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UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

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In re:) P. & S. Docket No. D-98-0025
)
 Athens Livestock Auction Company,)
 Inc. and Jerry Armstrong,)
)
 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 Programs, GIPSA, United States Department of Agriculture, alleging that Respondents have willfully violated the Act and the regulations issued 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).

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.

Complainant agrees to the entry of this decision.

Findings of Fact

(1) Respondent Athens Livestock Auction Company, Inc., hereinafter referred to as the corporate Respondent, is a corporation whose business mailing address is P.O. Box 67, Athens, Texas 37303.

(2) The corporate Respondent was at all times material herein:

- (a) A posted stockyard under the Act;
- (b) Engaged in the business of a dealer, buying and selling livestock for its own account or the account of others;
- (c) Engaged in the business of a market agency, buying and selling livestock on a commission basis; and
- (d) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock for its own account or the account of others, and a market agency buying and selling livestock on a commission basis.

(3) Respondent Jerry Armstrong, hereinafter referred to as the individual Respondent, is an individual whose business mailing address is P.O. Box 67, Athens, Texas 37303.

- (4) The individual Respondent was at all times material herein:
- (a) President and 84 percent stockholder of the corporate Respondent; and
 - (b) Responsible for the direction, management and control of the corporate Respondent and the alter ego of the 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

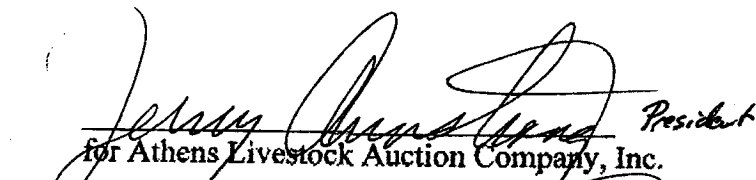
Respondent Athens Livestock Auction Company, Inc., its officers, directors, agents, employees, successors and assigns, and Respondent Jerry Armstrong, individually or through any corporate or other device, in connection with their operations subject to the Act, shall cease and desist from:

1. Failing to deposit in the corporate Respondent's "Custodial Account for Shippers' Proceeds" within the time prescribed by section 201.42 of the regulations (9 C.F.R. § 201.42) an amount equal to the proceeds receivable from the sale of consigned livestock;
2. Failing to maintain the corporate Respondent's "Custodial Account for Shippers' Proceeds" in conformity with the provisions of section 201.42 of the regulations (9 C.F.R. § 201.42);
3. Using custodial funds for purposes of their own or for any purpose other than the remittance of net proceeds to the person or persons entitled thereto and the payment of lawful marketing charges; and
4. Making and keeping records which do not fully and correctly disclose livestock transactions.

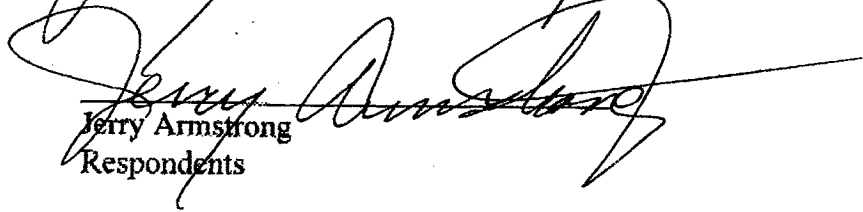
Pursuant to section 312(b) of the Act (7 U.S.C. § 213(b)), Respondents are assessed a civil penalty, jointly and severally, in the amount of Three Thousand Six Hundred and Fifty Dollars (\$3,650.00).

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


Copies of this decision shall be served upon the parties.



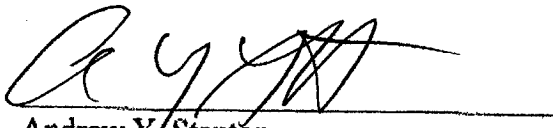
 Jerry Armstrong, President
 for Athens Livestock Auction Company, Inc.



 Jerry Armstrong
 Respondents

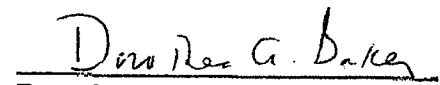


 C. Paul Harrison, Esq.
 Attorney for Respondents



 Andrew Y. Stanton
 Attorney for Complainant

Issued this 7th day of
May, 1999.



 Dorothea A. Baker
 Administrative Law Judge