

USDA
CALIFORNIA
2012 JUN 27 PM 12:13
FBI

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	P&S Docket No. 12-0025
)	
Fred J. Berger, Ltd. d.b.a,)	
Berger Cattle Company,)	
)	
and)	
)	
Fred J. Berger,)	
)	
Respondents)	Consent Decision and Order

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 Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that respondents Fred J. Berger, Ltd. d.b.a. Berger Cattle Company and Fred J. Berger willfully 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

(a) Respondent Fred J. Berger, Ltd., doing business as Berger Cattle Company, is a corporation organized and existing under the laws of the State of North Dakota. Its business mailing address is P.O. Box 308, Mandan, ND 58554.

(b) Respondent Fred J. Berger, Ltd., under the direction, management, and control of respondent Fred J. Berger, is, and at all times material herein was:

(1) Engaged in the business of a livestock dealer buying and selling livestock in commerce for its own account, and as a market agency buying livestock in commerce on a commission basis; and

(2) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce, and as a market agency to buy livestock in commerce on a commission basis.

(c) Respondent Fred J. Berger is an individual and his mailing address is P.O. Box 308, Mandan, ND 58554. Respondent Berger is, and at all times material herein was, the owner, president and manager of Respondent Fred J. Berger, Ltd., and formulated, directed, and controlled the policies, practices and activities of Respondent Fred J. Berger, Ltd.

(d) Respondent Fred J. Berger is, and at all times material herein was engaged in the business of a livestock dealer buying and selling livestock in commerce for his own account, and as a

market agency buying livestock in commerce on a commission basis.

Conclusions

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

Order

Respondents Fred J. Berger, Ltd. and Fred J. Berger, their agents and employees, directly or indirectly through any corporate or other device, shall cease and desist from failing to pay livestock sellers or their duly authorized representatives the full amount of the purchase price for livestock before the close of the next business day following each purchase of livestock, as required by section 409 of the Act (7 U.S.C. § 228b) and section 201.43 of the regulations (9 C.F.R. § 201.43).

To the extent Respondents seek to enter into written credit agreements with sellers of livestock, Respondents shall comply in every respect with the requirements of 9 C.F.R. § 201.43. Respondents Fred J. Berger, Ltd. and Fred J. Berger, their agents and employees, directly or indirectly through any corporate or other device, shall:

1. Ensure that all credit agreements are in writing, contain the effective date of the agreement, specify when and how the agreement may be terminated or revoked, are acknowledged and signed by the seller of livestock, include the date(s) of signing, and are in effect before the date of the livestock transaction for which Respondents seek the

extension of credit; and

2. Disclose all credit agreements in their records and retain the credit agreements for such time as is required by any law, or by written notice served on Respondents by the GIPSA Administrator, but not less than two calendar years from the date of expiration thereof; and
3. Provide GIPSA with access to all credit agreements, upon request; and
4. Provide the Midwestern Regional Office, P&SP, GIPSA, 210 Walnut Street, Room 317, Des Moines, IA 50309-2110, with copies of all of Respondents' credit agreements in effect on or before the effective date of this Order, and provide an updated list or copies of all of Respondents' current credit agreements to the Midwestern Regional Office every three months thereafter, for a period of 18 months, the final list or copies being due on September 1, 2013.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), respondents are assessed a civil penalty in the amount of Fourteen Thousand Dollars (\$14,000.00).

Copies of this decision shall be served upon the parties.

The provisions of this order shall become effective on the sixth day after service of this consent decision and order on the respondents.

Respondent Fred J. Berger, Ltd.

By Fred J. Berger 2-11-12

Fred J. Berger
Owner and President
Respondent Fred J. Berger

By Fred J. Berger 2-11-12
Fred J. Berger

Rauleigh D. Robinson 2/11/2012
Rauleigh D. Robinson
Attorney for Respondents

Lauren C. Axley 2/21/12
Lauren C. Axley
Attorney for Complainant

Done at Washington, D.C.

this 27th day of February, 2012

[Signature]
Administrative Law Judge