

UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

2002 JAN 15 P 2:51

In re:)	P. & S. Docket No. D-00-0008
W.W. Livestock, Inc., O. Wayne Clark,)	
Ernie L. Kennedy, and Warren Young,)	
)	
Respondents)	Decision as to Respondents
)	W.W. Livestock, Inc., and
)	O. Wayne Clark

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This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.) by a complaint 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 wilfully 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 provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

Respondents W.W. Livestock, Inc., and O. Wayne Clark 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.

Complainant agrees to the entry of this decision.

Findings of Fact

1. W.W. Livestock, Inc., hereinafter referred to as Respondent W.W. Livestock, is a Florida corporation whose business mailing address is P.O. Box 87, Madison, Florida 32341.
2. Respondent W.W. Livestock at all times material herein was:

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

(b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for its own account or the accounts of others.

3. Respondent O. Wayne Clark, hereinafter referred to as Respondent Clark, is an individual whose business mailing address is P.O. Box 87, Madison, Florida 32341.

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

(a) President and sole owner of Respondent W.W. Livestock;

(b) Responsible for the direction, management, and control of Respondent W.W. Livestock;

(c) A dealer buying and selling livestock in commerce for the account of Respondent W.W. Livestock and a market agency buying livestock in commerce on a commission basis within the meaning of these terms under the Act and subject to the Act; and

(d) Not individually registered with the Secretary of Agriculture in any capacity.

Conclusions

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

Order

Respondent W.W. Livestock, Inc., its officers, directors, agents and employees, successors and assigns, directly or through any corporate or other device, and Respondent O. Wayne Clark, 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. Selling livestock on false and inflated weights, or on any weights other than the original purchase weights of the livestock or the actual weights determined upon a proper re-weighing of the livestock as required by section 201.55 of the regulations (9 C.F.R. § 201.55) ;
2. Failing to disclose on the accountings, bills or statements issued when livestock is sold the location and date where the actual weight is determined, whenever the actual weight used is not obtained on the date and at the place of transfer of possession, as required by section 201.55 of the regulations (9 C.F.R. § 201.55);
3. Issuing sales invoices or other records containing false or manipulated livestock weights;
4. Operating any livestock scale, individually or jointly, or directing any other person in the operation of any livestock scale, in any manner other than to ensure accurate and correct weights;
5. Failing to weigh livestock as required by the Instructions for Weighing Livestock (9 C.F.R. § 201.73-1);
6. Creating false scale tickets to conceal weight manipulation; and
7. Failing to properly use and complete scale tickets in connection with the weighing of livestock as required by section 201.49(a) of the regulations (9 C.F.R. § 201.49(a)).

Respondent W.W. Livestock, Inc., and Respondent O. Wayne Clark, as alter ego of Respondent W.W. Livestock, Inc., are suspended as registrants under the Act for the period of five years. Respondent O. Wayne Clark may not be employed by, or act as the agent of, any

dealer, market agency or packer, in connection with the buying, selling, or weighing of livestock, or the preparation of livestock transaction records, while suspended as a registrant.

Respondents W.W. Livestock, Inc. and O. Wayne Clark are jointly and severally assessed a civil penalty in the amount of Fifty Thousand Dollars (\$50,000.00). Twenty Thousand Dollars (\$20,000.00) of the civil penalty is due upon the effective date of this Order, and the remaining Thirty Thousand Dollars (\$30,000.00) shall be paid in four annual installment payments of Seven Thousand Five Hundred Dollars (\$7,500.00) beginning on the first anniversary of the effective date of this Order. The initial payment and the first annual installment payment of this civil penalty shall be held in abeyance for a period of 18 months from the effective date of this Order to permit litigation or settlement of reparation proceedings that have been commenced, or may be brought, regarding the transactions alleged in the complaint in this disciplinary proceeding. Upon demonstration to Packers and Stockyards Programs that Respondents W.W. Livestock, Inc. and O. Wayne Clark have paid reparation awards, or settlements of reparation claims, to livestock purchasers identified in the complaint during this 18 month period of abeyance, this civil penalty may be modified or waived in the amounts of any such reparation awards or settlement amounts paid by these Respondents. Jurisdiction of this disciplinary proceeding is retained for purposes of modifying or waiving the civil penalty assessed herein.

The provisions of this Order shall become effective on the sixth day after service of this order on Respondents W.W. Livestock and Clark.

Copies of this decision shall be served upon the parties.

W. W. LIVESTOCK, INC.

By O. Wayne Clark
O. WAYNE CLARK
President

O. Wayne Clark
O. WAYNE CLARK
Respondents

Eric Paul
ERIC PAUL
Attorney for Complainant

David A. Richman
DAVID A. RICHMAN
Attorney for Complainant

Issued this 14 day of January, 2002

Jill S. Clifton
Jill S. Clifton
Administrative Law Judge

This Decision was served upon Respondents
W.W. Livestock, Inc. and O. Wayne Clark
in the hearing on the record on
January 14, 2002. JSC