

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



In re:)
)
Powell Livestock, Inc.) P&S Docket No. 13-0318
)
and)
)
Hugh B. Powell, Jr.,) P&S Docket No. 13-0319
)
Respondents) Consent Decision

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.), by a complaint filed by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that the respondents willfully 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 provision 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

(a) Respondent Powell Livestock, Inc. is a corporation organized under the laws of the State of North Carolina, with its principal place of business located at 276 Packing Plant Road,

Smithfield, NC 27577 and whose business mailing address is P.O. Box 636, Smithfield, NC 27577.

(b) Respondent Powell Livestock, Inc., under the direction, management, and control of respondent Hugh B. Powell, Jr., is, and at all times material herein was:

- (1) Engaged in the business of a dealer buying and selling livestock in commerce and as a market agency buying and selling livestock in commerce on a commission basis; and
- (2) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce and as a market agency to buy and sell livestock in commerce on a commission basis.

(c) Respondent Hugh B. Powell, Jr. is an individual whose business mailing address is P.O. Box 636, Smithfield, NC 27577.

(d) Respondent Hugh B. Powell, Jr. is, and at all times material herein was:

- (1) President of Respondent Powell Livestock, Inc.;
- (2) Sole owner of Respondent Powell Livestock, Inc.; and
- (3) Responsible for the direction, management and control of Respondent Powell Livestock, Inc.

(e) Respondent Hugh B. Powell, Jr. is, and at all times material herein was:

- (1) Engaged in the business of conducting and operating Powell Livestock, Inc.; and
- (2) Engaged in the business of a dealer buying and selling livestock in commerce and as a market agency buying and selling livestock on a commission basis in commerce.

- (3) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce and as a market agency to buy and sell livestock in commerce on a commission basis.

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

Respondents Powell Livestock, Inc., and Hugh B. Powell, Jr., their agents and employees, directly or indirectly through any corporate or other device, shall cease and desist from:

1. Failing to properly maintain its Custodial Account for Shippers' Proceeds in strict conformity with the Act and section 201.42 of the regulations (9 C.F.R. § 201.42);
2. Failing to deposit in the custodial account for shippers' proceeds, within the time prescribed by section 201.42 of the regulations (9 C.F.R. § 201.42), an amount equal to the proceeds receivable for sales of consigned livestock;
3. Using funds received from the sale of consigned livestock for any purpose other than those specifically permitted by section 201.42(d) of the regulations (9 C.F.R. § 201.42(d));
4. Operating while Respondent Powell Livestock, Inc.'s current liabilities exceed its current assets, a financial condition which does not comply with the requirements of the Act.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), the respondent is assessed a civil penalty in the amount of five thousand dollars (\$5,000.00).

This order shall have the same force and effect as if entered after full hearing. The provisions of this order shall become effective on the sixth day after service of this consent decision and order on the respondent.

Copies of this decision shall be served upon the parties.

Respondent Powell Livestock, Inc.

By Powell Livestock Inc by Hugh B Powell

Hugh B Powell
Hugh B. Powell
Respondent

Ernest H. VanHooser by Gerald Epstein, attorney
Ernest H. VanHooser
Attorney for Respondents

Lauren Axley
Lauren Axley
Attorney for Complainant

Done at Washington, D.C.

this 14 day of July, 2014

Jill S. Clifton
Administrative Law Judge
Jill S. Clifton