

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

P & S Docket No. D-10-0053

In re: JEFF DUTTON, d/b/a
JEFF DUTTON CATTLE CO.
and d/b/a BAR 7 CATTLE CO.,

Respondent

DEFAULT DECISION AND ORDER

Preliminary Statement

This disciplinary proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.; hereinafter “Act”), by a Complaint filed on December 3, 2009, by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (hereinafter “Complainant”), alleging that Respondent Jeff Dutton, d/b/a Jeff Dutton Cattle Co., and d/b/a Bar 7 Cattle Co. (hereinafter “Respondent”), willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.; hereinafter “Regulations”).

A copy of the Complaint was sent to Respondent by certified mail on December 4, 2009, and it was served on Respondent on December 19, 2009. Complainant’s attorney also sent a letter to Respondent dated December 16, 2009, by certified mail, informing Respondent that Complainant would seek a suspension of Respondent’s registration under the Act for a period of up to five (5) years. The letter was returned to Complainant’s attorney on January 12, 2010, marked “unclaimed” by the U.S. Postal Service. On January 13, 2010, Complainant’s attorney re-mailed the letter using regular mail.

Respondent has failed to file an answer within the time period prescribed by the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.136; hereinafter “Rules of Practice”), and the material facts alleged in the Complaint, which are admitted by Respondent’s failure to file an answer, are adopted and set forth herein as findings of fact. Upon Complainant’s motion, this Default Decision and Order will be entered pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Jeff Dutton, d/b/a Jeff Dutton Cattle Co., and d/b/a Bar 7 Cattle Co., is an individual whose mailing address is in the State of Texas.
2. At all times material to the Complaint, Respondent was:
 - (a) Engaged in the business of buying and selling livestock in commerce as a dealer for his own account;
 - (b) Engaged in the business of a market agency buying livestock in commerce on a commission basis;
 - (c) Not registered as a dealer or a market agency with the Secretary of Agriculture;¹ and
 - (d) At all times material to the Complaint, operating as a dealer and a market agency within the jurisdiction of the Secretary.
3. In a certified Notice of Default letter dated May 8, 2008, and served upon Respondent on or about May 20, 2008,² Respondent was informed that he needed to file a new application for

¹ Respondent and his wife were owners of Bar 7 Cattle Company, LLC, which was registered with Complainant as a dealer and a market agency buying on commission. At the request of Respondent, the registration of Bar 7 Cattle Company, LLC, was made inactive on March 26, 2007.

² United States Postal Service Domestic Return Receipt for Article No. [REDACTED] 4558 was signed for by Kay Yonker. In a sworn affidavit dated October 7, 2008, Ms. Yonker states that she is a former employee of Respondent and currently picks up his mail and holds it for him until he picks it up. She further states that if she signed for any certified mail addressed to Respondent, she would make sure that Respondent received it.

registration and a bond or bond equivalent in the amount of \$10,000.00. Respondent was referred to section 312(a) of the Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30) and informed that it was an unfair and/or deceptive practice to operate as a market agency or dealer without filing an application for registration and a bond or bond equivalent. Respondent was further informed that if he did not bring his operations into compliance with the registration and bonding provisions of the Act that appropriate formal action would be taken. Notwithstanding such notice, Respondent continued to engage in the business of a dealer and a market agency without maintaining an adequate bond or its equivalent as required by the Act and the Regulations.

4. On October 7, 2008, a Packers and Stockyards Program representative personally informed Respondent that he needed to file a new application for registration and a bond or bond equivalent. Respondent was further informed that he was operating in violation of the Act and should discontinue operations.

5. On May 27, 2009, a Packers and Stockyards Program representative personally served on Respondent a letter dated May 26, 2009, informing Respondent that a review of his records disclosed that he continued to operate as a market agency without being properly bonded and that he is required to obtain a \$40,000.00 bond or bond equivalent.

6. On or about the dates and in the transactions set forth in Appendix A and incorporated herein by reference, Respondent engaged in the business of a market agency buying livestock in commerce on a commission basis without maintaining an adequate bond or bond equivalent. The transactions occurred at Llano Livestock Auction Co.,³ a posted stockyard, in Llano, Texas and Gillespie Livestock Co., Inc., a posted stockyard, in Fredericksburg, Texas.

³ Llano Livestock Auction Co. made its registration inactive as of March 31, 2009.

7. On or about the dates and in the transactions set forth below, Respondent issued checks in payment for livestock purchases, which checks were returned unpaid by the bank upon which they were drawn because Respondent did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented.

Seller	Purchase Date	Date Payment Due	No. of Head	Livestock Amount	Check No.	NSF Check Amount	Date Check Returned	Date Paid
Central Texas Cattle Co. La Vernia, Texas	06/04/07	06/05/07	62	\$33,538.32 ^a	1330	\$33,538.32	06/18/07	Not fully paid
Llano Livestock Auction Co. Llano, Texas	12/09/08	12/10/08	18	\$5,913.78	1229	\$6,100.89 ^b	12/18/08	Late April or Early May 2009
Union Commission Co., Inc. Hondo, Texas	12/15/08	12/16/08	12	\$3,968.75	1230	\$4,085.45 ^c	12/31/08	Unpaid

^a The original livestock amount was \$33,828.32, but \$290.00 was deducted due to a dead calf.

^b Check amount includes fees for hauling and commission.

^c Check amount includes a fee for hauling.

8. Respondent, in connection with his operations subject to the Act, on or about the dates and in the transactions set forth in Appendix B and incorporated herein by reference, failed to pay the full amount of the purchase price for livestock within the time period required by the Act, with the total amount remaining unpaid of \$59,553.92 as of November 4, 2009.

9. On August 31, 2009, Respondent filed a Voluntary Petition pursuant to chapter 13 of the Bankruptcy Code (11 U.S.C. § 1301 et seq.) in the United States Bankruptcy Court, Western District of Texas, San Antonio Division. This petition was designated case number 09-53364-rbk. Respondent, in bankruptcy schedule F, admitted that two of the sellers listed in Appendix B of the Complaint hold unsecured nonpriority claims for debt. Specifically, in bankruptcy schedule F, Respondent admitted that he owes K. Jordan Enterprises, Inc., d/b/a Jordan Cattle Auction \$45,000.00 for debt incurred in October 2007 and that he owes Union Commission Co., Inc., \$4,100.00 for debt incurred in December 2008.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts found in Findings of Fact 3 through 6, Respondent willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30).
3. By reason of the facts found in Findings of Fact 7 and 8, Respondent willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

Order

1. Respondent, Jeff Dutton, d/b/a Jeff Dutton Cattle Co., and d/b/a Bar 7 Cattle Co., as an individual, and his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Act, shall cease and desist from:
 - a. Engaging in business in any capacity for which bonding is required under the Act and the Regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the Regulations;
 - b. Issuing checks in purported payment of livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;
 - c. Failing to pay, when due, for livestock purchases; and
 - d. Failing to pay the full purchase price for livestock purchases.
2. Respondent is hereby suspended as a registrant under the Act for a period of five (5) years pursuant to 7 U.S.C. § 204.
3. This decision and order shall become final and effective without further proceedings thirty-five (35) days after service on Respondent, unless appealed to the Judicial Officer by a party to

the proceeding within thirty (30) days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139, 1.145).

Copies of this decision and order shall be served upon the parties.

Done at Washington, D.C.
March 29, 2010



PETER M. DAVENPORT
Acting Chief Administrative Law Judge

Appendix B: Jeff Dutton - Failure to Timely Pay for Livestock

Seller	Purchase Date	Date Payment Due	No. of Head	Livestock Amount	Payment Method	Date Paid ^a	Amount Paid	Balance Owed for Livestock Amount	Days Late
Central Texas Cattle Co., Inc. La Vernia, Texas	06/04/07	06/05/07	62	\$33,538.32	Cashier's Check	06/25/07	\$5,200.00	\$10,797.36	Not fully paid
					Cashier's Check	07/26/07	\$6,000.00		
					Cashier's Check	08/30/07	\$3,500.00		
					Cashier's Check	11/09/07	\$4,000.00		
					Commission ^b	05/31/08	\$3,246.47		
					Commission ^c	07/22/08	\$355.10		
					Commission ^d	11/30/08	\$439.39		
K. Jordan Enterprises, Inc., d/b/a Jordan Cattle Auction San Saba, Texas	10/29/07	10/30/07	72	\$44,787.81			\$44,787.81	Unpaid	
Llano Livestock Auction Co. Llano, Texas	12/09/08	12/10/08	18	\$5,913.78	Proceeds from Sale of Equipment	Late April or Early May 2009	\$5,913.78		Approximately 136 ^e
	01/27/09	01/28/09	3	\$1,046.83	Check ^e	02/12/09 ^f	\$959.53		Approximately 87 ^g
					Proceeds from Sale of Equipment	Late April or Early May 2009	\$87.30		
Union Commission Co., Inc. Hondo, Texas	12/15/08	12/16/08	12	\$3,968.75				\$3,968.75	Unpaid
TOTALS			167	\$89,255.49			\$29,701.57	\$59,553.92	

^a Date paid is the date payment was issued unless otherwise noted.

^b Central Texas Cattle Co., Inc., had an agreement with Respondent that it would apply half of the commission owed to Respondent to Respondent's debt. Commissions covered the time period of 06/18/07 through 05/21/08.

^c Commissions covered the time period of 05/28/08 through 07/22/08.

^d Commissions covered the time period of 07/29/08 through 10/21/08.

^e According to the invoice, Respondent purchased the livestock for David Whitworth of Junction, Texas. Mr. Whitworth informed Llano Livestock Auction Co., that he never told or asked Respondent to purchase the livestock for him. On February 11, 2009, the livestock was resold at Gillespie Livestock Co., Inc., which issued a check to Mr. Whitworth in the amount of \$959.53. On February 12, 2009, Mr. Whitworth hand-delivered the check to Llano Livestock Co., Inc., which deposited the check the same day.

^f Date check hand-delivered to Llano Livestock Auction Co.

^g A Packers and Stockyards Program investigator spoke with Hatch Smith, the former owner of Llano Livestock Auction Co. Mr. Hatch was unable to recall the exact date the balance due for the livestock purchases was paid, but said payment was made in late April or early May 2009. Calculation of days late was determined by using April 25, 2009, as a possible date of payment.