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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:	
Hill City Commission, LLC; and Larry W. Phillips, Respondents.	P&S Docket No. 25-J-0009 P&S Docket No. 25-J-0010

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Todd J. Lewellen, Esq., Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service ("AMS")

This is a proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181 *et seq.*) ("Act"); the regulations promulgated thereunder (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 ("AMS"), United States Department of Agriculture ("Complainant"), initiated this proceeding by filing a complaint against Hill City Commission, LLC and Larry W. Phillips ("Respondents") on October 8, 2024. The Complaint alleged that during the period from May 31, 2022 through July 5, 2022, Respondents 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) by failing to properly maintain

their custodial account and misusing custodial account funds.[1] The Complaint requested:

> That an order be issued requiring Respondents to cease and desist from the violations of the Act and regulations found to exist; suspending Respondent Hill City as a registrant under the Act; barring Respondent Phillips 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 for such other and further relief as warranted under the Act and the surrounding circumstances.

Complaint at 7.

Respondents were duly served with a copy of the Complaint and did not file an answer within the 20-day period as prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), nor have Respondents filed such an answer since that deadline.[2]

On February 20, 2025, I issued an order directing the parties to show cause ("Show Cause Order"), not later than 20 days after that date, why default should not be entered against Respondents.[3]

On March 11, 2025, Complainant filed a Response to Show Cause Order and Motion for Decision by Reason of Default ("Motion for Default") and a proposed Decision and Order Without Hearing by Reason of Default ("Proposed Decision") pursuant to section 1.139 of the

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[1] Complaint at 4-6.

[2] United States Postal Service records reflect the Complaint was sent to Respondents via certified mail; it was delivered to Respondent Hill City Commission, LLC on October 30, 2024, and delivered to Respondent Larry W. Phillips on November 4, 2024. Respondents had 20 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 holiday, the last day for timely filing shall be the following workday. 7 C.F.R. § 1.147(h). In this case, an answer was due on or before November 19, 2024 for Respondent Hill City and November 25, 2024 for Respondent Phillips. Respondents have not filed an answer.

[3] The Show Cause Order also directed: "Unless the parties have agreed to a consent decision, Complainant's response shall be accompanied by: (1) a proposed decision and order and (2) a motion for adoption of that proposed decision and order in accordance with the provisions of 7 C.F.R. § 1.139." Show Cause Order at 2.

Rules of Practice (7 C.F.R. § 1.139). Complainant now requests an order

> requiring Respondents to cease and desist from failing to properly maintain their custodial account and from misusing custodial account funds; suspending Respondent Hill City as a registrant under the Act for a period of 30 days and thereafter until Respondents demonstrate to the Packers and Stockyards Division that the shortages in the account have been eliminated; barring Respondent Phillips from registering under the Act until Respondents demonstrate to the Packers and Stockyards Division that the shortages in the account have been eliminated; and prohibiting Respondents from engaging in any operation subject to the Act while Respondent Hill City's registration is suspended.

Motion for Default at 7-8.

Respondents did not respond to the Show Cause Order and have not filed any objections to Complainant's Motion for Default or Proposed Decision.[4]

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision.[5] Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely answer where, as in the present case, no meritorious objections have been filed.[6]

Sanctions

As previously stated, Complainant seeks an order directing Respondents to cease and

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[4] United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondents via certified mail and returned to the Hearing Clerk's Office as "unclaimed." In accordance with the Rules of Practice, the Hearing Clerk re-mailed (*see* 7 C.F.R. § 1.132) the Motion for Default and Proposed Decision to the same addresses by ordinary mail on May 8, 2025. 7 C.F.R. § 1.147(c)(1). Respondents had 20 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 workday. 7 C.F.R. § 1.147(h). In this case, Respondents' objections were due on or before May 28, 2025. Respondents have not filed any objections.

[5] 7 C.F.R. § 1.136(c).

[6] *See supra* note 4 and accompanying text.

desist from failing to properly maintain their custodial account and misusing custodial account funds; suspending Respondent Hill City as a registrant under the Act for 30 days; barring Respondent Phillips from registering under the Act until Respondents demonstrate the account shortages have been eliminated; and prohibiting Respondents from engaging in any operations under the Act while Respondent Hill City's registration is suspended.[7] The Act provides for each of these sanctions: 7 U.S.C. § 203 prohibits a market agency from operating subject to the Act unless it has registered with the Secretary;[8] 7 U.S.C. § 204 authorizes the Secretary to suspend registrants for reasonable periods if they are insolvent or have violated the Act;[9] and 7 U.S.C. § 193(b) authorizes the Secretary to issue orders requiring packers to cease and desist from violating the Act.[10]

With regard to sanction determinations, the Judicial Officer has explained:

> [T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendation of the administrative officials charged with the responsibility for achieving the congressional purpose.

S.S. Farms Linn County, Inc., 50 Agric. Dec. 476, 497 (U.S.D.A. Jud. Officer 1991) (Decision as to James Joseph Hickey & Shannon Hansen), *aff'd*, 991 F.2d 803 (9th Cir. 1993) (not to be cited as precedent under the 9th Circuit Rule 36-3). The purpose of imposing sanctions "is to accomplish the remedial purposes of the Packers and Stockyards Act by deterring future

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[7] *See* Motion for Default at 7-8; Proposed Decision at 8.

[8] 7 U.S.C. § 203.

[9] 7 U.S.C. § 204.

[10] 7 U.S.C. § 193(b).

violations of the Packers and Stockyards Act by the violator and others."[11] Complainant states that it "considered these factors in formulating the recommended sanctions in this case."[12]

Complainant submits that Respondents' failure to properly maintain their custodial account and misuse of custodial account funds constitute serious violations of the Act and Regulations.[13] As the Judicial Officer has recognized:

> [T]he Secretary has repeatedly determined that a market agency's failure to make deposits to its custodial account in the manner and within the times prescribed in section 201.42 is an unfair and deceptive practice. "It is deceptive because shippers do not know that their money is being used to extend credit to buyers. It is unfair because it is using trust money for their own purposes (to extend credit to themselves and others.)."

Blackfoot Livestock Commission Co., 45 Agric. Dec. 590, 604 (U.S.D.A. Jud. Officer 1986) (quoting *Hardy*, 33 Agric. Dec. 1383, 1400 (U.S.D.A. Jud. Officer 1974)), *aff'd*, 810 F.2d 916 (9th Cir. 1987). In this case, "Respondents' custodial account was short by significant margins."[14] In May 2022, Respondents' custodial account was short more than $300,000; in July 2022, it was short by more than $230,000.[15]

Moreover, this is not the first time Respondents committed violations of the Act and Regulations. Respondents have "repeatedly failed to maintain their custodial account" and "repeatedly misused custodial account funds."[16] Complainant explains that, in October 2019, the

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[11] *Syverson*, 69 Agric. Dec. 1500, 1509 (U.S.D.A. Jud. Officer 2010) (Decision and Order on Remand), *aff'd sub nom. Syverson v. U.S. Dep't of Agric.*, 666 F.3d 1137 (8th Cir. 2012).

[12] Motion for Default at 9.

[13] *Id.* (citing *Cobb*, 48 Agric. Dec. 234, 255 (U.S.D.A. Jud. Officer 1989), *aff'd*, 889 F.2d 724 (6th Cir. 1989); *George Cnty. Stockyard, Inc.*, 45 Agric. Dec. 2342, 2351 (U.S.D.A. Jud. Officer 1986)).

[14] Motion for Default at 9.

[15] *Id.* (citing Complaint ¶ 11).

[16] Motion for Default at 9.

Packers and Stockyards Division issued Respondents a notice ("Notice of Violation") informing them that their custodial account was out of balance in June 2019 and that they had violated the law by misusing custodial account funds.[17] The Notice of Violation also explained that: (1) operating as a market agency with a shortage in the custodial account violates 9 C.F.R. § 201.32 and is considered unreasonable and unlawful under 7 U.S.C. § 208 and an unfair practice under 7 U.S.C. § 213(a); (2) bank fees, such as overdraft fees, are not lawful charges against the custodial account, and using custodial account funds to pay them violates 9 C.F.R. § 201.32(d); and (3) "continued violations could result in formal enforcement action, including the filing of an administrative complaint."[18]

Despite the warnings in their Notice of Violation, Respondents did not "bring their operation into compliance with the law."[19] Complainant states that, as a result of additional shortages in Respondents' custodial account in January and February 2020, Respondents entered into a civil-penalty stipulation agreement with the Packers and Stockyards Division in July 2020.[20] Complainant also states that "as a result of yet more shortages in in Respondents' custodial account in December 2020 and January 2021," Respondents entered into a second civil-penalty stipulation agreement with the agency in April 2021.[21] Thus, this case reflects "at least the fourth occasion on which Respondents have failed to comply with the custodial account

[17] *Id.*

[18] *Id.* at 10.

[19] *Id.*

[20] *Id.*

[21] *Id.* (citing Complaint ¶¶ 8-9).

rules."[22] I therefore find that Respondents' violations of the Act and Regulations were serious.[23]

Having considered the nature of Respondents' violations and the remedial purposes of the Act, I find Complainant's sanction recommendations to be reasonable and appropriate under the facts and circumstances of this case.

As Respondents failed to file an answer to the Complaint, and upon Complainant's motion for the issuance of a decision without hearing, this Decision and Order is issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Hill City Commission, LLC is a limited liability company organized under Kansas law. Respondent Hill City's mailing address is 2356 South US Highway 283, Hill City, Kansas 67642-2849.
2. At all times material to the Complaint, Respondent Hill City was:
    a. Engaged in the business of conducting and operating a posted stockyard pursuant to the provisions of the Packers and Stockyards Act;
    b. Engaged in the business of a market agency selling livestock in commerce on a commission basis; and

[22] Motion for Default at 10.

[23] *See George Cnty. Stockyard, Inc.*, 45 Agric. Dec. at 2351 ("Custodial account violations have long been recognized as serious violations of the Packers and Stockyards Act.") (citing *Roseth v. Bergland*, 636 F.2d 1224 (8th Cir. 1980); *Miller v. Butz*, 498 F.2d 1088, 1089 (5th Cir. 1974); *Hyatt & Ward v. United States*, 276 F.2d 308, 310-13 (10th Cir. 1960); *United States v. Donahue Bros., Inc.*, 59 F.2d 1019, 1020-23 (8th Cir. 1932)); *see also, e.g.*, *Bowman v. U.S. Dep't of Agric.*, 363 F.2d 81, 85 (5th Cir. 1966) ("With respect to the other business practices which were held to violate the Act, the custodial account departures are the most serious.").

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

3. Respondent Larry W. Phillips is an individual whose mailing address is 2356 South US Highway 283, Hill City, Kansas 67642-2849.

4. At all times material to the Complaint, Respondent Phillips was:

   a. The 100% owner of Respondent Hill City;

   b. Responsible for the management, direction, and control of Respondent Hill City; and

   c. A market agency within the meaning of and subject to the Packers and Stockyards Act and Regulations.

5. In October 2019, the Packers and Stockyards Division issued a written notice of violation to Respondent Phillips as the owner of Respondent Hill City. The Notice of Violation informed Respondents that operating as a market agency with a shortage in the custodial account violates the regulation at 9 C.F.R. § 201.42 and is considered unreasonable and unlawful under section 307 of the Act (7 U.S.C. § 208) and an unfair practice under section 312(a) of the Act (7 U.S.C. § 213(a)). The Notice of Violation also advised Respondents that bank fees, such as overdraft fees, are not lawful charges against the custodial account and that using custodial account funds to pay them violates the regulation at 9 C.F.R. § 201.42(d).

6. In July 2020, Respondents entered into a civil-penalty stipulation agreement with the Packers and Stockyards Division following alleged custodial account shortages from January 2020 to February 2020.

7. In April 2021, Respondents entered into a second civil-penalty stipulation agreement with the Packers and Stockyards Division as a result of alleged custodial account shortages from December 2020 to January 2021.

8. Notwithstanding the October 2019 Notice of Violation and the agreements entered into in July 2020 and April 2021, Respondents have continued to operate with custodial account shortages and misuse custodial account funds.

9. During the period from May 31, 2022, through July 5, 2022, Respondent Hill City, under the direction, management, and control of Respondent Phillips, failed to properly 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 May 31, 2022, Respondents had outstanding checks drawn on the custodial account in the amount of $260,245.23 and a balance of negative $46,899.89, resulting in a custodial account shortage in the amount of $307,145.12.

    b. As of July 5, 2022, Respondents had outstanding checks drawn on the custodial account in the amount of $152,311.44 and a balance of negative $78,588.72, resulting in a custodial account shortage in the amount of $230,900.16.

10. The shortages in Respondents' custodial account were due, in part, to their failure to deposit into the account an amount equal to the proceeds receivable from the sale of consigned livestock within the time limits prescribed by section 201.42 of the Regulations (9 C.F.R. § 201.42).

11. The shortages in Respondents' custodial account during the period from May 31, 2022, through July 5, 2022, as set forth in paragraph 11 of the Complaint, were also due in part to Respondents' misuse of custodial account funds. Specifically:

    a. Respondent Hill City, under the direction, management, and control of Respondent Phillips, on or about the dates set forth below, permitted a total of $3,642.05 in bank fees to be charged to its custodial account, as follows:

Date	Description	Amount
06/01/22	Overdraft fee	$20.00
06/02/22	Overdraft fee	$120.00
06/03/22	Overdraft fee	$60.00
06/06/22	Overdraft fee	$20.00
06/07/22	Overdraft fee	$20.00
06/08/22	Overdraft fee	$440.00
06/09/22	Overdraft fee	$100.00
06/10/22	Overdraft fee	$80.00
06/13/22	Overdraft fee	$300.00
06/14/22	Overdraft fee	$100.00
06/15/22	Overdraft fee	$500.00
06/16/22	Overdraft fee	$300.00
06/17/22	Overdraft fee	$220.00
06/21/22	Overdraft fee	$80.00
06/22/22	Overdraft fee	$60.00
06/23/22	Overdraft fee	$560.00
06/24/22	Overdraft fee	$120.00
06/27/22	Overdraft fee	$120.00
06/28/22	Overdraft fee	$20.00
06/29/22	Overdraft fee	$200.00
06/30/22	Overdraft fee	$60.00
06/30/22	Service charge/maintenance fee	$6.00
06/30/22	Per-credit-item charge	$0.50
06/30/22	Per-debit-item charge	$34.20
06/30/22	Items-deposited charge	$1.35

07/01/22	Overdraft fee	$20.00
07/05/22	Overdraft fee	$80.00
		Total = $3,642.05

b. Respondent Hill City, under the direction, management, and control of Respondent Phillips, on or about the dates set forth below, transferred a total of $3,537.19 in custodial account funds to the market's general account:

Date	**Description**	**Amount**
06/07/22	Transfer of funds	$51.00
06/07/22	Transfer of funds	$219.19
06/07/22	Transfer of funds	$270.00
06/07/22	Transfer of funds	$462.00
06/07/22	Transfer of funds	$486.00
06/07/22	Transfer of funds	$918.00
06/07/22	Transfer of funds	$1,131.00
		Total = $3,357.19

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondents Hill City Commission, LLC and Larry W. Phillips willfully violated sections 307 and 312(a) of the Packers and Stockyards Act (7 U.S.C. §§ 208, 213(a)) and section 201.42 of the Regulations (9 C.F.R. § 201.42) by failing to properly maintain their custodial account and by misusing custodial account funds.

ORDER

1. Complainant's Motion for Default is GRANTED.

2. Respondents Hill City Commission, LLC and Larry W. Phillips and their agents, employees, successors, and assigns, directly or indirectly through any corporate or other device, shall cease and desist from failing to properly maintain their custodial account and misusing custodial account funds.
3. Respondent Hill City Commission, LLC's registration is suspended for a period of 30 days and thereafter until Respondents demonstrate to the Packers and Stockyards Division that the shortages in the custodial account have been eliminated.
4. Respondent Larry W. Phillips is barred from registering under the Packers and Stockyards Act until Respondents demonstrate to the Packers and Stockyards Division that the shortages in the custodial account have been eliminated.
5. Respondents are prohibited from engaging in any operation subject to the Packers and Stockyards Act while Respondent Hill City Commission, LLC's registration is suspended.

This Decision and Order shall be final and effective without further proceedings thirty-five (35) days after service, unless an appeal to the Judicial Officer is filed with the Hearing Clerk 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 and 1.145).

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk.

Done at Washington, D.C.,
this 1st day of July 2025,

CHANNING STROTHER
Digitally signed by CHANNING STROTHER
Date: 2025.07.01 12:38:37 -04'00'

Channing D. Strother
Chief Administrative Law Judge

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