

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

202 APR -3 P 3 12

In re:) P. & S. Docket No. D-03-0002
)
Kirk Hemmert, d/b/a)
Wakeeney Livestock Commission Co.)
)
)
Respondent) Decision Without Hearing
) By Reason of Consent

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.) (hereinafter referred to as the Act), 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 Respondent 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 applicable to this proceeding (7 C.F.R. § 1.138).

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. Kirk Hemmert, hereinafter referred to as the Respondent, is an individual doing business as Wakeeney Livestock Commission Co., with a mailing address of P.O. Box 905, Wakeeney, Kansas 67672.

2. Respondent, at all times material herein, was:
 - (a) Engaged in the business of conducting and operating a posted stockyard subject to the provisions of the Act, hereinafter referred to as "the stockyard";
 - (b) Engaged in the business of a market agency buying and selling livestock in commerce on a commission basis at the stockyard;
 - (c) Engaged in the business of a dealer buying and selling livestock in commerce for his own account; and
 - (d) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account and as a market agency to buy and sell livestock in commerce on a commission basis.

Conclusions

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

Order

Respondent Kirk Hemmert, d/b/a Wakeeney Livestock Commission Co., his agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to deposit in his Custodial Account for Shippers' Proceeds within the times prescribed in Section 201.42 of the regulations promulgated under the Act (9 C.F.R. § 201.42) amounts equal to the outstanding proceeds receivable due from the sale of consigned livestock; and
2. Failing to otherwise maintain his Custodial Account for Shippers' Proceeds in strict


conformity with the provisions of Section 201.42 of the regulations (9 C.F.R. § 201.42).

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent Kirk Hemmert is assessed a civil penalty in the amount of Five Thousand Dollars (\$5,000.00).

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

Copies of this decision shall be served upon the parties.


Kirk Hemmert


Charles L. Kendall
Attorney for Complainant

Issued this 8 day of April, 2003.



Jill S. Clifton
Administrative Law Judge