

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:

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Richard H. Swanz d/b/a Lewistown) P. & S. Docket No. D-01-0009
Livestock Auction,)
Respondent) Decision

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 Respondent wilfully 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).

The Respondent admits the jurisdictional allegations in paragraph I of the complaint and specifically admits that the Secretary has jurisdiction in this matter, neither admits nor denies the remaining allegations, waives oral hearing and further procedure, and consents and agrees, 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. Richard H. Swanz, hereinafter referred to as Respondent, is an individual whose business mailing address is 316 Cottonwood Street, Lewistown, MT 59457.
2. Respondent, at all times material herein, was:
 - (a) Engaged in the business of selling livestock in commerce on a commission basis using the trade name Lewistown Livestock Auction; and

(b) Registered with the Secretary of Agriculture as a market agency to sell livestock on a commission basis, ~~and as a dealer to buy and sell livestock for his own account~~ 

3. Respondent's registration as a market agency to sell livestock on a commission basis was rendered inactive after a corporation, Central Montana Livestock Auction, Inc., was registered to do business as Lewistown Livestock Auction. As of October 2, 2000, Respondent sold out his stock ownership in Central Montana Livestock Auction, Inc.

Conclusions

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

Order

Respondent Richard H. Swanz, his agents and employees, directly or through any corporate or other device, in connection with his operations 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 times prescribed in Section 201.42 of the regulations (9 C.F.R. §201.42) amounts equal to the outstanding proceeds receivable 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 from the sale of consigned livestock for the payment of yardage and selling commissions while there is a shortage of funds in the Custodial Account for Shippers' Proceeds for the payment to consignors of the amount due from the sale of their livestock;

4. Using funds received from the sale of consigned livestock for the payment of bank overdraft charges;

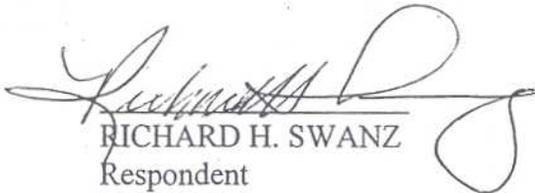
5. Using funds received from the sale of consigned livestock for purposes of his own or for any purpose other than payment to consignors of the amount due from the sale of their livestock and the payment of lawful marketing charges; and

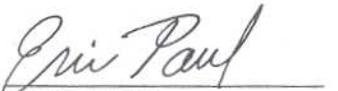
6. Permitting the person performing the duties of auctioneer from purchasing consigned livestock to fill orders on an agency basis at auction sales.

Respondent Richard H. Swanz is assessed a civil penalty in the amount of Ten Thousand dollars (\$10,000.00).

The provisions of this Order shall become effective on the sixth day after service of this order on Respondent.

Copies of this decision shall be served upon the parties.


RICHARD H. SWANZ
Respondent


ERIC PAUL
Attorney for Complainant

Issued this 29th day of July 2002


Administrative Law Judge