

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

USDA
OALJ/1100

In re:

Larry F. Wooton and
Roswell Livestock Auction Sales, Inc.,

Respondents

P & S Docket No. D-02-0013

Consent Decision

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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 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 provision of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (hereinafter "Rules of Practice" 7 C.F.R. § 1.130 *et seq.*) applicable to this proceeding, section 1.138 of the Rules of Practice (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. Roswell Livestock Auction Sales, Inc. (hereinafter "Respondent Roswell") is a corporation organized and existing under the laws of the state of New Mexico. Its mailing

address is P.O. Box 2041, Roswell, New Mexico 88202.

2. Respondent Roswell at all times material herein, was:

(a) Engaged in the business of conducting and operating the Roswell Livestock Auction Sales, Inc., stockyard (hereinafter referred to as 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; and

(c) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for its own account and as a market agency to buy and sell livestock in commerce on a commission basis.

3. Larry F. Wooton, hereinafter referred to as Respondent Wooton, is an individual whose business mailing address is P.O. Box 2041, Roswell, New Mexico 88202.

4. Respondent Wooton is and at all times material herein was:

(a) President of Respondent Roswell;

(b) Manager of Respondent Roswell;

(c) Fifty percent shareholder of Respondent Roswell;

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

(e) The *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 Roswell and Respondent Wooton, their agents and employees, heirs and assigns, directly or indirectly through any corporate or other device, in connection with their operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to reimburse the Custodial Account for Shippers' Proceeds (hereinafter "custodial account") for owners' and officers' purchases within the time prescribed by section 201.42 of the Regulations (9 C.F.R. § 201.42);
2. Failing to deposit in the Custodial Account, 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;
3. Failing to otherwise maintain the Custodial Account in strict conformity with the provisions of Section 201.42 of the regulations (9 C.F.R. § 201.42);
4. Misusing the Custodial Account by depositing into its general account payments that livestock buyers make to Respondent when such proceeds from livestock sales should be deposited in Respondent's Custodial Account;
5. Using false names to purchase livestock out of consignment.
6. Respondents shall keep and maintain records that fully and correctly disclose all transactions involved in its business subject to the Packers and Stockyards Act, and specifically, will maintain records that fully and correctly disclose the true name of the purchaser in transactions in livestock purchased out of consignment.

Respondents are suspended as registrants under the Act for a period of 56 days and a civil penalty of \$35,000 is issued against Respondents jointly and severally. The suspension and civil

penalty are held in abeyance for a period of three (3) years from the effective date of this Consent Decision in accordance with the Understanding with Respect to Consent Decision (hereinafter "Understanding") executed by the parties.

Failure of Respondents, their agents and employees, heirs and assigns, directly or indirectly through any corporate or other device, in connection with their operations subject to the Packers and Stockyards Act, to adhere to the terms of this Understanding will cause the sanctions now held in abeyance to come into full force and effect without further procedure before the Secretary of Agriculture.

The provisions of this order shall become effective on the sixth (6th) day after service of this order on Respondents.

This forum retains jurisdiction for the sole purposes of execution of the sanction held in abeyance should breach of the terms of the Understanding with Respect to Consent Decision occur.

Copies of this decision shall be served upon the parties.

FOR RESPONDENT Roswell Livestock Auction Sales, Inc., Inc.

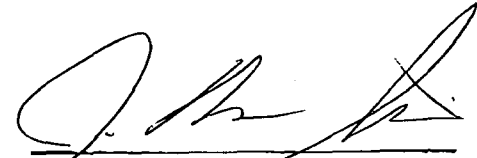
By Larry F. Wooton

Title: President - owner

AS TO RESPONDENT Larry F. Wooton

Larry F. Wooton
Larry F. Wooton
Respondent

Robert M. Cook
Robert M. Cook
Attorney for Respondents



Brian Smith
Attorney for Respondents



Rubén D. Rudolph Jr.
Attorney for Complainant

Issued in Washington D.C.
this 23rd day of July, 2004



Administrative Law Judge