

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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In re

P. & S. Docket No. D-04-0017

Nathan Shaull, d b a Highmore Auction
Sales and HS Cattle,

Respondent

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.) (hereinafter referred to as the "Act"), by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondent willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.) (hereinafter referred to as the "regulations"). 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).

Respondent admits the jurisdictional allegations in paragraph I of 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, and consents and agrees, 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. Nathan Shaull, d/b/a Highmore Auction Sales and HS Cattle (hereinafter, "Respondent"), is an individual whose business mailing address is P.O. Box 245, Highmore, South Dakota 57345.
2. Respondent was at all times material herein:
 - (a) Engaged in the business of a market agency, Highmore Auction Sales, buying and selling livestock on a commission basis, and as a dealer, HS Cattle, buying and selling livestock for his own account or the accounts of others; and
 - (b) Registered with the Secretary of Agriculture as a market agency, to buy and sell on commission, and as a dealer to buy or sell livestock in commerce for his own account or the accounts of others.

Conclusions

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

Order

Respondent, Nathan Shaull, d/b/a Highmore Auction Sales and HS Cattle, his agents and employees, directly or through any corporate or other device, in connection with his activities 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 maintain and use properly his Custodial Account for Shippers' Proceeds;

3. Using funds received as proceeds from the sale of livestock sold on a commission basis for his own purposes or for any purpose other than the payment of lawful marketing charges and the remittance of net proceeds to the consignors and shippers of livestock;

4. Exchanging or "kiting" checks with any person or between any accounts for the purpose or with the effect of concealing the true amount of funds available in any account, or of creating a false float, or balance, in any such account;

5. Issuing checks in payment of the net proceeds from the sale of consigned livestock without having sufficient funds on deposit and available in the custodial account upon which such checks are drawn to pay such checks when presented;

6. Issuing checks in payment for livestock purchases without having sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;

7. Failing to remit the full amount of the net proceeds for livestock within the time period required by the regulations; and

8. Failing to pay the full amount of the purchase price for livestock within the time period required by the Act.

Respondent shall keep such accounts, records and memoranda which fully and correctly disclose all transactions conducted subject to the Act, including, but not limited to, his general ledger, cash receipts and disbursements journal, his accounts receivable and payable journal, and all of his purchase and sales invoices, inventory records, notes receivable and payable records, and check registers


Respondent is suspended as a registrant under the Act for a period of five (5) years and thereafter until he has demonstrated that he is no longer insolvent. Provided, however, that upon application to Packers and Stockyards Programs, a supplemental order may be issued terminating the suspension at any time after one (1) year, upon demonstration that all livestock consignors, sellers or shippers identified in the complaint have been paid in full and Respondent is no longer insolvent. Provided, further, that this order may be modified upon application to Packers and Stockyards Programs to permit Respondent's salaried employment by another registrant or packer after the expiration of nine (9) months of this suspension term and upon demonstration of circumstances warranting modification of the order.


The provisions of this order shall become effective upon issuance.

Copies of this decision shall be served upon the parties.

Issued this 20th day of
December, 2004.

 
Administrative Law Judge


Nathan Shaull, d/b/a Highmore Auction Sales
and HS Cattle
Respondent


Andrew Y. Stanton
Attorney for Complainant