

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) P. & S. Docket No. D-12-0135  
)  
Claypoole Livestock, Inc., and )  
Timothy J. Claypoole, )  
)  
Respondents ) **Decision and Order**

**PROCEDURAL HISTORY**

Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on December 21, 2011. The Deputy Administrator instituted the proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act]; the regulations issued under the Packers and Stockyards Act (9 C.F.R. pt. 201) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Deputy Administrator alleges: (1) during the period May 6, 2009, through August 10, 2011, Claypoole Livestock, Inc., under the direction, management, and control of Timothy J. Claypoole, purchased livestock and failed to pay, when due, the full purchase price of the livestock, in willful violation of 7 U.S.C. §§ 213(a) and 228b; (2) during the period May 20, 2009, through August 24, 2011, Claypoole Livestock, Inc., under the direction, management, and control of Mr. Claypoole, in connection with operations subject to the Packers and Stockyards Act, issued checks for livestock purchases that were returned unpaid by the bank upon which the checks were drawn because Claypoole Livestock, Inc., and Mr. Claypoole 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, in willful violation of 7 U.S.C. §§ 213(a) and 228b; and (3) Claypoole Livestock, Inc., and Mr. Claypoole engaged in operations subject to the Packers and Stockyards Act without registering or maintaining an adequate bond or bond equivalent, in willful violation of 7 U.S.C. § 213(a) and 9 C.F.R. §§ 201.29-.30.<sup>1</sup>

The Hearing Clerk served Claypoole Livestock, Inc., and Mr. Claypoole with the Complaint and the Hearing Clerk's service letter on February 2, 2012.<sup>2</sup> Neither Claypoole Livestock, Inc., nor Mr. Claypoole filed an answer to the Complaint within

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<sup>1</sup>Compl. ¶¶ II-V.

<sup>2</sup>Memorandum To The File, dated February 2, 2012, regarding service on Claypoole Livestock, Inc.; Memorandum To The File, dated February 2, 2012, regarding service on Mr. Claypoole.

20 days after the Hearing Clerk served them with the Complaint, as required by 7 C.F.R. § 1.136(a). The Hearing Clerk sent a letter, dated March 8, 2012, to Claypoole Livestock, Inc., and Mr. Claypoole informing them that an answer to the Complaint had not been filed within the time prescribed by the Rules of Practice. Neither Claypoole Livestock, Inc., nor Mr. Claypoole responded to the Hearing Clerk's letter dated March 8, 2012.

On March 14, 2012, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] issued a Show Cause Order in which he provided the parties 15 days within which to show cause why a default decision should not be entered. On March 15, 2012, the Deputy Administrator filed a response to the Chief ALJ's Show Cause Order in the form of a Motion for Default Decision and a proposed Decision and Order. On April 5, 2012, Claypoole Livestock, Inc., and Mr. Claypoole filed a response to the Chief ALJ's Show Cause Order.

On May 11, 2012, the Chief ALJ, in accordance with 7 C.F.R. § 1.139, issued a Default Decision and Order: (1) concluding Claypoole Livestock, Inc., and Mr. Claypoole willfully violated 7 U.S.C. §§ 213(a) and 228b and 9 C.F.R. §§ 201.29-.30, as alleged in the Complaint; (2) ordering Claypoole Livestock, Inc., and Mr. Claypoole to cease and desist from violations of the Packers and Stockyards Act and the Regulations; and (3) assessing Claypoole Livestock, Inc., and Mr. Claypoole, jointly and severally, an \$11,000 civil penalty.<sup>3</sup>

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<sup>3</sup>Chief ALJ's Default Decision and Order at 5-6.

On May 29, 2012, Claypoole Livestock, Inc., and Mr. Claypoole appealed the Chief ALJ's Default Decision and Order to the Judicial Officer. On June 13, 2012, the Deputy Administrator filed an Appeal Response. On June 15, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision. Based upon a careful review of the record, I adopt, with minor changes, the Chief ALJ's Default Decision and Order as the final agency decision.

## **DECISION**

### **Statement of the Case**

Neither Claypoole Livestock, Inc., nor Mr. Claypoole filed a timely answer to the Complaint. Pursuant to 7 C.F.R. § 1.136(c), the failure to file a timely answer is deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to 7 C.F.R. § 1.139, the failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, constitutes a waiver of hearing. Accordingly, the material allegations in the Complaint are adopted as findings of fact, and I issue this Decision and Order pursuant to 7 C.F.R. § 1.139.

### **Findings of Fact**

1. Claypoole Livestock, Inc., is a corporation organized and existing under the laws of the State of Colorado. Claypoole Livestock, Inc.'s business mailing address is in the State of Colorado. Claypoole Livestock, Inc.'s registered agent for service of process is Timothy J. Claypoole.

2. Claypoole Livestock, Inc., is, and at all times material to this proceeding was:

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

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

(c) Not registered as a dealer or market agency with the Secretary of Agriculture.

3. Timothy J. Claypoole is an individual whose business mailing address is in the State of Colorado.

4. Timothy J. Claypoole is, and at all times material to this proceeding was:

(a) The president of Claypoole Livestock, Inc.;

(b) A director of Claypoole Livestock, Inc.;

(c) An owner of Claypoole Livestock, Inc.;

(d) The registered agent of Claypoole Livestock, Inc.; and

(e) Responsible for the direction, management, and control of Claypoole Livestock, Inc.

5. On or about the dates and in the transactions described in this finding of fact, Claypoole Livestock, Inc., under the direction, management, and control of Timothy J. Claypoole, in connection with its operations subject to the Packers and

Stockyards Act, purchased livestock and failed to pay, when due, the full purchase price of the livestock:

Purchase Date	Seller	No. of Head	Type of Livestock	Sale Price – Excluding Non-Livestock Charges	Payment Due Date Per 7 U.S.C. § 228b	Payment Date	Days Late
05/21/09	Delta Sales Yard	14	LAMBS	\$1,850.03	05/22/09	10/16/09	147
06/11/09	Delta Sales Yard	6	LAMBS	\$484.50	06/12/09	07/07/09	25
05/06/09	Western Slope Cattlemen's	8	CATTLE	\$6,107.88	05/07/09	05/08/09	1
05/13/09	Western Slope Cattlemen's	2	CATTLE	\$1,078.08	05/14/09	06/03/09	20
05/20/09	Western Slope Cattlemen's	1	CATTLE	\$290.70	05/21/09	07/14/09	54
06/24/09	Western Slope Cattlemen's	6	LAMBS	\$639.35	06/25/09	07/14/09	19
08/05/09	Western Slope Cattlemen's	10	CATTLE	\$10,209.60	08/06/09	08/08/09	2
08/12/09	Western Slope Cattlemen's	54	LAMBS	\$5,542.76	08/13/09	08/15/09	2
08/10/11	Western Slope Cattlemen's	24	LAMBS/E WES	\$3,545.60	08/11/11	08/15/11	4

6. On or about the dates and in the transactions described in this finding of fact, Claypoole Livestock, Inc., under the direction, management, and control of Timothy J. Claypoole, in connection with its operations subject to the Packers and Stockyards Act, issued checks for livestock purchases that were returned unpaid by the bank upon which the checks were drawn because Claypoole Livestock, Inc., and Timothy J. Claypoole 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:

Purchase Date	No. of Head	Type of Livestock	Invoice Amount	Check Date	Check Number	Check Amount	Date Check Returned
05/21/09	14	LAMBS	\$1,843.07	05/25/09	3267	\$1,843.07	07/01/09 07/14/09
06/11/09	6	LAMBS	\$482.12	06/20/09	3228	\$482.12	07/01/09
05/20/09	1	LAMBS	\$290.70	05/25/09	3266	\$290.70	06/15/09
06/24/09	6	LAMBS	\$639.35	06/28/09	3271	\$639.35	07/10/09
08/24/11	96	LAMBS	\$19,630.85	08/24/11	3630	\$19,630.85	08/30/11

7. On August 24, 2009, Timothy J. Claypoole received written notification from the Packers and Stockyards Program that he was operating subject to the Packers and Stockyards Act and that he was required to register and to obtain a bond or bond equivalent as required by the Packers and Stockyards Act and the Regulations. Notwithstanding the notice, Timothy J. Claypoole continued to direct, manage, and control Claypoole Livestock, Inc., while engaging in the business of a dealer buying and selling livestock in commerce and the business of a market agency buying livestock on a commission basis, without registering or maintaining an adequate bond or bond equivalent as required by the Packers and Stockyards Act and the Regulations.

#### **Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. At all times relevant to the allegations in the Complaint, Claypoole Livestock, Inc., and Timothy J. Claypoole were operating as a dealer and market agency subject to the provisions of the Packers and Stockyards Act.

3. Claypoole Livestock, Inc., and Timothy J. Claypoole willfully violated 7 U.S.C. §§ 213(a) and 228b by failing to make timely payment for livestock purchases and by issuing insufficient fund checks in purported payment for livestock.

4. Claypoole Livestock, Inc., and Timothy J. Claypoole willfully violated 7 U.S.C. § 213(a) and 9 C.F.R. §§ 201.29-.30 by engaging in operations subject to the Packers and Stockyards Act without maintaining an adequate bond or bond equivalent.

### **Claypoole Livestock, Inc., and Mr. Claypoole's Appeal Petition**

Claypoole Livestock, Inc., and Mr. Claypoole raise two issues in their appeal petition. First, Claypoole Livestock, Inc., and Mr. Claypoole assert they are not now able to pay the civil penalty assessed by the Chief ALJ and request that I reduce the civil penalty "to the least monetary fine possible."

The Chief ALJ assessed Claypoole Livestock, Inc., and Mr. Claypoole, jointly and severally, an \$11,000 civil penalty. However, the Chief ALJ suspended all but \$2,500 of the civil penalty contingent on Claypoole Livestock, Inc., and Mr. Claypoole's compliance with the Chief ALJ's cease and desist order for 1 year.<sup>4</sup> In light of the number and gravity of Claypoole Livestock, Inc., and Mr. Claypoole's violations of the Packers and Stockyards Act and the Regulations and the extensive period of time during which Claypoole Livestock, Inc., and Mr. Claypoole violated the Packers and Stockyards Act and the Regulations, I conclude the civil penalty assessed by the Chief ALJ is

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<sup>4</sup>Chief ALJ's Default Decision and Order at 6.

justified by the facts. Moreover, the civil penalty is warranted in law. The maximum civil penalty that the Secretary of Agriculture may assess for each of Claypoole Livestock, Inc., and Mr. Claypoole's violations is \$11,000.<sup>5</sup> The Chief ALJ could have assessed Claypoole Livestock, Inc., and Mr. Claypoole a civil penalty of \$165,000 each. Therefore, I reject Claypoole Livestock, Inc., and Mr. Claypoole's request that I reduce the civil penalty assessed by the Chief ALJ.

Second, Claypoole Livestock, Inc., and Mr. Claypoole request that I modify the Chief ALJ's cease and desist order to eliminate the provision suspending them "from "doing livestock business for one year[.]"

The Chief ALJ's Default Decision and Order contains no provision suspending Claypoole Livestock, Inc., or Mr. Claypoole from "doing livestock business" for 1 year. Therefore, I reject Claypoole Livestock, Inc., and Mr. Claypoole's request that I eliminate the non-existent 1-year suspension.

For the foregoing reasons, the following Order is issued.

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<sup>5</sup>The Packers and Stockyards Act provides that the maximum civil penalty that the Secretary of Agriculture may assess for each violation of 7 U.S.C. § 213(a) is \$10,000 (7 U.S.C. § 213(b)). However, the maximum civil penalty that the Secretary of Agriculture may assess for each violation of 7 U.S.C. § 213(a) has been modified under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), and various implementing regulations issued by the Secretary of Agriculture. When Claypoole Livestock, Inc., and Mr. Claypoole violated the Packers and Stockyards Act, the maximum civil penalty for each violation of 7 U.S.C. § 213(a) was \$11,000 (7 C.F.R. § 3.91(b)(6)(iv)).

## ORDER

1. Claypoole Livestock, Inc., and Timothy J. Claypoole, their agents and employees, directly or indirectly through any corporate or other device, in connection with their operations subject to the Packers and Stockyards Act, shall cease and desist from:

a. Engaging in business in any capacity for which bonding is required without filing and maintaining an adequate bond or bond equivalent as required by the Packers and Stockyards Act and the Regulations;

b. Purchasing livestock and failing to pay for the livestock purchases within the time period required by the Packers and Stockyards Act; and

c. Issuing checks in payment for livestock without having and maintaining sufficient funds on deposit and available in the accounts upon which the checks are drawn to pay the checks when presented.

2. Claypoole Livestock, Inc., and Timothy J. Claypoole are prohibited from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act without first becoming properly registered.

3. In accordance with 7 U.S.C. § 213(b), Claypoole Livestock, Inc., and Timothy J. Claypoole are jointly and severally assessed an \$11,000 civil penalty.

However, the civil penalty in excess of \$2,500 is suspended: *Provided, That* Claypoole Livestock, Inc., and Timothy J. Claypoole fully comply with terms of the cease and desist

provisions contained in this Order for a period of 1 year. Payment of the unsuspended amount of \$2,500 shall be made by certified check or money order, made payable to the “Treasurer of the United States,” and sent to:

USDA-GIPSA  
PO Box 790335  
St. Louis, Missouri 63179-0335

Payment of the civil penalty shall be sent to, and received by, USDA-GIPSA within 60 days after service of this Order on Claypoole Livestock, Inc., and Timothy J. Claypoole. Claypoole Livestock, Inc., and Timothy J. Claypoole shall state on the certified check or money order that payment is in reference to P. & S. Docket No. D-12-0135.

**RIGHT TO JUDICIAL REVIEW**

Claypoole Livestock, Inc., and Timothy J. Claypoole have the right to seek judicial review of 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 60 days after entry of the Order in this Decision and Order.<sup>6</sup> The date of entry of the Order in this Decision and Order is June 20, 2012.

Done at Washington, DC

June 20, 2012

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William G. Jenson  
Judicial Officer

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<sup>6</sup>28 U.S.C. § 2344.