

USDA
C-10-410
JUL 11 10 3:24
RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-07-0053
)
)
Moyer Packing Company,)
)
)
Respondent)

CONSENT DECISION

This is a disciplinary proceeding brought under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §181 et seq.), (hereinafter "the Act"). On January 18, 2007, a Complaint and Notice of Hearing (hereinafter "Complaint") was issued against Respondent alleging that:

- (a) During the period November 29, 2001 through November 4, 2004, Respondent purchased livestock on a hot carcass weight basis;
- (b) Throughout the period set forth in paragraph (a) above, Respondent utilized a computer program which improperly rounded hot carcass weight;
- (c) Throughout the period set forth in paragraph (a) above, Respondent reported improperly rounded hot carcass weights to livestock producers, and paid livestock producers on those improperly rounded hot carcass weights; and
- (d) Throughout the period set forth in paragraph (a) above, Respondent failed to maintain a written record of the properly rounded hot carcass weights.

The Complaint also alleged that Respondent, as a result of the practices described in paragraphs (a) through (c), above, failed to pay livestock producers when due for livestock, in that it failed to pay the full amount due for carcasses on which Respondent improperly rounded and recorded hot carcass weights.

The Complaint further alleged that:

(a) By reason of Respondent's practice of improperly rounding hot carcass weights, reporting the improperly rounded hot carcass weights to livestock producers, and paying livestock producers on those improperly rounded hot carcass weights, Respondent willfully violated section 202(a) of the Act (7 U.S.C. § 192 (a));

(b) By reason of Respondent's practice of failing to maintain a written record of properly rounded hot carcass weights, Respondent failed to keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in its business, as required by section 401 of the Act (7 U.S.C. § 221); and

(c) By reason of Respondent's practice of failing to keep a true written account of properly rounded hot carcass weights and failing to pay producers on a hot carcass weight basis for properly rounded, actual hot weights, Respondent violated sections 201.71 and 201.99 of the regulations (9 C.F.R. §§ 201.71 and 201.99).

Respondent and Complainant have now agreed to the entry of a Decision Without Hearing by Reason of Consent as set forth herein. Therefore, this Decision Without Hearing by Reason of Consent is entered without further procedure or hearing 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. § 1.130 et seq.; hereinafter “Rules of Practice”) applicable to these proceedings (7 C.F.R. §1.138).

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 of the Complaint, waives oral hearing and further procedure, and consents and agrees, for the purpose of settling this proceeding, to the entry of this decision.

Findings of Fact

1. At all times relevant to the Complaint, Respondent Moyer Packing Company (now known as Smithfield Beef Group-Souderton, Inc.) was a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, doing business in the Commonwealth of Pennsylvania. Its business mailing address is P.O. Box 64395, Souderton, PA 18964.

Respondent was a wholly owned subsidiary of Smithfield Beef Group, Inc. Smithfield Beef Group, Inc., is a corporation organized and existing in the State of Delaware. Its business mailing address is P.O. Box 23000, Green Bay, WI 54305-3000. .

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

(a) Engaged in the business of buying livestock in commerce for the purposes of slaughter;

(b) Engaged in the business of manufacturing or preparing meat and meat food products for sale or shipment in commerce; and

(c) A packer within the meaning of and subject to the provisions of the Act.

Order

Respondent Moyer Packing Company, its agents and employees, successors and assigns, directly or through any corporate or other device, in connection with all its activities subject to the Act, shall cease and desist from improperly rounding hot carcass weights, reporting improperly rounded hot carcass weights to livestock producers, and paying livestock producers on improperly rounded hot carcass weights, in violation of section 202(a) of the Act (7 U.S.C. § 192 (a)) and sections 201.99 and 201.71 of the regulations. Respondent is ordered to maintain accounts, records, and memoranda as fully and correctly disclose all transactions involved in its business, as required by section 401 of the Act, specifically, Respondent shall maintain and keep a written record of properly rounded hot carcass weights (7 U.S.C. § 221).

Pursuant to Section 203 of the Act (7 U.S.C. § 193), Respondent is assessed a civil penalty in the amount of \$325,000.00, payable pursuant to the terms of an Understanding Regarding the Consent Decision, entered into between the parties.

The provisions of this Order shall become effective on the sixth (6th) day after service of this Order on the Respondent. Copies of this decision shall be served upon the parties.

[REDACTED]
Brett T. Schwemer
Attorney for Respondent

[REDACTED]
David L. Durkin
Attorney for Respondent

[REDACTED]
Christopher Young-Morales
Attorney for Complainant

Done at Washington, D.C.
this 11th day of October, 2007

[REDACTED]

Administrative Law Judge