

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-03-0007
)
Topeka Auction & Marketing, Inc.,)
d/b/a Topeka Livestock Auction,)
and Robert Bale)
)
Respondents) Decision

This proceeding was instituted under the Packers and Stockyard 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 willfully violated the Act and the regulations issued thereunder. This decision is entered pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (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, Topeka Auction & Marketing, Inc. (hereinafter referred to as the "Corporate Respondent") is an Indiana corporation, doing business as Topeka Livestock Auction, whose business mailing address is P.O. Box 279, Topeka, Indiana 46571.

2. The Corporate Respondent was at all times material herein:

- (a) Engaged in the business of operating Topeka Livestock Auction, a posted stockyard subject to the provisions of the Act;
- (b) Engaged in the business of a market agency buying and selling livestock in commerce on a commission basis;
- (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 dealer, and as a market agency to buy and sell livestock in commerce on a commission basis.

3. Respondent, Robert Bale (hereinafter referred to as "Respondent Bale" or as the "Individual Respondent"), is an individual whose business mailing address is P.O. Box 279, Topeka, Indiana 46571.

4. Respondent Robert Bale was at all times material herein:

- (a) President and owner of 50 percent of the stock of the Corporate Respondent; and
- (b) Responsible for the direction, management and control of the Corporate Respondent.

5. The Individual Respondent, Robert Bale, is the alter ego of the Corporate Respondent with respect to his obligations under the Packers and Stockyards Act.

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

Respondents Topeka Auction & Marketing, Inc. d/b/a Topeka Livestock Auction and Robert Bale, their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to maintain the Custodial Account for Shippers' Proceeds (hereinafter referred to as the "custodial account") in strict conformity with the provisions of Section 201.42 of the regulations (9 C.F.R. § 201.42); and Respondents shall specifically cease and desist from:
 - (a) Failing to deposit in the custodial account, 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; and
 - (b) Using funds received from the sale of consigned livestock for purposes of their own or for any purpose other than payment to consigners of the amount due from the sale of their livestock and the payment of lawful marketing charges.

Pursuant to section 312(b) of the Act (7 U.S.C. § 213(b)), Respondents Topeka Auction & Marketing, Inc. d/b/a Topeka Livestock Auction and Robert Bale are assessed a civil penalty, jointly and severally, in the amount of Thirty Thousand Dollars (\$30,000.00), to be paid in accordance with the conditions detailed in the Understanding Regarding Civil Penalty Payment Terms, which was agreed to by the parties.

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.

Robert Bale
Topeka Auction & Marketing, Inc.
d/b/a Topeka Livestock Auction
Respondent

President
Title

Robert Bale
Robert Bale
Respondent

DA Richman
David A. Richman
Attorney for Complainant

Issued this 18th day of December, 2003

Julia B. Holt
Administrative Law Judge