

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	P&S Docket No. 17-0016
)	17-0017
)	17-0018
Glacial Lakes Livestock, Inc., Jim)	
Jensen III, and Rick Woehlhaff,)	
)	
)	
Respondents)	Complaint

There is reason to believe that the Respondents named herein have willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (the Act) and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*) (the regulations) and, therefore, this complaint is issued alleging the following:

I.

(a) Glacial Lakes Livestock, Inc. (Respondent corporation), is a business organized under the laws of the State of South Dakota, with a physical address of 1005 9th Avenue, SW, Watertown, South Dakota 57201 and a mailing address of P.O. Box 256, Watertown, South Dakota 57201.

(b) Respondent corporation is, and at all times material herein was:

- (1) Engaged in the business of conducting and operating a posted stockyard subject to the provisions of the Act;
- (2) Engaged in the business of a market agency buying and selling livestock in commerce on a commission basis at a stockyard; and

(3) Registered with the Secretary of Agriculture as a market agency buying and selling livestock in commerce on a commission basis and as a dealer.

(c) Jim Jensen III (Respondent Jensen) is an individual whose current address is in the State of South Dakota. His address will not be stated in the complaint to protect Respondent Jensen's privacy but will be provided to the Hearing Clerk, United States Department of Agriculture, for the purpose of service of this complaint.

(d) Respondent Jensen is, and at all times material herein was:

- (1) The 60.7 percent owner of Respondent corporation; and
- (2) A market agency within the meaning of and subject to the provisions of the Act.

(e) Rick Woehlhaff (Respondent Woehlhaff) is an individual whose current address is in the State of South Dakota. His address will not be stated in the complaint to protect Respondent Woehlhaff's privacy but will be provided to the Hearing Clerk, United States Department of Agriculture, for the purpose of service of this complaint.

(f) Respondent Woehlhaff is, and at all times material herein was:

- (1) The manager and 33.33 percent owner of Respondent corporation¹;
- (2) Responsible for the day-to-day direction, management, and control of Respondent Corporation; and
- (3) A market agency within the meaning of and subject to the provisions of the Act.

¹ The percent ownership listed herein for Respondents Jensen and Woehlhaff is that which they themselves reported to complainant in their latest annual report. New owners have been added to Respondent corporation since the date of the violations alleged herein, but the new owners will not be named as respondents in this complaint.

II

(a) Section 201.42 of the regulations (9 C.F.R. § 201.42) requires market agencies selling livestock on commission to maintain a custodial account for shippers' proceeds ("custodial account"). A custodial account is a trust account that protects funds that are owed to livestock producers and owners who consign livestock for sale at an auction market. The proceeds from livestock sales at regulated auction markets must be deposited into custodial accounts. If the proceeds receivable from livestock sales are not collected and deposited into a market's custodial account by the close of the seventh day after the sale, then the market must make up the shortfall and reimburse the custodial account for the unpaid receivables.

(b) On October 10, 2012, the Packers and Stockyards Program (P&SP), Grain Inspection, Packers and Stockyards Administration (GIPSA), notified Respondent corporation, via certified mail, that it was operating with a custodial account shortage in violation of section 312 of the Act (7 U.S.C. § 213) and that continuing to do so could result in an administrative action seeking an order to cease and desist from this unlawful conduct, civil penalties of up to \$11,000.00 per violation, or suspension of registration. Notwithstanding this notice, Respondents continued to operate with a custodial account shortage.

(c) On or about June 17, 2013, Respondent corporation and Respondent Woehlhoff entered into a Civil Penalty Stipulation Agreement with the P&SP, GIPSA, whereby said Respondents agreed to pay \$2,200.00 in full settlement of allegations that they operated with custodial account shortages and misused custodial account funds, in violation of section 307(a) of the Act (7 U.S.C. § 208(a)) and section 201.42(c) of the regulations promulgated thereunder

(9 C.F.R. § 201.42(c)). Notwithstanding this stipulation, Respondents continued to misuse custodial account funds and operate with a custodial account shortage.

III.

During the period from August 31, 2013, through October 6, 2013, Respondent corporation, under the direction, management, and control of Respondents Jensen and Woehlhaff, failed to properly use and maintain its 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 August 31, 2013, Respondent corporation had outstanding checks drawn on its custodial account in the amount of \$211,363.86 and had to offset such checks a balance in the custodial account of \$43,315.29 and proceeds receivable of \$56,659.42, resulting in a custodial account shortage in the amount of \$111,389.15.

(b) As of October 6, 2013, Respondent corporation had outstanding checks drawn on its custodial account in the amount of \$286,053.95 and had to offset such checks a negative balance in the custodial account of \$36,173.22 and proceeds receivable of \$206,512.74, resulting in a custodial account shortage in the amount of \$115,714.43.

(c) The shortages in Respondent corporation's custodial account were due, in part, to Respondents' failure to deposit into the 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.

IV.

The shortages in respondent's custodial account during the period from August 31, 2013, through October 6, 2013, as set forth in paragraph III above, also were due in part to Respondents' misuse of custodial account funds:

(a) Respondent corporation, under the direction, management, and control of Respondents Jensen and Woehlhoff, on or about the dates set forth below, permitted its bank to charge \$2,270.00 in bank fees to its custodial account:

<u>Date</u>	<u>Description</u>	<u>Amount</u>
09/04/13	NSF Overdraft Fees	\$125.00
09/06/13	NSF Overdraft Fees	\$175.00
09/10/13	NSF Overdraft Fees	\$100.00
09/12/13	NSF Overdraft Fees	\$150.00
09/13/13	NSF Overdraft Fees	\$250.00
09/16/13	Debit Memo-Wire Fees	\$10.00
09/16/13	NSF Overdraft Fees	\$325.00
09/19/13	NSF Overdraft Fees	\$175.00
09/20/13	NSF Overdraft Fees	\$375.00
09/23/13	NSF Overdraft Fees	\$300.00
09/26/13	Debit Memo-Wire Fees	\$10.00
09/26/13	NSF Overdraft Fees	\$250.00
10/04/13	NSF Overdraft Fees	\$25.00
		\$2,270.00

(b) Respondent corporation, under the direction, management, and control of Respondents Jensen and Woehlhoff, on or about the date set forth below, transferred \$3,000.00 in custodial account funds to the market's general account:

<u>Date</u>	<u>Description</u>	<u>Amount</u>
09/03/13	Transfer of Funds	\$3,000.00
		\$3,000.00

By reason of the facts alleged in paragraphs III-IV, Respondents have willfully violated sections 307 and 312(a) of the act (7 U.S.C. §§ 208 and 213(a)) and section 201.42 of the regulations (9 C.F.R. § 201.42).

WHEREFORE, it is hereby ordered that for the purpose of determining whether Respondents have in fact willfully violated the Act and regulations issued thereunder, this complaint shall be served upon Respondents. Respondent shall have twenty (20) days following receipt of this complaint to file an answer with the Hearing Clerk, Room 1031 - South Building, United States Department of Agriculture, 1400 Independence Ave., S.W., Washington, D.C. 20250-9200, in accordance with the rules of practice governing the proceedings under the Act (7 C.F.R. § 1.130 et seq.). Allegations not answered shall be deemed admitted for the purpose of this proceeding. Failure to file an answer shall constitute an admission of all the material allegations in this complaint and a waiver of hearing.

The Grain Inspection, Packers and Stockyards Administration, Packers and Stockyards Program, requests:

1. That unless Respondents fail to answer within the time allowed, or file an answer admitting all material allegations of this complaint, this proceeding be set for oral hearing in accordance with the rules of practice; and
2. That an order be issued requiring Respondents to cease and desist from the violations of the Act and the regulations found to exist; suspending Respondent corporation as a registrant under the Act; barring Respondents Jensen and Woehlhoff 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 assessing such civil penalties

against Respondents as are authorized by the Act and warranted by the facts and circumstances of this case.

Done at Washington, D.C.

this 15th day of December, 2016.

A solid black rectangular redaction box covering the signature of Susan B. Keith.

Susan B. Keith
Deputy Administrator
Packers and Stockyards Program

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