

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/DALJ/OHC
2020 JAN 31 PM 1:42

In re:) P&S Docket No. D-20-J-0033
)
Eugene Nisly d/b/a)
Carrollton Livestock Auction,)
)
Respondent) Consent Decision and Order

This proceeding was instituted under the Packers and Stockyards Act (the Act), 7 U.S.C. §§ 181 *et seq.*, by a Complaint filed by the Deputy Administrator, United States Department of Agriculture, Agricultural Marketing Service, Fair Trade Practices Program, Packers and Stockyards Division, alleging that Respondent Eugene Nisly, doing business as Carrollton Livestock Auction, willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. §§ 201.1 *et seq.*, the regulations). 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.

Respondent admits the jurisdictional allegations in paragraph I of the Complaint and specifically admits that the Secretary has jurisdiction in this matter, neither admits nor denies the remaining allegations, waives oral hearing and further procedure; waives all rights to seek judicial review and otherwise challenge or contest the validity of this decision, including waiving challenges to the Administrative Law Judge's authority to enter this Decision and Order under the Administrative Procedure Act and the Constitution of the United States, and waives any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 *et seq.*) for fees and other expenses incurred by Respondent in

connection with this proceeding or any action against any USDA employee in their individual capacity. The parties consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this Decision.

Findings of Fact

- (a) Eugene Nisly is an individual doing business as Carrollton Livestock Auction, (Respondent), whose mailing address was provided to the USDA's Office of the Hearing Clerk.
- (b) Respondent is, and at all times material herein, was:
 - (1) Engaged in the business of a market agency, selling consigned livestock in commerce on a commission basis;
 - (2) Engaged in the business of, and operating as, a stockyard posted under and subject to the provisions of the Act;
 - (3) Registered with the Secretary of Agriculture as a market agency selling livestock in commerce on a commission basis;
 - (4) Registered with the Secretary of Agriculture as a market agency buying livestock in commerce on a commission basis; and
 - (5) Registered with the Secretary of Agriculture as a dealer, buying and selling livestock.

Conclusions

Respondent, having admitted the jurisdictional facts, and the parties having agreed to the entry of this Consent Decision, this Consent Decision will be entered.

Order

Respondent and Respondent's agents, employees, successors and assigns, directly or indirectly or through any corporate or other device, in connection with Respondent's activities subject to the Packers and Stockyards Act, shall cease and desist from:

- (1) failing to properly maintain their Custodial Account for Shippers' Proceeds (custodial account) in strict conformity with the Act and section 201.42(a) of the regulations (9 C.F.R. § 201.42(a));
- (2) using funds received from the sale of consigned livestock for any purpose other than those specifically permitted by section 201.42(d) of the regulations (9 C.F.R. § 201.42(d));
- (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; and
- (4) failing to remit, when due, the proceeds of livestock sales to consignors in strict conformity with section 201.43 of the Regulations (9 C.F.R. § 201.43).

Respondent is suspended as a registrant under the Act for a period of five years and thereafter until Respondent remits full payments to livestock sellers.


This Consent Decision and Order is not to be construed as in any way limiting the authority of the Packers and Stockyards Division to investigate and monitor Respondent's activities that are subject to the Act to assure the Respondent's compliance with the Act and Regulations during the period of suspension or at any other time as authorized by the Act and Regulations.

This Consent Decision and Order shall have the same force and effect as if entered after full hearing. The provisions of this Order shall become final and effective on the date that it is signed.

Copies of this decision shall be served upon the parties forthwith.




Eugene Nisly
Respondent

CHRISTOPHER YOUNG 

Chris Young
Attorney for Complainant

Done at Washington, D.C.

this 31st day of January, 2020



Chief Administrative Law Judge
Channing D. Strother