

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:

Muenster Livestock Auction)	P. & S. Docket No. D-08-0059
Commission, Inc., and Ronnie)	
Anstin,)	
Respondents)	Consent Decision

This proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.), hereinafter referred to as the Act, by a Complaint filed by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, alleging that the Respondents wilfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.). An Amended Complaint, subsequently filed by the Deputy Administrator, added further allegations that Respondents wilfully violated the Act. This Consent Decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

Respondents admit the jurisdictional allegations in paragraph I of the Amended Complaint and specifically admit that the Secretary has jurisdiction in this matter, neither admit nor deny the remaining allegations, waive oral hearing and further procedure, and consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

Complainant agrees to the entry of this decision.

Findings of Fact

1. Muenster Livestock Auction Commission, Inc., hereinafter referred to as the Corporate Respondent, is a Texas corporation whose mailing address is P.O. Box 116, Muenster,

TX 76252.

2. The Corporate Respondent is and at all times material herein was:

(a) Engaged in the business of selling livestock in commerce on a commission basis under the name Muenster Livestock Commission, in Muenster, Texas; and

(b) Registered with the Secretary of Agriculture as a market agency to sell livestock on commission.

3. Ronnie Austin, hereinafter referred to as the Individual Respondent, is an individual whose mailing address is RT 1, Box 44A, Ringling, OK 73456.

4. The Individual Respondent at all times material herein was:

(a) President and 100 percent owner of the Corporate Respondent;

(b) The person managing, directing, and controlling the market agency selling on commission activities of the Corporate Respondent;

(c) A market agency buying and selling livestock in commerce on a commission basis and a dealer; and

(d) Individually registered with the Secretary of Agriculture as a market agency buying on commission and dealer, doing business under the name Austin Cattle Company, under the Act.

Conclusions

Respondents having admitted the jurisdictional facts, and the parties having agreed to the entry of this decision, the decision will be entered

Order

Corporate Respondent Muenster Livestock Auction Commission, Inc., its officers, agents

and employees, directly or through any corporate or other device, and Respondent Ronnie Austin, his agents and employees, directly or through any corporate or other device, in connection with their operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to deposit in the Custodial Account for Shippers' Proceeds within the times prescribed in section 201.42 of the regulations (9 C.F.R. § 201.42) amounts equal to the outstanding proceeds receivable from the sale of consigned livestock;

2. Failing to otherwise maintain the Custodial Account for Shippers' proceeds in strict conformity with section 201.42 of the regulations (9 C.F.R. § 201.42);

3. Using funds received from the sale of consigned livestock for the payment of NSF check charges and other bank fees, or improperly transferring custodial funds from its custodial account into its general operations account, or for any purpose other than payment to consignors of the amount due from the sale of their livestock and the payment of lawful marketing charges;

4. Issuing custodial account checks in payment for livestock purchases made at other markets;

5. Permitting any manager or employee to issue custodial account checks to replace their own dishonored checks, or for any other purposes of their own;

6. Issuing custodial account checks without having sufficient funds on deposit and available in the custodial accounts for shippers' proceeds upon which the checks are drawn to pay the checks when presented for payment;

7. Financing the Corporate Respondent's market agency operations through the use of custodial account overdrafts; and

8. Keeping custodial funds in certificates of deposit while maintaining a substantial

negative balance in custodial account funds available to pay checks upon presentation.

Respondents, in connection with the operations conducted under the name Muenster Livestock Commission, in Muenster, Texas, or any other market agency selling livestock on a commission basis that they may subsequently operate, shall keep and maintain such accounts, records, and memoranda as fully and correctly disclose their transactions subject to the Act and the regulations, including but not limited to: (1) properly preparing and keeping custodial account reconciliations with supporting schedules; (2) maintaining a system of records which permits them to accurately determine the balance of their custodial account; (3) issuing consecutively numbered custodial account checks; (4) recording all issued custodial account checks in a custodial account check register; and (5) maintaining a set of general accounting records, including a general ledger, subsidiary ledgers, cash receipts journal, and cash disbursement journal. Respondents shall keep all records prepared for the required two year record retention period.

Respondent Muenster Livestock Auction Commission, Inc., is suspended as a registrant under the Act for a period of 120 days. This suspension shall not affect the registration of respondent Ronnie Austin to do business as a dealer and market agency buying on commission under the name Austin Cattle Company. Respondent Ronnie Austin shall not be registered to engage in business as a market agency selling on commission, and is prohibited from operating as a market agency selling on commission without being so registered. Provided, that Respondent Ronnie Austin will be permitted to register as a market agency selling on commission upon demonstration to Packers and Stockyards Program that Respondent Muenster Livestock Auction Commission has completed its 120 day suspension. In the event that the posted stockyard facility

in Muenster, Texas, at which Respondents are operating as a market agency selling livestock on a commission basis is sold either before the start of this 120 day suspension, or before its conclusion, the registration, bonding, and commencement of operations of the entity acquiring the stockyard facility in a *bona fide* purchase will not be adversely affected by this 120 day suspension, *provided*, that Respondents acquire no interest in such entity, and maintain no affiliation with the market operation during the 120 day suspension period.

The provisions of this Order, with the exception of the 120 day suspension of Respondent Muenster Livestock Auction Commission, Inc., shall become effective on the sixth day after service of the decision on Respondents. As specifically agreed to by the parties, the suspension provision will become effective on May 1, 2009.

Copies of this decision shall be served upon the parties.

Approved by:

MUENSTER LIVESTOCK AUCTION COMMISSION, INC.

Respondent

by

RONNIE AUSTIN

President

RONNIE AUSTIN

Respondent

LUKE MOTLEY IV

Attorney for Respondents

ERIC PAUL

Attorney for Complainant

Issued this 29th day of March, 2009

Marc R. Hillson
Chief Administrative Law Judge