

OFFICE OF ADMINISTRATIVE LAW JUDGES
Hearing Clerk's Office

Document Distribution Form

Docket #: 13-0146

Document(s): Consent Decision and Order as to TW Cattle & Thomas J. Witt

1. Date sent to: Respondent(s) Petitioner(s): 5-13-13

- Regular Mail Fax Certified Mail
 Registered Mail FedEx Personal Service
 Other:

Address:

Douglas R. Switzer, Esquire
HATHAWAY SWITZER, LLC
13057 West Center Road, Suite
23
Omaha, Nebraska 68144

Brian J. Witt
P. O. Box 57
Falls City, NE 68355
(regular mail)

Robert J., Witt
aka Bob Witt
P. O. Box 57
Falls City, NE 68355
(regular mail)

2. Date sent to OGC: 5-13-13

- Inter-Office Mail
 Messenger
 Pick-Up
 Other email

Date sent to Agency: 5-13-13

- Inter-Office Mail
 Messenger
 Pick-Up
 Other email

OGC - Served and Address:

Krishna Ramaraju, OGC
South Building, Room 2319

Agency - Served and Address:

S. Brett Offutt, GIPSA
RM. 2055 SOUTH

Signature: Leslie E. Whitfield

USDA
OAL/OHC

2013 MAY 10 AM 11: 25

RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P & S Docket No. 13-0146
)
3-State Stockyards, Inc.,)
)
TW Cattle Co., LLC)
)
Riverside Cattle Co., LLC,)
)
Thomas J. Witt a/k/a Tom Witt,)
)
Brian J. Witt,)
)
Robert J. Witt a/k/a Bob Witt,)
)
Respondents) Consent Decision and Order as to
) Respondents TW Cattle Co., LLC
) and Thomas J. Witt

Consent Decision and Order as to TW Cattle Co., LLC and Thomas J. Witt

This disciplinary proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.), by a Complaint filed on January 8, 2013, by the Acting Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (Complainant), alleging that respondents herein 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 applicable to this proceeding (7 C.F.R. § 1.138).

Respondents Thomas J. Witt and TW Cattle Co., LLC 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.

This Consent Decision and Order settles this matter only as to Respondents Thomas J. Witt and TW Cattle Co., LLC.

The complainant agrees to the entry of this decision.

Findings of Fact

(A) Respondent TW Cattle Co., LLC, is a business organized under the laws of the State of Nebraska with a mailing address of P.O. Box 186, Falls City, NE, 68355. Respondent TW Cattle Co., LLC, under the direction, management and control of Respondent Thomas J. Witt, is, and at all times material herein was:

- (1) Engaged in the business of a dealer buying and selling livestock in commerce for its own account and the account of others;
- (2) Engaged in the business of a market agency buying livestock in commerce on a commission basis;
- (3) A dealer within the meaning of and subject to the Act;
- (4) A market agency within the meaning of and subject to the Act; and

(5) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce and registered as a market agency to buy livestock in commerce on a commission basis.

(B) Respondent Thomas J. Witt, also known as Tom Witt, is an individual whose business mailing address is P.O. Box 186, Falls City, NE, 68355. Respondent Thomas J. Witt is, and at all times material herein was:

- (1) Sole member and manager of, and owner of 100% of the stock issued by Respondent TW Cattle Co., LLC;
- (2) Treasurer of and owner of 33.3% of the stock issued by Respondent 3-State Stockyards, Inc.; and
- (3) Responsible for the direction, management and control of respondents TW Cattle Co., LLC and 3-State Stockyards, Inc.

Order

Respondents Thomas J. Witt and TW Cattle Co., LLC, their agents and employees, successors and assigns, directly or through any corporate or other device, in connection with their operations subject to the Act, shall cease and desist from:

1. Failing to keep and maintain accounts, records and memoranda as fully and correctly disclose all transactions involved in their business, including but not limited to, purchase and sale invoices, bank statements, canceled checks, and deposit slips; and

2. Failing to, promptly following the purchase of livestock on a commission or agency basis, transmit or deliver to the person for whose account such purchase was made, or the duly authorized agent, a true written account of the purchase showing the number, weight, and price of each kind of animal purchased, the names of the person from whom purchased, the date of purchase, the commission and other lawful charges, and such other facts as may be necessary to complete the account and show fully the true nature of the transaction.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), respondents Thomas J. Witt and TW Cattle Co., LLC, are assessed, jointly and severally, a civil penalty in the amount of fifty thousand dollars (\$50,000.00).

This Order shall have the same force and effect as if entered after full hearing. The provisions of this Order shall become final and effective on the sixth day after service of this consent decision and Order on the respondent.

Copies of this decision shall be served upon the parties.

[Redacted]

Thomas J. Witt
Respondent

[Redacted]

TW Cattle Co., LLC
By: Thomas J. Witt, Owner and Manager
Respondent

[Redacted]

Douglas R. Switzer
Hathaway Switzer, LLC
Attorney for Respondents Thomas J. Witt and TW Cattle Co., LLC

[Redacted]

Krishna G. Ramaraju
Attorney for Complainant

Done at Washington, D.C.

this 10th day of May, 2013



/Peter M. Davenport /
Chief Administrative Law Judge