

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P&S Docket No. 20-J-0129
)
MARK A. HOLDER)
)
Respondent)
) Consent Decision and Order

REC'D - USDA/OALJ/OHC
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This proceeding arises under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (Packers and Stockyard Act) and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*) (Regulations). On May 27, 2020, a Complaint was filed by the Deputy Administrator, Fair Trade Practices Program (Packers and Stockyards Division), Agricultural Marketing Service, United States Department of Agriculture (USDA), alleging that Respondent willfully violated sections of the Packers and Stockyards Act and its attendant regulations. Complainant and Respondents have agreed to entry of this Decision, without hearing or further procedure, pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.138) (Rules of Practice).

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 procedures, waives all rights to seek judicial review and otherwise challenge or contest the validity of this Consent Decision and Order, including waiving challenges to the Administrative Law Judge's authority to enter this Consent Decision and Order under the Administrative Procedure Act and the Constitution of the United

States, and waives any action against the USDA 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.

Respondent consents and agrees, for the purposes of settling this proceeding, to the entry of this Consent Decision and Order. Complainant agrees to the entry of this Consent Decision and Order.

FINDINGS OF FACT

(1) Mark A. Holder, d/b/a Mark I Holder Livestock (Respondent), is an individual whose current mailing address is in the [REDACTED]. His address will not be stated in this Consent Decision to protect Respondent's privacy but has been providing to the Hearing Clerk, USDA.

(2) Respondent is, and at all times material herein was:

- a. Engaged in the business of a dealer buying and selling livestock in commerce for his own account and for the accounts of others;
- b. Engaged in the business of a market agency buying livestock on a commission basis; and
- c. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce and as a market agency to buy livestock on a commission basis.

CONCLUSIONS

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

ORDER

Respondent, his agents and employees, successors and assigns, directly or through any device, in connection with Respondent's activities subject to the Packers and Stockyards Act, shall forevermore cease and desist from failing to pay, when due, the full purchase price of livestock purchased in violation of 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b) and section 201.43 of the regulations (9 C.F.R. § 201.43). In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent is hereby assessed civil penalties of \$85,500 (the "Civil Penalties").

Pursuant to 7 U.S.C. § 204, Respondent, operating individually and through any corporate or other device, shall voluntarily suspend his registration and is furthermore prohibited from operating subject the Act for a period of five (5) years from the date that this Consent Decision and Order is final and effective ("Suspension Period"). For the avoidance of doubt, Respondent shall be prohibited during the Suspension Period from engaging in conduct under the Act for which license and/or registration is required. Furthermore, Respondent shall pay, in full, no later than thirty (30) days from the date the Consent Decision and Order is entered by the Administrative Law Judge, any amount owed to any livestock market. In exchange for Respondent's suspension, the Agency shall hold the Civil Penalties in abeyance for the duration of the Suspension Period so long as Respondent fully complies with the Act, Regulations, and this Consent Decision and Order. Upon conclusion of the Suspension Period, Respondent must apply to the Packer and Stockyards Division for license and registration under the Act.

Furthermore, Respondent has previously failed to cease and desist from such conduct as previously prosecuted by USDA, and as such, if Respondent fails to abide by any provision of this Consent Decision and Order, then all Civil Penalties shall be immediately due and payable

without further action, and the Respondent and any/all of his agents and employees, successors and assigns, directly or through any device from the date the finding of the Agency shall be required to serve *an additional five (5)*^{year} suspension to be added to the Suspension Period if Respondent violated the terms of this Consent Decision and Order, in connection with Respondent's activities subject to the Packers and Stockyards Act to the fullest extent permitted by law, including without limitation referral to the Department of Justice for prosecution.

Any and all payments required by this Consent Decision and Order shall be made by certified check or money order payable to the United States Treasury. Respondent shall indicate on the certified check or money order that the payment is in reference to P&S Docket No. 20-J-0129, and mail to: USDA-AMS-FTPP-PSD, P.O. Box 979064, St. Louis, MO 63197-9000.

This Order shall have the same force and effect as if entered after full hearing. Copies of this Consent Decision Order shall be served upon Respondent. The provisions of this Consent Decision and Order shall become final and effective upon issuance.

[Redacted]

Mark A. Holder,
d/b/a Mark Holder Livestock
Respondent

[Redacted]

Zach Taylor
Attorney for Respondent

Natalie
Smittle

Digitally signed by
Natalie Smittle
Date: 2020.08.20
10:39:59 -05'00'

Natalie Smittle
Attorney for Complainant

Done at Washington D.C.
This 20th day of August, 2020

[Redacted]

Chief Administrative Law Judge
Channing D. Strother