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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P & S Docket No. 13- 0146
)
3-State Stockyards, Inc.,)
)
TW Cattle Co., LLC)
)
Riverside Cattle Co., LLC,)
)
Thomas J. Witt a/k/a Tom Witt,)
)
Brian J. Witt,)
)
Robert J. Witt a/k/a Bob Witt)
)
Respondents) Complaint

There is reason to believe that respondents 3-State Stockyards, Inc., TW Cattle Co., LLC, Riverside Cattle Co., LLC, Thomas J. Witt a/k/a Tom Witt, Brian J. Witt, and Robert J. Witt a/k/a Bob Witt have willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*). Therefore, this Complaint is issued alleging the following:

I

(a) Respondent 3-State Stockyards, Inc. is a corporation organized under the laws of the State of Nebraska, with a mailing address of P.O. Box 71, Falls City, NE, 68355. Respondent 3-State Stockyards, Inc. under the direction, management,

and control of respondents Robert J. Witt, Brian J. Witt and Thomas J. Witt, is, and at all times material herein was:

(1) Engaged in the business of conducting and operating 3-State Stockyards, Inc., a stockyard posted under and subject to the provisions of the Act;

(2) Engaged in the business of a market agency selling livestock in commerce on a commission basis; and

(3) Registered with the Secretary of Agriculture as a market agency to sell livestock on a commission basis in commerce.

(b) Respondent TW Cattle Co., LLC, is a business organized under the laws of the State of Nebraska with a mailing address of P.O. Box 186, Falls City, NE, 68355. Respondent TW Cattle Co., LLC, under the direction, management and control of Respondent Thomas J. Witt, is, and at all times material herein was:

(1) Engaged in the business of a dealer buying and selling livestock in commerce for its own account and the account of others;

(2) Engaged in the business of a market agency buying livestock in commerce on a commission basis;

(3) A dealer within the meaning of and subject to the Act;

(4) A market agency within the meaning of and subject to the Act; and

(5) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce and registered as a market agency to buy livestock in commerce on a commission basis.

(c) Respondent Riverside Cattle Co., LLC, is a business organized under the laws of the State of Nebraska with a mailing address of P.O. Box 57, Falls City, NE, 68355. Respondent Riverside Cattle Co., LLC, under the direction, management and control of Respondent Brian J. Witt, is, and at all times material herein was:

(1) Engaged in the business of a dealer buying and selling livestock in commerce for its own account and the account of others;

(2) Engaged in the business of a market agency buying livestock in commerce on a commission basis;

(3) A dealer within the meaning of and subject to the Act;

(4) A market agency within the meaning of and subject to the Act; and

(5) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce and registered as a market agency to buy livestock in commerce on a commission basis.

(d) Respondent Thomas J. Witt, also known as Tom Witt, is an individual whose business mailing address is P.O. Box 186, Falls City, NE, 68355. Respondent Thomas J. Witt is, and at all times material herein was:

(1) Sole member and manager of, and owner of 100% of the stock issued by Respondent TW Cattle Co., LLC;

(2) Treasurer of and owner of 33.3% of the stock issued by Respondent 3-State Stockyards, Inc.; and

(3) Responsible for the direction, management and control of respondents TW Cattle Co., LLC and 3-State Stockyards, Inc.

(e) Respondent Brian J. Witt is an individual whose business mailing address is P.O. Box 57, Falls City, NE, 68355. Respondent Brian J. Witt is, and at all times material herein was:

(1) Sole member, manager and owner of 100% of the stock issued by Respondent Riverside Cattle Co., LLC;

(2) President of and owner of 33.3% of the stock issued by Respondent 3-State Stockyards, Inc.; and

(3) Responsible for the direction, management and control of respondents Riverside Cattle Co., LLC and 3-State Stockyards, Inc.

(f) Respondent Robert J. Witt, also known as Bob Witt, is an individual whose business mailing address is P.O. Box 57, Falls City, NE, 68355. Respondent Robert J. Witt is, and at all times material herein was:

(1) Secretary of and owner of 33.3% of the stock issued by Respondent 3-State Stockyards, Inc.; and

(2) Responsible for the direction, management and control of Respondent 3-State Stockyards, Inc.

II

On April 4, 2002, respondents 3-State Stockyards, Inc. and Robert J. Witt agreed to a consent decision and order *In re: 3-State Stockyards, Inc. and Robert J. Witt*, P&S Docket No. D-01-0011. The consent decision and order required respondents 3-State Stockyards, Inc. and Robert J. Witt, their agents and employees, directly or through any corporate or other device, in connection with their operations subject to the Act, to, *inter alia*, keep and maintain accounts, records and memoranda which fully and correctly disclose all transactions subject to the Packers and Stockyards Act, including, but not limited to, a check register or outstanding checklist for its general checking account and to reconcile its general account and maintain reconciliation records for such account.

III

(a) On approximately 4 dates, between January 6, 2011 and May 5, 2011, in transactions involving approximately 693 head of livestock, respondent 3-State Stockyards, Inc., under the direction, management and control of respondents Thomas. J. Witt, Brian J. Witt and Robert J. Witt, generated purchase invoices with false data at the request and direction of respondent Riverside Cattle Co., LLC, under the direction, management and control of Respondent Brian J. Witt. The invoices, which were produced after the livestock had been purchased by respondent Riverside Cattle Co., LLC, under the direction, management and control of

Respondent Brian J. Witt, at Respondent 3-State Stockyards, Inc. posted stockyard, listed purchase prices for livestock that were higher than the actual purchase prices. Respondent Riverside Cattle Co., LLC, under the direction, management and control of Respondent Brian J. Witt then provided these invoices to its customers to whom it later transferred and sold the livestock.

(b) On or about May 5, 2011, in a transaction involving approximately 44 head of livestock, respondent 3-State Stockyards, Inc., under the direction, management and control of respondents Thomas. J. Witt, Brian J. Witt and Robert J. Witt, sold consigned livestock to Respondent Brian J. Witt and did not disclose on the account of sale the name of the buyer and the nature of the relationship existing between Respondent 3-State Stockyards, Inc. and Respondent Brian J. Witt.

IV

On approximately 14 dates, between January 20, 2011 and August 4, 2011, in transactions involving approximately 1,517 head of livestock, respondent 3-State Stockyards, Inc., under the direction, management and control of respondents Thomas. J. Witt, Brian J. Witt and Robert J. Witt, generated purchase invoices with false data at the request and direction of Respondent TW Cattle Co., LLC, under the direction, management and control of Respondent Thomas J. Witt. The invoices, which were produced after the livestock had been purchased by Respondent TW Cattle Co., LLC, under the direction, management and control of Respondent Thomas J. Witt, at Respondent 3-State Stockyards, Inc. posted

stockyard, listed purchase prices for livestock that were higher than the actual purchase prices. Respondent TW Cattle Co., LLC, under the direction, management and control of Respondent Thomas J. Witt then provided these invoices to its customers to whom it later transferred and sold the livestock.

V

On approximately 18 dates, between October 4, 2010 and May 30, 2011, in transactions involving approximately 2,124 head of livestock, the posted stockyards United Producers, Inc. and Russell Livestock Market generated purchase invoices with false data at the request and direction of Respondent TW Cattle Co., LLC, under the direction, management and control of Respondent Thomas J. Witt. The invoices, which were produced after the livestock had been purchased by Respondent TW Cattle Co., LLC, under the direction, management and control of Respondent Thomas J. Witt, at United Producers, Inc. and Russell Livestock Market, listed purchase prices for livestock that were higher than the actual purchase prices. Respondent TW Cattle Co., LLC, under the direction, management and control of Respondent Thomas J. Witt then provided these invoices to its customers to whom it later transferred and sold the livestock.

VI

On approximately 11 dates, between January 18, 2010 and April 4, 2011, in transactions involving approximately 1,671 head of livestock, the Gallatin Livestock Auction, a posted stockyard, generated purchase invoices with false data at the request and direction of respondent Riverside Cattle Co., LLC, under the direction, management and control of Respondent Brian J. Witt. The invoices, which were produced after the livestock had been purchased by respondent Riverside Cattle Co., LLC, under the direction, management and control of Respondent Brian J. Witt, at the Gallatin Livestock Auction, listed purchase prices for livestock that were higher than the actual purchase prices. Respondent Riverside Cattle Co., LLC, under the direction, management and control of Respondent Brian J. Witt then provided these invoices to its customers to whom it later transferred and sold the livestock.

VII

Notwithstanding the facts alleged in paragraph II, by reason of the facts alleged above in paragraphs III, IV, V and VI respondents failed to keep and maintain accounts, records and memoranda as fully and correctly disclosed all transactions involved in their business.

VIII

By reason of the facts alleged in paragraphs III, IV, V and VI of this Complaint, respondents have willfully violated sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213(a)) and sections 201.44 and 201.53 of the regulations (9 C.F.R. §§ 201.44 and 201.53).

By reason of the facts alleged in paragraphs II, III, IV, V, VI and VII, respondents have willfully violated section 401 of the Act (7 U.S.C. § 221) by failing to keep and maintain accounts, records and memoranda as fully and correctly disclosed all transactions involved in their business.

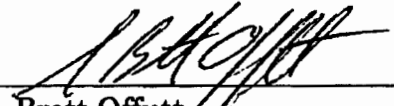
WHEREFORE, it is hereby ordered that this Complaint shall be served upon respondents for the purpose of determining whether respondents have willfully violated the Act and regulations. Respondents shall have twenty (20) days after receipt of this Complaint in which to file an answer with the Hearing Clerk, Room 1031-South Building, United States Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing 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 will constitute an admission of all the material allegations of this Complaint.

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

1. That unless respondents fail to file an answer within the time allowed, or file an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in accordance with the Rules of Practice; and
2. That such order or orders be issued, including an order requiring respondents to cease and desist from the violations of the Act and the regulations found to exist, requiring respondents to keep and maintain all accounts, records, and memoranda that fully and accurately disclose all transactions involved in their businesses, suspending respondents 3-State Stockyards, Inc., TW Cattle Co., LLC and Riverside Cattle Co., LLC as registrants under the Act for a specified period of time, prohibiting respondents Thomas J. Witt, Brian J. Witt and Robert J. Witt from being registered and engaging in any activities for which registration is required under the Act for a specified period of time, and assessing such civil penalties against respondents as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 8th day of January, 2013



S. Brett Offutt
Acting Deputy Administrator
Packers and Stockyards Program

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