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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P & S Docket No. D-19-J-0051
	)	
Michael W. Whitten,	)	
	)	
Respondent	)	Consent Decision and Order

This proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (the Act), by a Complaint filed by the Deputy Administrator, Fair Trade Practices Program (Packers & Stockyards Division), Agricultural Marketing Service, U.S. Department of Agriculture, alleging that respondent Michael W. Whitten (Respondent) violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*) (the regulations). This consent decision and order is entered pursuant to section 1.138 (7 C.F.R. § 1.138) of the Rules of Practice Governing Formal Adjudicatory Procedures Instituted by the Secretary under Various Statutes (Rules of Practice) (7 C.F.R. § 1.130 *et seq.*).

Respondent admits the jurisdictional allegations in the complaint and specifically admits that the Secretary has jurisdiction in this matter; neither admits nor denies the remaining allegations; waives oral hearing and further procedure; waives all rights to seek judicial review and otherwise challenge or contest the validity of this decision, including waiving challenges to the Administrative Law Judge's authority to enter this Decision and Order under the Administrative Procedure Act and the Constitution of the United States, and waives any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 et seq.) for fees and other expenses incurred by Respondent in connection with this proceeding or any action against any USDA employee in their individual capacity. The

parties consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this Decision.

Findings of Fact

1. Respondent Michael W. Whitten (Respondent) is an individual. Respondent's mailing address has not been stated in the complaint or in this order to protect Respondent's privacy, but has been provided to the Hearing Clerk's Office, United States Department of Agriculture, for the purposes of service of process in this case.
2. At all times material herein, Respondent was:
   (a) Engaged in the business of a dealer and as a market agency buying on a commission basis; and
   (b) Registered with the Secretary of Agriculture as a dealer and as a market agency buying on a commission basis.

Conclusion

Respondent having admitted the jurisdiction facts, and the parties having agreed to the entry of this consent decision, the consent decision and order will be entered.

Order

Respondent Michael W. Whitten, his agents and employees, directly and through any corporate or other device, in connection with his operations subject to the Act, shall cease and desist from making or causing to be made, issuing, or circulating any false or misleading reports, records, or representations concerning the market conditions or the prices or sale of any livestock

in violation of section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.53 of the Regulations (9 C.F.R. § 201.53).

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent is assessed a civil penalty in the amount of thirteen thousand and five hundred dollars ($13,500.00).

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

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

Done at Washington, D.C.

this 9 day of APR, 2019.

[redacted]

Administrative Law Judge for
Channing D. Strother
Chief Administrative Law Judge

[redacted]

Michael W. Whitten
Respondent

[redacted]

Charles L. Kendall
Attorney for Complainant