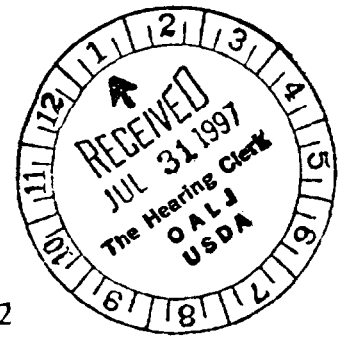


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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



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|-------------------------|---|----------------------------|
| In re: |) | P. & S. Docket No. D-95-22 |
| |) | |
| Greater Omaha |) | 9653 |
| Packing, Co., Inc., and |) | |
| Henry A. Davis, |) | |
| |) | |
| Respondents |) | Decision |

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.) by a Complaint and Notice of Hearing filed by the Acting Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the respondents willfully violated the Act. This 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 and Notice of Hearing and specifically admit that the Secretary has jurisdiction in this matter, and, for the purpose of settling this proceeding and for such purpose only: 1) neither admit nor deny the remaining allegations, 2) waive oral hearing and further procedure, and 3) consent and agree to the entry of this decision.

The complainant agrees to the entry of this decision.

Findings of Fact

1. Greater Omaha Packing Co., Inc, hereinafter referred to as Greater Omaha, is a corporation incorporated and doing business in the State of Nebraska and whose mailing address is 5100 South 26th Street, Omaha, Nebraska 68107.
2. Greater Omaha is, and at all times material herein was:
 - (a) Engaged in the business of buying livestock in commerce for purposes of slaughter, and manufacturing or preparing meat or meat food products for sale or shipment in commerce; and
 - (b) A packer within the meaning of and subject to the provisions of the Act.
3. Henry A. Davis, hereinafter referred to as Davis, is an individual whose mailing address is 5100 South 26th Street, Omaha, Nebraska 68107.
4. Davis is, and at all times material herein was:
 - (a) President and director and responsible for the management, direction and control of Greater Omaha; and
 - (b) A packer within the meaning of and subject to the provisions of the Act.
5. Individual respondent, Henry Davis, is the alter ego of corporate respondent, Greater Omaha Packing Co., Inc.

Conclusions

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

Findings of Fact

1. Greater Omaha Packing Co., Inc, hereinafter referred to as Greater Omaha, is a corporation incorporated and doing business in the State of Nebraska and whose mailing address is 5100 South 26th Street, Omaha, Nebraska 68107.

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

(a) Engaged in the business of buying livestock in commerce for purposes of slaughter, and manufacturing or preparing meat or meat food products for sale or shipment in commerce; and

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

3. Henry A. Davis, hereinafter referred to as Davis, is an individual whose mailing address is 5100 South 26th Street, Omaha, Nebraska 68107.

4. Davis is, and at all times material herein was:

(a) President and director and responsible for the management, direction and control of Greater Omaha; and

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

5. Individual respondent, Henry Davis, is the alter ego of corporate respondent, Greater Omaha Packing Co., Inc.

Conclusions

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

Order

Respondent Greater Omaha Packing Co., Inc., its officers, directors, agents and employees, successors and assigns, directly or through any corporate or other device, and respondent Henry A. Davis, his agents and employees, directly or indirectly through any corporate or other device, shall cease and desist from:

1. Operating any scale owned or controlled by respondents, either individually or jointly, in any manner other than to insure accurate and correct weights;
2. Operating any scale owned or controlled by respondents, either individually or jointly, unless the scale's tare has been adjusted and set to include only the weight of such equipment;
3. Failing to account and make final payment for livestock purchased on a carcass weight or grade and yield basis on the actual hot carcass weights of such livestock;
4. Weighing livestock or livestock carcasses at other than their true and correct weights;
5. Recording inaccurate or incorrect weights on hot weight scale sheets or kill sheets, on accountings issued to the sellers of livestock, on carcass tags, or on any other record or document which purports to show the accurate hot weight of livestock;
6. Paying the sellers of livestock on the basis of inaccurate or incorrect weights;
7. Failing to disclose to the sellers of livestock on a carcass weight or carcass grade and yield basis, prior to the purchase of such livestock, complete and accurate details of the purchase contract, including the expected date and place of slaughter, carcass price, condemnation terms, and a description of the carcass trim;

8. Taking any unauthorized or unsupported deductions from the hot carcass weights on livestock purchased on a carcass weight or carcass grade and yield basis; and

9. Failing to prepare and issue to the sellers of livestock on a carcass weight or carcass grade and yield basis a true and written account of each transaction showing the number, weight, and price of carcasses of each grade and the explanation for any adjustments made in the determination of the final purchase amount, and such facts as may be necessary to show fully and account for the true and correct nature of each transaction.

Respondent Greater Omaha Packing Co., Inc., and respondent Henry A. Davis shall keep and maintain accounts, records, and memoranda which fully and correctly disclose the nature and details of all transactions involved in their operations as a packer subject to the Packers and Stockyards Act. In addition to the records that respondents are required to keep and maintain in accordance with section 401 of the Act (7 U.S.C. § 221), respondents, during the period August 18, 1997 through and including August 18, 2002, shall also keep and maintain the following records or reports, in whatever form created or maintained, and all records or reports derived therefrom (1) original hot weight scale printouts, hot weight scale sheets showing individual carcass weight and identity of livestock purchased on a carcass weight or carcass grade and yield basis; (2) cold weight printouts, accounts of sale, purchase invoices and other documents showing the true and accurate hot and cold weights of livestock purchased on a carcass weight or carcass grade and yield basis; (3) and any other accounts, records, and memoranda (including computer programs) as may be necessary to show the true and correct nature of each transaction previously described. All required records shall be maintained in accordance with the applicable regulation setting forth the time period for which

records must be maintained (currently 9 C.F.R. § 203.4, entitled "Statement with respect to the disposition of records by packers, live poultry dealers, stockyard owners, market agencies and dealers"), except (1) carcass tags (or equivalent source documents) which may be destroyed after one week, and (2) electronic backup tapes which may be overwritten in accordance with Greater Omaha's existing procedures or after six days, whichever comes last.

Upon expiration of the time period set forth in the applicable regulation, respondents may dispose of the records.

In accordance with section 203(b) of the Act (7 U.S.C. § 193(b)), respondents are jointly and severally assessed a civil penalty in the amount of Seventy Thousand Dollars (\$70,000.00) for alleged violations through the date of this order.

This order shall have the same force and effect as if entered after full hearing and shall be effective on the first day after service of this decision on the respondents.

Copies of this decision shall be served upon the parties.

GREATER OMAHA PACKING CO., INC.

By Henry A. Davis
PRESIDENT
 Title

Henry A. Davis
 HENRY A. DAVIS
 Respondent

Joann Waterfield
 JOANN WATERFIELD
 Attorney for Complainant

Issued this 31 day of July 1997

Victor W. Palmer
 Administrative Law Judge

for: VICTOR W. PALMER
 Chief Administrative Law Judge