

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

P. & S. Docket No. D-09-0002

In re: GREAT WESTERN AUCTIONS, LLC,

Respondent

DEFAULT DECISION AND ORDER

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), herein referred to as the “Act,” instituted by a Complaint filed on October 1, 2008 by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, charging that the Respondent willfully violated the Act.

The Complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130), hereinafter the “Rules of Practice,” were served on Respondent by certified mail on October 6, 2008. Respondent was informed in the letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the Complaint.

Further, on October 20, 2008, Complainant sent a letter to Respondent informing Respondent that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the Complaint.

The letter also informed Respondent that if this matter were to proceed to hearing, the Packers and Stockyards Program would seek a civil penalty of \$10,000. On October 23, 2008, Respondent responded to Complainant's letter, by telephone, but failed to file an answer.

Because Respondent has failed to file an answer within the time period prescribed by the Rules of Practice (7 C.F.R. § 1.136), and the material facts alleged in the Complaint, which are admitted by Respondent's failure to file an answer, are adopted and set forth herein as findings of fact. This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

- 1) Respondent is a limited liability company whose mailing address is 30822 Nichols Sawmill Rd., Magnolia, Texas 77355.
- 2) Respondent is, and at all times material herein, was:
 - a. Engaged in the business of selling livestock in commerce on a commission basis;
and
 - b. Registered with the Secretary of Agriculture as a market agency.
- 3) On September 19, 2007, the Packers and Stockyards Program sent Respondent a certified letter which stated that Respondent's surety bond would terminate on October 17, 2007. The letter referenced 9 C.F.R. §§ 201.29-201.30, which requires market agencies to file and maintain bonds and reminded Respondent that violators are subject to disciplinary action under the Act. The letter also notified Respondent that without the requested bond coverage, continuation of livestock operations as a market agency would be a violation of

7 U.S.C §213(a) of the Act. The letter was returned “unclaimed.” On October 23, 2007, the letter was resent, via Federal Express, and served on Respondent October 24, 2007.

- 4) On October 18, 2007, Packers and Stockyards Program representatives contacted Respondent, by telephone, to inquire about the status of the replacement bond or bond equivalent and discussed the potential administrative procedures that could follow if Respondent violated provisions of the Act. Notwithstanding such notice, Respondent continued to engage in business as a market agency without maintaining an adequate bond or its equivalent as required by the Act and the Regulations.
- 5) On or about the dates and in the transactions set forth below, Respondent engaged in the business of a market agency without maintaining an adequate bond or bond equivalent.

The transactions occurred at Great Western Auction.

Purchase Date	Purchased For	No. of Head	Livestock Amount	Commissions
11/10/07	R. Walton	1	\$75.00	\$15.00
11/10/07	D. Calhoun	2	\$1,900.00	\$172.00
11/10/07	M. Winstead	2	\$225.00	\$30.00
11/10/07	D. Clevenger	1	\$525.00	\$42.00
11/10/07	M. Annuot	1	\$225.00	\$18.00
11/10/07	J. Bass	1	\$925.00	\$74.00
11/10/07	B. Sadler	1	\$525.00	\$42.00
11/10/07	B. McVaney	1	\$375.00	\$30.00
11/10/07	D. Nichols	3	\$2,100.00	\$210.00
11/10/07	T. Hayne	4	\$1,050.00	\$109.00
11/10/07	K. Lewis	2	\$400.00	\$32.00
11/10/07	L. Ragan	4	\$2,125.00	\$170.00
11/10/07	Harris City Sheriffs' Dept.	7	\$525.00	\$105.00
11/10/07	C. Young	1	\$1,000.00	\$0.00
11/10/07	J. Runnels	1	\$325.00	\$26.00
11/10/07	W. Griffin	1	\$225.00	\$18.00
11/10/07	D. Cobb	1	\$375.00	\$30.00
11/10/07	D. Stephens	5	\$2,950.00	\$239.00
11/10/07	J. Jarel	5	\$1,925.00	\$177.50

11/24/07	BL Ritchey	4	\$1,000.00	\$80.00
11/24/07	L. Ragan	1	\$900.00	\$72.00
11/24/07	D. Cobb	3	\$1,350.00	\$145.00
11/24/07	B. Allen	1	\$225.00	\$18.00
11/24/07	G. Nunnally	2	\$435.00	\$41.00
11/24/07	J. Helton	2	\$425.00	\$35.00
11/24/07	B. Hurst	2	\$450.00	\$40.00
11/24/07	J. Lamb	2	\$170.00	\$30.00
11/24/07	L. Marshall	1	\$725.00	\$72.50
11/24/07	Horses Barn	11	\$3,515.00	\$323.00
11/24/07	D. Nace	10	\$4,675.00	\$389.00
12/08/07	C. Young	1	\$375.00	\$37.50
12/08/07	G. Kemp	1	\$800.00	\$80.00
12/08/07	Terry Ranch	3	\$825.00	\$71.00
12/08/07	J. Jones	1	\$400.00	\$32.00
12/08/07	K. Narvaez	1	\$450.00	\$45.00
12/08/07	K. Watson	1	\$200.00	\$16.00
12/08/07	A. Drake	6	\$5,450.00	\$508.50
12/08/07	K. Welfel	2	\$125.00	\$30.00
12/08/07	H. Plitt	2	\$525.00	\$48.00
12/08/07	B. Hurst	2	\$500.00	\$46.00
12/08/07	Kvalsvita	1	\$200.00	\$16.00
12/08/07	T. Witt	4	\$625.00	\$69.00
12/08/07	Horses Barn	12	\$7,825.00	\$761.00
12/08/07	D. Cobb	1	\$900.00	\$90.00
12/08/07	T. Saulters	13	\$4,400.00	\$368.00
Totals		134	\$55,245.00	\$5,003.00

- 6) Respondent failed to keep accounts, records, and memoranda that fully and correctly disclosed all transactions involved in the business, as required by section 401 of the Act (7 U.S.C. § 221), including but not limited to, sale and bank records, ring sheets, and accounts of sales.

Conclusions Of Law

- 1) The Secretary has jurisdiction in this matter.
- 2) Respondent willfully violated section 312(a) of the Act (7 U.S.C. §§ 213(a)) and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30). Paragraph 5.

- 3) Respondent has failed to keep records as required by section 401 of the Act (7 U.S.C. § 221) and, therefore, has willfully engaged in an “unfair practice” in violation of section 312 (a) of the Act (7 U.S.C. §213(a)). Paragraph 6.

Order

- 1) Respondent Great Western Auctions, LLC, its agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in operations subject to the Act without maintaining an adequate bond or bond equivalent.
- 2) Respondent Great Western Auctions, LLC and its agents and employees shall keep such accounts, records, and memoranda that fully and correctly disclosed all transactions involved in the business, including but not limited to, sale and bank records, ring sheets, and accounts of sales.
- 3) Respondent Great Western Auctions, LLC is assessed a civil penalty in the amount of Ten Thousand dollars (\$10,000).
- 4) This decision shall become final and effective without further proceedings 35 days after the date of service upon Respondent, unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to Section 1.145 of the Rules of Practice (7 C.F.R § 1.145).

Copies of this decision shall be served upon the parties.

Done at Washington, DC
August 4, 2009

PETER M. DAVENPORT
Administrative Law Judge