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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-04-0010  
Dennis V. Chavez, Dennis V. )  
Chavez, L.L.C., and Southwest )  
Livestock Auction, L.L.C., )  
Respondents ) Modified 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, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that the financial condition of Respondent Southwest Livestock Auction, L.L.C., does not meet the requirements of the Act, and that the Respondents have wilfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*). Respondents now having demonstrated compliance with relevant financial condition, custodial account, and bonding requirements, this decision is entered to modify the original decision 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. Respondent Dennis V. Chavez is an individual whose business address is 24 Dalies Road, Los Lunas, NM 87031.

2. Respondent Dennis V. Chavez is and at all times material herein was:

(a) Engaged in the business of a dealer, buying and selling livestock in commerce for his own account and for the account of others.

(b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce.

(c) Sole owner and member of Respondent Dennis V. Chavez, L.L.C.

(d) Sole owner and member of Respondent Southwest Livestock Auction, L.L.C.

(e) The *alter ego* of Respondents Dennis V. Chavez, L.L.C., and Southwest Livestock Auction, L.L.C.

3. Respondent Dennis V. Chavez, L.L.C., is a limited liability company organized under the New Mexico Limited Liability Company Act on December 20, 2001, whose business address is 24 Dalies Road, Los Lunas, NM 87031.

4. Respondent Dennis V. Chavez, L.L.C., is and at all times material herein was:

(a) Engaged in the business of a dealer, buying and selling livestock in commerce for its own account and for the account of others.

(b) Not registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce.

5. Respondent Southwest Livestock Auction, L.L.C. is a limited liability company organized under the New Mexico Limited Liability Company Act on December 20, 2001, whose business address is 24 Dalies Road, Los Lunas, NM 87031.

6. Respondent Southwest Livestock Auction, L.L.C., is and at all times material

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herein was:

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

(b) Registered as a market agency to sell livestock in commerce on a commission basis.

### Conclusions

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

### Order

Respondents Dennis V. Chavez and Dennis V. Chavez, L.L.C., their agents and employees, directly or through any corporate or other device, in connection with their operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to pay, when due, the full purchase price of livestock;
2. Issuing checks in payment for livestock purchases without having sufficient funds on deposit and available in the account on which the checks are drawn to pay such checks when presented; and
3. Engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations.

Respondents Dennis V. Chavez and Southwest Livestock Auction, L.L.C., their agents and employees, directly or through any corporate or other device, in connection with their operations subject to the Packers and Stockyards Act, shall cease and desist from:

- 4
1. Failing to fully reimburse the Custodial Account for Shippers' Proceeds within the times prescribed in section 201.42 of the regulations (9 C.F.R. § 201.42);
  2. Failing to otherwise maintain the Custodial Account for Shippers' Proceeds in strict conformity with section 201.42 of the regulations (9 C.F.R. § 201.42);
  3. Using funds received from the sale of consigned livestock for purposes of their own, including the financing of the livestock dealer operations of Respondents Dennis V. Chavez and Dennis V. Chavez, L.L.C., or any other corporate or organizational device of Respondent Dennis V. Chavez, 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;
  4. Permitting the payment of NSF check and other bank charges from the Custodial Account for Shippers' Proceeds;
  5. Failing to identify their custodial account on their bank records and monthly statements as a designated "Custodial Account for Shippers' Proceeds;"
  6. Failing to remit, when due, the net proceeds from the sale of consigned livestock to consignors; and
  7. Issuing checks in purported payment of net proceeds to livestock consignors without having sufficient funds on deposit and available in the Custodial Account for Shippers' Proceeds on which the checks are drawn to pay such checks when presented.

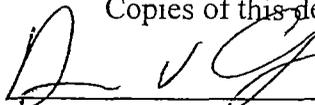
Respondents Dennis V. Chavez, Dennis V. Chavez, L.L.C., and Southwest Livestock Auction, L.L.C., are assessed, jointly and severally, a civil penalty in the amount of Thirty Three Thousand dollars (\$33,000:00).

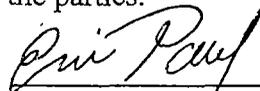
Respondents Dennis V. Chavez and Southwest Livestock Auction, L.L.C., in connection

with their operations as a market agency selling on commission, shall keep and maintain such accounts, records, and memoranda as fully and correctly disclose their transactions subject to the Act and the regulations, including an accurate general ledger, subsidiary ledgers, cash receipt journal, cash disbursement journal, market support ledger, accounts receivable and payable ledgers, reconciliations of its custodial and general account, and consistently record the clearance, or the voiding and replacement by other methods of payment, of checks drawn on their custodial account

The provisions of this Order shall become effective on the first day after service of this order on the Respondents.

Copies of this decision shall be served upon the parties.

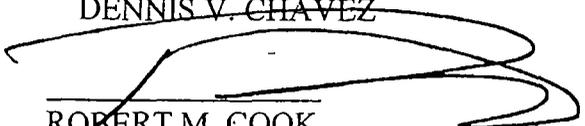
  
DENNIS V. CHAVEZ  
Respondent  
DENNIS V. CHAVEZ, L.L.C.  
Respondent

  
ERIC PAUL  
Attorney for Complaint

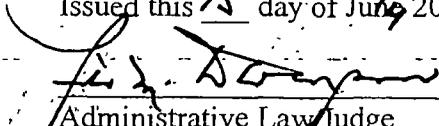
by   
DENNIS V. CHAVEZ

SOUTHWEST LIVESTOCK AUCTION, L.L.C.  
Respondent

by   
DENNIS V. CHAVEZ

  
ROBERT M. COOK  
Lead Counsel for Respondents

Issued this 15<sup>th</sup> day of July 2005

  
Administrative Law Judge

for Marc Hillson,  
Chief Administrative Law  
Judge