

USDA
OALJ/OHC

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

2015 APR 24 AM 9:39

RECEIVED

In re:) P & S Docket No. 15-0053
)
)
H & P Cattle, LLC,)
d/b/a Gowan Stockyards)
)
)
Respondent) Consent Decision

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 Respondent H & P Cattle, LLC, d/b/a/ Gowan Stockyards, 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).

Respondent H & P Cattle, LLC, d/b/a/ Gowan Stockyards 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

1. H & P Cattle, LLC, d/b/a Gowan Stockyards (Respondent) is a limited liability company organized and existing under the laws of the State of Mississippi with a mailing address of PO Box 3336, Kosciusko, Mississippi 39090.
2. Respondent is, and at all times material to the Complaint was:
 - (a) Engaged in the business of conducting and operating a stockyard, H & P Cattle, LLC, d/b/a Gowan Stockyards No. MS-119, physically located at 911 Blackjack Road, Kosciusko, Mississippi 39090, which is posted under and subject to the provisions of the Act;
 - (b) Engaged in the business of a market agency selling livestock in commerce on a commission basis; and
 - (c) Registered with the Secretary of Agriculture as a market agency selling livestock in commerce on a commission basis.

Conclusion

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, its owners, officers, directors, agents and employees, directly or through any corporate or other device, in connection with its operations subject to the Act, shall cease and desist from:

1. Generating or permitting to be generated, at the request or direction of another person, false or misleading records in connection with activities subject to the Act, including, but not limited to;

- (a) Purchase invoices that listed livestock as being purchased under false names;
- (b) Purchase invoices that misrepresented that livestock had been resold at the market where the livestock had been purchased earlier the same day;
- (c) Purchase invoices that listed purchase prices for livestock that were higher than the actual purchase prices;
- (d) Purchase invoices that listed fabricated prices for livestock; and
- (e) Purchase invoices that listed fabricated weights for livestock.

2. Otherwise 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 false or deceptive pretense upon any person in connection with the purchase or sale of livestock;

3. Failing to operate in compliance with section 201.53 of the Regulations (9 C.F.R. § 201.53), including, but not limited to, making, issuing, or circulating any false or misleading record concerning the prices or sale of livestock;

4. Failing to operate in compliance with section 201.55 of the Regulations (9 C.F.R. § 201.55), including, but not limited to, failing to base the payment of livestock on the actual weight of the livestock.

Respondent shall keep and maintain accounts, records, and memoranda, which fully and correctly disclose the true nature of all transactions involved in its business subject to the Act as required by section 401 of the Act (7 U.S.C. § 221), including, but not limited to, purchase invoices which completely and accurately reflect the true nature of the transactions.

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 Eighteen Thousand Dollars (\$18,000.00). Respondent shall make an initial payment of Six Thousand Dollars (\$6,000.00), which shall accompany the return of this signed Consent Decision to Complainant's attorney. The remaining Twelve Thousand Dollars (\$12,000.00) shall be paid in six (6) monthly installments of Two Thousand Dollars (\$2,000.00) each. The first installment shall be due on or before June 15, 2015, and the remaining five (5) installments shall be due on or before the fifteenth day of each month thereafter until the civil penalty is paid in full. Each payment shall be paid by a certified check, cashier's check, or money order made payable to the "United State Department of Agriculture" and include the docket number of this proceeding, P & S Docket No. 15-0053, on the check or money order. All payments, excluding the initial payment of Six Thousand Dollars (\$6,000.00) which shall be sent to Complainant's attorney, shall be mailed in an envelope with sufficient first class postage to USDA GIPSA, PO Box 790335, St. Louis, Missouri 63179-0335. If Respondent fails to comply with any of the terms of this Consent Decision, any remaining balance of the civil penalty will become immediately due and payable. Respondent expressly waives any further procedure related to this enforcement action including waiver of any procedure in connection with its compliance or non-compliance with the terms of this Consent Decision.

This Order shall have the same force and effect as if entered after full hearing. The provisions of this Order shall become effective on the sixth day after service of this Consent Decision and Order on Respondent.

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

Done at Washington, D.C.

this 24th day of April, 2015


Administrative Law Judge

JANICO K. BULLARD

H & P Cattle, LLC, d/b/a Gowan Stockyards,
Respondent,

By: 

Title: MEMBER


Don A. McGraw, Jr.
Attorney for Respondent


Leah C. Battaglioli
Attorney for Complainant