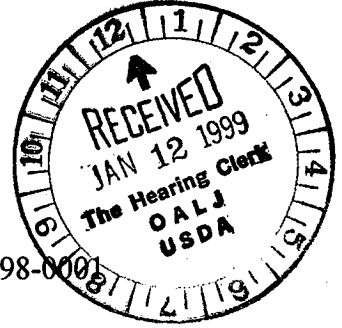


UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



In re:) P. & S. Docket No. D-98-0001
)
) Lovington Livestock Market,
) Inc., Jim Gray and Cindy
) Gray,
)
) Respondents) Decision

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 Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the financial condition of the corporate respondent did not meet the requirements of the Act, and 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).

The 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. Respondent Lovington Livestock Market, Inc., hereinafter referred to as the corporate respondent, is a corporation whose business mailing address is Hobbs Highway, Box 1449, Lovington, New Mexico 88260.

2. The corporate respondent is, and at all times material herein was:
 - a. Engaged in the business of conducting and operating Lovington Livestock Market, Inc. stockyard, a posted stockyard subject to the provisions of the Act;
 - b. Engaged in the business of a market agency buying and selling livestock 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; and
 - d. Registered with the Secretary of Agriculture as a market agency to sell livestock on a commission basis and as a dealer to buy and sell livestock in commerce for its own account.
3. Respondent Jim Gray is an individual whose business mailing address is Hobbs Highway, Box 1449, Lovington, New Mexico 88260.
4. Respondent Jim Gray is, and at all times material herein was:
 - a. President of the corporate respondent;
 - b. Owner of 80 percent of the stock of the corporate respondent;
 - c. Along with respondent Cindy Gray, responsible for the direction, management and control of the corporate respondent;
 - d. Engaged in the business of conducting and operating the Lovington Livestock Market, Inc., stockyard, a posted stockyard subject to the Act;
 - e. Engaged in the business of a dealer, buying and selling livestock in commerce for his own account and for the account of others;

f. Engaged in the business of a market agency selling livestock in commerce on a commission basis;

g. Not individually registered with the Secretary of Agriculture as a dealer or market agency; and

h. Together with respondent Cindy Gray, an alter ego of the corporate respondent.

5. Respondent Cindy Gray is an individual whose business mailing address is Hobbs Highway, Box 1449, Lovington, New Mexico 88260.

6. Respondent Cindy Gray is, and at all times material herein was:

a. Vice President of the corporate respondent;

b. Through her husband, respondent Jim Gray, holder of an interest in 80 percent of the stock of the corporate respondent;

c. Along with respondent Jim Gray, responsible for the direction, management and control of the corporate respondent;

d. Engaged in the business of conducting and operating the Lovington Livestock Market, Inc., stockyard, a posted stockyard subject to the Act;

e. Engaged in the business of a market agency selling livestock in commerce on a commission basis;

f. Not individually registered with the Secretary of Agriculture as a market agency; and

g. Together with respondent Jim Gray, an alter ego of the corporate respondent

Conclusions

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

Order

Respondent Lovington Livestock Market, Inc., and its alter egos, Jim Gray and Cindy Gray, its agents and employees, directly or through any corporate or other device, in connection with its operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to deposit in their 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 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 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;
4. Issuing checks in payment of the net proceeds derived from the sale of livestock on a commission basis without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented; and
5. Failing to remit, when due, the net proceeds due from the sale of livestock on a commission basis.

Respondents shall keep and maintain accounts, records and memoranda which fully and correctly disclose all transactions involved in their business as a market agency and as a dealer

subject to the Act, including, but not limited to: (1) purchase invoices for livestock purchased from other markets and in the country and (2) proper deposit records for the custodial account, invoices, and other transaction records regarding specific purchases that were paid or reimbursed by payments made for multiple purchases.

Respondent Lovington Livestock Market, Inc., and its alter egos, respondents Jim Gray and Cindy Gray, are suspended as registrants under the Act for a period of twenty eight (28) days and thereafter until they demonstrate that the corporate respondent is solvent and that the shortage in the Custodial Account for Shippers' Proceeds has been eliminated. When the respondents demonstrate that the current liabilities of the corporate respondent no longer exceed its current assets and that the deficiency in the custodial account has been eliminated, a supplemental order will be issued in this proceeding terminating this suspension.

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.

LOVINGTON LIVESTOCK MARKET, INC.

Respondent

By Jim Gray
Pres.
Title

Jim Gray
JIM GRAY
Respondent

Cindy Gray
CINDY GRAY
Respondent

Eric Paul
ERIC PAUL
Attorney for Complainant

Issued this 12th day of January 1999

James Hunt
Administrative Law Judge