

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)
) P&S Docket No D-07-0163
Clifford F. Dance, Jr. and Mike)
Whitfield d.b.a. Gowan Stockyards)
)
Respondents)
) Decision by Reason of Consent

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.) (Act), by a Complaint filed on July 27, 2007, by the Deputy Administrator, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the Respondents willfully violated the Act and regulations promulgated thereunder (9 C.F.R. § 201.1 et seq.). The Complaint alleged that Respondents failed to maintain and use properly their custodial accounts for shipper's proceeds in violation of sections 307 and 312(a) of the Act (7 U.S.C. §§ 208, 213(a)) and section 201.42 of the regulations (9 C.F.R. § 201.42). 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).

Respondents admit the jurisdictional allegations in paragraph 1 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. Clifford F. Dance, Jr. and Mike Whitfield (“Respondents”) are individuals doing business as Gowan Stockyards, a partnership, whose business address is Blackjack Road, Kosciusko, Mississippi, 39090, and whose mailing address is P.O. Box 336, Kosciusko, Mississippi 39090.
2. Respondents are, and at all times material to this complaint were:
 - a. Engaged in the business of conducting and operating Gowan Stockyards, a posted stockyard subject to the provisions of the Act, located in Kosciusko, Mississippi;
 - b. Engaged in the business of a market agency buying and selling livestock in commerce on a commission basis.
 - c. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for their own account, and as a market agency to buy and sell livestock in commerce on a commission basis.

Conclusions

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

Respondents, their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Act, shall cease and desist from:

1. Failing to fully reimburse the custodial account within the times prescribed in section 201.42 of the regulations (9 C.F.R. § 201.42);
2. Failing to otherwise maintain the custodial account in strict conformity with the provisions of section 201.42 of the regulations (9 C.F.R. § 201.42);

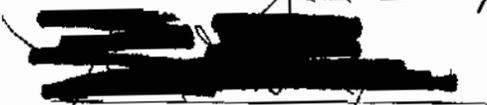
3. Using funds received from the sale of consigned livestock for payment of banking fees, general operating expenses or for any purpose other than for (1) payment of the net proceeds to the consignor or shipper, or to any person that the market agency knows is entitled to payment, (2) to pay lawful charges against the consignment of livestock which the market agency shall, in its capacity as agent, be required to pay, or (3) to obtain any sums due the market agency as compensation for its services.

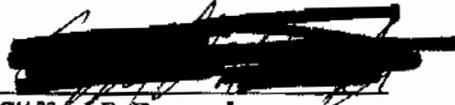
In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondents are assessed jointly and severally a civil penalty in the amount of fourteen thousand dollars (\$14,000), six thousand (\$6,000) of which will be held in abeyance pending Respondent's compliance with the provisions of the Understanding with Respect to Civil Penalty entered into by the parties. The provisions of this order shall become final and effective on issuance.

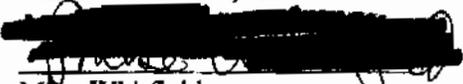
Copies of this decision shall be served upon the parties.

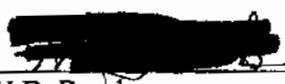
Done at Washington, D.C.

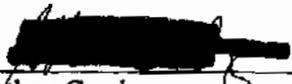
this 14th day of April, 2008


Administrative Law Judge


Clifford F. Dance, Jr.


Mike Whitfield


H.D. Brock
Attorney for Respondents


Jonathian Gordy
Attorney for Complainant