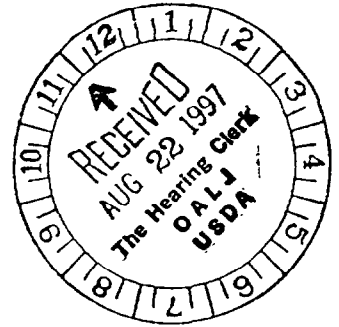


UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



In re:) P. & S. Docket No. D-95-0004
)
Charles Edward Womac,)
)
Respondent) **Decision Without Hearing by**
) **Reason of Admissions**

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (U.S.C. § 181 *et seq.*), ("the Act"), instituted by a Complaint filed by the Acting Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, charging that the Respondent wilfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*).

Copies of the Complaint and the Rules of Practice (7 C.F.R. § 1.130 *et seq.*), governing proceedings under the Packers and Stockyards Act were served upon Respondent. Respondent filed an Answer in which he failed to deny or dispute any of the material allegations of the Complaint. A failure to deny or otherwise respond to an allegation of the Complaint constitutes an admission of said allegation (7 C.F.R. § 1.136(c)). Complainant has requested the issuance of a decision without hearing because of admissions made by Respondent in his Answer, and in a sworn affidavit dated June 28, 1994, which was expressly provided "For use in any proceeding or action under the

Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181 *et seq.*)." For good cause shown, this Decision and Order is issued without hearing.

Findings of Fact

1. Respondent, Charles Edward Womac, is an individual whose mailing address is 611 County Road 443, Athens, Tennessee 37303.

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

(a) Engaged in the business of buying and selling livestock in commerce for his own account; and

(b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account. This registration has been inactive since June 10, 1979.

3. A certified letter was sent to Respondent on December 16, 1992, notifying Respondent that he was required to obtain adequate bond coverage or its equivalent before continuing his livestock operations subject to the Act. Respondent refused service of this certified letter. A duplicate letter was hand-delivered to Respondent on July 20, 1993. Despite such notices, Respondent has continued to engage in the business of a dealer without maintaining an adequate bond or its equivalent.

4. Respondent farms and deals in livestock. He has a Tennessee livestock dealer license. He has admitted buying and selling livestock at the auction market located at Sweetwater, Tennessee, on a regular basis, and at auction markets located at Athens, Tennessee, and Greenville, Tennessee, on an irregular basis.

5. Respondent has acknowledged in a sworn statement that he buys on the lot (penhooks) and sells through the ring. He has admitted to both acting independently, and to using

money furnished by E.M. Armstrong or others in transactions where Respondent resells livestock that he has obtained from producers arriving at the market in the auction sale and then splits the profit or loss realized.

6. The Athens Livestock Auction Company, Inc., Athens, Tennessee (TN-173), the East Tennessee Livestock Center, Inc., Sweetwater, Tennessee (TN-164), and the Farmers Livestock Market, Inc., Greenville, Tennessee (TN-121) are posted stockyards under the Act (37 Federal Register 59, January 4, 1972; 40 Federal Register 26723, June 25, 1975).

Conclusions

Respondent has admitted, by his failure to deny material factual allegations of the Complaint, and by his statements in the Answer and in the sworn statement given to Complainant's investigator, to engaging in the buying and selling of livestock in speculative dealer transactions conducted at auction markets located in the state of Tennessee. Official notice is taken that the livestock markets located in the towns where Respondent has acknowledged doing business are posted stockyards under the Act. Livestock transactions conducted at such stockyards are transactions occurring in the course of interstate commerce. *Kelly v. United States*, 202 F. 838 (10th Cir. 1953). Respondent has operated as a dealer subject to the Act without obtaining and filing with the Secretary of Agriculture the bond or approved bond equivalent that is required under the substantive bonding regulations that have been promulgated under the Act (9 C.F.R. § 201.27 *et seq.*). Moreover, Respondent has continued to operate in a manner that requires a reasonable bond or bond equivalent after having been put on notice of this requirement.

Respondent has asserted that there are other holders of state livestock dealer licenses that have not been required to be registered and bonded under the Act. Respondent is required to

comply with the bonding requirement applicable to his operations regardless of whether there may be other holders of Tennessee livestock dealer licenses whose operations are not subject to the Act, or who have not yet complied with the Act. Respondent's failure to comply is wilful and requires the suspension of Respondent as a registrant until such time as Respondent fully satisfies his bonding requirement. The \$1,000.00 civil penalty that has been proposed by Complainant for operating without a bond, which is the minimum amount currently being sought by Complainant as a sanction in disciplinary proceedings for operating without a bond, is an appropriate and necessary deterrent.

By reason of the facts found in Findings of Fact 3 through 6, Respondent has wilfully violated Section 312(a) of the Act (7 U.S.C. § 213(a)), and Sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29, 201.30).

Order

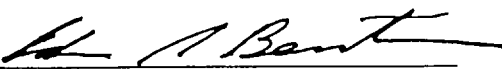
Respondent, Charles Edward Womac, his agents and employees, directly, or through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations.

Respondent is suspended as a registrant under the Act until such time as he complies fully with the bonding requirements under the Act and the regulations. When Respondent demonstrates that he is in full compliance with such bonding requirements, a supplemental order will be issued in this proceeding terminating the suspension.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent is hereby assessed a civil penalty in the amount of \$1,000.00.

This decision shall become final and effective without further proceedings 35 days after the date of service upon the Respondent, unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to Section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

August 22, 1997


EDWIN S. BERNSTEIN
Administrative Law Judge