

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-98-0026
)
Nicholas Meat Packing Co., and)
Eugene A. Nicholas,)
)
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 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 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 Nicholas Meat Packing Co., hereinafter referred to as the corporate respondent, is a Pennsylvania corporation whose business mailing address is RD#1, P.O. Box 95, Loganton, PA 17747.

2. The corporate respondent is, and at all times material herein was:

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

(b) A packer within the meaning of that term as defined in the Act and subject to the provisions of the Act

3. Respondent Eugene A. Nicholas, hereinafter referred to as the individual respondent is, and at all times material herein was:

(a) An individual whose business mailing address is RD#1, P.O. Box 106, Loganton, PA 17747.

(b) The president and sole stockholder of the corporate respondent;

(c) Responsible for the direction, management and control of the corporate respondent;

(d) A packer within the meaning of that term as defined in the Act;

(e) The alter ego of the corporate respondent;

(f) Engaged in the business of buying and selling livestock in commerce for his own account; and

(g) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account.

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 Nicholas Meat Packing Co., its officers, directors, agents, employees, successors and assigns, and respondent Eugene A. Nicholas, his agents and employees, directly or through any corporate or other device, in connection with their operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to pay, when due, the full purchase price of livestock; and
2. Issuing checks in purported payment for livestock 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.


Respondents shall keep and maintain accounts, records and memoranda which fully and correctly disclose all transactions involved in the business of respondent Nicholas Meat Packing Co. subject to the Act, including checks that are returned for insufficient funds and not paid upon a second presentation, bank notifications of returned checks, original kill sheets, and accountings showing each livestock seller selling on a carcass weight basis the carcass weight and price per pound.


In accordance with section 203(b) of the Act (7 U.S.C. 193(b)), respondents Nicholas Meat Packing Co., and Eugene A. Nicholas are assessed, jointly and severally, a civil penalty of Six Thousand Dollars (\$6,000.00).


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

Copies of this decision shall be served upon the parties.

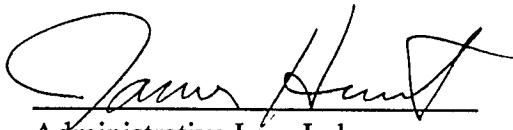
NICHOLAS MEAT PACKING CO.

By 
EUGENE A. NICHOLAS
President


EUGENE A. NICHOLAS
Respondents


ERIC PAUL
Attorney for Complainant

Issued this 29th day of September 1998


Administrative Law Judge