

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:

Midwest National Farmers -
Sig Ellingson, Inc.,
and
James Gibbons,

Respondents

P & S Docket No. D-04-0006

Consent Decision

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*), by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the Respondents wilfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*). This decision is entered pursuant to the consent decision provision 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, waive 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. Midwest National Farmers – Sig Ellingson, Inc. (hereinafter "Respondent Midwest") is a corporation organized and existing under the laws of the State of Minnesota. Its mailing address was 136 Livestock Exchange Building, South Saint Paul, MN 55075.

2. Respondent Midwest at all times material herein, was:

indirectly through any corporate or other device, in connection with their operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Issuing checks in payment of the net proceeds from the sale of consigned livestock without having sufficient funds on deposit and available in the custodial account upon which such checks are drawn to pay such checks when presented;
2. Failing to remit, when due, the net proceeds received from the sale of consigned livestock;
3. Failing to remit the net proceeds due from the sale of livestock on a commission basis;
4. Failing to deposit in the Custodial Account, within the time frame prescribed by section 201.42 of the regulations (9 C.F.R. § 201.42), an amount equal to the proceeds receivable from the sale of consigned livestock.

Respondent Midwest is suspended as a registrant under the Act for a period of five (5) years and thereafter until Respondent Midwest has demonstrated that the shortage in Respondent's Custodial Account for Shipper's Proceeds has been eliminated.

Respondent Gibbons shall not be registered with the Secretary of Agriculture for a period of five (5) years. Pursuant to section 303 of the Act (7 U.S.C. §203), Respondent Gibbons is prohibited from operating subject to the Act without being registered. Provided, however, that upon application to the Packers and Stockyards Programs a supplemental order may be issued allowing Respondent Midwest and Respondent Gibbons to operate subject to the Act at any time after the expiration of 210 days of suspension upon demonstration by Respondents of conditions warranting the issuance of such supplemental order, and provided further that this order may be modified upon application to the Packers and Stockyards Programs to permit the salaried

