

UNITED STATES DEPARTMENT OF AGRICULTURE 2010 NOV 26 AM 9:15

BEFORE THE SECRETARY OF AGRICULTURE

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In re:) P & S Docket No. D-10-0233
)
New Wilmington Livestock)
Auction, Inc. and)
Thomas R. Skelton,)
)
Respondents) Decision Without Hearing
) By Reason of Consent

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 Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the Respondents willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (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 Administrative Proceedings Instituted By the Secretary (7 C.F.R. § 1.138).

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. New Wilmington Livestock Auction, Inc. (hereinafter "Corporate Respondent"), is a corporation organized and existing under the laws of the State of Pennsylvania, with a street address of 2006 Mercer - New Wilmington Rd., New Wilmington, PA 16142, and a mailing address of P.O. Box 296, Canfield, OH 44406.

2. Corporate 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;

(b) Engaged in the business of a market agency selling livestock in commerce on a commission basis;

(c) Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis.

3. Thomas R. Skelton, (hereinafter "Individual Respondent"), at all times material herein was:

(a) 100% shareholder of Corporate Respondent;

(b) President of Corporate Respondent; and

(c) Responsible for the day-to-day direction, management and control of Corporate Respondent.

Conclusions

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

Order

Respondents New Wilmington Livestock Auction, Inc. and Thomas R. Skelton, their 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 failing to have their scales tested at six-month intervals in accordance with section 201.72 of the regulations (9 C.F.R. § 201.72).

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondents New Wilmington Livestock Auction, Inc. and Thomas R. Skelton are jointly and severally assessed a civil penalty in the amount of Three Thousand and Five Hundred Dollars (\$3,500.00). The civil penalty will be paid in accordance with an Understanding Regarding Civil Penalty Payment Terms agreed to and ratified by the parties.

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.



Thomas R. Skelton
for New Wilmington Livestock Auction, Inc.



Thomas R. Skelton



Charles L. Kendall
Attorney for Complainant

Issued this 26 day of NOV 2010



Jill S. Clifton
Administrative Law Judge