

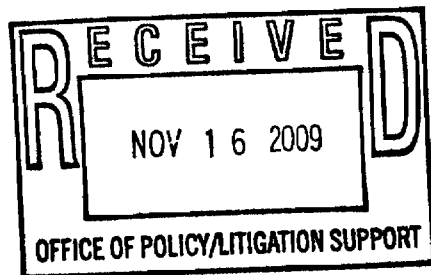
A. Chaston
D. Butler

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
Beyer & Funderburgh, Ltd.,)	
d/b/a ABF Packing, Ltd. and)	P. & S. Docket No. D-07-0093
)	
Erath County Dairy Sales, Inc. and)	
)	
Peco Valley Dairy Sales, Inc. and)	
)	
Jimmy J. "Jason" Beyer and)	
)	
Dennis J. Funderburgh and)	Hearing Cancellation
)	
Jimmy G. "Jim" Beyer,)	
)	
Respondents)	

The Administrator of Packers & Stockyards Programs, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture ("Packers & Stockyards" or "Complainant"), is represented by Charles L. Kendall, Esq. Respondents Beyer & Funderburgh, Ltd., d/b/a ABF Packing, Ltd., Erath County Dairy Sales, Inc., Peco Valley Dairy Sales, Inc., Jimmy J. "Jason" Beyer, Dennis J. Funderburgh, and Jimmy G. "Jim" Beyer ("Respondents"), are represented by Ernest H. Van Hooser, Van Hooser & Eftink, P.C.

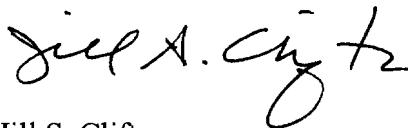
The hearing, scheduled for Tuesday, January 12 - Thursday, January 14, 2010, is CANCELED.



cc: Brett

Copies of this Hearing Cancellation shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 10th day of November 2009

A handwritten signature in black ink that reads "Jill S. Clifton". The signature is written in a cursive style with a large, stylized 'J' and 'C'.

Jill S. Clifton
Administrative Law Judge

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

IN RE:)	
)	
BEYER & FUNDERBURGH, LTD.,)	
D/B/A ABF PACKING, LTD., AND)	
ERATH COUNTY DAIRY SALES, INC., AND)	
PECOS VALLEY DAIRY SALES, INC., AND)	P&S Docket No. D-07-0093
JIMMY J. "JASON" BEYER AND)	
DENNIS L. FUNDERBURGH AND)	Decision Without Hearing By
JIMMY G. "JIM" BEYER,)	Reason of Consent
)	
Respondents.)	

This proceeding was instituted under the Packers & Stockyards Act (7 U.S.C. Section 181 *et seq*) by a Complaint filed by the Deputy Administrator, Packers & Stockyards Program, Grain Inspection, Packers & Stockyards Administration, United States Department of Agriculture, alleging that the Respondents willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. Section 201.1 *et seq.*). This decision is entered pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By the Secretary (7 C.F.R. Section 131.8)

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. Buyer & Funderburgh, Ltd., d/b/a ABF Packing, Ltd. (hereinafter "ABF, Ltd.") is a limited liability partnership organized and existing under the laws of the State of Texas, with a mailing address and street address of 8758 S. U.S. Highway 377, Dublin, TX 76446. ABF, Ltd., at all times material herein, was:

- (a) Engaged in the business of buying livestock in commerce for purpose of slaughter; and
- (b) A packer within the meaning of and subject to the provisions of the Act; and

2. Erath County Dairy Sales, Inc., (hereinafter "ECDS") is a corporation organized and existing under the laws of the State of Texas, with a mailing address and street address of 8892 S. U.S. Highway 377, Dublin, TX 76446. ECDS, at all times material herein, was:

- (a) Engaged in the business of conducting and operating a posted stockyard subject to the provisions of the Act;
- (b) Engaged in the business of a market agency selling and buying livestock in commerce on a commission basis; and
- (c) Registered with the Secretary of Agriculture as a market agency to sell and buy livestock in commerce on a commission basis.

3. Pecos Valley Dairy Sales, Inc., (hereinafter "PVDS") is a corporation organized and existing under the laws of the State of New Mexico, with a mailing address and street address of 274 E. Darby Road, Dexter, NM 88230. PVDS, at all times material herein, was:

- (a) Engaged in the business of conducting and operating a posted stockyard subject to the provisions of the Act;
- (b) Engaged in the business of a market agency selling and buying livestock in commerce on a commission basis; and
- (c) Registered with the Secretary of Agriculture as a market agency to sell and buy livestock in commerce on a commission basis.

4. Jimmy J. "Jason" Beyer (hereinafter "Jason Beyer") is an individual whose mailing address is 14695 FM 2303, Stephenville, TX 76401. Jason Beyer at all times material herein, was:

- (a) A general partner and vice president of Beyer & Funderburgh, Ltd., d/b/a ABF Packing, Ltd;

(b) Responsible for the day to day direction, management and control of ABF Ltd;

(c) A packer within the meaning of and subject to the provisions of the Act; and

(d) Engaged in the business of a dealer buying and selling livestock.

5. Dennis L. Funderburgh (hereinafter "D.L. Funderburgh") is an individual whose mailing address is 20183 FM 914, Stephenville, TX 76401. D.L. Funderburgh at all times material herein, was:

(a) A general partner and president of ABF, Ltd;

(b) Responsible for the day to day direction, management and control of ABF Ltd;

(c) A packer within the meaning of and subject to the provisions of the Act; and

(d) Engaged in the business of a dealer buying and selling livestock.

6. Jimmy G. "Jim" Beyer (hereinafter "Jim Beyer") is an individual whose business address is 8892 S. U.S. Highway 317, Dublin, TX 76446. Jim Beyer at all times material herein, was:

(a) President of ECDS;

(b) Owner of 100% of the stock of ECDS;

(c) Responsible for the day to day direction, management and control of ECDS, Ltd;

(d) Vice president and director of Pecos Valley Dairy Sales, Inc; and

(e) Owner of 50% of the stock of PVDS.

Conclusions

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

Order

Respondents Beyer & Funderburgh, Ltd., d/b/a ABF Packing, Ltd., and Jimmy J. “Jason” Beyer and Dennis L. Funderburgh, their agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers & Stockyards Act, shall cease and desist from:

1. Having an ownership interest in, financing, or participating in the management or operation of a market agency selling livestock on a commission basis;
2. Purchasing livestock for resale without being registered and bonded with the Secretary of Agriculture as required under Sections 201.29, 201.30 and 201.31 of the regulations (9 C.F.R. Sections 201.29, 201.30 and 201.31);
3. Failing to conduct their buying operations independently of packers who are similarly engaged (i.e., buying the same classes of livestock).

It is understood that the prohibition set out in subparagraph 1 above does not prohibit Jimmy J. “Jason” Beyer from serving as an auctioneer at ECDS so long as he does not serve as auctioneer for any sale where ECDS is selling the class of cattle that ABF Ltd. purchases.

Respondent Erath County Dairy Sales, Inc., and Jimmy G. “Jim” Beyer, their agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers & Stockyards Act, shall cease and desist from permitting a packer to have an ownership interest in, finance, or participate in the management or operation of such market agency.

Pecos Valley Dairy Sales, Inc., and Jimmy G. “Jim” Beyer, their agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers & Stockyards Act, shall cease and desist from purchasing livestock at Pecos Valley Dairy Sales, Inc., without disclosing on the account of sale the name of the buyer and the nature of the relationship existing between Pecos Valley Dairy Sales, Inc., and the buyer.

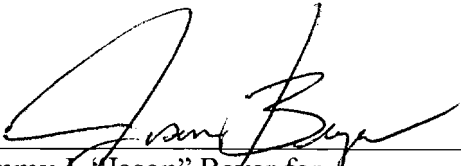
In accordance with Section 312(b) of the Act (7 U.S.C. Section 213(b)), Respondents Beyer and Funderburgh, Ltd., d/b/a ABF Packing, Ltd., Jimmy J. “Jason” Beyer and Dennis L. Funderburgh are assessed jointly and severally, a civil penalty in the amount of Ten Thousand Seven Hundred Fifty Dollars (\$10,750.00), with one half of said amount to be paid concurrently with the entry of this Decision and one half of said amount to be paid six months from the entry of this Decision.

In accordance with Section 312(b) of the Act (7 U.S.C. Section 213(b)), Respondents Erath County Dairy Sales, Inc., and Jimmy G. “Jim” Beyer are assessed jointly and severally, a civil penalty in the amount of Eight Hundred Twenty-five Dollars (\$825.00), to be paid concurrently with the entry of this Decision.

In accordance with Section 312(b) of the Act (7 U.S.C. Section 213(b)), Respondents Pecos Valley Dairy Sales, Inc., and Jimmy G. "Jim" Beyer are assessed jointly and severally, a civil penalty in the amount of Eight Hundred Twenty-five Dollars (\$825.00), to be paid concurrently with the entry of this Decision.

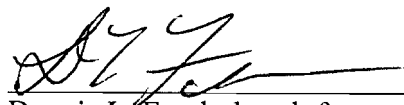
The provisions of the order shall become effective upon entry of this Decision.

Copies of this Decision shall be served upon the parties.



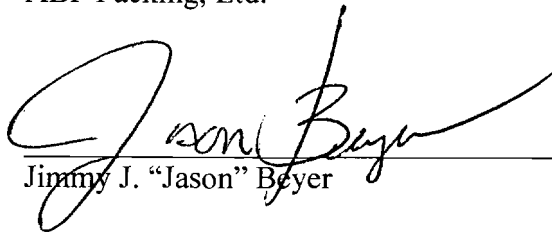
Jimmy J. "Jason" Beyer for
Beyer & Funderburgh, Ltd., d/b/a
ABF Packing, Ltd.

Date Signed 11/3/09



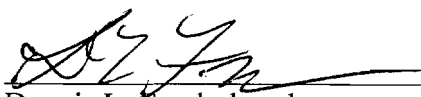
Dennis L. Funderburgh for
Beyer & Funderburgh, Ltd., d/b/a
ABF Packing, Ltd.

Date Signed 11/3/09




Jimmy J. "Jason" Beyer

Date Signed 11/3/09




Dennis L. Funderburgh

Date Signed 11/3/09



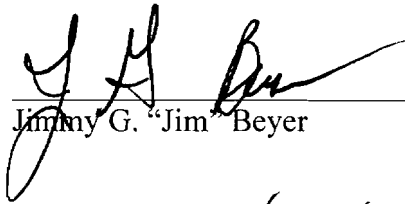
Jimmy G. "Jim" Beyer for
Erath County Dairy Sales, Inc.

Date Signed 11/6/09

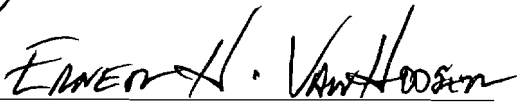


Jimmy G. "Jim" Beyer for
Pecos Valley Dairy Sales, Inc.

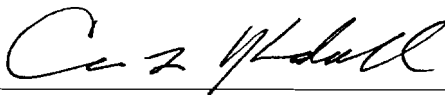
Date Signed 11/6/09


Jimmy G. "Jim" Beyer

Date Signed 11-6-09

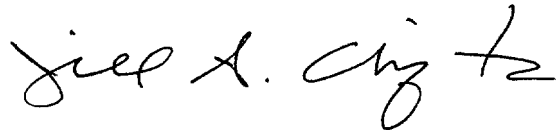

Ernest H. Van Hooser
Attorney for Respondents

Date Signed 10/29/09


Charles L. Kendall
Attorney for Complainant

Date Signed 11/9/09

Issued this 10 day of November, 2009



Jill S. Clifton, Administrative Law Judge