

UNITED STATES DEPARTMENT OF AGRICULTURE RECEIVED SEP 20 PM 2: 23

BEFORE THE SECRETARY OF AGRICULTURE

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| In re: |) | P & S Docket No. D-12-0241 |
| New Wilmington Livestock |) | |
| Auction, Inc., and |) | |
| Thomas R. Skelton |) | |
| Respondents |) | Decision Without Hearing |
| |) | By Reason of Consent |

This proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.) (Act), by a Complaint filed by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that the respondents willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 et seq.) (regulations). This consent decision is entered pursuant to the consent decision provision of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.138) (Rules of Practice).

The respondents admit the jurisdictional allegations in paragraph I of the 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 consent decision.

Complainant agrees to the entry of this consent decision.

Findings of Fact

1. Respondent New Wilmington Livestock Auction, Inc. is a corporation organized and existing under the laws of the State of Pennsylvania, with a street address of 2006 Mercer -New Wilmington Rd., New Wilmington, P A 16142, and a mailing address of P.O. Box 296, Canfield, OH 44406.

2. Respondent Thomas R. Skelton is an individual whose current mailing address is identical to the mailing address provided in subsection (a) above.

3. Respondent New Wilmington Livestock Auction, Inc., under the direction, management, and control of respondent Thomas R. Skelton, at all times material herein was:

(a) Engaged in the business of conducting and operating a posted stockyard subject to the provisions of the Act;

(b) Engaged in the business of a market agency selling livestock in commerce on a commission basis; and

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

4. Respondent Thomas R. Skelton at all times material herein was:

(a) The one hundred percent owner and president of respondent New Wilmington Livestock Auction, Inc.; and

(b) Responsible for the day-to-day direction, management and control of respondent New Wilmington Livestock Auction, Inc.

5. Respondent New Wilmington Livestock Auction, Inc. is the alter ego of respondent Thomas R. Skelton.

Conclusion

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

Order

Respondent New Wilmington Livestock Auction, Inc. and respondent Thomas R. Skelton, their agents and employees, directly or through any corporate or other device, in connection with their operations subject to the Act, shall cease and desist from:

1. Engaging in business subject to the Act while insolvent, i.e. while current liabilities exceed current assets;
2. Failing to properly maintain their Custodial Account for Shippers' Proceeds in strict conformity with the Act and section 201.42 of the regulations (9 C.F.R. § 201.42); and
3. Using funds received from the sale of consigned livestock for any purpose other than those specifically permitted by section 201.42(d) of the regulations (9 C.F.R. § 201.42(d)).

Pursuant to 7 U.S.C. § 204, respondent New Wilmington Livestock Auction, Inc. is suspended as a registrant under the Act for a period of 14 days and thereafter until respondent New Wilmington Livestock Auction, Inc. has demonstrated to the satisfaction of the Packers and Stockyards Program, that the custodial account shortages in respondent New Wilmington Livestock Auction, Inc.'s custodial account and respondent New Wilmington Livestock Auction, Inc.'s insolvency have been corrected. After the expiration of the initial 14 day suspension period, and provided that respondent New Wilmington Livestock Auction, Inc. demonstrates that its

custodial account shortages have been corrected and that its current liabilities no longer exceed its current assets, upon application to the Packers and Stockyards Program, a supplemental order may be issued terminating the suspension.

Respondent Thomas R. Skelton is prohibited from being registered under the Act for a period of 14 days. Pursuant to section 303 of the Act, respondent Thomas R. Skelton is prohibited from carrying on the business of a market agency or dealer without being registered. After the 14 day suspension period, respondent Thomas R. Skelton may apply for registration as dealer or market agency buying on commission and/or may be employed by another person who is subject to the Act.

In accordance with section 312(b) of the Act (7 U.S.C. Sec. 213(b)), the respondents are further assessed, jointly and severally, a civil penalty in the amount of twenty-five thousand dollars (\$25,000.00). However, this civil penalty will be held in abeyance provided that respondents are in compliance with the terms of this Consent Decision and Order. It is within GIPSA's sole discretion to determine whether respondents are in compliance with the terms of this Consent Decision and Order. If GIPSA determines that respondents are not in compliance with the terms of this Consent Decision and Order, GIPSA may petition the ALJ to order the twenty-five thousand dollars (\$25,000.00) civil penalty held in abeyance to become effective immediately without further procedure. If GIPSA has not petitioned the ALJ to order the twenty-five thousand dollars (\$25,000.00) civil penalty against respondents within one-year from the effective date of this consent decision and order, the civil penalty will be extinguished.

The provisions of this Order shall become effective on the sixth day after service of this order on the respondents.

Copies of this decision and order shall be served upon the parties.

Done at Washington, D.C.

this 28 day of FEB, 2013


Administrative Law Judge

Peter M. Davenport

New Wilmington Livestock Auction, Inc.
Respondent

By: 

Title: *President*


Thomas R. Skelton
Respondent


Ernest H. Van Hooser
Van Hooser and Eftink, P.C.
Attorney for Respondents


Ciarra A. Toomey
Attorney for Complainant

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