



United States
Department of
Agriculture

Grain Inspection,
Packers and Stockyards
Administration

SUPPLEMENTAL MATERIALS

AFFIDAVIT TRAINING

PACKERS AND STOCKYARDS PROGRAM

NATIONAL MEETING

SEPTEMBER 15, 2010

Presented by

Roderick Prather and Wayne Basford

WARNING:
WHAT YOU CAN
GET WHEN A
VIOLATOR
PREPARES THE
AFFIDAVIT

██████████'s Livestock Auction

PO Box ██████████

██████████, NM ██████████

April 3, 2009

To: USDA GIPSA

Fr: ██████████

Re: Outline of events relating to ██████████ Livestock

September 2001 – I purchased a 2000 head dairy named ██████████ Dairy which would compliment the dairy cattle sale at ██████████.

March 2007 – I sold all cows and heifers out of ██████████ Dairy. The dairy at this point had cost me approximately \$1 million dollars. When I sold all the animals there was about \$500,000.00 left to pay all the bills owed by ██████████ Dairy. ██████████ was the bank for ██████████ Dairy. ██████████ kept all the funds from the sale of the cattle and paid it towards the real estate note which was not in arrears. The money ██████████ applied was to future payments not yet owed. This left an account payable of \$500,000.00 unpaid. Since March 2007 I have slowly paid some creditors while others have filed suit against me. ██████████ said I should sell the dairy facility to get the money to pay everyone. I have diligently tried to sell the property with no success because of the terrible dairy economy.

February 2008 – I had no success selling ██████████ Dairy without any cows in the dairy. I decided to put cows back in the dairy and maybe get it sold as an operating dairy. I started buying cows and taking on partners in the purchase of the cows to get the dairy full and operating again. I called the new entity ██████████ Dairy. The partners I had on the cows were Keith ██████████, Greg ██████████, Jack ██████████, and Stanley ██████████. We milked cows from February to November 2008 with no success selling the dairy.

November 2008 – ██████████ Dairy was losing money and I had no success selling the real estate and the outlook for the dairy business didn't look good. I decided to sell the cows. Keith ██████████ sent Vern ██████████, who worked for ██████████ Genetics to buy some cows. Vern ██████████ came to my dairy and picked out 650 head of cows. Keith told me that ██████████ was signing a note to Keith and was going to pay for the cows at the end of December. Keith told me not to load any cows until he had the note signed. Vern ██████████ picked the cows and Keith ██████████ said the note was signed. I loaded the cows on trucks going to Indiana and Ohio. After the 650 head of cows

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were gone Stanley [REDACTED] decided to come pick cows out of my dairy in place of the money he had put in the dairy. He took approximately 500 head of cows to one of his other dairies. There were about 400 cows left in the dairy which were Jack [REDACTED], Greg [REDACTED], and mine. There were also about 400 heifers in my dairy which belonged to Keith [REDACTED]. In addition to the 400 cows I had about \$400,000.00 owed to me from the sale of the 650 cows sold to [REDACTED]. I was to be paid by Keith [REDACTED] when [REDACTED] paid him. Keith had a note at [REDACTED] Bank in [REDACTED] for his part of the cows and his heifers. The note would be paid off with the sale of his heifers and his part of the money from [REDACTED].

September – December 2008 – I am purchasing heifers out of the [REDACTED] Livestock Dairy Sale and sending them to [REDACTED] Feeders in [REDACTED] TX. The feed yard wanted to start feeding Holstein heifers and wanted me to be involved in helping them. The feed yard owner Ken [REDACTED] told me he had financing in place to feed the Holstein heifers. As time went by and [REDACTED] Feeders hadn't paid for any of the heifers I realized they didn't have their financing in place. I was trying to figure out what to do because I didn't have the money to keep them and the money needed to be put in the custodial account at [REDACTED]. There were approximately 400 head with a value of \$400,000.00.

December 2008 – Keith [REDACTED] came to [REDACTED] to get his heifers sold to pay [REDACTED] Bank. Keith tells me he needs more cattle to cover his loan until [REDACTED] pays him. Keith sells the rest of the cows at my dairy to help him get his note paid. He concludes that won't be enough and needs more cattle. I then offer to let him use the 400 head at [REDACTED] Feeders as collateral on his note until [REDACTED] pays him. I understood the cattle would stay at [REDACTED] Feeders but Keith would use them as collateral. This was being done because Keith's cows financed at [REDACTED] Bank in [REDACTED] were in Indiana and Ohio. Keith decided without telling me that he should sell as many cattle as possible to pay the note instead of using them as collateral. Keith had trucks show up at [REDACTED] Feeders and load my heifers. Keith wired money for the feed bill to [REDACTED] Feeders so they would release the cattle. I think Keith sold the heifers at [REDACTED] Dairy [REDACTED] in KY. I allowed Keith to sell the heifers because the custodial account needed to be reimbursed at [REDACTED]. Keith also loaded all the rest of my cows and even my breeding bulls at my dairy and sold them some where else. Keith also loaded all his heifers that were at my dairy. At this point there are no more cattle at my dairy and Keith has his note paid at [REDACTED] Bank. I am thinking that when [REDACTED] pays Keith the end of December that I will get all the money owed to Jack [REDACTED], Greg [REDACTED] and the [REDACTED] custodial account.

December 2008 – I have a 1500 acre farm in [REDACTED] that I have used to raise crops for my dairy. In September 2007 I sold the corn and sorghum off the farm to a dairyman neighbor, Gary [REDACTED] who was looking at leasing or purchasing my dairy. He bought the feed and put it up on my dairy. He then

didn't lease or purchase my dairy but the feed stayed there. So when I started [REDACTED] Dairy in February 2008 I agreed to purchase the feed back from him. I used the feed to feed the cows and heifers at my dairy. I had been trying to sell my dairy for nearly two years with no success. Many people wanted to buy my farm but not the dairy. I was using the farm to get people interested in the dairy. Since I couldn't get both properties sold I decided to sell the farm by its self. The farm was also financed at [REDACTED] with the dairy and another piece of property. I repeatedly asked [REDACTED] if I sold the farm by its self if I would get the equity money out of the farm. They repeatedly said yes. So I sold the farm to another dairyman neighbor, Al [REDACTED] for \$3,000,000.00. The amount owed to Ag NM was \$1,400,000.00. This should have left me with \$1,600,000.00 to get the [REDACTED] custodial account even and clear up Greg [REDACTED] and most of Jack [REDACTED]. Then I would be able to wait on Keith to pay me with the [REDACTED] money. The farm closed in December 2008 and [REDACTED] decided to keep all the money and apply it to my other real estate notes not in arrears. This left me in financial distress. Then [REDACTED] Livestock sold all the cows of [REDACTED] Dairy in [REDACTED] at the end of December. The cows sold and there was an approximate amount of \$480,000.00 owed to [REDACTED] Dairy. I spoke with John [REDACTED] a partner in [REDACTED] Dairy about giving me a little time to get them paid. The money owed to [REDACTED] Dairy was put in the [REDACTED] custodial account to cover the shortage created by Keith [REDACTED] not paying for the heifers he got from [REDACTED] Feeders.

January 2009 – I spend all my time trying to get [REDACTED] Livestock refinanced or one of my other properties refinanced. To this day I have not been successful in doing this. Because of the banking crisis I was not able to borrow one dollar. Also Gary [REDACTED] and his brother Bruce [REDACTED] are buying heifers at [REDACTED] Livestock to exchange for the money I owe them from the feed at [REDACTED] Dairy which would have been paid from the sale of cows that Keith has not yet paid. The feed was also used to feed the heifers owned by Keith and no feed bill was ever paid by Keith. This creates a bigger shortage in the [REDACTED] custodial account. I am in constant contact with Keith [REDACTED] telling him what's going on and how I need the money. Keith is telling me to this day that [REDACTED] has not paid him. I really don't know. Not only am I not able to borrow any money but [REDACTED] bank where [REDACTED] Livestock banks is now pressuring me to get paid off. I start thinking the only way out of this and get everyone paid is to sell [REDACTED] Livestock and my other sale barn [REDACTED] in [REDACTED] TX. As I am talking to the president of [REDACTED] bank, Jim [REDACTED] about what to do, I am also talking to Keith [REDACTED] about what to do. I am trying to figure out how to get everyone paid and not focusing on the money that Keith owes me. Jim [REDACTED] and Keith [REDACTED] start talking to me about buying both sale barns. Also during January [REDACTED] Dairy files a claim on my bond at [REDACTED] Livestock which brings P & S to investigate. I am dealing with the [REDACTED] custodial shortage, [REDACTED] Dairy bond claim, Jack [REDACTED] and Greg [REDACTED] wanting their money, [REDACTED]

(A)

Bank wanting paid, P & S investigating and I begin to think I have to sell my business to get out of this.

February 2009 – Jim [redacted] and Keith [redacted] are negotiating with me to purchase my two livestock auctions. Jim [redacted] brings Ernest [redacted] in as a partner. Since my custodial account is so short and I'm trying to keep any checks from being returned unpaid I sell my interest in cattle at [redacted] Feedyard to Jim and Ernest. This allows me to get some money in the custodial account. I also have to go meet with Jim and Ernest to borrow money to put in the custodial account. Every time I meet with them the discussion is about what I'm going to sell them and at what price. Jim [redacted] does all the talking at these meetings. Once Jim is satisfied with what I'm telling him he would then tell Ernest to give me a check. Jim would then call the bank and tell them to pay my custodial checks.

March 2009 – The negotiations are continuing with Jim [redacted] on the sale of the two livestock auctions. I have not committed to sell them because I'm trying to figure any other option. Jim [redacted] now tells me he has brought in Charlie [redacted] into the group that is buying me out. The group consists of Jim [redacted], my banker; Charlie [redacted], my main competition; Keith [redacted], owes me money; Ernest [redacted] just trying to keep the sale open; and Greg [redacted] I owe money because of Keith [redacted]. I guess Jim didn't know Jack [redacted] because he didn't ask him to be involved. Now every time I meet with Jim [redacted] the deal changes. His group wants more assets of mine and wants to give less money. Then on March 12, 2009 I meet with Jim and Ernest because I need to borrow more money to cover the custodial account. Because I haven't committed to sell everything I have for half price to my banker and his group, Jim decides Ernest shouldn't loan me any more money. Jim has the bank send checks back on every account I have at the bank including custodial and even payroll. It was a Thursday and that's when I decided to sell everything I had to them because I felt I would lose my customers and most of my employees after the returned checks. I then spent all day Friday with Jim and his group at their attorneys' office trying to get the deal done. At 5pm there were some issues with P&S that would have to be resolved on Monday morning. Monday morning came and my attorney met with Jim [redacted], Charlie [redacted], and their attorney. When Jim and Charlie realized they may not be able to have a sale at [redacted] on Thursday they decided to call the whole deal off. It was their opinion [redacted] Livestock would have no value once it shut down and all my business would move to [redacted] Livestock (owned by Charlie [redacted]). They then offered me \$300,000.00 for the Hereford sale barn and my 1/2 interest in a cattle yard in [redacted], NM. This would not have fixed any problem I had. Since that day I have been trying to sell the two livestock auctions to other people to get everyone paid. [redacted] Bank has continued sending checks back on all my accounts. P&S gets another complaint on a returned check and comes to investigate on March 30, 2009. On Friday March 27, 2009 Bank [redacted] enforces a judgment filed against me and cleans out all my [redacted] accounts including the custodial account. The

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judgment with Bank [redacted] dealt with a four year suit [redacted]'s Livestock had with Bank [redacted] concerning a dairy client of Bank [redacted] that filed bankruptcy.
Bank *Bank*

It is now April 3, 2009 and this statement is being given at the request of USDA GIPSA. [redacted] Bank is foreclosing on everything I have. I have no choice but to sell all real estate, equipment, feed, and businesses that I have. When I realize if Keith [redacted] had paid me for my cattle instead of his note at [redacted] Bank I wouldn't be in this mess. It's ironic that my cattle and the custodial account money paid Keith's note at [redacted] Bank and then the president of [redacted] Bank, Jim [redacted] and Keith try to buy me out and [redacted] Bank is foreclosing on me.

I believe these statements to be true and accurate.

[redacted]
[redacted]

This statement consists of 7 pages of which this is page 7. I have read the foregoing statement and it is true and correct. I give such statement freely and voluntarily, without threats or promises having been made, knowing that it may be used in the administration of the Packers and Stockyards Act, 1921, as amended, and the regulations thereunder.

 

(SIGNED)

SUBSCRIBED AND SWORN TO before me at 
NEW MEXICO, on this 13th
day of APRIL, 2009
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Employee of the United States Department of Agriculture,
designated pursuant to law to administer oaths,
Authorization No. #181

WITNESS:

(7) 

This is how the Agent would have written the relevant portions of the violator's statement:

My name is John Doe. I own and operate the Austin Livestock Auction in Austin, NM, and the Orange Livestock Exchange in Orange, TX.

In December of 2008, I purchased 400 head of dairy heifers at the sale at my market in Austin, NM. The heifers cost approximately \$400,000. I did not reimburse the custodial account for this purchase. My net worth and cash flow have been greatly reduced by failed investments in the dairy industry. I was never able to regain the financial stability required to reimburse the custodial account for this purchase. I have been transferring funds between accounts at Orange Livestock Exchange and the Austin Livestock Auction in order to keep checks from coming back NSF. My bank was covering some NSF checks through a line of credit. My bank refused to pay NSF checks and terminated all of my credit lines.

In late December 2008, I sold \$480,000 worth of dairy cows for Plateau Dairy through my dealer account and put the proceeds into the Austin Livestock Auction custodial account. This deposit did not balance the account but it did keep custodial checks from coming back NSF. I issued a check for the cows to Plateau Dairy with an agreement that the manager, John Wayne, would hold the check until I had the proceeds needed to make the check good. Plateau Dairy deposited the check before I was able to obtain funding and it was returned to them NSF, resulting in them contacting the Packers and Stockyards Program.

(The names and places stated above are fictionalized.)

EXAMPLE



AFFIDAVIT

BY A

COMPLAINANT

AFFIDAVIT OF CHARLIE BROWN

I, CHARLIE BROWN, am over the age of 18 years and I am competent to make this statement under oath. I am the owner and operator of 16 poultry houses under which I have operated as CHARLIE BROWN FARMS. My poultry houses are located at 1055 County Road 800, Forest Hills, Arkansas 49151.

I built the 10 poultry houses on my farm during or about 1991. The houses measure 400 feet by 40 feet, and are of conventional design. All 16 houses were originally built as black-out houses with black curtains. I later changed the curtains to clear curtains, and installed fans on the sides of the houses.

At the end of a contract that I had with Big A Foods, Inc., during or about the summer of 2005, Advantage Foods of Arkansas, Inc. ("Advantage"), was seeking new poultry growers. Jimmy Eager with Advantage was actively recruiting poultry growers to grow birds for Advantage. I was offered a four year contract to grow chickens for Advantage, and I was told that no changes or upgrades to my poultry houses would be necessary or required, and that I could keep growing chickens for Advantage for as long as I wanted to do so.

My complaints regarding Advantage's treatment of me as a poultry grower are as follows:

1. **Termination of poultry growing contract.** About two years into my four year contract with Advantage, I was told by Advantage officials

(mainly by the Advantage Service Technician assigned to my farm, Axel Anxious, who relayed messages to me from Billy Hotcollar, Advantage's Live Production Manager) that I had to make significant upgrades to my 16 poultry houses in order to continue growing chickens for Advantage. Specifically, I was told that I had to add or change equipment to have cool cell pads, raise the static pressure in my houses, install baffle boards, etc. All of these demands by Advantage were relayed to me verbally. No demands for upgrades were ever given to me in writing. Up to that time, however, my performance as a grower had been around or above average. Nevertheless, the Advantage Service Technician assigned to me, Axel Anxious, told me that I had to make the upgrades to my houses, or that my contract with Advantage would be cancelled. I was also told that if I made the upgrades, I would be placed on a flock-to-flock contract to continue to grow chickens for Advantage. This occurred during or about May or June 2008. My farming operations and poultry houses were completely paid for, and I was not in debt. I made a business decision to not incur significant debt in order to continue raising chickens for Advantage on a flock-to-flock basis, so I decided against making the upgrades to my houses that Advantage was demanding. I wanted to continue raising chickens for Advantage at least

until my four year contract expired. In response to my decision, however, Advantage terminated my poultry growing contract about two years before the end of the four year term. I contacted Big A Foods, Inc., Pure Heart Foods, Inc., and Ready Chicken Company to see if I could begin growing chickens for either of those companies. None of those companies needed poultry growers at that time. My 16 poultry houses have sat empty and unused since Advantage terminated its poultry growing contract with me. There is an arbitration clause in the contract that has prevented me from filing a lawsuit for damages for Advantage's breach of our contract. I cannot afford the approximate \$30,000 that it would cost me to go to arbitration; and

2. **Feed quality.** I noticed a lot of variation in feed that was delivered to my farm. Most of the feed was delivered to my farm from the feed mill operated by Advantage at Piney Plains, Arkansas. The flock that I raised before the last flock (received on March 20, 2008) received growth feed and withdrawal feed that looked like starter feed and had a meal appearance and was not pelletized. This repeatedly caused my feed lines to clog. My farm also received feed from the Advantage mill located at Crestview, Arkansas. I believe that the feed from the Crestview mill is superior in quality, and it never caused any feed lines to clog. The

chickens that I raised that received feed from the Crestview feed mill weighed more and did not experience any diarrhea. All of the flocks that I raised on feed from the Piney View mill had low average weights and had diarrhea that caused the floors of my houses to be slick. Because of that, I believe that the feed from the mill at Crestview may be superior. Growers for the Advantage complex receive feed from either Crestview or Piney View, and they compete against each other in the weekly tournament system. I believe that growers who get feed from Crestview are given an unfair advantage over growers who receive feed from Piney View.

I wish to be considered as a complainant against Advantage with regard to the issues set forth above. I consent to the use of my name and the information that I have provided to the Packers and Stockyards Program as the investigation of the above matters proceeds. Also, I am willing to testify as a witness concerning the above matters, as needed.

The remainder of this page is left intentionally blank.

(The above names and places are fictionalized.)

FORMS FOR DECLARATIONS

**NOTE: THESE FORMS
HAVE NOT BEEN
OFFICIALLY ADOPTED
OR NUMBERED.
CONSULT WITH
SUPERVISORY AND
LEGAL STAFF PRIOR TO
USING.**

UNITED STATES DEPARTMENT OF AGRICULTURE

PACKERS AND STOCKYARDS PROGRAM

DECLARATION

(For use within the United States of America or its territories, possessions, or commonwealths)

**UNDER PENALTY OF PERJURY
FOR USE IN ANY PROCEEDING OR ACTION
ARISING UNDER THE PACKERS AND STOCKYARDS
ACT, 1921, AS AMENDED AND SUPPLEMENTED
(7 U.S.C. § 181 *et seq.*)**

STATE/TERRITORY/POSSESSION/COMMONWEALTH OF _____)
COUNTY/PROVINCE OF _____) SS:

I, _____, am over the age of 18 years and I am competent to make the following statement under penalty of perjury as follows:

I give this statement, which consists of ___ pages, freely and voluntarily, without threats or promises having been made, knowing that it may be used in administering the Packers and Stockyards Act, 1921, as amended and supplemented, and the regulations issued thereunder.

As provided in 28 U.S.C. § 1746, I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on _____, 201__.

SIGNATURE

(Print Name)

Address: _____

UNITED STATES DEPARTMENT OF AGRICULTURE

PACKERS AND STOCKYARDS PROGRAM

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STATE/PROVINCE OF _____) SS:

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As provided in 28 U.S.C. § 1746, I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____, 201__.

SIGNATURE

(Print Name)

Address: _____
