ 201.27 – 201.32.

5. Respondents willfully violated 7 U.S.C. § 192(a) and § 228b of the Act by failing to pay the full amount of the purchase price for livestock within the time period required by the Act.
6. Sanctions are appropriate to deter Respondents and others from willfully failing to make prompt payments, pursuant to 7 U.S.C. §193(b).

ORDER

Respondents West Coast Commodities, LLC, its agents and employees, directly or through any corporate or other device, and Michael Paul Partlow, in connection with activities subject to the Packers and Stockyards Act, shall cease and desist from engaging in any capacity for which registration and bonding is required under the Packers and Stockyards Act and implementing regulations without registering with the Secretary of Agriculture and obtaining an adequate bond or bond equivalent.

Respondents West Coast Commodities, LLC, its agents and employees, directly or through any corporate or other device, and Michael Paul Partlow, in connection with activities subject to the Packers and Stockyards Act, shall cease and desist from failing to pay, when due, the full purchase price of livestock.

Respondents West Coast Commodities, LLC, its agents and employees, directly or through any corporate or other device, and Michael Paul Partlow, in connection with activities subject to the Packers and Stockyards Act, shall cease and desist from issuing checks in payment for livestock without having and maintaining sufficient funds on deposit and available in the account upon which they are drawn to pay checks when presented.

Respondents West Coast Commodities, LLC, its agents and employees, directly or through any corporate or other device, and Michael Paul Partlow, in connection with

activities subject to the Packers and Stockyards Act, shall keep and maintain accounts, records, and memoranda which fully and accurately disclose the true nature of their operations subject to the Act, including, but not limited to, purchase and sale invoices, bank statements, canceled checks, deposit slips, kill sheets, and sale agreements.

To the extent that Respondent West Coast Commodities, LLC, through its officer and Respondent Michael Paul Partlow, its agents and employees, directly or through any corporate or other device, seek to enter into written agreements extending the terms of prompt payment beyond the close of business on the day following a purchase of livestock, Respondents must ensure that all agreements are in writing and are acknowledged and signed by the seller of the livestock, and include the date of signing, the date payment is due, and the date of the livestock transaction.

Pursuant to 7 U.S.C. § 193(b), Respondents are assessed, jointly and severally, a civil penalty in the amount of fourteen thousand dollars (\$14,000.00). Payment shall be made out to the “U.S. Department of Agriculture” and sent to USDA-GIPSA, P.O. Box 790335, St. Louis, Missouri 63179-0335. A reference to this case, Docket No. 12-0475, must be included on the payment.

Respondents West Coast Commodities, LLC, and Michael Paul Partlow are prohibited from being registered and from engaging in any activity for which registration is required under the Act for a period of thirty (30) days and thereafter until such time as Respondents demonstrate to the satisfaction of GIPSA that they have an adequate bond or bond equivalent and that they are in full compliance with the Act. Provided that Respondents demonstrate to the satisfaction of GIPSA that they have an adequate bond or bond equivalent and that they are in full compliance with the Act, after expiration of the initial thirty (30) day

period, upon application to GIPSA, a supplemental Order may be issued terminating the prohibition on Respondents. At such time and thereafter, any application for registration that Respondents may file with GIPSA will be processed in accordance with standard GIPSA procedures.

This Decision and Order shall become final and effective without further proceedings thirty-five (35) days after service on Respondents, unless appealed to the Judicial Officer for the U.S. Department of Agriculture by a party to the proceeding within thirty (30) days after service, pursuant to 7 C.F.R. §§ 1.139, 1.145.

The Hearing Clerk shall serve copies of this Decision and Order upon the parties.

So ORDERED this 4th day of November, 2013 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge