

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket NO. D-96-17
Conaway and Cooper, Inc.,)
d/b/a Elkins Stockyard, C.C.)
Conaway, Inc. and C.C. "Bus")
Conaway, II,)
Respondents) Decision

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 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. The decision is entered pursuant to the consent decision provisions 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 in this matter 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. Respondent Conaway and Cooper, Inc., is a West Virginia corporation doing business as Elkins Stockyard whose business mailing address is P.O. Box 1335, Elkins, West Virginia 26241.

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

(a) Engaged in the business of buying and selling livestock in commerce for its own account or the account of others, and selling livestock in commerce on a commission basis;

(b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for its own account or the account of others and as a market agency to sell livestock in commerce on a commission basis; and

(c) A stockyard operator, operating the Elkins Stockyard as a posted stockyard under the Act.

3. Respondent C.C. Conaway, Inc., is a West Virginia corporation whose business mailing address is P.O. Box 1335, Elkins, West Virginia 26241.

4. Respondent C.C. Conaway, Inc., is and at all times material herein was a Ford Tractor and Farm Equipment dealer that was:

(a) Engaged in the business of buying and selling livestock in commerce for its own account or the account of others.

5. Respondent C.C. "Bus" Conaway, II, is an individual whose business mailing address is P.O. Box 1335, Elkins, West Virginia 26241.

6. Respondent C.C. "Bus" Conaway, II, is and at all times material herein was:

(a) Engaged in the business of buying and selling livestock in commerce for his own account or the account of others, and selling livestock in commerce on a commission basis;

(b) Manager of the Elkins Stockyard;

(c) President and a one third stockholder of respondent Conaway and Cooper, Inc., a closely held corporation the balance of whose stock is owned by his mother and sister.

(d) President and a one third stockholder of respondent C.C. Conaway Inc., a closely held corporation the balance of whose stock is owned by his mother and sister.

(e) Responsible for the direction, management and control of respondents Conaway and Cooper, Inc., and C.C. Conaway, Inc.;

(f) The alter ego of respondents Conaway and Cooper, Inc., and C.C. Conaway, Inc.; and

(g) A dealer and market agency within the meaning of these terms under the Act and subject to the Act.

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 Conaway and Cooper, Inc., and C.C. Conaway, Inc., their officers, directors, agents, employees, successors, and assigns, and respondent C.C. "Bus" Conaway, II, his agents and employees, directly, using the name Elkins Stockyard, or

through any corporate or other device, in connection with their operations as a dealer, market agency and stockyard operator, shall cease and desist from:

1. Failing to pay, when due, the full purchase price of livestock;

2. Issuing checks in payment for livestock without sufficient funds on deposit and available in the account upon which such checks are drawn to pay such check when presented;

3. Issuing custodial account checks for purposes other than the payment of net proceeds to consignors and persons known to be entitled to payment, the payment of lawful charge against the livestock consignments; and the payment of sums due the market agency as compensation for its services;

4. Misusing the custodial account for shippers' proceeds by the advancing of funds to any dealer or by paying for any dealer purchases of livestock; and

5. Remitting net proceeds from the sale of livestock to the consignor or shipper of such livestock while knowing that the consignor or shipper has failed to pay, and does not intend to pay, the original owner of such livestock the full purchase price of such livestock.

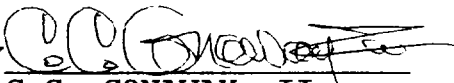
Respondents Conaway and Cooper, Inc., and C.C. "Bus" Conaway, II, are suspended as registrants under the Act for a period of five weeks. Respondent C.C. Conaway, Inc., shall not be registered as a dealer or market agency under the Act for a period of five weeks and pursuant to section 303 of the Act (7

U.S.C. § 203), respondent C.C. Conaway, Inc. is prohibited from operating subject to the Act without being registered.

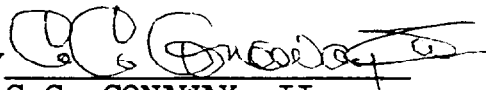
The provisions of this order shall become effective on the sixth day after service of this decision on the respondents.

Copies of this decision shall be served upon the parties.

CONAWAY AND COOPER, INC.

BY 
C.C. CONAWAY, II
President

C.C. CONAWAY, INC.

BY 
C.C. CONAWAY, II
President


C.C. "BUS" CONAWAY, II
Respondents


ERIC PAUL
Attorney for Complainant

Issued this 27th day of January, 1946


Administrative Law Judge