

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/OHC
2020 April 8 PM 3:11

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

**Decision and Order on the Written Record (Ruling GRANTING
Complainant AMS's Motion for Decision Without Hearing)**

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, who represents Respondent Quinter Livestock Market, LLC and himself.

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 alleging that Quinter Livestock Market, LLC and Clint

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

Kvasnicka (collectively, “Respondents”) willfully violated the Act. On July 16, 2019, AMS moved for 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).

I agree with AMS that no hearing is warranted and that a decision on the written record is appropriate. I grant AMS’s Motion for Decision Without Hearing.

Procedural History

On May 7, 2019, AMS filed a disciplinary complaint against Respondents. The Complaint alleged 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

² See Complaint at 3-9.

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

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

but provided, in its entirety: “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,

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.

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 “to deny any of the allegations contained in paragraphs I through VII of the Complaint.”⁶ Respondents have not filed any objections thereto.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. §§

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.

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.

1.130 *et seq.*, apply to the adjudication of this matter. Pursuant to section 1.136 (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 provide 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 With regard to such admission, section 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. 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.

Also applicable to the instant proceeding 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).

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

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).

unjust, unreasonably, or discriminatory regulation or practice is prohibited and declared to be unlawful.”¹¹ 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.”¹² 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 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

¹¹ 7 U.S.C. § 208(a).

¹² 7 U.S.C. § 228b(c).

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,”¹³ and every market agency subject to the Act is required to establish and properly maintain a custodial account for shipper’s proceeds.¹⁴ 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, 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).

Discussion

¹³ 9 C.F.R. § 201.42(a).

¹⁴ 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.”).

It is well settled that “a respondent in an administrative proceeding does not have a right to an oral hearing under all circumstances, and an agency may dispense with a hearing when there is no material issue of fact on which a meaningful hearing can be held.”¹⁵

Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) allows for a decision without hearing by reason of admissions: “The failure to file an answer, or the admission by the answer of all the material allegations of fact, contained in the complaint, shall constitute a waiver of hearing.”¹⁶

In their Answer, Respondents did not deny that they had violated the Act. The Answer states, in its entirety:

We had Banking issues!!! I Informed PnS when it happened. They were aware of the problems that occurred. The Bank was at fault.

Answer at 1. Such explanation does not satisfy the specific requirements for an answer under section 1.136 of the Rules of Practice, which requires Respondents to “clearly admit, deny, or explain”¹⁷ all the allegations of the Complaint.¹⁸ Respondents failed to clearly deny

¹⁵ *H. Schnell & Co.*, 57 Agric. Dec. 1722, 1729 (U.S.D.A. 1998); *see, e.g., KDLO Enters., Inc.*, 70 Agric. Dec. 1098, 1104 (U.S.D.A. 2011); *Kirby Produce Co.*, 58 Agric. Dec. 1011, 1027 (U.S.D.A. 1999).

¹⁶ 7 C.F.R. § 1.139.

¹⁷ *See* 7 C.F.R. § 1.136(b) (“The answer shall: (1) Clearly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent; or (2) State that the respondent admits all the facts alleged in the complaint; or (3) State that the respondent admits the jurisdictional allegations of the complaint and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.”).

¹⁸ *See Blaser*, 45 Agric. Dec. 1727, 1728 (U.S.D.A. 1986) (holding that an answer that admits one allegation of the complaint and fails to respond to the other allegations constitutes an admission of all allegations in the complaint); *Stoltzfus*, 44 Agric. Dec. 1161, 1162 (U.S.D.A. 1985) (holding that an answer stating “no violation was intended” does not otherwise respond to the complaint and is deemed an admission of the allegations of the

the material allegations set forth in Paragraphs I through VII of the Complaint; therefore, those allegations shall be deemed admitted.¹⁹

Assuming *arguendo* that the bank letter attached to Respondents' Answer might be considered responsive to the Complaint, AMS has demonstrated that the contents of the letter are immaterial here:

In support of their assertion, Respondents attached a letter from their banking institution dated September 17, 2018, describing an incident which occurred "a few weeks ago where "a check was deposited into an incorrect account that caused a problem with your check from Quinter Livestock." Assuming that this 'bank error' occurred during the beginning of September 2018 (the timeframe suggested by the bank letter), the bank error could "explain" one of two bank fees* charged to the Respondents' account. While the explanation is not a clear denial and does not coincide with the evidence gathered against Respondents in this case, since some explanation of the allegation was provided in the Answer, *Complainant withdrew its allegations* in support of Respondents misuse of custodial account with respect to both "return check fees" which occurred during the beginning of September 2018 in the Motion for Decision Without Hearing.

Proposed Decision at 1-2 (emphasis added). Moreover, even if AMS had not withdrawn these allegations, the purported error is not a defense to any of the alleged violations contained in the Complaint. A banking error, or even a deliberate act by a bank (such as

complaint under 7 C.F.R. 1.136(c)); *Lucas*, 43 Agric. Dec. 1721, 1722, 1725 (U.S.D.A. 1984) (where an answer that raised concerns extraneous to the complaint failed to admit, deny, or otherwise respond to allegations of the complaint and was deemed an admission of the complaint allegations).

¹⁹ See 7 C.F.R. § 1.136(c) ("[F]ailure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation, unless the parties have agreed to a consent decision.").

* "The Complaint, at page 5, section IV(a), alleges approximately 30 incidents where bank fees were charged supporting the allegation of Respondents' misuse of their custodial account. Specifically, on September 6 and September 11, 2018, the Respondents' custodial account was charged two charges in the amount of \$29.43 each for a 'return check charge.'" Proposed Decision at 2 n.1.

terminating overdraft protection) does not “insulate a livestock buyer from accountability under the Act” because “[i]t gives no protection to the sellers of livestock.”²⁰ Reliance on a banking institution to not make mistakes or fail altogether “fails to fulfill respondent’s obligation under statutory and regulatory requirements[.]”²¹

Where, as in the present case, a complainant moves for default and the respondent files no meritorious objections,²² the Rules of Practice provide that decision and order shall be entered without further procedure:

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

²⁰ See *Garver*, 45 Agric. Dec. 1090, 1094 (U.S.D.A. 1986); see also *Ozark Cty. Cattle Co.*, 49 Agric. Dec. 336, 363 (U.S.D.A. 1990) (“The delay in payment was a violation, and such delays frequently have a deleterious ripple effect across the industry, which the Act seeks to prevent.”); *Great American Veal, Inc.*, 48 Agric. Dec. 183, 211 (U.S.D.A. 1989) (“The real damage to the livestock growers in this case is that they were not paid promptly or in full for their livestock. . . . That damage is the same regardless of the reasons underlying respondents’ payment violations.”).

²¹ See *Garver*, 45 Agric. Dec. at 1094; see also *Palmer*, 50 Agric. Dec. 1762, 1773-77 (U.S.D.A. 1991); *Finger Lakes Livestock Exchange, Inc.*, 48 Agric. Dec. 390, 401-03 (U.S.D.A. 1989) (“In the administration of the Packers and Stockyards Act, we are particularly concerned with the adequacy of capital to permit prompt payment for livestock and to meet current operating expenses. A registrant is considered to be engaging in an unfair practice if he operates while his current liabilities exceed his current assets, or if he is unable to meet his obligations as they become due in the normal course of business. . . .”).

²² 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 on or before August 12, 2019. Respondents have not filed any objections.

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 (emphasis added). Having carefully considered the pleadings, relevant authorities, and arguments of the parties, the following Findings of Fact, Conclusions, and Order are entered without further procedure or hearing pursuant to sections 1.136(c) and 1.139 of the Rules of Practice (7 C.F.R. §§ 1.136(c) and 1.139).

Findings of Fact

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 Administration²³ 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

²³ Now the Packers and Stockyards Division, Fair Trade Practices Program of the Agricultural Marketing Service.

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, 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 \$140,173.11.
- 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 \$9,351.97²⁴ 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

²⁴ 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).

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
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	Instru Date Da Clea
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
	subtotals²⁵	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			

²⁵ Subtotals are included because sellers paid for more than one transaction with one check.

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 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.

Conclusions

1. The Secretary of Agriculture has jurisdiction over the parties and the subject matter.
2. 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).
3. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. AMS's Motion for Decision Without Hearing is GRANTED.
2. 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.

3. 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.

Finality

This Decision and Order becomes final and effective without further proceedings thirty-five (35) days after the date of service upon Respondents, unless appealed to the Judicial Officer by a party to the proceeding by filing with the Hearing Clerk within thirty (30) days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145). See Appendix A.

Copies of this “Decision and Order on the Written Record (Ruling GRANTING Complainant AMS’s Motion for Decision Without Hearing)” shall be sent by the Hearing Clerk to each of the parties. The Hearing Clerk will use **both** certified mail and regular mail for Respondents, and as a courtesy will in addition email Respondent Clint Kvasnicka at the email address he used to reach the Hearing Clerk.

Issued at Washington D.C. this 8th day of April 2020



Jill S. Clifton
Administrative Law Judge

see Appendix A

Hearing Clerk's Office
U.S. Department of Agriculture
Stop 9203 South Building, Room 1031
1400 Independence Avenue, SW
Washington, DC 20250-9203
Tel: 202-720-4443
Fax: 202-720-9776
SM.OHA.HearingClerks@USDA.GOV

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145