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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P&S Docket No. D-12-0404
	)	
Milan Livestock Auction, Inc., also d/b/a Brookfield Sales Co., Wendell Fleshman, and Linda Fleshman	)	
	)	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.) (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 Statues (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 Milan Livestock Auction, Inc., also d/b/a Brookfield Sales Co., is a Missouri corporation with a business mailing address of 805 West Helm, Brookfield, MO 64628. The corporation's registered agent for service of process is Wendell F. Fleshman, 23820 LuJuan Drive, Milan, Missouri 63556.

(2) At all times material herein, respondent Milan Livestock managed and operated two livestock auction markets located in Brookfield and Milan Missouri, and was:

a. Engaged in the business of conducting and operating a posted stockyard subject to the provisions of the Act;

b. Engaged in the business of a market agency selling consigned livestock in commerce on a commission basis at the stockyard; and

c. Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis and as a market agency buying livestock on commission.

(3) Respondents Wendell F. Fleshman and Linda C. Fleshman are individuals whose current mailing address is in the State of Missouri. The address will not be stated in this Decision to protect the privacy of respondents, but will be provided to the Hearing Clerk's Office, United States Department of Agriculture, for the purposes of service of effectuating service of process.

03/10/2012 10:08 15602654136025 82 MILAN_LIVESTOCKBROOK PAGE 03/07

(4) At all times material to the allegations herein, Wendell and Linda Fleshman were:

a. The owners of Milan Livestock;

b. The corporate officers of Milan Livestock;

c. The corporate directors of Milan Livestock;

d. Responsible for the day-to-day direction, management and control of Milan Livestock; and

e. Engaged in the business of a market agency subject to the provisions of the Act.

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 Milan Livestock Auction, Inc., also d/b/a Brookfield Sales Co, respondent Wendell Fleshman, and respondent Linda Fleshman, 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) Engaging in any act, practice or course of business for the purpose of obtaining money from the purchasers of livestock by false or deceptive pretenses, or which operates or would operate as a fraud or deceit upon any person in connection with the purchase or sale of livestock;

(2) Entering into, continuing in, or cooperating in any agreement, arrangement, understanding or course of business with any person for the purpose of aiding or assisting such person to obtain money from the purchasers of livestock by false or deceptive pretenses, or which enables such person to engage in a practice which operates or would operate as a fraud or deceit upon any person in connection with the purchase or sale of livestock;

(3) Misrepresenting, directly or indirectly, to the purchasers of livestock, the origin of such livestock, the true name of the seller of such livestock, the actual purchase prices for such livestock, or the method or procedure by which respondents acquired such livestock; and

(4) Manipulating the price of livestock by creating false auction market invoices for customers.

Respondents, in connection with their operations subject to the Act, shall keep and maintain accounts, records, and memoranda that fully and correctly disclose all transactions involved in their business as a market agency, including, but not limited to, scale tickets reflecting true and correct weights; records that fully and correctly disclose the source, weight, and purchase price of livestock purchased and sold; invoices which show the true and correct purchase price of livestock purchased on a commission basis; and other documents of sale which completely and accurately reflect the true nature of such transactions as required by section 401 of the Act (7 U.S.C. § 221) and as more fully specified in section 203.4

of the Statements of General Policy Under the Packers and Stockyards Act (9 C.F.R. § 203.4).

Respondent Milan Livestock Auction, Inc., also d/b/a Brookfield Sales Co, is suspended as a registrant under the Act for a period of thirty (30) days. Respondents Wendell and Linda Fleshman are prohibited from being registered under the Act during the thirty (30) day suspension period of respondent Milan Livestock Auction, Inc., also d/b/a Brookfield Sales Co. Pursuant to section 303 of the Act, respondents Wendell and Linda Fleshman are prohibited from carrying on the business of a market agency or dealer without being registered.

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 fifty five thousand dollars ($55,000.00). However, this civil penalty will be held in abeyance provided that respondents are in compliance with the terms of this Consent Decision and Order. It is within GIPSA's sole discretion to determine whether respondents are in compliance with the terms of this Consent Decision and Order. If GIPSA determines that respondents are not in compliance with the terms of this Consent Decision and Order, GIPSA may petition the ALJ to order the fifty five thousand dollars ($55,000.00) civil penalty held in abeyance to become effective immediately without further procedure. If GIPSA has not petitioned the ALJ to order the fifty five thousand dollars ($55,000.00) civil penalty against respondents within one year from the effective date of this consent decision and order, the civil penalty will be terminated.

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

Copies of this decision and order shall be served upon the parties.

Done at Washington, D.C.

this 11 day of Apr, 2013

[redacted]

Administrative Law Judge

Jill S. CLIFTON

Milan Livestock Auction, Inc., also d/b/a Brookfield Sales Co.
Respondent.

By: _____ Date: _____

Title: _____

_____ Date: 3-11-13

Wendell Fleshman
Respondent

[redacted] Date: 3-11-13

Linda Fleshman
Respondent

[redacted] Date: April 1, 2013

Wendell Fleshman
Respondent

[redacted] April 11, 2013

Ciarra A. Toomey
Attorney for Complainant

TOTAL P.07