

**In re: HOUSTON LIVESTOCK CO., INC., BILLY MIKE GENTRY.
P&S Docket No. D-02-0003.
Decision and Order.
Filed July 25, 2002.**

P&S – Default – Proceeds, failure to remit, net – Custodial account, failure to maintain .

Ann Pames, for Complainant.

Respondents, Pro se.

Decision and Order issued by Jill S. Clifton, Administrative Law Judge.

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 Respondents willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*). The complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*), hereinafter the Rules of Practice, were mailed to both parties via certified mail on January 29, 2002. On February 21, 2002, the complaint addressed to Houston Livestock was returned undeliverable and remailed by regular mail on February 21, 2002. The complaint addressed to Billy Mike Gentry came back unclaimed on March 5, 2002, and was remailed by regular mail on March 6, 2002. Accompanying the complaint was a cover letter informing Respondents that an answer must be filed within twenty (20) days of service and that failure to file an answer would constitute an admission of all of the material allegations in the complaint and a waiver of the right to an oral hearing.

Respondents have failed to file an answer within the time period required by the Rules of Practice (7 C.F.R. § 1.136), and the material facts alleged in the complaint, which are admitted by Respondents' failure to file an answer, are adopted and set forth herein as findings of fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

- (1) Houston Livestock Co, Inc. hereinafter referred to as Respondent Houston, is a corporation organized and existing under the laws of the state of Mississippi. Its business mailing address is 5050 Highway 6 East, Pontonoc, MS, 38863.
- (2) Respondent Houston is and at all times material herein was:
 - (a) Engaged in the business of a market agency selling livestock on a commission basis; and
 - (b) Registered with the Secretary of Agriculture as a market agency to sell

livestock in commerce on a commission basis.

(3) Respondent Billy Mike Gentry, hereinafter referred to as Respondent Gentry, is an individual whose mailing address is P.O. Box 667, Houston, Mississippi 38851.

(4) Respondent Gentry is and at all times material herein was:

(a) President and Treasurer of Respondent Houston;

(a) Owner of 50% of the stock of Respondent Houston; and

(c) Responsible for the direction, management, and control of Respondent Houston;

(d) Registered with the Secretary of Agriculture as a market agency buying on commission, and as a dealer to buy and sell livestock in commerce for his own account;

(e) alter ego of the Respondent Houston.

(5) As set forth in section II(a) of the complaint, Respondent Houston, under the direction, management and control of Respondent Gentry, issued insufficient funds checks in purported payment of the net proceeds from the sale of consigned livestock.

(6) As set forth in section II(b) of the complaint, Respondent Houston, under the direction, management and control of Respondent Gentry, failed to remit, when due, the net proceeds from the sale of consigned livestock.

(7) As set forth in section II(c) of the complaint, Respondent Houston, under the direction, management and control of Respondent Gentry, failed to remit the net proceeds from the sale of consigned livestock.

(8) As set forth in section III of the complaint, Respondent Houston, under the direction, management and control of Respondent Gentry, failed to maintain and use properly its Custodial Account for Shippers' Proceeds.

Respondents did not file an answer within the time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), which constitutes an admission of all of the material allegations in the complaint. Complainant has moved for the issuance of a Decision Without Hearing by Reason of Default, pursuant to section 1.139 of the Rules of Practice

(7 C.F.R. § 1.139). Accordingly, this decision is entered without hearing or further procedure.

Order

By reason of the facts alleged in Findings of Fact 4,5 and 6, Respondents have willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228(b), and section 201.43 of the regulations (9 C.F.R. § 201.43).

By reason of the facts alleged in Finding of Fact 7, Respondents have willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), and section 201.42 of the regulations (9 C.F.R. § 201.42).

Respondents Houston and Gentry, 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. Issuing checks or drafts in payment of the net proceeds from the sale of consigned livestock without having sufficient funds on deposit and available in the custodial account upon which such checks are drawn to pay such checks when presented;

2. Failing to remit, when due, the net proceeds received from the sale of consigned livestock;

3. Failing to remit the net proceeds received from the sale of consigned livestock;

4. Failing to deposit in the 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; and

5. 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)

Houston Livestock Co., Inc., and Billy Mike Gentry as its alter ego, are suspended for a period of five years and thereafter until such time as the shortage in the Custodial Account for Shippers' Proceeds is corrected, provided, however, that upon application to the Packers and Stockyards Programs, a supplemental order may be issued after 90 days of the suspension have been served allowing for the salaried employment of Billy Mike Gentry by another registrant or by a packer. If the Respondents pay in full all debts to consignors resulting from the Respondents' failure to remit the net proceeds from the sale of consigned livestock, and the shortage in the Custodial Account for Shippers' Proceeds is corrected, and upon application to the Packers and Stockyards Programs and documentation substantiating such restitution and compliance, a supplemental order may be issued terminating the suspension after 90 days of the suspension have been served.

This decision and order shall become final and effective without further proceedings thirty-five (35) days after service on Respondents, if it is not appealed to the Judicial Officer by a party to the proceeding within thirty (30) days, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies hereof shall be served upon the parties.

[This Decision and Order became final October 2, 2002. - Editor]
