

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-08-0024
)
John (Jack) W. McGuinness,)
)
) Decision Without Hearing By Reason Of
) Consent
Respondent

This proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.) (hereinafter referred to as the "Act"), by a Complaint filed by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondent has willfully violated the Act and the regulations issued thereunder (9 C.F.R. § 201.1 et seq.) (hereinafter referred to as the "regulations"). 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).

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.

Complainant agrees to the entry of this decision.

Findings of Fact

1. Respondent is an individual whose business address was P.O. Box 31533, Billings, Montana 59107. Respondent's current address is a personal residence located in the state of Montana. The address is not included in this Decision in order to protect Respondent's privacy, however, the personal address will be provided to the Hearing Clerk's office for purposes of service of the Decision.

2. Respondent was at all times material herein:

- (a) A posted stockyard subject to the provisions of the Act;
- (b) Engaged in the business of a market agency, selling livestock on a commission basis; and
- (c) Registered with the Secretary of Agriculture as a market agency to sell livestock 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, his officers, agents, employees, successors and assigns, directly or through any corporate or other device in connection with operations subject to the Act, shall cease and desist from:

- 1. Failing to deposit in the 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. Using funds received as proceeds due from the sale of livestock sold on a commission basis for any purpose other than the payment of lawful marketing charges and the remittance of net proceeds to the consignors of livestock;

3. 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); and

4. Engaging in business subject to the Act while insolvent, i.e. while current liabilities exceed current assets.

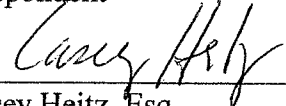
Respondent is suspended as a registrant under the Act for a period of twenty one (21) days, beginning on November 29, 2008. The provisions of this order shall become effective immediately upon service of this order on Respondent.

Copies of this decision shall be served upon the parties.




John (Jack) W. McGuinness
Respondent

11/13/08
Date



Casey Heitz, Esq.
Attorney for Respondent

11/14/08
Date

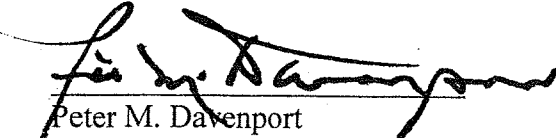


Christopher Young, Esq.
Attorney for Complainant

11-2-08
Date

Issued this 21ST day of

November, 2008



Peter M. Davenport
Administrative Law Judge