

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Quinter Livestock Market, LLC; and) PS-D Docket No. 19-J-0081
Clint Kvasnicka,) PS-D Docket No. 19-J-0082
)
Respondents.)

ORDER AFFIRMING INITIAL DECISION AND ORDER
WITH PROVISO FOR AMS CONSIDERATION OF WAIVER OF SUSPENSION

Appearances:

Buren W. Kidd, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Ave SW, Washington, DC 20250, for the Complainant (AMS);¹ and

Clint Kvasnicka, pro se, for Respondent Quinter Livestock Market, LLC and himself.

Decision and Order issued by Judge Bobbie J. McCartney, Judicial Officer.

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"); the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. §§ 201.1 *et seq.*) (Regulations); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) (Rules of Practice).

The Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture (AMS or Complainant), initiated this proceeding by filing a complaint on May 7, 2019, alleging that Quinter Livestock Market, LLC

¹ The Complainant is the Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture (AMS or Complainant).

and Clint Kvasnicka (collectively, Respondents) willfully violated the Act on numerous occasions. On July 16, 2019, AMS moved for entry of a decision and order without hearing based on admissions pursuant to sections 1.136(c) and 1.139 of the Rules of Practice (7 C.F.R. §§ 1.136(c) and 1.139). While Respondents filed a timely Answer to the Complaint, Respondents failed to file a response to AMS's Motion.

On April 8, 2020, Administrative Law Judge Jill S. Clifton (Judge Clifton) issued an Initial Decision (ID) granting AMS's Motion and finding that, based upon the written record, Respondents Quinter Livestock Market, LLC and Clint Kvasnicka have willfully violated sections 307, 312(a), and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 208, 213(a), and 228b); and section 201.42 of the Regulations promulgated thereunder (9 C.F.R. § 201.42). Based on these findings, Judge Clifton issued an Order that Respondents cease and desist from engaging in operations under the Packers and Stockyards Act, and that Respondents' registration as a market agency and dealer is to be suspended for a period of five (5) years after the Initial Decision becomes final.

Respondents have filed an appeal of Judge Clifton's Initial Decision to the Judicial Officer. Based upon careful consideration of the record, as well as applicable statutory, regulatory and adjudicatory precedents, including a *de novo* review of the record, for the reasons set forth herein below, it is my determination that the Initial Decision should be, and the same hereby is, *affirmed*.

SUMMARY OF PROCEDURAL HISTORY AND PRELIMINARY FINDINGS

On May 7, 2019, AMS filed a disciplinary complaint against Respondents (Complaint), alleging that Respondents willfully violated sections 307, 312(a), and 409 of the Act (7 U.S.C. §§ 208, 213(a), and 228b); and section 201.42 of the Regulations (9 C.F.R. § 201.42), by failing

to properly maintain Respondents' custodial account and by failing to pay, when due, the full purchase price of livestock.² Moreover, the Complaint requested that "an order be issued requiring Respondents to cease and desist from violations of the Act and the regulations found to exist; suspending Respondents as registrants under the Act; and barring Respondents from registering under the Act; prohibiting Respondents, for a specified period, from engaging in business in any capacity for which registration and bonding are required under the Act; and finally, assessing any such civil penalties as may be warranted under the circumstances.

Complaint at 11.

On June 3, 2019, Respondents filed a timely response (Answer)³ to the Complaint.⁴ The Answer did not admit or deny the material allegations of the Complaint but simply stated, "We had Banking issues!!! I Informed P n S when it happened. They were aware of the problems that occurred [sic]. The Bank was at fault."⁵

Attached to the Answer was a letter dated September 17, 2018 from Respondents' banking institution, which stated:

Dear [left blank],
A few weeks ago, there was a check deposited into an incorrect account that caused a problem with your check from Quinter Livestock. This was a bank error and I personally want to apologize for the mix-up. If you incurred any charges at your bank regarding your cattle sales from Quinter Livestock, I will be happy to refund those.

² See Complaint at 3-9.

³ The response, signed by Respondent Clint Kvasnicka, was handwritten on the cover page of a copy of the Rules of Practice, which had been mailed to Respondents with the Complaint.

⁴ United States Postal Service records reflect that the Complaint was sent to Respondents via certified mail and delivered on May 14, 2019. Respondents had twenty days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondents' answer was due by June 10, 2019.

⁵ Answer at 1.

Attachment to Answer at 1.

On July 16, 2019, AMS filed a Motion for Decision Without Hearing (Motion for Default) and Proposed Decision and Order Without Hearing (Proposed Decision) based on Respondents' failure, pursuant to the Rules of Practice (*see* 7 C.F.R. § 11.36 (b)(1)), "to deny any of the allegations contained in paragraphs I through VII of the Complaint."⁶ Respondents failed to file a response to the Motion.⁷

Authorities

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (Rules of Practice or Rules); set forth at 7 C.F.R. §§ 1.130 *et seq.*, apply to the adjudication of this matter. Pursuant to 7 C.F.R. § 1.136, a respondent is required to file an answer within twenty days after service of a complaint.⁸ The Rules require that an answer shall "[c]learly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent."⁹ Moreover, "failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation."¹⁰ Specifically, §1.139 (7 C.F.R. § 1.139) provides:

The failure to file an answer, or the admission by the answer of the all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing.

⁶ Motion at 1.

⁷ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondents via certified mail and delivered on July 22, 2019. Respondents had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondents' objections were due by August 12, 2019. Respondents have not filed any objections.

⁸ 7 C.F.R. § 1.136(a).

⁹ 7 C.F.R. § 1.136(b)(1).

¹⁰ 7 C.F.R. § 1.136(c).

Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. *If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.*

7 C.F.R. § 1.139 (emphases added).¹¹

Section 307 of the Act (7 U.S.C. § 208) requires “every stockyard owner and market agency to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services” and provides that “every unjust, unreasonably, or discriminatory regulation or practice is prohibited and declared to be unlawful.”¹² Pursuant to section 312(a) of the Act:

It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice in connection with determining whether persons should be authorized to operate at the stockyards, or with the receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock.

7 U.S.C. § 213(a).

Under section 228b, the term “unfair practice” includes “[a]ny delay or attempt to delay by a market agency, dealer or packer purchasing livestock, the collection of funds . . . or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock.”¹³ With regard to the collection of funds, section 228b provides:

Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full

¹¹ Also applicable here are sections 307, 312(a), and 409 of the Act (7 U.S.C. §§ 208, 213(a), and 228b), and section 201.42 of the Regulations (9 C.F.R. § 201.42).

¹² 7 U.S.C. § 208(a).

¹³ 7 U.S.C. § 228b(c).

amount of the purchase price: Provided, That each packer, market agency, or dealer purchasing livestock for slaughter shall, before the close of the next business day following purchase of livestock and transfer of possession thereof, actually deliver at the point of transfer of possession to the seller or his duly authorized representative a check or shall transfer funds for the full amount of the purchase price to the account of the seller by wire, electronic funds transfer, or any other expeditious method determined appropriate by the Secretary for the full amount of the purchase price; or, in the case of a purchase on a carcass or "grade and yield" basis, the purchaser shall make payment by check at the point of transfer of possession or shall transfer funds for the full amount of the purchase price to the account of the seller by wire, electronic funds transfer, or any other expeditious method determined appropriate by the Secretary for the full amount of the purchase price not later than the close of the first business day following determination of the purchase price: Provided further, That if the seller or his duly authorized representative is not present to receive payment at the point of transfer of possession, as herein provided, the packer, market agency or dealer shall transfer funds for the full amount of the purchase price by wire, electronic funds transfer, or any other expeditious method determined appropriate by the Secretary or place a check in the United States mail for the full amount of the purchase price, properly addressed to the seller, within the time limits specified in this subsection, such action being deemed compliance with the requirement for prompt payment.

7 U.S.C. § 228b(a).

Furthermore, "[e]ach payment that a livestock buyer makes to a market agency selling on a commission is a trust fund,"¹⁴ and every market agency subject to the Act is required to establish and properly maintain a custodial account for shipper's proceeds.¹⁵ Section 201.42(c) of the Regulations (9 C.F.R. § 201.42(c)) sets forth detailed instructions on how to properly maintain a custodial account:

The market agency shall deposit in its custodial account before the close of the next business day (the next day on which banks are customarily open for business whether or not the market agency does business on that day) after livestock is sold (1) the proceeds from the sale of livestock that have been collected, and (2) an amount equal to the proceeds receivable from the sale of livestock that are due from (i) the market agency, (ii) any owner, officer, or employee of the market agency,

¹⁴ 9 C.F.R. § 201.42(a).

¹⁵ 9 C.F.R. § 201.42(b) ("Every market agency engaged in selling livestock on a commission or agency basis shall establish and maintain a separate bank account designed as 'Custodial Account for Shippers' Proceeds,' or some other identifying designation, to disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.").

and (iii) any buyer to whom the market agency has extended credit. The market agency shall thereafter deposit in the custodial account all proceeds collected until the account has been reimbursed in full, and shall, before the close of the seventh day following the sale of livestock, deposit an amount equal to all the remaining proceeds receivable whether or not the proceeds have been collected by the market agency.

9 C.F.R. § 201.42(c).

Findings of Fact and Law

The Findings of Fact and Law, adopted herein based upon the written record and as set forth in the Initial Decision, are as follows:

1. Respondent Quinter Livestock Market, LLC (“Respondent Quinter”) is a limited liability company whose business mailing address is 7099 Highway 40, Quinter, Kansas 67752.
2. Respondent Quinter is, and at all times material herein, was:
 - a. Engaged in the business of a dealer buying and selling livestock in commerce;
 - b. Engaged in the business of a market agency buying and selling consigned livestock in commerce on a commission basis; and
 - c. Registered with the Secretary of Agriculture as a dealer buying and selling livestock in commerce and as a market agency buying and selling livestock in commerce on a commission basis.
3. Respondent Clint Kvasnicka (“Respondent Kvasnicka”) is an individual whose current address is in the State of Kansas. The address will not be stated in this Decision and Order to protect Respondent Kvasnicka’s privacy but has been provided to the Hearing Clerk, United States Department of Agriculture, for service purposes.
4. Respondent Kvasnicka is, and at all times material herein, was:
 - a. General Manager, a member, a co-owner, and President of Quinter Livestock LLC;

- b. Responsible for the day-to-day direction, management, and control of Respondent Quinter;
 - c. Engaged in the business of a dealer buying and selling livestock in commerce; and
 - d. Engaged in the business of a market agency buying and selling consigned livestock in commerce on a commission basis.
5. On August 10, 2017, the Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration¹⁶ sent Respondents a Notice of Violation (“NOV”), via certified mail, informing Respondents that Respondent Quinter had failed to maintain its custodial account and operated with a custodial account shortage in violation of sections 307 and 312 of the Act (7 U.S.C. §§ 208 and 213) and section 201.42 of the Regulations (9 C.F.R. § 201.42). Further, in the same NOV, the Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration informed Respondents that Respondents had failed to make prompt payment for certain livestock purchases during the period of January 2017 through May 2017. The NOV further informed Respondents that failure to pay for livestock by close of the next business day is a violation of the Act and Regulations and that failure to correct their business practices and bring them into statutory and regulatory compliance could subject them to disciplinary action. Notwithstanding the NOV, Respondents continued to misuse custodial-account funds and operate with a custodial-account shortage and continued to engage in the business as a dealer buying and selling livestock in commerce without paying, when due, the full purchase price of the livestock, as required by the Act.
6. From October 2017 through July 2018, Respondent Quinter, under the direction,

¹⁶ Now known as the Packers and Stockyards Division, Fair Trade Practices Program of the Agricultural Marketing Service.

management, and control of Respondent Kvasnicka, failed to properly maintain Respondents' custodial account, thereby endangering the faithful and prompt accounting of shippers' proceeds and the payments due to the owners or consignors of livestock, in that:

- a. As of October 31, 2017, Respondents had outstanding checks drawn on their custodial account in the amount of \$61,254.98 and had to offset such checks, a balance in the custodial account of \$91.44 and proceeds receivable of \$0, resulting in a custodial-account shortage in the amount of \$61,163.54.
- b. As of May 18, 2018, Respondents had outstanding checks drawn on their custodial account in the amount of \$84,084.74 and had to offset such checks, a negative balance in the custodial account of \$64,880.87, and proceeds receivable of \$8,592.50, resulting in a custodial-account shortage in the amount of \$140,473.11.
- c. As of June 30, 2018, Respondents had outstanding checks drawn on their custodial account in the amount of \$58,547.70 and had to offset such checks, a negative balance in the custodial account of \$50,426.31, and proceeds receivable of \$0, resulting in a custodial-account shortage in the amount of \$108,974.01.
- d. As of November 30, 2018, Respondents had outstanding checks drawn on their custodial account in the amount of \$24,415.04 and had to offset such checks, a balance in the custodial account of \$183.16, and proceeds receivable of \$0, resulting in a custodial-account shortage in the amount of \$24,231.88.
- e. The shortages in Respondent's custodial account were due, in part, to Respondents' failure to deposit into the custodial account an amount 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).

7. The shortages in Respondents' custodial account during the period January 1, 2018 through June 30, 2018, as set forth in paragraph 6 above, also were due in part to Respondents' misuse of custodial-account funds. Respondent Quinter, under the direction, management, and control of Respondent Kvasnicka, on or about the dates set forth below, permitted \$9,351.97¹⁷ in bank fees to be charged to its custodial account:

Date	Description	Amount
1/2/2018	Overdraft Charge	\$201.74
1/3/2018	Overdraft Charge	\$28.82
1/4/2018	Overdraft Charge	\$28.82
1/5/2018	Overdraft Charge	\$57.64
1/12/2018	Overdraft Charge	\$28.82
1/16/2018	Overdraft Charge	\$57.64
1/17/2018	Overdraft Charge	\$86.46
1/18/2018	Overdraft Charge	\$259.38
1/19/2018	Overdraft Charge	\$57.64
1/22/2018	Overdraft Charge	\$57.64
1/23/2018	Overdraft Charge	\$57.64
1/24/2018	Overdraft Charge	\$144.10
1/25/2018	Overdraft Charge	\$28.82
1/29/2018	Overdraft Charge	\$28.82
1/31/2018	Overdraft Charge	\$172.92
1/31/2018	Service Charge	\$8.33

¹⁷ Amount revised from \$9,411.83 as stated at Complaint section IV(a) (page 5), to current amount \$9,351.97, to reflect two "return check fees" withdrawn from the allegations (September 6, 2018, and September 11, 2018, each \$29.93).

2/1/2018	Overdraft Charge	\$144.10
2/2/2018	Overdraft Charge	\$115.28
2/5/2018	Overdraft Charge	\$115.28
2/6/2018	Overdraft Charge	\$172.92
2/7/2018	Overdraft Charge	\$144.10
2/8/2018	Overdraft Charge	\$86.46
2/9/2018	Overdraft Charge	\$86.46
2/12/2018	Overdraft Charge	\$57.64
2/13/2018	Overdraft Charge	\$57.64
2/14/2018	Overdraft Charge	\$259.38
2/15/2018	Overdraft Charge	\$28.82
2/20/2018	Overdraft Charge	\$28.82
2/21/2018	Overdraft Charge	\$57.64
2/22/2018	Overdraft Charge	\$172.92
2/23/2018	Overdraft Charge	\$115.28
2/26/2018	Overdraft Charge	\$57.64
2/27/2018	Overdraft Charge	\$28.82
2/28/2018	Overdraft Charge	\$144.10
2/28/2018	Service Charge	\$8.33
3/1/2018	Overdraft Charge	\$230.56
3/2/2018	Overdraft Charge	\$86.46
3/5/2018	Overdraft Charge	\$57.64
3/6/2018	Overdraft Charge	\$86.46
3/7/2018	Overdraft Charge	\$115.28
3/8/2018	Overdraft Charge	\$28.82

3/9/2018	Overdraft Charge	\$115.28
3/12/2018	Overdraft Charge	\$57.64
3/13/2018	Overdraft Charge	\$57.64
3/14/2018	Overdraft Charge	\$172.92
3/15/2018	Overdraft Charge	\$57.64
3/16/2018	Overdraft Charge	\$28.82
3/19/2018	Overdraft Charge	\$201.74
3/20/2018	Overdraft Charge	\$86.46
3/21/2018	Overdraft Charge	\$28.82
3/28/2018	Overdraft Charge	\$317.02
3/29/2018	Overdraft Charge	\$86.46
3/30/2018	Overdraft Charge	\$86.46
3/31/2018	Service Charge	\$8.33
4/2/2018	Overdraft Charge	\$28.82
4/3/2018	Service Charge	\$115.28
4/19/2018	Mobile Deposit Fee	\$0.50
4/19/2018	Mobile Deposit Fee	\$0.50
4/24/2018	Overdraft Charge	\$28.82
4/30/2018	Overdraft Charge	\$28.82
5/1/2018	Overdraft Charge	\$57.64
5/2/2018	Overdraft Charge	\$57.64
5/3/2018	Overdraft Charge	\$86.48
5/4/2018	Mobile Deposit Fee	\$0.50
5/4/2018	Overdraft Charge	\$57.64
5/7/2018	Overdraft Charge	\$144.10

5/9/2018	Overdraft Charge	\$57.64
5/10/2018	Overdraft Charge	\$144.10
5/11/2018	Overdraft Charge	\$115.28
5/15/2018	Overdraft Charge	\$57.64
5/16/2018	Overdraft Charge	\$28.82
5/17/2018	Overdraft Charge	\$144.10
5/18/2018	Overdraft Charge	\$86.46
5/21/2018	Mobile Deposit Fee	\$0.50
5/21/2018	Overdraft Charge	\$144.10
5/22/2018	Service Charge	\$259.38
5/23/2018	Overdraft Charge	\$230.56
5/24/2018	Overdraft Charge	\$57.64
5/25/2018	Overdraft Charge	\$86.46
5/29/2018	Mobile Deposit Fee	\$0.50
5/29/2018	Mobile Deposit Fee	\$0.50
5/29/2018	Mobile Deposit Fee	\$0.50
5/29/2018	Overdraft Charge	\$115.28
5/30/2018	Overdraft Charge	\$57.54
5/31/2018	Overdraft Charge	\$28.82
5/31/2018	Service Charge	\$8.33
6/1/2018	Overdraft Charge	\$57.64
6/4/2018	Overdraft Charge	\$28.82
6/6/2018	Mobile Deposit Fee	\$0.50
6/6/2018	Overdraft Charge	\$115.28
6/7/2018	Overdraft Charge	\$114.10

6/8/2018	Overdraft Charge	\$57.64
6/11/2018	Overdraft Charge	\$28.82
6/12/2018	Overdraft Charge	\$57.64
6/13/2018	Overdraft Charge	\$86.46
6/14/2018	Overdraft Charge	\$57.64
6/15/2018	Overdraft Charge	\$86.46
6/18/2018	Overdraft Charge	\$28.82
6/19/2018	Overdraft Charge	\$28.82
6/20/2018	Overdraft Charge	\$144.10
6/21/2018	Mobile Deposit Fee	\$86.46
6/22/2018	Mobile Deposit Fee	\$0.50
6/25/2018	Overdraft Charge	\$172.92
6/27/2018	Overdraft Charge	\$0.50
6/27/2018	Overdraft Charge	\$0.50
6/27/2018	Service Charge	\$115.28
6/28/2018	Overdraft Charge	\$28.82
6/29/2018	Overdraft Charge	\$28.82
6/30/2018	Mobile Deposit Fee	\$8.33
7/2/2018	Overdraft Charge	\$57.64
7/3/2018	Overdraft Charge	\$57.64
7/5/2018	Mobile Deposit Fee	\$0.50
7/5/2018	Overdraft Charge	\$86.46
7/9/2018	Overdraft Charge	\$28.82
7/18/2018	Return Check Charge	\$29.93
7/23/2018	Mobile Deposit Fee	\$0.50

7/23/2018	Return Check Charge	\$29.93
7/31/2018	Return Check Charge	\$29.93
7/31/2018	Service Charge	\$8.33
8/14/2018	Mobile Deposit Fee	\$0.50
8/22/2018	Return Check Charge	\$29.93
8/27/2018	Return Check Charge	\$29.93
9/27/2018	Return Check Charge	\$29.93
9/28/2018	Mobile Deposit Fee	\$0.50
10/4/2018	Return Check Charge	\$29.93
10/12/2018	Return Check Charge	\$59.86
10/26/2018	Overdraft Charge	\$28.82
11/21/2018	Return Check Charge	\$29.93
11/26/2018	Return Check Charge	\$29.93
11/29/2018	Return Check Charge	\$29.93

8. On or about the dates and in the transactions set forth below, Respondents failed to pay, when due, the full purchase price of such livestock.

Purchase Date	Seller's Name	# of Head	Livestock Amount	Net Invoice Adjustments	Net Invoice	Due Date	Payment Date	Payment Amount	Days Late Per Instrument Date	Date Cleared Bank	Instrument Date to Date Cleared
3/8/18	Colby Livestock Auction, LLC	4	\$2,763.03	\$50.00	\$2,813.03	3/9/18	3/26/18		17		
3/15/18	Colby Livestock Auction, LLC	10	\$6,194.30	\$203.55	\$6,397.85	3/16/18	3/26/18		10	3/29/18	3

	subtotals¹⁸	14	\$8,957.33	\$253.55	\$9,120.88		3/26/18	\$9,120.88		3/29/18	3
3/29/18	Colby Livestock Auction, LLC	3	\$4,109.65	\$28.35	\$4,138.00	3/30/18	4/2/18	\$4,138.00	3	4/4/18	2
4/10/18	Wakeeney Livestock, LLC	8	\$4,318.50		\$4,318.50	4/11/18	4/16/18	\$4,318.50	5	4/20/18	4
3/13/18	Plainville Livestock Commission, Inc.	31	\$25,917.35		\$25,917.35	3/14/18	3/16/18	\$25,917.35	2	3/20/18	4
4/10/18	Plainville Livestock Commission, Inc.	64	\$53,232.8		\$53,232.83	4/11/18	4/30/18	\$53,232.83	19	5/2/18	2
4/17/18	Plainville Livestock Commission, Inc.	46	\$34,995.05		\$24,995.05	4/18/18	5/7/18	\$34,995.05	19	5/9/18	2
4/19/18	Oakley Livestock Commission Co., Inc.	3	\$2,500.00		\$2,500.00	4/20/18	4/23/18		3		
4/19/18	Colby Livestock Auction, LLC	14	\$8,393.90	\$193.43	\$8,587.33	4/20/18	4/23/18		3		
4/12/18	Colby Livestock Auction, LLC	1	\$464.40		\$464.40	4/13/18	4/23/18		10		
	subtotals	18	\$11,358.30	\$193.43	\$11,551.73		4/23/18	\$11,551.73		4/27/18	4
	TOTALS	184	\$142,889.01	\$475.33	\$143,364.34			\$143,364.34			

9. During the period of July 10, 2017 through August 21, 2017, in eight of the transactions involving six different livestock sellers, Respondents issued checks in payment for livestock

¹⁸ Subtotals are included because sellers paid for more than one transaction with one check.

purchases, which checks were returned unpaid by the bank upon which they were drawn because Respondents did not have and maintain sufficient funds on deposit and available in the accounts upon which such checks were drawn to pay such checks when presented.

10. By issuing insufficient funds checks in the eight transactions in paragraph VI(a) of the Complaint, Respondents failed to pay, when due, the full purchase price of livestock. (ID at 10-20).

Decision

The primary issue is whether Respondent properly maintained a custodial account to cover the expenses and obligations of a livestock sales business. This custodial account is akin to a trust account, creating a fiduciary duty from the livestock dealer to its customers and suppliers. 9 C.F.R. § 201.42(b). Great care must be taken by the holder of the custodial account to ensure that deposits are timely made in order to cover subsequent payments made to suppliers. The Findings of Fact set forth above fully support the conclusion that the Respondents failed in their duty to properly maintain this custodial account, thereby breaching their fiduciary duties to those with whom Quinter Livestock, LLC, engaged in business transactions. The banking records detail the numerous, repeated instances of failure to maintain funds to cover accounts payable and show the ongoing inability of Respondents to run its business in a manner compliant with the specific requirements of the Act. Simply blaming the bank does not “clearly admit, deny, or explain each of the allegations of the Complaint.” 7 C.F.R. § 1.136 (b)(1). In any event, assertions that the bank was at fault are insufficient to explain the evidence of record documenting the repeated instances of failure to maintain sufficient funds in the custodial account. While the letter from the bank provided by the Respondents reflects one instance of an

incorrect charge, there is no explanation, either from the bank or from Respondents, which would explain the approximately ninety-six (96) overdrafts committed between January 2018 and November 2018. (see ID at 10-18).

Based upon careful consideration of the record, as well as applicable statutory, regulatory and adjudicatory precedents, including a *de novo* review of the record, for the reasons set forth herein above, it is my determination that the Initial Decision should be, and the same hereby is, *affirmed.*

CONCLUSIONS

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Judge Clifton did not err in her findings in determining that a decision on the record was appropriate in this case; further, her findings fully support her determination that Respondents willfully violated the Act as set forth therein.
3. Respondents Quinter Livestock Market, LLC and Clint Kvasnicka have willfully violated sections 307, 312(a), and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 208, 213(a), and 228b); and section 201.42 of the Regulations promulgated thereunder (9 C.F.R. § 201.42).
4. The following Order is authorized by the Act and warranted under the facts and circumstances of this case, as detailed above.

ORDER

1. Respondents Quinter Livestock Market, LLC and Clint Kvasnicka, their agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in operations subject to the Packers and Stockyards Act without paying timely for each and every livestock transaction and purchase from sellers of livestock and shall cease and desist from issuing checks without sufficient funds to pay those checks.
2. Respondents Quinter Livestock Market, LLC and Clint Kvasnicka are suspended as registrants from all livestock operations as a market agency buying and selling consigned livestock in commerce on a commission basis and as a dealer for a period of five (5) years from the date when this Decision and Order becomes final; **EXCEPT THAT** in the event that Respondents can demonstrate to AMS within sixty (60) days of the date of entry of this Order that they have made payment in full as to all transactions referenced hereinabove and that they have operated their business in a manner compliant with the specific requirements of the Act since November 2018, AMS may waive such suspension in whole or in any part.

RIGHT TO SEEK JUDICIAL REVIEW

Petitioner has the right to seek judicial review of the Order in this Decision and Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. Judicial review must be sought within sixty (60) days after the date of entry of the Decision and Order, as indicated below, or it will become final and unappealable by operation of law.¹⁹

¹⁹ 28 U.S.C. § 2344.

Copies of this Decision and Order shall be served by the Hearing Clerk upon each party.

The Hearing Clerk will use both certified mail and regular mail for Respondents, and as a courtesy, also email copies to Complainant and to Respondent Clint Kvasnicka at the email address he used to reach the Hearing Clerk.

Done at Washington, D.C.,
this 27 day of August 2020

[REDACTED] Digitally signed
[REDACTED] by Judge
[REDACTED] Bobbie J.
[REDACTED] McCartney

Judge Bobbie J. McCartney
Judicial Officer

Hearing Clerk's Office
United States Department of Agriculture
South Building, Room 1031
1400 Independence Avenue, SW
Washington, DC 20250-9203
Tel.: 202-720-4443
Fax: 202-720-0776
SM.OHA.HearingClerks@OHA.USDA.GOV