UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	
Southern Colorado Livestock Auction Inc.,	)	P&S Docket No. 12-0492
	)	
and	)	
	)	
John R. Malouff, Jr.,	)	
	)	
Respondents	)	Consent Decision and Order

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.), 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 Southern Colorado Livestock Auction Inc. and John R. Malouff, Jr. willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 et seq.). This decision is entered pursuant to the consent decision provision of the rules of practice applicable to this proceeding (7 C.F.R. § 1.138).

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 decision.

The complainant agrees to the entry of this decision.

Findings of Fact

(a) Respondent Southern Colorado Livestock Auction Inc. is a corporation organized under the laws of the State of Colorado, with its principal place of business located at 5660 E. Hwy 160, Monte Vista, CO 81144.

(b) Respondent John R. Malouff, Jr. is an individual whose mailing address is 5660 E. Hwy 160, Monte Vista, CO 81144.

(c) Respondent Southern Colorado Livestock Auction Inc., under the direction, management, and control of respondent John R. Malouff, Jr., is, and at all times material herein was:

(1) Engaged in the business of conducting and operating Southern Colorado Livestock Auction Inc., a stockyard posted under and subject to the provisions of the Act;

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

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

(d) Respondent John R. Malouff, Jr. is, and at all times material herein was:

(1) President of respondent Southern Colorado Livestock Auction Inc.;

(2) Sole owner of respondent Southern Colorado Livestock Auction Inc.; and

(3) Responsible for the direction, management and control of respondent Southern Colorado Livestock Auction Inc.

(e) Respondent John R. Malouff, Jr. was, and is, at all times material herein President and owner of another livestock market, the Southern Colorado Livestock Auction Fowler, LLC stockyard located in Fowler, CO.

(f) Respondent John R. Malouff, Jr. is, and at all times material herein was:

(1) Engaged in the business of conducting and operating Southern Colorado Livestock Auction Inc., a stockyard posted under and subject to the provisions of the Act; and

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

Conclusions

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

Order

Respondent Southern Colorado Livestock Auction Inc. and Respondent John R. Malouff, Jr., their agents and employees, directly or indirectly through any corporate or other device, 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. Issuing checks in payment for livestock without having and maintaining sufficient funds on deposit and available in the accounts upon which they are drawn to pay such checks when presented;

3. Failing to maintain and operate scales to ensure accurate weights in compliance with 9 C.F.R. § 201.71(a) and (d) of the regulations and the applicable requirements contained in the General Code, Scales Code, and Weights Code for the 2009 edition of the National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," which is incorporated by reference in 9 C.F.R. § 201.71;

4. Failing to have their scales used for the purchase, sale, acquisition, payment, or settlement of livestock or live poultry tested by competent persons at least twice during each calendar year; and

5. Failing to retain a copy of each report of tests and inspections of their scales used for the purchase, sale, acquisition, payment, or settlement of livestock or live poultry and failing to submit a copy of each such report to the Packers and Stockyards Program Western Regional Office.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), respondents are assessed, jointly and severally, a civil penalty in the amount of one thousand dollars ($1,000.00). Respondents' payment of One Thousand Dollars ($1,000.00) shall be made payable to the Treasurer of the United States and include the docket

[redacted]

Southern Colorado Livestock Auction Inc.
Respondent
By: John R. Malouff, Jr., President and Owner

[redacted]

John R. Malouff, Jr.
Respondent

[redacted]

Benjamin F. Gibbons
Benjamin F. Gibbons, P.C.
Attorney for Respondents

[redacted]

Krishna Ramaraju
Attorney for Complainant

Done at Washington, D.C.

this 14th day of December, 2012

[redacted]

Peter M. Davenport
Chief Administrative Law Judge