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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-11-0412
)	
Ashville Stockyard, Inc., and)	
Bradley and Tilda Plunkett)	
)	
)	
)	Decision Without Hearing
Respondents)	By Reason of Consent

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 the respondents willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 et seq.) (regulations). This consent decision is entered pursuant to the consent decision provision of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.138) (Rules of Practice).

The 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 consent decision.

Complainant agrees to the entry of this consent decision.

Findings of Fact

1. Respondent Ashville Stockyard, Inc. (Respondent Ashville Stockyard) is a corporation organized and existing under the laws of the State of Alabama whose mailing address is P.O. Box 580, Ashville, Alabama 35953.

2. At all times material herein, Respondent Ashville Stockyard was:

(a) Engaged in the business of dealer buying and selling livestock for its own account or account of others and as a market agency buying and selling livestock in commerce on a commission basis; and

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

3. Respondent Bradley Plunkett is an individual whose current mailing address is in the State of Alabama. The address will not be stated in this consent decision to protect the privacy of Mr. Plunkett, but the address was provided to the Hearing Clerk's Office, United States Department of Agriculture, for the purposes of service.

4. At all times material herein, Respondent Bradley Plunkett was:

(a) President and 100% shareholder of Respondent Ashville;

(b) In conjunction with Respondent Tilda Plunkett, responsible for the direction, management, and control of Respondent Ashville; and

(c) Not individually registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce or as a market agency to buy on commission.

5. Respondent Tilda Plunkett is an individual whose current mailing address is the same address as Respondent Bradley Plunkett. The address was provided to the Hearing Clerk as stated in Finding of Fact 3 above.

6. At all times material herein, Respondent Tilda Plunkett was:

(a) Secretary and Treasurer of Respondent Ashville;

(b) In conjunction with Respondent Bradley Plunkett, responsible for the direction, management, and control of Respondent Ashville; and

(c) Not individually registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce or as a market agency buying on commission.

7. Respondent Bradley Plunkett and Respondent Tilda Plunkett are the alter egos of Respondent Ashville.

Conclusion

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

Order

Respondent Ashville Stockyard, Respondent Bradley Plunkett, and Respondent Tilda Plunkett, their agents and employees, 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 properly maintain their Custodial Account for Shippers' Proceeds in strict conformity with the Act and section 201.42 of the regulations (9 C.F.R. § 201.42);

2. Using funds received 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 the payment of lawful marketing charges;

3. Issuing custodial account checks without having sufficient funds on deposit and available in the Custodial Account for Shippers' Proceeds upon which the checks are drawn to pay the checks when presented for payment;

4. Failing to remit the proceeds of livestock sales in strict conformity with section 201.43 of the regulations (9 C.F.R. § 201.43); and

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

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), the respondents are further assessed, jointly and severally, a civil penalty in the amount of eight thousand dollars (\$8,000.00), payable in nine (9) installments. Respondents shall send a certified check or money order for the first installment of four thousand dollars (\$4,000.00), payable to the Treasurer of the United States, to:

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P.O. Box 790335
St. Louis, MO 63197-9000

within thirty (30) days from the effective date of this Order. The certified check or money order shall include the docket number of this proceeding. The second installment of five hundred dollars (\$500.00) shall be due on or before June 1, 2012, and the remaining seven (7) installments of five hundred dollars (\$500.00) each shall be due on or before the first day of each month thereafter until the eight thousand dollars (\$8,000.00) civil penalty is paid in full. Each monthly installment shall be paid by a certified check or money order payable to the Treasurer of the United States at the mailing address listed above. Each certified check or money order shall include the docket number of this proceeding.

If respondents fail to pay any part of the eight thousand dollars (\$8,000.00) civil penalty in accordance with the schedule of payments set forth herein, the Administrator, GIPSA, reserves the right to request a hearing and to seek the full amount of the civil penalties for all violations of the Act and regulations that respondents are alleged to have committed up to and including the effective date of this order, minus any amount already paid pursuant to this order.

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 upon issuance (7 C.F.R. § 1.138).

Copies of this decision shall be served upon the parties.

Done at Washington, D.C.
this 4th day of April, 2012

Janice K. Bullard
Administrative Law Judge
JANICE K. BULLARD

Ashville Stockyards, LLC, Respondent

By: Bradley Plunkett
Title: President

Bradley Plunkett
Bradley Plunkett, Respondent

Tilda Plunkett
Tilda Plunkett, Respondent

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