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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:) P&S Docket No. D-11-0303
)
Montana Livestock Auction, Inc.,)
and Kenneth Moe,)
)
)
Respondents) Consent Decision

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), instituted by a Complaint filed by the Deputy Administrator of Packers and Stockyards Program on July 7, 2011. The Complaint alleged that Respondents violated section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.42 of the regulations issued under the Act (9 C.F.R. § 201.42) by failing to maintain and use properly the custodial account for shippers' proceeds ("custodial account") at a livestock auction market that they managed and operated in Ramsay, Montana. The Complaint further alleged that Respondents violated section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.43 of the regulations (9 C.F.R. § 201.43) by issuing insufficient fund checks to livestock consignors and by failing to timely remit the net proceeds due from the sale of livestock on a commission basis. Complainant and Respondents have now agreed to entry of this Decision, without hearing or further procedure, pursuant to the consent decision provisions of the Rules of Practice governing proceedings under the Act (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.

Findings of Fact

1. Respondent Montana Livestock Auction, Inc. ("Montana Livestock"), is a Montana corporation with a principal place of business in Ramsay, Montana. The corporation's registered agent for service of process in the State of Montana is: Kenneth Moe, 2333 Telegraph Gulch Road, P.O. Box 4285, Butte, Montana 59702.

2. Respondent Montana Livestock, at all times material to the allegations in the Complaint, managed and operated a livestock auction market located at 100 Cattle Drive, Ramsay, Montana 59748, and 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 consigned livestock in commerce on a commission basis; and
- c. Registered with the Secretary of Agriculture as a market agency to buy and sell livestock in commerce on a commission basis.

3. Respondent Kenneth Moe is an individual whose home address is in the State of Montana.

4. Respondent Moe, at all times material to the allegations in the Complaint, was:

- a. The sole owner of Respondent Montana Livestock;
- b. Responsible for the day-to-day direction, management and control of Respondent Montana Livestock;
- c. A market agency within the meaning of and subject to the provisions of the Act; and
- d. The alter ego of Respondent Montana Livestock.

Conclusions

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

Order

Respondents Montana Livestock Auction, Inc., and Kenneth Moe, 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 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), amounts equal to the proceeds received or due from the sale of consigned livestock;
2. 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);

3. Using funds received as proceeds from the sale of consigned livestock for any purpose other than payment to consignors of the amount due from the sale of their livestock and payment of lawful marketing charges;

4. Issuing checks in payment for livestock sold on a consignment basis without maintaining sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented; and

5. Failing to remit, when due, the proceeds of livestock sales in strict conformity with the provisions of section 201.43 of the regulations (9 C.F.R. § 201.43).

Respondent Montana Livestock Auction, Inc., is suspended as a registrant under the Act for a period of five (5) years and Respondent Kenneth Moe is prohibited from registering to engage in business subject to the Act for a period of five (5) years. Pursuant to section 312(b) (7 U.S.C. § 213(b)), Respondents Montana Livestock Auction, Inc., and Kenneth Moe are jointly and severally assessed a civil penalty in the amount of thirteen thousand and five hundred dollars (\$13,500.00) which will be held in abeyance subject to the terms and conditions set forth below.

Upon application to the Packers and Stockyards Program, a supplemental order may be issued terminating the suspension of the registration of Respondent Montana Livestock under the Act and/or permitting Respondent Kenneth Moe to be registered with the Secretary of Agriculture to engage in business subject to the Act at any time after thirty (30) days upon demonstration of circumstances warranting modification of this Order. The circumstances warranting modification of this Order include payment of the civil penalty held in abeyance.

If Respondents violate the terms of this Order by operating subject to the Act during the period of time that they are suspended and/or prohibited from registering to operate subject to the Act, then the civil penalty held in abeyance shall become due and payable. Respondents will have ten (10) days after receiving written notification from the Deputy Administrator of the Packers and Stockyards Program, indicating that the terms of this Order have been violated, to make full payment of the \$13,500.00 civil penalty held in abeyance without further procedure or hearing.

Copies of this Decision and Order shall be served on the parties. The provisions of this Order shall become effective upon issuance.

Respondent
MONTANA LIVESTOCK AUCTION, INC.,


KENNETH MOE
Respondent

By: 
KENNETH MOE


TIMOTHY DICK
TIMOTHY M. DICK, PC
Attorney for Respondents



CHARLES SPICKNALL
Attorney for Complainant

Issued in Washington D.C.

this 9th day of August, 2011



ADMINISTRATIVE LAW JUDGE