

# AGRICULTURE DECISIONS

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Page 1493 - 1523



UNITED STATES DEPARTMENT OF AGRICULTURE

## AGRICULTURE DECISIONS

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The published decisions and orders may be cited by giving the volume number, page number and year, e.g., 1 Agric. Dec. 472 (1942). It is unnecessary to cite a decision's docket number, e.g., AWA Docket No. 99-0022, and the use of such references generally indicates that the decision has not been published in *Agriculture Decisions*. Decisions and Orders found on the OALJ Website may be cited as primary sources.

Consent Decisions entered subsequent to December 31, 1986, are no longer published in *Agriculture Decisions*. However, a list of Consent Decisions is included in the printed edition. Since Volume 62, the full texts of Consent Decisions are posted on the USDA/OALJ website (See url below). Consent Decisions are on file in portable document format (pdf) and may be inspected upon request made to the Hearing Clerk, Office of Administrative Law Judges (OALJ).

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**PACKERS AND STOCKYARDS ACT**

**DEPARTMENTAL DECISIONS**

JOE U. AMBROSE, JR.  
P & S Docket No. D-10-0047.  
Decision and Order.. . . . . 1493

TODD SYVERSON, d/b/a SYVERSON LIVESTOCK BROKERS.  
P&S docket No. D-05-0005.  
Decision and Order on Remand... . . . . 1500

**MISCELLANEOUS ORDERS**

TODD SYVERSON, d/b/a SYVERSON LIVESTOCK BROKERS.  
P&S Docket No. D-05-0005.  
Order Denying Petition to Reconsider on Remand.. . . . . 1510

TODD SYVERSON, d/b/a SYVERSON LIVESTOCK BROKERS.  
P&S Docket No. D-05-0005.  
Stay Order.. . . . . 1519

**DEFAULT ORDERS**

KAO VANG AND CHUE THAO, d/b/a CALIFORNIA FRESH  
MEATS.  
P & S Docket No. D-10-0065.  
Decision and Order by Reason of Default... . . . . 1521

CLARENCE RICKY FISHER, a/k/a RICKY FISHER.  
P. & S. Docket No. D-09-0092.  
Default Decision and Order... . . . . 1521

E.M.M. PIG PLACEMENT CO., LLC.  
P & S Docket No. D-10-0029.  
Default Decision and Order... . . . . 1521

JAMES MASTERS.  
P & S Docket No. D-09-0091.  
Decision and Order by Reason of Default.. . . . . 1522

JOHN LUNDGREN.  
P & S Docket No. D-10-0151.  
Decision and Order by Reason of Default.. . . . . 1522

**Consents** . . . . . 1523

Joe U. Ambrose, Jr.  
69 Agric. Dec. 1493

1493

## PACKERS AND STOCKYARDS ACT

### DEPARTMENTAL DECISION

**In re: JOE U. AMBROSE, JR.**  
**P & S Docket No. D-10-0047.**  
**Decision and Order.**  
**Filed November 30, 2010.**

**P&S.**

Leah C. Battagioli, for the Deputy Administrator, GIPSA.  
Respondent, Pro se.  
*Decision issued by Peter M. Davenport, Chief Administrative Law Judge.*

This is a disciplinary proceeding brought pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*; hereinafter "Act") and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 - 1.151; hereinafter "Rules of Practice"). Complainant, the Deputy Administrator, Grain Inspection, Packers and Stockyards Program, initiated this proceeding against Respondent Joe U. Ambrose, Jr. (hereinafter "Respondent") by filing a disciplinary complaint on December 1, 2009.

Copies of the Complaint and the Rules of Practices were served upon Respondent by certified mail. The Complaint alleged that Respondent failed to pay the full amount of the purchase price for livestock within the time period required by the Act, with the total amount remaining unpaid of \$352,811.43 as of November 2, 2009, in willful violation of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b). (Compl. ¶¶ II-III.)

Respondent filed a timely Answer to Complaint on December 30, 2009, denying the allegations in the Complaint and asserting multiple affirmative defenses. On January 29, 2010, Respondent and his wife, Rhonda Ambrose, filed a Voluntary Petition pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. § 701 *et seq.*) in the United States Bankruptcy Court, Eastern District of California. This petition was designated case number 10-10936. Included with the Voluntary Petition was Schedule F which listed Respondent's creditors and the amounts each creditor is owed. On May 13,

2010, Respondent and his wife filed an Amended Schedule F. Respondent admitted in both the original Schedule F and the Amended Schedule F that the three livestock sellers identified in the Complaint as still being owed money for livestock purchases remained unpaid at the time Respondent filed each schedule.

Upon learning of the bankruptcy proceeding, Complainant moved for a Decision Without Hearing By Reason of Admissions pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Based on careful consideration of the pleadings and the precedent cited by the parties, Complainant's motion is hereby granted and the following Decision and Order is issued without further proceeding or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

In his Answer to Complaint, Respondent raises three affirmative defenses. The first affirmative defense raised by Respondent is that the Complaint is overly broad, vague, and ambiguous. (Answer 2 ¶ 1.) The second affirmative defense raised by Respondent is that the Complaint fails to state a legally recognizable cause of action. (Answer 2 ¶ 2.) These defenses are meritless. Section 1.135(a) of the Rules of Practice (7 C.F.R. § 1.135(a)) specifies the required contents of complaints. All of the requirements are met. In addition, violations of section 409 of the Act (7 U.S.C. § 228b) are considered "unfair practices" under section 312(a) of the Act (7 U.S.C. § 213(a)) for which complaints can be issued against the violating person or entity. 7 U.S.C. §§ 228b(c), 213(b). Therefore, because the Complaint complies with the requirements of section 1.135(a) of the Rules of Practice (7 C.F.R. § 1.135(a)) and violations of sections 409 and 312(a) of the Act (7 U.S.C. §§ 228b, 213(a)) are legally recognizable causes of action, Respondent's first two defenses fail.

Respondent's third affirmative defense is that the transactions in the Complaint were credit transactions. Even if all the livestock sellers listed in the Complaint extended credit, in writing, to Respondent, which Complainant contests, it is still an unfair practice in violation of the Act for Respondent to fail to make full payment to the livestock sellers. *See* 7 U.S.C. § 409(c) ("Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an 'unfair practice' in violation of this Act."); *see also In re Great Am. Veal, Inc.*, 48 Agric. Dec. 183, 211 (1989) ("Even if a livestock seller expressly extends credit, in

writing, . . . it is still an unfair practice . . . to fail to make full payment to such a seller.") Here, Respondent has declared bankruptcy and has admitted in both the original Schedule F and the Amended Schedule F that he failed to make full payment to Western Stockman's Market, Visalia Livestock Market, and Overland Stockyard, and still owes the markets close to \$350,000.00. Ex. A pp. 8, 10-11; Ex. B pp. 7, 9. Even under the most liberal interpretation of the payment requirements under the Act, by not fully paying for livestock purchases, Respondent is in violation of the Act. Moreover, on June 14, 2010, the bankruptcy court issued a Discharge of Debtor for both Respondent and his wife. Ex. C p. 1. Under section 524(a)(2) of the bankruptcy code (11 U.S.C. § 524(a)(2)), a discharge order eliminates a debtor's legal obligation to pay a debt that is discharged and operates as an injunction against any attempt to collect payment against the debtor. 11 U.S.C. § 524(a)(2); Ex. C p. 2. Therefore, unless Respondent reaffirms the livestock debt, of which there is no indication he has, or he voluntarily repays the livestock debt, which he is not required to do, the livestock sellers that are still owed money by Respondent will likely never be fully paid.

Because it is irrelevant whether or not Respondent had credit agreements with all of the livestock sellers identified in Appendix A of the Complaint to make a determination that Respondent is in violation of the Act, Respondent's third defense also fails.

It is well-established that failing to make full payment for livestock purchases is a serious violation of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b). *E.g.*, *In re Hines and Thurn Feedlot, Inc.*, 57 Agric. Dec. 1408, 1428-29 (1998); *In re Syracuse Sales Co.*, 52 Agric. Dec. 1511, 1524 (1993); *In re Palmer*, 50 Agric. Dec. 1762, 1772-73 (1991); *In re Hennessey*, 48 Agric. Dec. 320, 324 (1989), *In re Garver*, 45 Agric. Dec. 1090, 1094-95 (1986), *aff'd sub nom. Garver v. United States*, 846 F.2d 1029 (6th Cir. 1988), *cert. denied* 488 U.S. 820 (1988). Because Respondent has admitted in bankruptcy documents that he has failed to fully pay for the livestock he purchased from Western Stockman's Market, Visalia Livestock Market, and Overland Stockyard, Respondent's actions are deemed to be unfair and deceptive practices in violation of sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

Respondent's actions are also willful. A violation is willful under the Administrative Procedure Act (5 U.S.C. §558(c)) "if a prohibited act is done

intentionally, irrespective of evil intent, or done with a careless disregard of statutory requirements." *In re Marysville Enters., Inc.*, 59 Agric. Dec. 299, 309 & n.5 (2000). In other words, "a violation is willful if a prohibited act is done intentionally, regardless of the violator's intent in committing those acts." *In re Hines and Thurn Feedlot*, 57 Agric. Dec. at 1414. Here, willfulness is established because Respondent intentionally continued to purchase livestock over the course of a year while some of the livestock sellers he previously purchased from were not fully paid.

Even applying the more stringent standard of willfulness used by the Fourth and Tenth Circuits, namely, that willfulness requires "such gross neglect of a known duty as to be the equivalent" of an intentional misdeed, the conduct of Respondent was still willful. *Capital Produce Co. v. USDA*, 930 F.2d 1077, 1079-80 (4th Cir. 1991); *Capitol Packing Co. v. USDA*, 350 F.2d 67, 78-79 (10th Cir. 1965). Respondent clearly knew or should have known that he was unable to fully pay for the livestock that he was purchasing because as he continued to make purchases through October 2009, purchases from October and November of the previous year remained unpaid. In addition, according to Respondent's sworn affidavit, Respondent knew he had exhausted his working capital by the end of October 2008. Whether or not Respondent had credit agreements is irrelevant to a determination of willfulness because Respondent failed to comply with any alleged credit agreements as evidence by three livestock sellers still being owed close to \$350,000.00 for livestock purchases.

Therefore, because Respondent was aware of his financial problems and continued to purchase livestock in spite of them, his actions can only be described as willful, both as intentional acts or as acts performed with careless disregard of statutory requirements.

The sanction policy of the Department is "to impose severe sanctions for violations of any of the regulatory programs administered by the Department that are repeated or that are regarded . . . as serious, in order to serve as an effective deterrent not only to the Respondents but to other potential violators as well." *In re Wooten*, 58 Agric. Dec. 944, 980 (1999); *see also Garver*, 45 Agric. Dec. at 1100. In this case, Respondent has failed to fully pay three different markets on multiple occasions, and still owes the markets close to \$350,000.00 making these violations both serious and repeated. When livestock sellers, such as Respondent, do not make full payment for their livestock purchases, the sellers are forced to finance the transaction. *See Van Wyk v. Bergland*, 570 F.2d 701, 704 (8th Cir. 1978);

*In re Powell*, 46 Agric. Dec. 49, 53 (1985). Considering Respondent's bankruptcy and his discharge from his debts, the livestock sellers are likely to never receive full payment for their livestock.

Complainant's recommendation that Respondent be ordered to cease and desist from violating the Act and suspended as a registrant under the Act for five years is consistent with the sanctions regularly imposed in other cases involving failure to pay for livestock. *E.g.*, *Marysville Enters.*, 59 Agric. Dec. at 321 & n.14, 323; *Hines and Thurn Feedlot*, 57 Agric. Dec. at 1429 & n.9.<sup>1</sup> The order and sanctions requested by Complainant are necessary to deter future violations and to prevent Respondent from continuing to purchase livestock while he is bankrupt and unable to pay for his purchases. *In re Holmes*, 62 Agric. Dec. 254, 259 (2003).

#### **Findings of Fact**

1. Respondent Joe U. Ambrose, Jr., is an individual whose mailing address is in the State of California.
2. Respondent is and, at all times material herein, was:
  - (a) Engaged in the business of buying and selling livestock in commerce as a dealer for his own account;
  - (b) Engaged in the business of a market agency buying livestock in commerce on a commission basis;
  - (c) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account; and
  - (d) Registered with the Secretary of Agriculture as a market agency to buy livestock in commerce on a commission basis.
3. Respondent and his wife, Rhonda Ambrose, filed for bankruptcy under Chapter 7, Title 11 of the United States Bankruptcy Code, in the United States Bankruptcy Court, Eastern District of California, Case No. 10-10936.
4. Respondent has admitted in bankruptcy documents, of which the Secretary may take official notice, that the three livestock sellers identified

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<sup>1</sup>In determining the sanction, "appropriate weight" is to be given to the sanction "recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose." *In re S.S. Farms Linn County Inc.*, 50 Agric. Dec. 476, 497 (1991); *see also Marysville Enters.*, 59 Agric. Dec. at 318.

in the Complaint as still being owed money by Respondent remain unpaid for close to \$350,000.00 worth of livestock. The original Schedule F and the Amended Schedule F contain tables with columns for the name and address of the creditor, along with the amounts of each creditor's claim.

5. The amounts alleged unpaid by Complainant and admitted unpaid by Respondent are as follows:

<u>Seller's Name</u>	<u>Amount Unpaid</u>
Western Stockman's Market	\$168,238.29 <sup>2</sup>
Visalia Livestock Market	\$61,641.23 <sup>3</sup>
Overland Stockyard	\$119,250.00 <sup>4</sup>
<b>TOTAL</b>	<b>\$349,129.52</b>

6. On June 14, 2010, the bankruptcy court issued a Discharge of Debtor for both Respondent and his wife.

#### **Conclusions of Law**

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts found in Findings of Fact 4 and 5, Respondent has willfully violated sections 312(a) and 409 of the Act (7 U.S.C. 213(a), 228b).

#### **Order**

1. Respondent Joe U. Ambrose, Jr., his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Act, shall cease and desist from failing to make full payment for livestock purchases in accordance with the Act or in accordance with the

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<sup>2</sup>Amount alleged unpaid in Complaint of \$171,919.98 was reduced to the amount Respondent admitted was unpaid in original Schedule F and Amended Schedule F.

<sup>3</sup>Amount Respondent admitted was unpaid in original Schedule F and Amended Schedule F of \$92,305.00 was reduced to the amount alleged to be unpaid in the Complaint.

<sup>4</sup>Amount alleged unpaid in Complaint of \$119,250.22 was reduced by 220 to the amount Respondent admitted was unpaid in original Schedule F and Amended Schedule F.

terms of a credit agreement that complies with the requirements of the Act.

2. Pursuant to 7 U.S.C. § 204, Respondent is hereby suspended as a registrant under the Act for a period of five (5) years. *Provided*, however, that after the expiration of 120 days of the suspension period, upon application to the Packers and Stockyards Program and upon Respondent's demonstration that the unpaid livestock sellers identified in the Complaint have been paid, in full, the amount of \$349,129.52 or a reasonable schedule of restitution has been arranged with the unpaid livestock sellers identified in the Complaint, a supplemental order may be issued permitting Respondent's salaried employment by another registrant or packer.

3. The provisions of this Order shall become effective on the sixth day after service of this Decision and Order on Respondent.

4. This Decision and Order shall become final without further proceedings thirty-five (35) days after service on Respondent, unless appealed to the Judicial Officer by a party to the proceeding within thirty (30) days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139, 1.145).

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

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**PACKERS AND STOCKYARDS ACT**

**MISCELLANEOUS ORDERS**

*[Editor's Note: This volume begins the new format of reporting Administrative Law Judge orders involving non-precedent matters [Miscellaneous Orders] with the sparse case citation but without the body of the order. The parties in the case will still be reported in Part IV (List of Decisions Reported - Alphabetical Index). Also, the full text of these cases will continue to be posted in a timely manner at:*

<http://www.dm.usda.gov/oaljdecisions/aljmisdecisions.htm>.

**In re: TODD SYVERSON, d/b/a SYVERSON LIVESTOCK BROKERS.**

**P&S docket No. D-05-0005.**

**Decision and Order on Remand.**

**Filed November 16, 2010.**

**P&S – Remand – Reconsideration of suspension – Cease and desist – Misrepresentation of purchase price of cattle – Failure to produce records for examination – Suspension as registrant.**

Charles E. Spicknall, for GIPSA.

E. Lawrence Oldfield, Oak Brook, IL & Kevin Velasquez, Mankatok, MN, for Respondent.  
*Decision and Order issued by William G. Jenson, Judicial Officer.*

**PROCEDURAL HISTORY**

On August 27, 2008, I issued a Decision and Order: (1) concluding Todd Syverson violated the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act], by engaging in an unfair and deceptive practice and failing to produce documents required to be kept; (2) ordering Mr. Syverson to cease and desist from engaging in an unfair and deceptive practice, in violation of 7 U.S.C. § 213(a); (3) ordering Mr. Syverson to cease and desist from failing to produce documents required to be kept under 7 U.S.C. § 221; and (4) suspending Mr. Syverson as a registrant under the Packers and Stockyards Act for a period of 5 years. *In re Todd Syverson*, 67 Agric. Dec. 1326 (2008). The United States Court of Appeals for the Eighth

Circuit affirmed the conclusion that Mr. Syverson violated the Packers and Stockyards Act but vacated the 5-year suspension of Mr. Syverson as a registrant under the Packers and Stockyards Act and remanded the case to me for reconsideration of the period of suspension, as follows:

We agree with the judicial officer that a suspension is appropriate because this case involves a serious violation of 7 U.S.C. § 213(a), as well as a violation of 7 U.S.C. § 221 that hindered the investigation. These serious offenses are deserving of a significant sanction, especially in light of the prior cease and desist order for price manipulation that had been imposed upon Syverson. A five-year suspension, however, is not a “reasonable specified period,” given the judicial officer’s deviation from the requirements of his own sanction policy and the facts of this case. It is unwarranted in law and without justification in fact. As such, it constituted an abuse of discretion and must be reconsidered.

### III.

The judicial officer’s determinations that Syverson acted as a market agency under the [Packers and Stockyards Act] and that he violated the [Packers and Stockyards Act] are affirmed. The sanction is vacated and the case is remanded to the judicial officer for reconsideration of the sanction.

*Syverson v. U.S. Dep’t of Agric.*, 601 F.3d 793, 805 (8th Cir. 2010).

On July 27, 2010, I conducted a conference call with E. Lawrence Oldfield, counsel for Mr. Syverson, and Charles E. Spicknall, counsel for the Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter GIPSA], to discuss the remand order in *Syverson v. U.S. Dep’t of Agric.*, 601 F.3d 793 (8th Cir. 2010). Mr. Oldfield and Mr. Spicknall requested an opportunity to file briefs, no later than October 27, 2010, regarding the appropriate period of suspension,

if any, to be imposed on Mr. Syverson on remand, which I granted.<sup>1</sup> On October 26, 2010, Mr. Syverson filed “Respondent Todd Syverson’s Brief Regarding Sanctions” recommending that I suspend Mr. Syverson as a registrant under the Packers and Stockyards Act for “less than 30 days, if any.” On October 27, 2010, GIPSA filed “Complainant’s Brief on Remand” recommending that I suspend Mr. Syverson as a registrant under the Packers and Stockyards Act for a period of 2 years. On November 1, 2010, the Hearing Clerk transmitted the record to me for consideration and a decision on remand.

### DECISION ON REMAND

The United States Court of Appeals for the Eighth Circuit found I did not examine the nature of Mr. Syverson’s violations in relation to the remedial purposes of the Packers and Stockyards Act and I did not consider all relevant circumstances. The Court also noted three previous disciplinary cases involving violations of the Packers and Stockyards Act similar to Mr. Syverson’s violations that resulted in significantly lesser suspensions than I imposed upon Mr. Syverson. *Syverson v. U.S. Dep’t of Agric.*, 601 F.3d 793, 804-05 (8th Cir. 2010).

#### *Mr. Syverson’s Violations Directly Relate to the Remedial Purposes of the Packers and Stockyards Act*

The Packers and Stockyards Act is remedial legislation designed to protect farmers and ranchers in the livestock industry.<sup>2</sup> “The primary purpose of [the Packers and Stockyards] Act is to assure fair competition and fair trade practices in livestock marketing. . . .” H.R. Rep. No. 85-1048, at 1 (1957), *as reprinted in* 1958 U.S.C.C.A.N. 5212, 5213. The United States Court of Appeals for the Eighth Circuit found Mr. Syverson acted as a market agency in connection with his purchases of cattle for Lance Quam

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<sup>1</sup>Order Regarding Time for Filing Briefs on Remand.

<sup>2</sup>*Van Wyk v. Bergland*, 570 F.2d 701, 704 (8th Cir. 1978); *Bruhn’s Freezer Meats of Chicago, Inc. v. U.S. Dep’t of Agric.*, 438 F.2d 1332, 1337-38 (8th Cir. 1971); *In re Gary Chastain*, 47 Agric. Dec. 395, 420 (1988), *aff’d per curiam*, 860 F.2d 1086 (8th Cir. 1988) (unpublished), *printed in* 47 Agric. Dec. 1395 (1988).

that are the subject of the instant proceeding. As a market agency, Mr. Syverson owed a fiduciary duty to Mr. Quam,<sup>3</sup> and Mr. Syverson's failure to disclose that he had repurchased cattle from his own consignment was an unfair and deceptive practice and a violation of 7 U.S.C. § 213(a). *Syverson v. U.S. Dep't of Agric.*, 601 F.3d 793, 802 (8th Cir. 2010). Thus, I conclude Mr. Syverson's violation of 7 U.S.C. § 213(a) was directly related to the primary purpose of the Packers and Stockyards Act to assure fair trade practices in livestock marketing. Moreover, Mr. Syverson thwarted the Secretary of Agriculture's ability to enforce the Packers and Stockyards Act when he failed to produce records, which he was required to keep, for examination by United States Department of Agriculture investigators, in violation of 7 U.S.C. § 221.

*Relevant Circumstances Not Previously Considered*

The United States Court of Appeals for the Eighth Circuit cited three circumstances, which the Court found relevant, that I did not consider in *In re Todd Syverson*, 67 Agric. Dec. 1326 (2008): (1) Mr. Syverson's violation of 7 U.S.C. § 213(a) only harmed one individual, (2) Mr. Syverson's violation of 7 U.S.C. § 213(a) only involved a small number of livestock, and (3) a 5-year suspension would likely bankrupt Mr. Syverson and deprive Mr. Syverson of his livelihood. *Syverson v. U.S. Dep't of Agric.*, 601 F.3d 793, 804-05 (8th Cir. 2010).

I did not consider that Mr. Syverson's violation of 7 U.S.C. § 213(a) only directly harmed one individual and only involved a small number of livestock when imposing the 5-year suspension of Mr. Syverson as a registrant under the Packers and Stockyards Act in *In re Todd Syverson*, 67 Agric. Dec. 1326 (2008). Having been sufficiently admonished by the Court, I find the facts that Mr. Syverson's violation of 7 U.S.C. § 213(a) only directly harmed one individual and that Mr. Syverson's violation of 7 U.S.C. § 213(a) only involved a small number of livestock, mitigating

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<sup>3</sup>See *United States v. Donahue Bros., Inc.*, 59 F.2d 1019, 1022 (8th Cir. 1932).

factors<sup>4</sup> that form part of the basis for my reduction of the 5-year period of suspension which I imposed on Mr. Syverson in *In re Todd Syverson*, 67 Agric. Dec. 1326 (2008).

The United States Court of Appeals for the Eighth Circuit also found relevant the fact that a 5-year period of suspension of Mr. Syverson as a registrant under the Packers and Stockyards Act would likely bankrupt Mr. Syverson and deprive Mr. Syverson of his livelihood. The Court stated the remedial purposes of the Packers and Stockyards Act would be achieved by Mr. Syverson's continuing to conduct business in a fair and honest manner and complying with the record keeping requirements in the Packers and Stockyards Act; "[a] five-year suspension, if it permanently forces Syverson from the industry, appears to bear no relation to the remedial purposes of the [Packers and Stockyards Act]." *Syverson v. U.S. Dep't of Agric.*, 601 F.3d 793, 804 (8th Cir. 2010).

Mr. Syverson contends "[a]ny substantial suspension will result in [his] financial ruin and his bankruptcy. This is true whether the suspension is for five years or for one year." (Respondent Todd Syverson's Brief Regarding Sanctions at 6.) Mr. Syverson requests no more than a 30-day suspension; "[a]ny more than that, and his choice will be to either go out of business or to appeal again." (Respondent Todd Syverson's Brief Regarding Sanctions at 8.) On the other hand, GIPSA, citing Mr. and Mrs. Syverson's other sources of income (Tr. 414, 451, 456, 475-76, 482, 493, 515-16, 522-24, 539), states a 2-year suspension of Mr. Syverson as a registrant under the Packers and Stockyards Act is unlikely to bankrupt Mr. Syverson or visit extreme hardship on his family (Complainant's Brief on Remand at 15-16).

Based upon the Court's finding that a 5-year suspension of Mr. Syverson

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<sup>4</sup>GIPSA concedes Mr. Syverson only directly harmed one individual but argues the mitigating effect of the small number of livestock involved should be limited. GIPSA states its investigators could only trace 24 of the 44 cattle Mr. Syverson repurchased for Mr. Quam back to the original purchase because of Mr. Syverson's failure to produce records, in violation of 7 U.S.C. § 221 (Tr. 320-21; CX 6-CX 14). (Complainant's Brief on Remand at 5 n.11.) I reject GIPSA's argument that Mr. Syverson's unfair and deceptive practice involved 44 cattle rather than 24 cattle. GIPSA only proved Mr. Syverson engaged in an unfair and deceptive practice with respect to 24 of the cattle sold to Mr. Quam. Nonetheless, even if Mr. Syverson's unfair and deceptive practice did involve 44 cattle sold to Mr. Quam, Mr. Syverson does not benefit from his violation of 7 U.S.C. § 221, as the period of suspension I impose in this Decision and Order on Remand reflects Mr. Syverson's violation of 7 U.S.C. § 221.

as a registrant under the Packers and Stockyards Act is likely to bankrupt Mr. Syverson and deprive Mr. Syverson of his livelihood, I do not impose a 5-year suspension of Mr. Syverson in this Decision and Order on Remand. I agree with the Court that the remedial purposes of the Packers and Stockyards Act would be achieved if Mr. Syverson (and all others) would conduct business in a fair and honest manner and comply with the record keeping requirements of the Packers and Stockyards Act. However, I note Mr. Syverson's violations of the Packers and Stockyards Act are serious and, in my view, a significant period of suspension as a registrant under the Packers and Stockyards Act is necessary to deter Mr. Syverson and others from violating the Packers and Stockyards Act in the future, even if the suspension poses some risk that Mr. Syverson may declare bankruptcy and poses a threat to Mr. Syverson's livelihood. While I empathize with the hardship a suspension may cause a violator, the hardship a suspension may cause an individual violator is not dispositive in determining the sanction since the national interest of having fair conditions in the livestock industry prevails over the violator's interest in continuing to conduct business as a registrant under the Packers and Stockyards Act. This Decision and Order on Remand does not operate as an absolute bar to Mr. Syverson's employment in the livestock industry during the period of suspension as a registrant under the Packers and Stockyards Act. There are many occupations in the livestock industry for which registration under the Packers and Stockyards Act is not required. Therefore, even though Mr. Syverson asserts a suspension in excess of 30 days will cause him to go out of business, I reject Mr. Syverson's request for a suspension of 30 days and impose a 16-month period of suspension on Mr. Syverson for his violations of the Packers and Stockyards Act.

*Previous Disciplinary Decisions Noted by the Court*

The United States Court of Appeals for the Eighth Circuit noted three disciplinary cases involving alleged violations of the Packers and Stockyards Act by persons other than Mr. Syverson, which cases are similar to the instant proceeding, but resulted in significantly lesser suspensions than I imposed upon Mr. Syverson, stating:

We, however, take note that other disciplinary cases for similar

conduct resulted in significantly lesser suspensions. *In re: Stanley Gildersleeve & William Eberle*, P & S Docket No. 6848 (Apr. 28, 1988) (twenty-one day suspension for Gildersleeve and six months' suspension for Eberle); *In re: Marvin J. Dinner & Kenneth S. Ross*, 41 Agric. Dec. at 2203 (ninety-day suspension for Dinner); *In re: Marvin J. Dinner & Kenneth S. Ross*, 41 Agric. Dec. 2196, 2197 (1982) (ninety-day suspension for Ross). Although there are aggravating factors present here and uniformity in sanctions is not required, the extreme variance in suspensions is troubling.

*Syverson v. U.S. Dep't of Agric.*, 601 F.3d 793, 805 (8th Cir. 2010).

All three of the decisions noted by the Court are consent decisions issued by administrative law judges in which the alleged violators neither admitted nor denied the alleged violations of the Packers and Stockyards Act. A consent decision is a signed agreement by the parties in the form of a decision that must be entered by the administrative law judge, unless an error is apparent on the face of the agreement (7 C.F.R. § 1.138). Generally, consent decisions do not come before the Judicial Officer, and none of the three cases noted by the Court came before the Judicial Officer.

I have long held that sanctions in consent decisions, which involve parties other than the party before me, are given no weight in determining the sanction in a litigated case.<sup>5</sup> The former Judicial Officer briefly articulated the reasons for this position, as follows:

Consent orders issued without a hearing should be given no weight whatsoever in determining the sanction to be imposed in a litigated case. In a case where a consent order is agreed to by the parties, there is no record or argument to establish the basis for the sanction. It may seem less than appears warranted because of problems of proving the allegations of the complaint or because of mitigating circumstances not revealed to the Administrative Law Judge or the Judicial Officer. Other circumstances, such as personnel and budget

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<sup>5</sup>*In re Steven Thompson* (Decision as to Darrell Moore), 50 Agric. Dec. 392, 407 (1991); *In re Paul Rodman*, 47 Agric. Dec. 1400, 1416 (1988); *In re Blackfoot Livestock Comm'n Co.*, 45 Agric. Dec. 590, 636 (1986); *In re Braxton McLinden Worsley*, 33 Agric. Dec. 1547, 1569 (1974).

considerations and the delay inherent in litigation, may also cause a consent order to seem less severe than appropriate. Conversely, a consent order may seem more severe than appears warranted because of aggravated circumstances not revealed by the complaint.

*In re Braxton McLinden Worsley*, 33 Agric. Dec. 1547, 1569 (1974).

Moreover, two of the three decisions noted by the Court, *In re Marvin J. Dinner* (Consent Decision as to Marvin J. Dinner), 41 Agric. Dec. 2201 (1982), and *In re Marvin J. Dinner* (Consent Decision as to Kenneth S. Ross), 41 Agric. Dec. 2196 (1982), predate a 1983 change in the United States Department of Agriculture's sanction policy regarding violations of Title III of the Packers and Stockyards Act (7 U.S.C. §§ 201-217a):

[D]uring the year 1983, the complainant conducted a complete review of the sanctions imposed for violations falling under Title III of the [Packers and Stockyards] Act. That review disclosed that sanctions clearly had not been sufficiently severe to effectively deter registrants violating the law. The complainant found that the same violations were occurring repeatedly and in some instances the same people were found to repeatedly commit the same offenses. As a result of that review, the complainant indicated that it has since markedly increased the severity of sanctions sought to be imposed in all cases.

*In re Mark V. Porter*, 47 Agric. Dec. 656, 668 (1988). "Since 1983, GIPSA has typically sought a suspension of six months or more in breach of fiduciary cases, depending on the facts and circumstances of the individual cases." (Complainant's Brief on Remand at 7.)

Unlike two of the three consent decisions noted by the Court, the events relevant to the instant proceeding occurred after the 1983 United States Department of Agriculture sanction policy change and, unlike all of the consent decisions noted by the Court, the instant proceeding was fully litigated and the respondent was found to have committed serious violations of the Packers and Stockyards Act. Therefore, I did not consider *In re Stanley Gildersleeve* (Consent Decision), 47 Agric. Dec. 807 (1988); *In re Marvin J. Dinner* (Consent Decision as to Marvin J. Dinner), 41 Agric. Dec.

2201 (1982); or *In re Marvin J. Dinner* (Consent Decision as to Kenneth S. Ross), 41 Agric. Dec. 2196 (1982), when determining the appropriate sanction in *In re Todd Syverson*, 67 Agric. Dec. 1326 (2008). As the Court found these three consent decisions noteworthy, I have carefully reviewed them; however, with all due respect, I do not give them any weight in my determination regarding the appropriate sanction to be imposed on Mr. Syverson in this Decision and Order on Remand.

*Sanction on Remand*

The United States Department of Agriculture's sanction policy is set forth in *In re S.S. Farms Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), *aff'd*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3):

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

The recommendations of administrative officials charged with the responsibility for achieving the congressional purpose of the regulatory statute are highly relevant to any sanction to be imposed and are entitled to great weight in view of the experience gained by administrative officials during their day-to-day supervision of the regulated industry. *In re S.S. Farms Linn County, Inc.*, 50 Agric. Dec. at 497. The administrative officials charged with the responsibility of administering the Packers and Stockyards Act recommend that I suspend Mr. Syverson as a registrant under the Packers and Stockyards Act for a period of 2 years. However, the recommendation of administrative officials as to the sanction is not controlling, and, in appropriate circumstances, the sanction imposed may be considerably less, or different, than that recommended by administrative

officials.<sup>6</sup> I reject GIPSA's sanction recommendation because, as noted, in this Decision and Order on Remand, *supra*, GIPSA does not appear to have taken into account the mitigating fact that Mr. Syverson's violation of 7 U.S.C. § 213(a) only involved a small number of livestock.

The purpose of an administrative sanction is to accomplish the remedial purposes of the Packers and Stockyards Act by deterring future violations of the Packers and Stockyards Act by the violator and others. This case involves serious violations of the Packers and Stockyards Act. Furthermore, Mr. Syverson committed these violations within a year of Mr. Syverson's consenting to a decision in which he was ordered to cease and desist from "[i]ssuing accounts of purchase or sale which fail to show the true and correct nature of the livestock transaction accounted for therein" and "causing false records to be prepared." See CX 5 at 2-3, *In re Todd Syverson*, 60 Agric. Dec. 302 (2001).

Based on the record before me, including the mitigating fact that only one person was directly affected by Mr. Syverson's violation of 7 U.S.C. § 213(a), the mitigating fact that Mr. Syverson's violation of 7 U.S.C. § 213(a) only involved 24 cattle, and the likelihood that a 5-year suspension of Mr. Syverson as a registrant under the Packers and Stockyards Act will bankrupt Mr. Syverson and deprive Mr. Syverson of his livelihood, I find Mr. Syverson's violations warrant a suspension as a registrant under the Packers and Stockyards Act for a period of 16 months.<sup>7</sup> However, Mr. Syverson may apply to the Packers and Stockyards Programs for permission to be a salaried employee of another registrant or packer after serving 8 months of the 16-month suspension.

For the foregoing reasons and the reasons in *In re Todd Syverson*, 67 Agric. Dec. 1326 (2008), the following Order is issued.

### ORDER

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<sup>6</sup>*In re Ronald Walker*, \_\_\_ Agric. Dec. \_\_\_, slip op. at 28 (Jan. 13, 2010), *appeal docketed*, No. 10-9511 (10th Cir. Feb. 24, 2010); *In re Lorenza Pearson*, \_\_\_ Agric. Dec. \_\_\_, slip op. at 69 (July 13, 2009); *In re Amarillo Wildlife Refuge, Inc.*, \_\_\_ Agric. Dec. \_\_\_, slip op. at 16 (Jan. 6, 2009).

<sup>7</sup>I suspend Mr. Syverson for a period of 1 year for his violation of 7 U.S.C. § 213(a) and for a period of 4 months for his violation of 7 U.S.C. § 221.

1. Mr. Syverson, his agents and employees, directly or indirectly through any corporate or other device, including, but not limited to, Syverson Livestock Brokers, in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from:

a. failing to comply with the requirements of section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)), and specifically, Mr. Syverson shall not represent to any buyer that his cost of cattle is based on a "purchase price" resulting from the "purchase" of cattle from his own inventory unless he discloses that he bought the cattle from his own consignment and his initial purchase price of the cattle; and

b. failing without good cause to produce for examination, within a reasonable time when asked by GIPSA, all of the accounts, records, and memoranda as are required to be kept under section 401 of the Packers and Stockyards Act (7 U.S.C. § 221), including, but not limited to, a purchase journal (recording, at minimum: the date of purchase; seller; number of head; description of livestock; purchase price(s); date(s) received; commission charges, if any; other fees or charges; whether the livestock were purchased for the account of another, and if so, the identity of that person or firm) together with all invoices, buyer bills, consignment sheets, and other records associated with individual livestock purchases and sales.

Paragraph 1 of this Order shall become effective on the day after service of this Order on Mr. Syverson.

2. Mr. Syverson is suspended as a registrant under the Packers and Stockyards Act for a period of 16 months; *Provided, however*, That this Order may be modified upon application to Packers and Stockyards Programs to permit the salaried employment of Mr. Syverson by another registrant or packer after the expiration of 8 months of the suspension term.

Paragraph 2 of this Order shall become effective on the 60th day after service of this Order on Mr. Syverson.

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**In re: TODD SYVERSON, d/b/a SYVERSON LIVESTOCK  
BROKERS.**

**P&S Docket No. D-05-0005.**

**Order Denying Petition to Reconsider on Remand.**

**Filed December 22, 2010.**

**P&S.**

Todd Syverson d/b/a Syverson Livestock Brokers 1511  
69 Agric. Dec. 1510

Charles E. Spicknall, for GIPSA.

Kevin A. Velasquez, Mankato, MN, and E. Lawrence Oldfield, Oak Brook, IL, for Respondent.

*Order issued by William G. Jenson, Judicial Officer.*

### **PROCEDURAL HISTORY**

On November 16, 2010, I issued a Decision and Order on Remand in which I suspended Todd Syverson as a registrant under the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act], for a period of 16 months. *In re Todd Syverson* (Decision on Remand), \_\_ Agric. Dec. \_\_\_\_ (Nov. 16, 2010). On November 26, 2010, Mr. Syverson filed “Respondent Todd Syverson’s Petition for Reconsideration or, In the Alternative, Motion for Stay Pending Appeal” [hereinafter Petition to Reconsider].<sup>1</sup> On December 20, 2010, the Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter GIPSA], filed “Complainant’s Response to Respondent’s Petition for Reconsideration and Motion for Stay Pending Appeal.” On December 21, 2010, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for a ruling on Mr. Syverson’s Petition to Reconsider.

### **CONCLUSIONS ON RECONSIDERATION**

Mr. Syverson raises eight issues in the Petition to Reconsider. First, Mr. Syverson asserts I “did no more than pay lip service to the Eighth Circuit’s clear direction concerning the importance of the effect of the sanction on the registrant.” (Pet. to Reconsider at 2.)

I gave considerable weight to the Court’s guidance and decreased the suspension of Mr. Syverson as a registrant under the Packers and Stockyards Act from 5 years to 16 months. Generally, “lip service” is an avowal of adherence expressed in words, but not backed by deeds. My

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<sup>1</sup>I address Mr. Syverson’s request for a stay in *In re Todd Syverson* (Stay Order), \_\_ Agric. Dec. \_\_\_\_ (Dec. 22, 2010), which I file simultaneously with this Order Denying Petition to Reconsider on Remand.

significant reduction of the period of Mr. Syverson's suspension is a deed that belies Mr. Syverson's assertion that I only paid lip service to the Eighth Circuit's guidance.

Second, I concluded the period of time in which a suspension of a registrant under the Packers and Stockyards Act is likely to bankrupt that registrant and deprive that registrant of a livelihood is not dispositive in determining the period of suspension, since the national interest of having fair conditions in the livestock industry prevails over a violator's interest in continuing to conduct business as a registrant under the Packers and Stockyards Act. *In re Todd Syverson* (Decision on Remand), \_\_\_ Agric. Dec. \_\_\_, slip op. at 7-8 (Nov. 16, 2010). Mr. Syverson contends this conclusion "is in direct contradiction to the Eighth Circuit's indication that the effect [of a sanction] on the registrant is crucially important." (Pet. to Reconsider at 2.)

The United States Court of Appeals for the Eighth Circuit states the effect of a sanction on a registrant under the Packers and Stockyards Act is "crucially important," as follows:

We have emphasized that the nature of the conduct in question is crucially important, as well as the effect of the proposed sanction on the registrant. *Ferguson*, 911 F.2d at 1282.

*Syverson v. U.S. Dep't of Agric.*, 601 F.3d 793, 804 (8th Cir. 2010). I do not read the Court's reference to the crucial importance of the effect of a sanction on a registrant as requiring that a suspension of a registrant must in all cases be for a period shorter than the period that might bankrupt the registrant and deprive the registrant of his or her livelihood. Instead, I interpret *Syverson v. U.S. Dep't of Agric.*, as holding that the effect of a sanction on a registrant and the nature of the conduct of a registrant are factors, albeit crucially important factors, that I must consider when determining the sanction to be imposed on a registrant under the Packers and Stockyards Act. In *Ferguson v. U.S. Dep't of Agric.*, 911 F.2d 1273 (8th Cir. 1990), referenced by the *Syverson* Court as a case in which the Eighth Circuit previously emphasized the crucial importance of the effect of a sanction, the Eighth Circuit concluded that the Judicial Officer's 6-month suspension of a registrant was too severe, stating "[o]ur conclusion is not based upon but is strengthened by the fact that the six-month suspension would likely put Ferguson out of business." *Ferguson v. U.S.*

*Dep't of Agric.*, 911 F.2d at 1282. This conclusion in *Ferguson* indicates the Eighth Circuit does not view the effect of a sanction as dispositive, but, instead, as an important factor that must be considered when determining the sanction to be imposed on a violator. Therefore, I reject Mr. Syverson's contention that my conclusion that the effect of a sanction on a registrant is not dispositive of the sanction to be imposed on that registrant, is error.

Third, Mr. Syverson asserts I erroneously used the Decision and Order on Remand "as an opportunity to make a new policy statement, without citation, that the national interest of having 'fair' conditions in the livestock industry prevails over the violator's interest in continuing to conduct business." (Pet to Reconsider at 2.)

The policy is not new. I have long held that collateral effects of a sanction on a violator and on a violator's community, customers, employees, and creditors are given no weight in determining the sanction to be imposed for violations of the Packers and Stockyards Act since the national interest of having fair conditions in the livestock industry must prevail over a violator's interests and the interests of the violator's community, customers, employees, and creditors.<sup>2</sup> Within the jurisdiction of the United States Court of Appeals for the Eighth Circuit, my policy of giving no weight to the effect of a sanction on the likelihood of a violator's bankruptcy and on the likelihood that a violator will be deprived of his or her livelihood is modified to comport with *Syverson v. U.S. Dep't of Agric.*, 601 F.3d 793 (2010).

Fourth, Mr. Syverson asserts I stated that I do not rely on consent decisions when determining the sanction in a litigated case, but then, contrary to that statement, heavily relied on *In re Todd Syverson* (Consent Decision), 60 Agric. Dec. 302 (2001), when determining the period of

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<sup>2</sup>See *In re Marysville Enterprises, Inc.*, 59 Agric. Dec. 299, 328 (2000); *In re Hines & Thurn Feedlot, Inc.*, 57 Agric. Dec. 1408, 1430 (1998); *In re Sam Odom*, 48 Agric. Dec. 519, 540-41 (1989); *In re Great American Veal, Inc.*, 48 Agric. Dec. 183, 206 (1989), *aff'd*, 891 F.2d 281 (3d Cir. 1989) (unpublished); *In re Edward Tiemann*, 47 Agric. Dec. 1573, 1593 (1988); *In re Paul Rodman* (Order Denying Pet. for Recons.), 47 Agric. Dec. 1400, 1415 (1988); *In re Richard N. Garver*, 45 Agric. Dec. 1090, 1104 (1986), *aff'd*, 846 F.2d 1029 (6th Cir.), *cert. denied*, 488 U.S. 820 (1988); *In re Blackfoot Livestock Comm'n Co.*, 45 Agric. Dec. 590, 636 (1986), *aff'd*, 810 F.2d 916 (9th Cir. 1987); *In re Ray H. Mayer* (Decision as to Jim Doss), 43 Agric. Dec. 439, 445 (1984), *appeal dismissed*, No. 84-4316 (5th Cir. July 25, 1984); *In re Hugh B. Powell*, 41 Agric. Dec. 1354, 1365 (1982).

Mr. Syverson's suspension as a registrant under the Packers and Stockyards Act (Pet. to Reconsider at 2-3).

As I noted in *In re Todd Syverson* (Decision on Remand), \_\_\_ Agric. Dec. \_\_\_, slip op. at 9 (Nov. 16, 2010), "I have long held that sanctions in consent decisions, *which involve parties other than the party before me*, are given no weight in determining the sanction in a litigated case." (Footnote omitted; emphasis added.) As Mr. Syverson was the subject of *In re Todd Syverson* (Consent Decision), 60 Agric. Dec. 302 (2001), I took that prior consent decision into account when determining the sanction to be imposed on Mr. Syverson. My consideration of Mr. Syverson's prior consent decision is consistent with the Eighth Circuit's consideration of the same prior consent decision:

We agree with the judicial officer that a suspension is appropriate because this case involves a serious violation of 7 U.S.C. § 213(a), as well as a violation of 7 U.S.C. § 221 that hindered the investigation. These serious offenses are deserving of a significant sanction, especially in light of the prior cease and desist order for price manipulation that had been imposed on Syverson.

*Syverson v. U.S. Dep't of Agric.*, 601 F.3d 793, 805 (8th Cir. 2010). Therefore, I reject Mr. Syverson's contention that my consideration of *In re Todd Syverson* (Consent Decision), 60 Agric. 302 (2001), is error.

Mr. Syverson cites *Spencer Livestock Comm'n Co. v. Dep't of Agric.*, 841 F.2d 1451 (9th Cir. 1988), as support for his contention that my reliance on *In re Todd Syverson* (Consent Decision), 60 Agric. Dec. 302 (2001), is error. However, the Ninth Circuit in *Spencer Livestock Comm'n Co.*, did not find the Judicial Officer's reliance on prior consent decisions, error:

The fact that the consent orders were *violated* could be used to determine what kind of sanction is needed to *deter* these petitioners from conduct prohibited by the statute. In each of the prior administrative proceedings, petitioners agreed to cease and desist from precisely the sort of behavior at issue in this case. Use of this information along with the fact that petitioners violated their criminal probation was appropriate to evaluate the deterrent value of various sanctions.

*Spencer Livestock Comm'n Co. v. Dep't of Agric.*, 841 F.2d 1451, 1458 (9th Cir. 1988) (emphasis in original). Therefore, I find my Decision on Remand consistent with the Ninth Circuit's holding in *Spencer Livestock Comm'n Co. v. Dep't of Agric.*, 841 F.2d 1451 (9th Cir. 1988).

Fifth, Mr. Syverson asserts I erroneously failed to discuss why the instant proceeding is different from *Ferguson v. U.S. Dep't of Agric.*, 911 F.2d 1273 (8th Cir. 1990); *Western States Cattle Co. v. U.S. Dep't of Agric.*, 880 F.2d 88 (8th Cir. 1989); and *Farrow v. U.S. Dep't of Agric.*, 760 F.2d 211 (8th Cir. 1985), in which the Court overturned sanctions imposed by the Judicial Officer (Pet. to Reconsider at 3).

The United States Court of Appeals for the Eighth Circuit concluded that the 5-year period of suspension of Mr. Syverson as a registrant under the Packers and Stockyards Act that I imposed in *In re Todd Syverson*, 67 Agric. Dec. 1326 (2008), was not reasonable and remanded the proceeding to me for reconsideration. *Syverson v. U.S. Dep't of Agric.*, 601 F.3d 793, 805 (8th Cir. 2010). The Eighth Circuit cited *Ferguson v. U.S. Dep't of Agric.*, 911 F.2d 1273 (8th Cir. 1990); *Western States Cattle Co. v. U.S. Dep't of Agric.*, 880 F.2d 88 (8th Cir. 1989); and *Farrow v. U.S. Dep't of Agric.*, 760 F.2d 211 (8th Cir. 1985), as examples of cases in which the Court has taken a critical view of the Judicial Officer's sanctions and vacated those sanctions. *Syverson v. U.S. Dep't of Agric.*, 601 F.3d at 804. Therefore, as Mr. Syverson indicates, with respect to the Court's treatment of sanctions imposed by the Judicial Officer, the instant proceeding is similar to *Ferguson*, *Western States Cattle Co.*, and *Farrow*. However, *Syverson* can be distinguished from *Ferguson*, *Western States Cattle Co.*, and *Farrow* in a number of ways, including most importantly the Eighth Circuit's view of the severity of the violations in each of these cases. The Eighth Circuit found Mr. Syverson acted as a market agency and owed a fiduciary duty to Lance Quam, Mr. Syverson knew his conduct was illegal, and Mr. Syverson's violations were serious offenses deserving of a significant sanction. These factors are absent in *Ferguson*, *Western States Cattle Co.*, and *Farrow*.<sup>3</sup>

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<sup>3</sup>*Ferguson v. U.S. Dep't of Agric.*, 911 F.2d 1273 (8th Cir. 1990) (the Court found very little evidence that Ferguson acted as a market agency and did not find Ferguson's violations of the Packers and Stockyards Act flagrant, intentional, or serious); *Western States Cattle*  
(continued...)

Sixth, Mr. Syverson asserts I did not give appropriate weight to Mr. Syverson's lack of knowledge that he was acting as a market agency and that his actions breached a fiduciary duty (Pet. to Reconsider at 3).

I gave no weight to Mr. Syverson's claimed lack of knowledge that he was acting as a market agency and that his actions breached a fiduciary duty in *In re Todd Syverson* (Decision on Remand), \_\_ Agric. Dec. \_\_\_ (Nov. 16, 2010), because the Court did not instruct that I was to consider these factors on remand. Moreover, even if I were to find Mr. Syverson did not know he was acting as a market agency and his actions breached a fiduciary duty, I give much more weight to Mr. Syverson's knowledge that his practices were illegal, which knowledge the Eighth Circuit described, as follows:

We reject Syverson's argument that he could not have known that his practices were illegal. "[T]he act does not specify forbidden practices in detail," *Donahue Bros.*, 59 F.2d at 1023, and prior disciplinary cases for price manipulation were sufficient to put Syverson on notice that his actions were unlawful. *Coosemans Specialties, Inc., v. Dep't of Agric.*, 482 F.3d 560, 568 (D.C. Cir. 2007) (holding that prior disciplinary cases put registrant on notice); *In re: Marvin J. Dinner & Kenneth S. Ross*, 41 Agric. Dec. 2201 (1982) (disciplinary case involving similar scheme of price manipulation via repurchasing from own consignment). Syverson had already been subject to a cease and desist order for price manipulation. *In re: Todd Syverson*, P & S Docket No. D-99-0011 (June 12, 2001) (enjoining further issuance of "accounts of purchase or sale which fail to show the true and correct nature of the livestock transaction accounted for therein"). Moreover, his initial refusal to produce complete records of his dealings with Quam, which in and

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<sup>3</sup>(...continued)

*Co. v. U.S. Dep't of Agric.*, 880 F.2d 88 (8th Cir. 1989) (the Court found Western States Cattle Company acted as a dealer, not as a market agency, and Western States Cattle Company's violations of the Packers and Stockyards Act were not substantial or intentional); *Farrow v. U.S. Dep't of Agric.*, 760 F.2d 211 (8th Cir. 1985) (the Court found no evidence establishing the petitioners' (two principal buyers of pound cows who entered into an anti-competitive agreement) violations of the Packers and Stockyards Act were intentional, flagrant, or serious or the petitioners were aware their agreement was unlawful).

of itself was a willful violation, belies his claim that he did not know there was anything wrong with what he had done.

*Syverson v. U.S. Dep't of Agric.*, 601 F.3d 793, 803 n.6 (8th Cir. 2010).

Seventh, Mr. Syverson contends I erroneously failed to explain why the clear public policy, codified in 5 U.S.C. § 558, “requiring a respondent to have notice of wrongdoing before suspension is permissible *at all*, can not be considered in evaluating the *length* of a suspension.” (Pet. to Reconsider at 3 (emphasis in original).)

I did not explain why the failure to provide notice of wrongdoing cannot be considered in evaluating the length of a suspension as a registrant under the Packers and Stockyards Act in *In re Todd Syverson* (Decision on Remand), \_\_ Agric. Dec. \_\_\_\_ (Nov. 16, 2010), because the Court did not instruct that I was to consider this factor on remand. Moreover, I note 5 U.S.C. § 558(c) does not indicate the length of a suspension is affected by an agency’s failure to comply with 5 U.S.C. § 558(c). As Mr. Syverson indicates, if an agency fails to provide a licensee the notice required by 5 U.S.C. § 558(c), no suspension would be lawful. Mr. Syverson has waived the argument that 5 U.S.C. § 558(c) precludes his suspension as a registrant under the Packers and Stockyards Act because he raised it for the first time on appeal to the United States Court of Appeals for the Eighth Circuit. *Syverson v. U.S. Dep't of Agric.*, 601 F.3d 793, 803 (8th Cir. 2010).

Eighth, Mr. Syverson asserts I did not properly address the relationship of Mr. Syverson’s violations of the Packers and Stockyards Act to the remedial purposes of the Packers and Stockyards Act (Pet. to Reconsider at 4).

As I stated in *In re Todd Syverson* (Decision on Remand), \_\_ Agric. Dec. \_\_\_\_, slip op. at 4 (Nov. 16, 2010), one of the primary purposes of the Packers and Stockyards Act is to assure fair trade practices in the marketing of livestock. The United States Court of Appeals for the Eighth Circuit found Mr. Syverson acted as a market agency in connection with his purchases of cattle for Mr. Quam that are the subject of the instant proceeding. As a market agency, Mr. Syverson owed a fiduciary duty to

Mr. Quam,<sup>4</sup> and Mr. Syverson's failure to disclose that he had repurchased cattle from his own consignment was an unfair and deceptive practice and a violation of 7 U.S.C. § 213(a). *Syverson v. U.S. Dep't of Agric.*, 601 F.3d 793, 802 (8th Cir. 2010). Thus, I conclude Mr. Syverson's unfair and deceptive practice directly relates to one of the primary, remedial purposes of the Packers and Stockyards Act: to assure fair trade practices in livestock marketing. Moreover, Mr. Syverson thwarted the Secretary of Agriculture's ability to enforce the Packers and Stockyards Act when he failed to produce records, which he was required to keep, for examination by United States Department of Agriculture investigators, in violation of 7 U.S.C. § 221. When I compare the remedial purposes of the Packers and Stockyards Act to Mr. Syverson's unfair and deceptive practice, I find Mr. Syverson's violations directly relate to one of the remedial purposes of the Packers and Stockyards Act.

For the foregoing reasons and the reasons set forth in *In re Todd Syverson* (Decision on Remand), \_\_ Agric. Dec. \_\_\_ (Nov. 16, 2010), Mr. Syverson's Petition to Reconsider is denied. The rules of practice applicable to the instant proceeding<sup>5</sup> provide that the decision of the Judicial Officer shall automatically be stayed pending the determination to grant or deny a timely-filed petition to reconsider (7 C.F.R. § 1.146(b)). Mr. Syverson's Petition to Reconsider was timely-filed and automatically stayed *In re Todd Syverson* (Decision on Remand), \_\_ Agric. Dec. \_\_\_ (Nov. 16, 2010). Therefore, since Mr. Syverson's Petition to Reconsider is denied, I hereby lift the automatic stay, and the Order in *In re Todd Syverson* (Decision on Remand), \_\_ Agric. Dec. \_\_\_ (Nov. 16, 2010), is reinstated; except that, the automatic stay is replaced with a Stay Order issued pursuant to Mr. Syverson's November 26, 2010, request for a stay pending the outcome of proceedings for judicial review.<sup>6</sup>

For the foregoing reasons, the following Order is issued.

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<sup>4</sup>See *United States v. Donahue Bros., Inc.*, 59 F.2d 1019, 1022 (8th Cir. 1932).

<sup>5</sup>The rules of practice applicable to the instant proceeding are the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-151).

<sup>6</sup>*In re Todd Syverson* (Stay Order), \_\_ Agric. Dec. \_\_\_ (Dec. 22, 2010).

Todd Syverson d/b/a Syverson Livestock Brokers 1519  
69 Agric. Dec. 1519

**ORDER**

Mr. Syverson's Petition to Reconsider, filed November 26, 2010, is denied. This Order shall become effective upon service on Mr. Syverson.

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**In re: TODD SYVERSON, d/b/a SYVERSON LIVESTOCK  
BROKERS.**

**P&S Docket No. D-05-0005.**

**Stay Order.**

**Filed December 22, 2010.**

**P&S.**

Charles E. Spicknall, for GIPSA.

Kevin A. Velasquez, Mankato, MN and E. Lawrence Oldfield, Oak Brook, IL, for Respondent.

*Order issued by William G. Jenson, Judicial Officer.*

On November 16, 2010, I issued *In re Todd Syverson* (Decision on Remand), \_\_ Agric. Dec. \_\_\_ (Nov. 16, 2010), in which I suspended Todd Syverson as a registrant under the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. §§ 181-229b). On November 26, 2010, Mr. Syverson filed "Respondent Todd Syverson's Petition for Reconsideration or, In the Alternative, Motion for Stay Pending Appeal" [hereinafter Motion for Stay] seeking a stay of the Order in *In re Todd Syverson* (Decision on Remand), \_\_ Agric. Dec. \_\_\_ (Nov. 16, 2010), pending the outcome of proceedings for judicial review.<sup>1</sup> On December 20, 2010, the Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, filed a response to Mr. Syverson's Motion for Stay stating it has no objection to my granting Mr. Syverson's Motion for Stay.

In accordance with 5 U.S.C. § 705, Mr. Syverson's Motion for Stay is

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<sup>1</sup>I address Mr. Syverson's petition to reconsider in *In re Todd Syverson* (Order Denying Pet. to Reconsider on Remand), \_\_ Agric. Dec. \_\_\_ (Dec. 22, 2010), which I file simultaneously with this Stay Order.

1520

PACKERS AND STOCKYARDS ACT

granted. For the foregoing reasons, the following Order is issued.

**ORDER**

The Order in *In re Todd Syverson* (Decision on Remand), \_\_ Agric. Dec. \_\_\_\_, (Nov. 16, 2010), is stayed pending the outcome of proceedings for judicial review. This Stay Order shall remain effective until lifted by the Judicial Officer or vacated by a court of competent jurisdiction.

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**DEFAULT DECISIONS**

*[Editor's Note: This volume begins the new format of reporting Administrative Law Judge orders involving non-precedent matters [Default Orders] with the sparse case citation but without the body of the order. The parties in the case will still be reported in Part IV (List of Decisions Reported - Alphabetical Index). Also, the full text of these cases will continue to be posted in a timely manner at:  
<http://www.dm.usda.gov/oaljdecisions/aljdefdecisions.htm>.*

**In re: KAO VANG AND CHUE THAO, d/b/a CALIFORNIA FRESH MEATS.**

**P & S Docket No. D-10-0065.**

**Decision and Order by Reason of Default.**

**Filed July 6, 2010.**

**P&S.**

Leah C. Battaglioli, for GIPSA.

Respondents, Pro se.

*Decision issued by Jill S. Clifton, Administrative Law Judge.*

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**In re: CLARENCE RICKY FISHER, a/k/a RICKY FISHER.**

**P. & S. Docket No. D-09-0092.**

**Default Decision and Order.**

**Filed July 7, 2010.**

**P&S.**

Ciarra A. Toomey, for GIPSA.

Respondent, Pro se.

*Default decision issued by Peter M. Davenport, Chief Administrative Law Judge.*

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1522

PACKERS AND STOCKYARDS ACT

**In re: E.M.M. PIG PLACEMENT CO., LLC.**  
**P & S Docket No. D-10-0029.**  
**Default Decision and Order.**  
**Filed July 7, 2010.**

**P&S.**

Brian P. Sylvester, for GIPSA.  
Respondent, Pro se.  
*Default decision issued by Peter M. Davenport, Chief Administrative Law Judge.*

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**In re: JAMES MASTERS.**  
**P & S Docket No. D-09-0091.**  
**Decision and Order by Reason of Default.**  
**Filed July 21, 2010.**

**P&S.**

Ciarra A. Toomey, for the Deputy Administrator, GIPSA.  
Respondent, Pro se.  
*Decision issued by Jill S. Clifton, Administrative Law Judge.*

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**In re: JOHN LUNDGREN.**  
**P & S Docket No. D-10-0151.**  
**Decision and Order by Reason of Default.**  
**Filed July 21, 2010.**

**P&S.**

Delisle Warden, for the Deputy Administrator, GIPSA.  
Respondent, Pro se.  
*Decision issued by Jill S. Clifton, Administrative Law Judge.*

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**CONSENT DECISIONS****PACKERS AND STOCKYARDS ACT**

Deward B. Wolfe and Jonathan Wolfe d/b/a Wolfe Livestock, P&S-10-0007, 10/08/20.

Terry Roth d/b/a Indian Creek Meadows, P&S-D-10-0062, 10/09/22.

Otis Lewis Fortner II d/b/a Lewie Fortner Livestock, P&S D-09-0090, 10/09/29.

Sam D. Holder, a/k/a Bill Holder and Mark K. Holder, d/b/a Trousdale County Livestock Market, P&S D-10-0052, 10/10/07.

New Wilmington Livestock Auction, Inc. and Thomas R. Skelton, P&S-D-10-0233, 10/11/26.

JBS USA, LLC, f/k/a Swift & Company and Swift Pork Company, P&S-D-10-0457, 10/12/22.

Gulf Packing Company, LP, and Charles L. Booth, P&S-D-09-0106, 10/12/23.