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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	) P & S Docket No. D-16-0082
	) P & S Docket No. D-16-0083
BP Livestock, LLC,	)
and	)
Brody Peak,	)
	)
Respondents	) CONSENT DECISION

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 by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that the respondents willfully violated the Act and the regulations issued thereunder (9 C.F.R. § 201.1 *et seq.*). This decision is entered pursuant to the consent decision provisions 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, wave 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

1. BP Livestock, LLC, (hereinafter referred to as respondent BP), is a Kansas limited liability company with a business mailing address of 502 Albert Street, Emporia, KS 66801.
2. At all times material to the allegations herein, respondent BP was:
   (a) Engaged in the business of a dealer, buying and selling livestock in commerce: and

(b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock.

3. Brody Peak, (hereinafter referred to as respondent Peak), is an individual whose business mailing address is 502 Albert Street, Emporia, KS 66801.

4. Respondent Peak at all times material herein was:

(a) Not registered with the Secretary of Agriculture as a dealer to buy and sell livestock;

(b) The 100% owner of Respondent BP;

(c) Responsible for the day-to-day management, direction, and control of Respondent BP.

Conclusions

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

Order

1. Respondents, their agents and employees, successors and assigns, directly or indirectly through any corporate or other device shall cease and desist from:

(a) Failing to pay for livestock purchases the full amount of the purchase price of such livestock within the time period required by 7 U.S.C. 228b and section 201.43 of the regulations (9 C.F.R. § 201.43).

(b) Failing to keep and maintain records which fully and correctly disclose all of the transactions involved in their business as a dealer as required by section 401 of the Act (7 U.S.C. § 221).

(c) Failing to disclose the actual weight of livestock upon which the purchase or sale weight was based.

2. Respondents shall keep and maintain records which fully and correctly disclose all of the transactions involved in their business as a dealer as required by section 401 of the Act, including the following:

(a) Purchase invoices shall have the true purchase date of the cattle; not the invoice date, but the purchase date or the date possession transferred from the seller to BP Livestock (the purchase date cannot be after the date the cattle are sold). The invoice should show the gross weight and the negotiated shrink if applicable;

(b) Printed scale tickets that meet the requirements outlined in 9 C.F.R. § 201.49;

(c) Trucking records showing when the cattle were shipped from the seller and shipped to the buyer;

(d) Load make-up sheets if the cattle are sorted before they are sold;

(e) Sales invoices showing the gross weight of the cattle and the negotiated shrink (if applicable). The sales invoice would need to show the date the cattle were sold (transferred from BP Livestock's possession to the buyer's procession). This date cannot be before the cattle were purchased.

(f) Records showing when payment was made (check stubs, cancelled checks, bank statements, etc.);

(g) If BP Livestock is not going to pay for the livestock by the close of the next business day following the transfer of possession, then BP Livestock must have written credit agreements in place with its suppliers.

3. Respondent BP is suspended from operating as a dealer, market agency, or in any capacity that is regulated by the Act for a period of four (4) full weeks, effective on the sixth day after service of this order on respondents. This suspension does not apply to respondent Peak or to BP Cattle Company, LLC.

4. In accordance with section 312 of the Act (7 U.S.C. § 213), respondents BP and Brody Peak are accessed, jointly and severally, a civil penalty of five thousand dollars ($5,000.00). Within thirty (30) days from the effective date of this order the respondents shall send a certified check or money order for five thousand dollars ($5,000.00), made out to "Treasurer of the United States," to the USDA-GIPSA Lockbox, PO Box 790335, St. Louis, Missouri 63179-0335. Respondents shall indicate on the certified check or money order that the payment is in reference to P&S Docket Nos. 16-0082 & 16-0083. The provisions of this order shall become effective on the sixth day after service of this order on respondents.

Copies of this decision shall be served upon the parties.

BP Livestock, LLC, Respondent

By: [redacted] Date: 12/16/16
Brody Peak, Owner

[redacted] Date: 12/16/16
Brody Peak, Respondent

[redacted] Date: 12-14-2016
Ernest H. Van Hooser, Esquire
Attorney for Respondent

[redacted] Date: 12-20-2016
Tracey Manoff
Attorney for Complainant

Issued in Washington, D.C.
This 20th day of December 2016

[redacted]

Administrative Law Judge

Channing D. Strother