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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P. & S. Docket No. D-07-0055
	)	
Wharton Livestock Auction, Inc. and	)	
Herman W. (Billy) Schwertner	)	
	)	
Respondents	)	Decision Without Hearing
	)	By Reason of Consent

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

The Complainant agrees to the entry of this decision.

Findings of Fact

1. Wharton Livestock Auction, Inc., (hereinafter "Corporate Respondent"), is a corporation organized and existing under the laws of the State of Texas, with a mailing address of 3230 North Richmond Rd., P.O. Box 973, Wharton, Texas 77488-0973.

2. Corporate Respondent, 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 (hereinafter "the stockyard");

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

(c) Engaged in the business of a dealer buying and selling livestock in commerce for its own account or account of others; and

(d) Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis and as a dealer buying and selling livestock in commerce.

3. Herman W. (Billy) Schwertner, (hereinafter "Individual Respondent"), at all times material herein was:

(a) President of Corporate Respondent;

(b) 100 percent shareholder of Corporate Respondent;

(c) The manager of Corporate Respondent;

(d) Responsible for the day to day direction, management and control of Corporate Respondent; and

(e) The *alter ego* of Corporate Respondent.

Conclusions

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

Order

Respondents Wharton Livestock Auction, Inc. and Herman W. (Billy) Schwertner, their agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from:

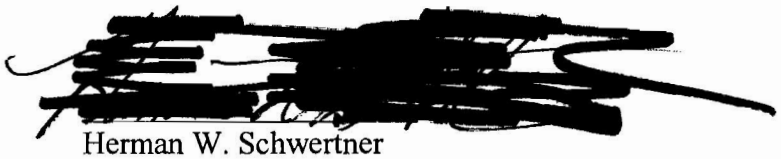
1. Using funds received as proceeds due from the sale of livestock sold on a commission basis for purposes of his own or for any purpose other than the payment of lawful marketing charges and the remittance of net proceeds to the consignors of livestock; and

2. Failing to otherwise maintain his Custodial Account for Shippers' Proceeds in strict conformity with the provisions of Section 201.42 of the regulations (9 C.F.R. § 201.42).

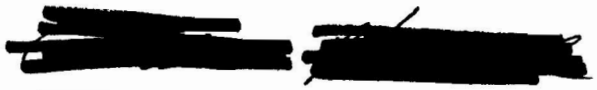
In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent Wharton Livestock Auction, Inc. and Respondent Herman W. (Billy) Schwertner, as its alter ego, are assessed a joint and several civil penalty in the amount of Twenty-Two Thousand and Five Hundred Dollars ($22,500.00).

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

Copies of this decision shall be served upon the parties.

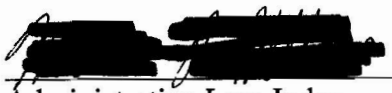


Herman W. Schwertner



Charles L. Kendall
Attorney for Complainant

Issued this 27th day of February



Administrative Law Judge