

UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

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In re:

) P. & S. Docket No. D-01-0004

)
) Calhan Auction Market, Inc.
) and Kenneth Larry Miller
)
)

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) Respondents

) Decision

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.), hereinafter "the Act", by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyard Administration (GIPSA), United States Department of Agriculture, alleging that the Respondents have willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 et seq.). 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).

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.

Complainant agrees to the entry of this decision.

Findings of Fact

(1) Calhan Auction Market, Inc., hereinafter referred to as Respondent Calhan or Corporate Respondent, is a corporation organized and existing under the laws of the state of

Colorado. Its business mailing address is P.O. Box 170, Calhan, Colorado 80808.

(2) Respondent Calhan is and at all times material herein was:

(a) Engaged in the business of conducting and operating Calhan Auction Market, Inc., a posted stockyard subject to the provisions of the Act;

(b) Engaged in the business of buying and selling livestock in commerce for its own account and buying and selling livestock in commerce on a commission basis;

(c) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for its own account and as a market agency to buy and sell livestock in commerce on a commission basis.

(3) Kenneth Larry Miller, hereinafter Respondent Miller, is an individual whose mailing address is P.O. Box 170, Calhan, Colorado 80808.

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

(a) President of Respondent Calhan; and

(b) Owner of fifty percent of the stock issued by Calhan.

(5) Respondent Miller is:

(a) Responsible for the direction, management and control of Respondent Calhan;

and

(b) The *alter ego* of Respondent Calhan.

Conclusions

Respondents having admitted the jurisdictional allegations and that the Secretary has jurisdiction in this matter, and the parties having agreed to the entry of this decision, such decision will be entered.

Order

Respondent Calhan Auction Market, Inc., and its *alter ego*, Respondent Kenneth Larry Miller, its agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Engaging in business subject to the Act while insolvent, i.e., while current liabilities exceed current assets;
2. 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;
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);
4. Filing an annual report or other document that contains false or misleading information;
5. Issuing checks in payment for the purchase of livestock on a dealer basis without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;
6. Failing to pay, when due, the amount due from the purchase of livestock on a dealer basis;
7. Issuing checks in payment of the net proceeds derived from the sale of livestock on a commission basis without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented; and

8. Failing to remit, when due, the net proceeds due from the sale of livestock on a commission basis.

Respondent Calhan Auction Market, Inc., and its alter ego, Respondent Kenneth Larry Miller, are jointly and severally assessed a civil penalty of \$ 8,500 dollars and are suspended as registrants for a period of 14 days and thereafter until they demonstrate that corporate Respondent is solvent and that the shortage in the Custodial Account for Shippers' Proceeds has been eliminated. The suspension will begin on August 26, 2002, and the civil penalty will be paid by that date.

The provisions of this order shall become effective on the sixth (6th) day after service of this Decision on Respondents.

Copies of this decision shall be served upon the parties.

Kenneth Larry Miller President
Calhan Auction Market, Inc. Title

Kenneth Larry Miller
Kenneth Larry Miller

Christopher Young-Morales
Christopher Young-Morales
Attorney for Complainant

Issued in Washington D.C.
this 1st day of August, 2002
Dorothea G. Baker
Administrative Law Judge