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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	P. & S. Docket No D-08-0151
)	
Hereford Livestock Exchange, Inc., d.b.a.)	
Livestock Exchange, Ltd.; and Randy)	
Bouldin)	
)	
 In re:)	 P. & S. Docket No D-08-0152
)	
Portales Livestock Auction, Inc., and)	
Randy Bouldin)	
)	Decision Without Hearing
Respondents)	by Reason of Consent

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.) (hereinafter "Act"), by two Complaints filed on June 26, 2008 by the Deputy Administrator, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondents willfully violated the Act and regulations promulgated thereunder (9 C.F.R. § 201.1 et seq.)(hereinafter "regulations"). The cases were consolidated by the Administrative Law Judge on July 23, 2008. This decision is entered pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes applicable to this proceeding (7 C.F.R. § 1.138).

The Complaints alleged that Respondents failed to maintain their custodial accounts in accordance with the requirements of the Act and the regulations, that Respondents failed to timely reimburse their custodial accounts, that Respondents misused custodial account funds and proceeds from the sale of livestock, that Respondents issued checks to consignors or shippers of livestock which were returned unpaid by the bank upon which they were drawn, and that Respondents failed to remit, when due, the proceeds of livestock sales.

On March 16, 2009, Complainant also filed an action for injunction in the United States District Court for the District of New Mexico to enjoin Respondents from further violations of the Act. On April 13, 2009, a Consent Order for Preliminary Injunction was entered that enjoined Respondents from operating subject to the Act in any capacity until Respondents met certain conditions, including: (1) full and complete payment to all unpaid livestock sellers, (2) acquisition of replacement bonds or bond equivalents, which are filed with GIPSA, and (3) the correction of shortages in Respondents' custodial accounts. The Preliminary Injunction remains in effect until the resolution of this administrative proceeding.

Respondents admit the jurisdictional allegations stated in the Findings of Fact 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. Portales Livestock Auction, Inc. (hereinafter "Respondent Portales"), is a corporation organized and existing under the laws of the State of New Mexico, whose mailing address is P.O. Box 218, Portales, New Mexico 88130.

2. At all times material to this decision, Respondent Portales was:

- (a) Engaged in the business of conducting and operating Portales Livestock Auction, Inc., a posted stockyard, subject to the provisions of the Act;
- (b) Engaged in the business of a dealer buying and selling livestock in commerce for its own account;
- (c) Engaged in the business of a market agency buying and selling livestock in commerce on a commission basis;

- (d) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for its own account; and
- (e) Registered with the Secretary of Agriculture as a market agency to buy and sell livestock in commerce on a commission basis and furnish stockyard services.

3. Hereford Livestock Exchange, Inc. (hereinafter "Respondent Hereford"), is a corporation organized and existing under the laws of the State of Texas, whose address is P.O. Box 31-3180 County Rd. 4, Hereford, TX 79045-0031

4. At all times material to this decision, Respondent Hereford was:

- (a) Engaged in the business of a dealer buying and selling livestock in commerce for its own account;
- (b) Engaged in the business of a market agency buying and selling livestock in commerce on a commission basis;
- (c) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for its own account; and
- (d) Registered with the Secretary of Agriculture as a market agency to buy and sell livestock in commerce on a commission basis.

5. Randy Bouldin (hereinafter "Respondent Bouldin"), is an individual whose mailing address is P.O. Box 218, Portales, New Mexico 88130.

6. At all times material to this decision, Respondent Bouldin was:

- (a) President of Respondent Portales;
- (b) General manager of Respondent Portales;
- (c) Director of Respondent Portales;
- (d) One-hundred percent owner of Respondent Portales;
- (e) Responsible for the management, direction, and control of Respondent Portales;
- (f) Director of Respondent Hereford;

- (g) One-hundred percent owner of Respondent Hereford; and
- (h) Responsible for the management, direction, and control of Respondent Hereford.

Conclusions

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

Order

Respondent Portales, Respondent Hereford, and Respondent Bouldin, their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Act, shall cease and desist from:

1. Failing to deposit in their Custodial Accounts 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 their Custodial Accounts 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 any purpose other than payment to consignors of the amount due from the sale of their livestock and the payment of lawful marketing charges, including, but not limited to:
 - a. the payment of NSF check charges and other bank fees,
 - b. transferring custodial account proceeds from custodial accounts into general operating accounts,
 - c. diverting custodial account funds and proceeds from the sales of livestock to non-custodial accounts or other businesses,
 - d. withdrawing from custodial account funds marketing charges not yet earned;

4. 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; and
5. Failing to remit, when due, the proceeds of livestock sales in strict conformity with section 201.43 of the regulations (9 C.F.R. § 201.43).

Respondents are suspended as registrants under the Act for a period of 5 years. Provided, however, that after 1 year of active suspension and upon application to the Packers and Stockyards Program, Respondent Bouldin may request a supplemental order that permits his salaried employment, or other modification of the suspension, based upon demonstration that full payment has been made to all unpaid livestock sellers and consignors who have not received full payment on or before the date this decision is filed.

The provisions of this order shall become final and effective on issuance.

Done at Washington, D.C.

this 2nd day of June, 2009

~~_____~~
Marc R. Hillson
Chief Administrative Law Judge

~~_____~~
Leah Battaglioli
Attorney for Complainant

~~_____~~
Jonathan Gordy
Attorney for Complainant

~~_____~~
Ernest Van Hooser
Attorney for Respondents

~~_____~~
Randy Bouldin
Individually and for Respondents