

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:) P & S Docket No. D-02-0005
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)
Livestock Auction of Cleburne, Inc.,)
d/b/a Cleburne Livestock Auction)
and Cleburne Livestock Auction, Inc.)
and Clyde A. Boyd Sr.,)
)
)
Respondents) Consent Decision and Order

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 Stockyards Administration (GIPSA), United States Department of Agriculture alleging that the Respondents have willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.) hereinafter referred to as the "Regulations." 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. Livestock Auction of Cleburne, Inc., d/b/a Cleburne Livestock Auction and Cleburne Livestock Auction, Inc. (hereinafter referred to as "Corporate Respondent") is a livestock auction business incorporated and doing business in the State of Texas and whose mailing address is P.O. Box 328, Cleburne, Texas 76033.

2. Corporate Respondent, Livestock Auction of Cleburne, Inc., d/b/a Cleburne Livestock Auction is, and was at all times material herein:

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

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

3. Corporate Respondent, Cleburne Livestock Auction, Inc., is, and was at all times material herein:

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

(b) A market agency as defined in the Act (7 U.S.C. § 201(c)).

4. Clyde A. Boyd Sr., hereinafter referred to as "Respondent Clyde Boyd" is an individual whose business mailing address is 5016 Cockrell Street, Ft. Worth, Texas 76133.

5. Respondent Clyde Boyd, is and was at all times material herein:

(a) The manager, president and/or vice president of Corporate Respondent;

(b) The owner of Corporate Respondent;

(c) Responsible for the day-to-day direction, control and management of Corporate Respondent; and

(d) An *alter ego* of Corporate Respondent.

ORDER

Respondents Clyde A. Boyd Sr. and the Livestock Auction of Cleburne, Inc., d/b/a Cleburne Livestock Auction and Cleburne Livestock Auction, Inc., their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to deposit in their 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 as proceeds from the sale of consigned livestock for purposes other than: (a) for payment of the net proceeds to the owners or consignors of such livestock, or (b) for the payment of sums due the Respondents as compensation for services rendered, or (c) for other lawful marketing charges.
4. Issuing checks in payment for livestock sold on a consignment basis without maintaining sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented;

5. Failing to remit, when due, the full amount owed to consignors following the sale of livestock consigned to Respondents;

6. Failing to remit the full amount due to seller on the sale of livestock; and

7. Engaging in the business of a market agency while insolvent with current liabilities exceeding current assets.

Respondents Clyde A. Boyd Sr. and the Livestock Auction of Cleburne, Inc., d/b/a Cleburne Livestock Auction are hereby suspended as registrants under the Act for a period of five years, and thereafter until the custodial account shortage and insolvency is corrected.

Respondent Cleburne Livestock Auction, Inc. shall not be registered during the suspension period of Respondents Clyde A. Boyd Sr. and the Livestock Auction of Cleburne, Inc., d/b/a Cleburne Livestock Auction. Pursuant to Section 303 of the Act (7 U.S.C. § 203), Respondents are prohibited from operating subject to the Act without being registered.

Provided however, that upon application to Packers and Stockyards Programs a supplemental order may be issued terminating the suspension of the Respondents at any time after 240 days upon demonstration by the Respondents that full restitution has been made to the livestock sellers and consignors identified by the Complaint and upon demonstration by the Respondents that the custodial account shortage and insolvency have been eliminated.

Provided further, that upon demonstration by the Respondents that a reasonable and current schedule of restitution has been established ensuring that the livestock sellers and consignors identified in the Complaint will be paid in full, this order may be modified upon application to Packers and Stockyards Programs to permit Respondent Clyde A. Boyd Sr. to

work as the salaried employee of another registrant or packer after the expiration of the 240 day period of suspension.

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

Copies of this decision shall be served upon the parties.

LIVESTOCK AUCTION OF CLEBURNE, INC.,
d/b/a CLEBURNE LIVESTOCK AUCTION
and CLEBURNE LIVESTOCK AUCTION, INC.
Respondent

By:

CLYDE A. BOYD

PRES.

Title

Clyde A. Boyd
CLYDE A. BOYD SR.

Respondent

Charles E. Spicknall
CHARLES E. SPICKNALL
Attorney for Complainant

Issued in Washington D.C.

this 20 day of June, 2002

Jill S. Clifton
Jill S. Clifton
Administrative Law Judge