

Jim

USDA
OALJ/OHC

2006 DEC 12 PM 3:29

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

RECEIVED

In re:

Muenster Livestock Auction)	P. & S. Docket No. D-06-0010
Commission, Inc., and Scotty)	
Austin,)	
Respondents)	Decision

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.), hereinafter "the Act", by a complaint filed by the Administrator, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that the Respondents wilfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

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 decision.

Complainant agrees to the entry of this decision.

Findings of Fact

1. Muenster Livestock Auction Commission, Inc., hereinafter referred to as the "Corporate Respondent", is a Texas corporation whose mailing address is P.O. Box 116, Muenster, TX 76252.

2. The Corporate Respondent is and at all times material herein was:

(a) Engaged in the business of selling livestock in commerce on a commission basis under the name Muenster Livestock Commission, in Muenster, Texas;

(b) Engaged, until May 13, 2004, also in the business of selling livestock in commerce on a commission basis under the name Bowie Livestock Commission, in Bowie, Texas; and

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

3. Scotty Austin, hereinafter referred to as the "Individual Respondent", is an individual whose mailing address is 101 North Hill, Valley View, TX.

4. The Individual Respondent at all times material herein was:

(a) President and fifty-one percent owner of the Corporate Respondent;

(b) The individual who managed, directed, and controlled the daily operations of the Corporate Respondent both as Muenster Livestock Commission and as Bowie Livestock Commission;

(c) A market agency selling livestock in commerce on a commission basis;

and

(d) Not individually registered with the Secretary of Agriculture in any capacity under the Act.

(e) The alter ego of the Corporate Respondent at the time of the violations.

Conclusions

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

Order

Corporate Respondent Muenster Livestock Auction Commission, Inc., its officers,

directors, agents and employees, successors and assigns, directly or through any corporate or other device, and Respondent Scotty Austin, his agents and employees, directly or through any corporate or other device, in connection with their operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to deposit in the Custodial Account 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 due from the sale of consigned livestock;
2. Failing to otherwise maintain the Custodial Account for Shippers' proceeds in strict conformity with section 201.42 of the regulations (9 C.F.R. § 201.42);
3. Failing to reimburse the Custodial Account for Shippers' Proceeds by the close of the next business day for purchases made by the Individual Respondent;
4. Using funds received from the sale of consigned livestock for purposes of their own, or 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;
5. Creating false dock-in records, sales invoices, and accounting for phantom livestock;
6. Issuing custodial account checks, and misusing custodial funds, in a fictitious sale of consigned livestock; and
7. Issuing custodial account checks payable to fictitious names, rather than to the true name of the livestock owner and consignor;

Respondents, in connection with the Corporate Respondent's operations, shall keep and maintain such accounts, records, and memoranda as fully and correctly disclose their transactions subject to the Act and the regulations, including but not limited to: (1) true and correct dock-in

records and sales invoices; and (2) custodial account checks that name as payee the true owners and consignors of consigned livestock.

Corporate Respondent Muenster Livestock Auction Commission, Inc., and Individual Respondent Scotty Austin as its *alter ego* at all times material herein, are suspended as registrants under the Act for a period of seven (7) days.

Respondents Muenster Livestock Auction Commission, Inc., and Scotty Austin are assessed, jointly and severally, a civil penalty in the amount of Twenty-Four Thousand Dollars (\$24,000.00).

The provisions of this Order shall become effective on the sixth day after service of the decision on Respondents.

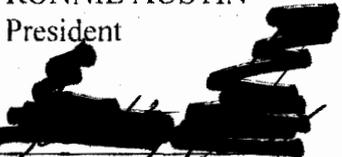
Copies of this decision shall be served upon the parties.

MUENSTER LIVESTOCK AUCTION COMMISSION, INC.

Respondent

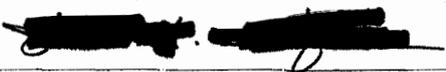
By 
RONNIE AUSTIN
President


LUKE MOTLEY IV
Attorney for Respondents


SCOTTY AUSTIN
Respondent


ERIC PAUL
Attorney for Complainant

Issued this 12 day of Dec, 2006


Administrative Law Judge
Jill S. Clifton