UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P. & S. Docket No. 13-0136
	)	
Benjamin W. Dunlap	)	
a/k/a Ben Dunlap,	)	
	)	
d/b/a Ben Dunlap Livestock	)	
	)	
d/b/a Dunlap Cattle and Farms,	)	
	)	
and d/b/a Phat Buzzard Cattle Co.	)	
	)	
	)	
Respondent	)	Consent Decision and Order

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, United States Department of Agriculture,

alleging that Benjamin W. Dunlap, doing business as Ben Dunlap Livestock, doing

business as Dunlap Cattle and Farms, and also doing business as Phat Buzzard

Cattle Co., willfully violated the Act and the regulations promulgated thereunder by

the Secretary of Agriculture (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. § 1.138).

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Benjamin W. Dunlap 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, and consents and agrees, 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

(a)   Respondent Benjamin W. Dunlap is an individual who is also known as Ben Dunlap. Respondent does business as Ben Dunlap Livestock, does business as Dunlap Cattle and Farms, and also does business as Phat Buzzard Cattle Co. Respondent has a business address of 4926 Bonlee-Bennett Road, Bear Creek, NC, 27207.

(b)   Respondent Benjamin W. Dunlap, doing business as Ben Dunlap Livestock, doing business as Dunlap Cattle and Farms, and doing business as Phat Buzzard Cattle Co., at all times material herein was:

> (1) Engaged in the business of a dealer buying and selling livestock in commerce;
>
> (2) A dealer within the meaning of and subject to the provisions of the Act; and
>
> (3) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce.

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Conclusion

The Respondent 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 Benjamin W. Dunlap, doing business as Ben Dunlap Livestock, doing business as Dunlap Cattle and Farms, and also doing business as Phat Buzzard Cattle Co., his agents and employees, directly or through any corporate or other device, in connection with his operations subject to the Act, shall cease and desist from failing to pay and failing to pay, when due, the full purchase price of livestock as required by section 409 of the Act (7 U.S.C. § 228b).

Respondent is suspended as a registrant under the Act for a period of 5 (five) years. Provided, however, that the suspension will be held in abeyance as long as Respondent makes full restitution to the two unpaid livestock sellers listed in Appendix A of the Complaint filed in this matter, Carolina Stockyards Co. and Powell Livestock, Inc., within a period of three years. Upon full payment being made to the two unpaid livestock sellers, the five-year suspension will be permanently terminated.

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In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent is assessed a civil penalty in the amount of Eighty-Four Thousand Dollars ($84,000.00). The civil penalty will be held in abeyance provided that Respondent makes full restitution to the two unpaid livestock sellers listed in Appendix A of the Complaint filed in this matter, Carolina Stockyards Co. and Powell Livestock, Inc., within a period of three years and provides proof of restitution payments as detailed below. The amount of the civil penalty held in abeyance will be reduced by the amount of restitution made to the two unpaid livestock sellers provided that proof of restitution payments is provided as detailed below.

The proof of restitution payments shall be sent to S. Brett Offutt, Director, Policy and Litigation Division, Packers and Stockyards Program, GIPSA at the following address: 1400 Independence Ave. SW., Room-2507 South Building, Washington, DC 20250-3646. On the first day of every month, Respondent shall send evidence of restitution payments, such as a schedule of the unpaid livestock sellers showing: (1) the amounts of payment(s) made to each seller for the previous month, and (2) the beginning and ending balances owed each unpaid livestock seller. Proof of payments, such as copies of checks made payable to unpaid livestock sellers, cancelled checks and/or bank statements, shall be provided by Respondent on request to the Packers and Stockyards Program. In its sole discretion, GIPSA may verify any payments made pursuant to this Order and determine if restitution has been made.

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Upon full payment being made to the two unpaid livestock sellers, the civil penalty in the amount of Eighty-Four Thousand Dollars ($84,000.00) will be permanently waived.

Should full payment not be made to the two unpaid livestock sellers within a period of three years from the effective date of this Order, Complainant may file a Motion to have the civil penalty held in abeyance become due and payable, and to have the suspension held in abeyance become effective.

This Order shall have the same force and effect as if entered after a full hearing. The provisions of this Order shall become final and effective on the sixth day after service of this consent decision and order on Respondent.

Copies of this decision shall be served upon the parties.

_____ 3/26/13

Benjamin W. Dunlap
Respondent

Krishna G. Ramaraju
Attorney for Complainant

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Done at Washington, D.C.

this __27__ day of __March__, 2013

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Peter M. Davenport
Chief Administrative Law Judge