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UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

THE HEARING CLERK

In re:

P & S Docket No. D-98-19

Allen Clark, Inc. and
Howard Foulkrod,

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 Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the financial condition of respondent Allen Clark, Inc. does not meet the requirements of the Act and that the respondents wilfully 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, 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. Allen Clark, Inc., hereinafter referred to as respondent Allen Clark, is a corporation organized and existing under the laws of the State of Pennsylvania. Its business address is Drawer 3, Paxinos, Pennsylvania 17860.

2. Respondent Allen Clark 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 and meat food products for sale or shipment in commerce; and

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

3. Howard Foulkrod, hereinafter referred to as respondent Foulkrod, is an individual whose address is R. D. #3, Box 112, Sunbury, Pennsylvania 17801.

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

(a) President of respondent Allen Clark.

(b) Owner of almost fifty-one percent of the shares of respondent Allen Clark.

(c) Responsible for the direction, management and control of respondent Allen Clark and its alter ego.

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

Respondent Allen Clark, Inc., its officers, directors, agents, employees, successors and assigns, directly or through any corporate or other device, in connection with its operations as a packer subject to the Act, and respondent Foulkrod, his agents and employees, directly or indirectly through any corporate or other device, shall cease and desist from:

1. Issuing checks in payment for livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;
2. Failing to pay, when due, for livestock purchased;
3. Failing to pay for livestock purchased;
4. Failing to pay, when due, for meat and meat products purchased; and
5. Failing to pay for meat and meat products purchased.

Respondent Allen Clark, Inc., its officers, directors, agents, employees, successors and assigns, directly or through any corporate or other device, and respondent Foulkrod, his agents and employees, directly or indirectly through any corporate or other device, shall cease and desist from purchasing livestock for slaughter as a packer while having current liabilities that exceed current assets unless full payment is made for such livestock at the time of exchange of possession in cash, by cashier's check or by wire transfer of funds.

In accordance with section 203(b) of the Act (7 U.S.C. § 193(b)), respondent Foulkrod is assessed a civil penalty of Twenty-Two Thousand Dollars (\$22,000.00).

It is provided that One Thousand Dollars (\$1,000.00) of the above assessed civil penalty shall be due and owing with this consent decision. It is provided further that Twenty-One Thousand Dollars (\$21,000.00) of the above assessed civil penalty shall be held in abeyance for the period of ten years from the effective date of this order and shall terminate at the end of this ten year period unless respondent Foulkrod, individually or through any corporate or other device, resumes operating in any capacity subject to the Packers and Stockyards Act during this ten year period. If respondent Foulkrod resumes operating during

the ten year period; the full amount of the applicable civil penalty shall become due and payable. Jurisdiction is retained to make this determination upon the submission of a motion and supporting affidavit by complainant which shall be served upon the respondent.

The provisions of this order shall become effective on the first day after service of this order on the respondent.

Copies of this decision shall be served upon the parties.

ALLEN CLARK, INC.

By Howard Foulkrod

Pres.
Title

Howard Foulkrod
HOWARD FOULKROD
Respondents

Arsen KASHKASHIAN
ARSEN KASHKASHIAN
Attorney for Respondents

Jane McCavitt
JANE MCCAIVITT
Attorney for Complainant

Issued this 22nd day of July, 1955

Dorothea A. Baker
DOROTHEA A. BAKER
Acting Chief
Administrative Law Judge