

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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In re:	)	
	)	
Southern Colorado Livestock Auction, Incorporated	)	P & S Docket No. D-17-0019
	)	
and	)	
	)	
John R. Malouff, Jr.	)	P & S Docket No. D-17-0020
	)	
Respondents	)	<b>CONSENT</b>

This proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (“the Act”), by a Complaint filed on November 14, 2016 by the Deputy Administrator of the Grain Inspection, Packers and Stockyards Administration (“GIPSA”), of the United States Department of Agriculture (“Complainant”), alleging that Respondents Southern Colorado Livestock Auction, Inc. and John R. Malouff willfully violated the Act and 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 Statutes (7 C.F.R. § 1.130 *et seq.*) (“Rules of Practice”).

Respondents admit the jurisdictional allegations in paragraph I.1, I.2, I.3, and subparagraphs I.4(a)-(c) of the Complaint and specifically admit that the Secretary of the U.S. Department of Agriculture has jurisdiction in this matter; neither admit nor deny the remaining allegations set forth in the Complaint; waive oral hearing and further procedure, including all rights to seek judicial review and otherwise challenge or contest the validity of this decision; 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. Southern Colorado Livestock Auction, Inc. (“Respondent Southern Colorado”) is a corporation organized under the laws of, and located in, the State of Colorado.  
Respondent Southern Colorado’s mailing address is P.O. Box 609, Monte Vista, CO 81144.
2. Respondent Southern Colorado is, and at all times material herein 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 selling livestock in commerce on a commission basis.
3. John R. Malouff, Jr. (“Respondent Malouff”) is an individual whose mailing address is P.O. Box 609, Monte Vista, CO 81144.
4. Respondent Malouff is, and at all times material herein was:
  - a. President, sole owner, and registered agent of Respondent Southern Colorado Livestock;
  - b. Responsible for the day-to-day direction, management, and control of Respondent Southern Colorado;

- c. Engaged in the business of conducting and operating Southern Colorado Livestock; and
- d. The alter ego of Southern Colorado Livestock.

Conclusion

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

**ORDER**

Respondent Malouff and Respondent Southern Colorado, 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. Failing to deposit in their Custodial Accounts for Shippers' Proceeds by the close of the next business day after livestock is sold:
  - a. the proceeds from the sale of livestock that have been collected, and
  - b. an amount equal to the proceeds receivable from the sale of livestock due from the respondents, any other owner, officer or employee of the respondents, and any buyer to whom the respondents have extended credit as prescribed in section 201.42 of the regulations (9 CFR § 201.42);
2. Failing to deposit in their Custodial Accounts for Shippers' Proceeds:
  - a. all proceeds collected until the account has been reimbursed in full, and,
  - b. an amount equal to all the remaining proceeds receivable outstanding, whether or not respondents have collected the proceeds, before the close of the seventh day following the sale of livestock, as prescribed in section 201.42 of the regulations (9 CFR § 201.42);

3. Failing to otherwise maintain their Custodial Accounts for Shippers' Proceeds in strict conformity with section 201.42 of the regulations (9 C.F.R. § 201.42); and
4. Using funds received from the sale of consigned livestock 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.

Pursuant to section 312(b) of the Act (7 U.S.C. § 213(b)), Respondents are hereby jointly and severally assessed a civil penalty in the amount of eight thousand two hundred fifty dollars (\$8,250). Payment must be made in accordance with the following:

1. All payments must be made by **certified check** or **money order**, must include the docket numbers of this proceeding, **P&S Docket Nos. D-17-0019 and D-17-0020** and be payable to the **“Treasurer of the United States.”**
2. The initial payment towards the civil penalty in the amount of two thousand two hundred fifty dollars (\$2,250) shall be due immediately and sent, with a signed copy of this Consent to:


Elizabeth M. Kruman  
Office of the General Counsel  
U.S. Department of Agriculture,  
Room 2336-A, South Building  
1400 Independence Avenue, SW.  
Washington, D.C. 20250

3. The remaining six thousand dollars (\$6,000) shall be paid in monthly installments of five hundred dollars (\$500) until the civil penalty is paid in full, no more than twelve (12) months from the date of the first payment. All payments after the initial payment shall be mailed to the following address:

USDA-GIPSA LOCKBOX  
P.O. Box 790335  
St. Louis, Missouri 63179-0335

This Order shall have the same force and effect as if entered after full hearing. The provisions of this Order shall become effective upon issuance (7 C.F.R. § 1.138).


Copies of this Consent Decision shall be served upon the parties.

Issued this 25<sup>th</sup> day of May, 2017,  
in Washington, D.C.  
  
ADMINISTRATIVE LAW JUDGE

SOUTHERN COLORADO LIVESTOCK  
AUCTION, INC  
Respondent

By: John R. Malouff  
Title: owner

  
JOHN R. MALOUFF  
Respondent

  
ERNEST H. VAN HOOSER  
Attorney for Respondent

  
ELIZABETH M. KRUMAN  
Attorney for Complainant