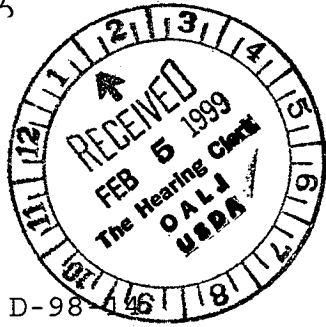


Davis



UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	P. & S. Docket No. D-98
)	
Ogden Livestock Auction,)	
Inc., Dean Barrow, Duane)	
Bitton, Kent Spencer and)	
Kirk Hansen,)	
)	
Respondents)	Decision With Respect to
)	Duane Bitton

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 Stockyard Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the respondents wilfully violated the Act. 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 respondent admits the jurisdictional allegations in paragraph I of the Complaint and specifically admits that the Secretary has jurisdiction in this matter, neither admits nor denies the remaining allegations, waives oral hearing and further procedure, and consents and agrees, 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. Ogden Livestock Auction, Inc., hereinafter referred to as respondent Ogden, is a corporation organized and existing under the laws of the state of Utah. Its business mailing address is 2485 West 4000 North, Farr West, Utah 84405-9367. Ogden has two operating locations, one is in Farr West and one is in Delta, Utah. The Delta location's business address is Box 426, Delta, Utah 84624.

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

(a) Engaged in the business of conducting and operating the Ogden Livestock Auction stockyards in Farr West, Utah and in Delta, Utah, posted stockyards subject to the provisions of the Act;

(b) Engaged in the business of selling livestock in commerce on a commission basis; and

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

3. Dean Barrow, hereinafter referred to as respondent Barrow, is a partner in Barrow Enterprises, Ltd.¹ whose current mailing address is 6835 West 900 South, Ogden, Utah 84404.

4. Respondent Barrow was:

(a) President of respondent Ogden during 1996; and

(b) Through Barrow Enterprises, during 1996, owner of forty percent of the stock for the Farr West stockyard location and, during 1996 and 1997, owner of thirty-three percent of the stock for the Delta stockyard location.

5. Duane Bitton, hereinafter referred to as respondent Bitton, is an individual whose current mailing address is 389 Fish Hatchery Road, Grace, Idaho 83241.

6. Respondent Bitton was:

(a) Vice President of respondent Ogden until November 1996; and

(b) During 1996, owner of forty percent of the stock for the Farr West stockyard location and, during 1996 and 1997, thirty-three percent owner of the stock for the Delta stockyard location.

¹ The partners in Barrow Enterprises are Dean and his father, Floyd Barrow.

7. Kent Spencer, hereinafter referred to as respondent Spencer, is an individual whose current mailing address is 9284 South 3550 West, Payson, Utah 84651.

8. Respondent Spencer was:

(a) Vice President of respondent Ogden after November 1996 and President of respondent Ogden during 1997; and

(b) During 1996 and 1997, owner of twenty percent of the stock for the Farr West stockyard location and owner of thirty-three percent of the stock for the Delta stockyard location.

9. Kirk V. Hansen, hereinafter referred to as respondent Hansen, is an individual whose current mailing address is 195 East 100 North, Hyde Park, Utah 84318.

10. Respondent Hansen was:

(a) Secretary/treasurer of respondent Ogden during 1997; and

(b) During 1997, owner of forty percent of the stock for the Farr West stockyard location.

11. Respondents Barrow, Bitton, Spencer and Hansen are:

(a) Responsible for the direction, management and control of respondent Ogden; and

(b) Engaged in the business of selling livestock in commerce on a commission basis.

Conclusions

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

Order

Respondent and its alter ego Bitton, their officers, directors, agents, employees, successors and assigns, directly or through any corporate or other device, in connection with their operations subject to the Act shall cease and desist from:

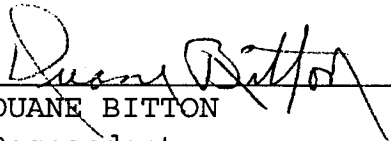
1. Failing to deposit in their Custodial Account for Shippers' Proceeds within the times prescribed in Section 201.42 of the regulations (9 C.F.R. § 201.42) amounts equal to the outstanding proceeds receivable due from the sale of consigned livestock;
2. Failing to otherwise maintain the Custodial Account for Shippers' Proceeds in strict conformity with the provisions of Section 201.42 of the regulations (9 C.F.R. § 201.42);
3. Issuing custodial checks for any purpose other than as payment of the proceeds of the sale of livestock to consignors or as payment for other lawful marketing charges; and

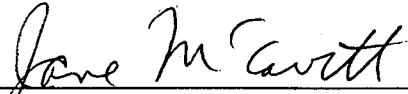
4. Maintaining a custodial account that is not designated as Custodial Account for Shippers Proceeds in strict conformity with the provisions of Section 201.42 of the regulations (9 C.F.R. § 201.42).

Respondent Bitton is suspended as a registrant under the Act for a period of twenty eight days and thereafter until it is demonstrated that the shortage in the Custodial Account for Shippers' Proceeds has been eliminated, provided, however, that this order may be modified upon application to the Packers and Stockyards Programs to permit respondent Bitton's salaried employment by another registrant or packer after the expiration of the 28 day period of suspension.

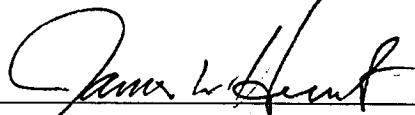
The provisions of this order shall become effective on the sixth day after service of this decision on the respondent.

Copies of this decision shall be served on the parties.


DUANE BITTON
Respondent


JANE MCCAIVITT
Attorney for Complainant

Issued this 5th day of February 1999


JAMES W. HUNT
Administrative Law Judge