

Christian Mitchell _____

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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:

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) P & S Docket No. D-12-0322
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)

Robert Witt
and
Thomas Witt,

)
) Respondents
)

)
) Consent Decision
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This proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.), (the Act), by a Complaint filed by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that Respondents willfully violated the Act. 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 1 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

(a) Robert Witt and Thomas Witt, herein referred to as Respondents, are individuals whose home address is in the State of Nebraska. In order to protect the personal privacy of respondents, their addresses are not included in this Decision.

(b) At all times material herein, Respondents were:

(1) Each 50% co-owners of KWW, LLC d.b.a. Grove Livestock

cc: Offutt

Auction, a limited liability company organized under the laws of the State of Oklahoma. The mailing address of KWW, LLC d.b.a. Grove Livestock Auction was: P.O. Box 451282, Grove, OK 74344. In a letter to the Western Regional Office, dated October 27, 2010, the Respondents claimed to have ceased operations of KWW, LLC d.b.a. Grove Livestock Auction (the company). As of the date of the filing of this complaint, the company is listed as inactive.

(c) At all times material herein, KWW, LLC d.b.a. Grove Livestock Auction was:

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

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

(d) Respondents Robert Witt and Thomas Witt, at all times material herein, were:

(1) Each 50% co-owners of KWW, LLC d.b.a. Grove Livestock Auction; and

(2) Each responsible for the day-to-day management, direction, and control of KWW, LLC d.b.a. Grove Livestock Auction.

Conclusions

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

Order

1. Respondents, their agents and employees, directly or through any corporate or other device, in connection with activities subject to the Act, shall cease and desist from:

- (a) operating with a shortage in its custodial account in violation of 9 C.F.R. § 201.42(c), section 307(a) (7 U.S.C. § 208), and 312(a) (7 U.S.C. § 213) of the Packers and Stockyards Act; and
- (b) failing to deposit into its custodial accounts, 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 and to the withdrawal of bank charges from their custodial account.

2. In accordance with section 312(b) of the Act (7 U.S.C. 213(b)), Respondents are hereby assessed a civil penalty of \$5,000.00.

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.

Issued in Washington D.C.

this 14 day of June, 2012

Janice K. Bullard

for Administrative Law Judge
Janice K. Bullard

Robert Witt
Robert Witt

Brian Sylvester
Brian Sylvester, Esq.
Counsel for Complainant

Thomas Witt
Thomas Witt