USDA
OALJ/OHC

2012 JUL 23 AM 11: 58

RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	[PS-D]
Sugarcreek Livestock Auction, Inc.	)	Docket No. **12-0079**
	)	
Respondent	)	

AND

In re:	)	
	)	[PS-D]
Leroy H. Baker, Jr.	)	Docket No. **12-0080**
	)	
Respondent	)	
	)	Consent Decision and Order

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 respondents Sugarcreek Livestock Auction, Inc. and Leroy H. Baker, Jr., 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 Sugarcreek Livestock Auction, Inc. is a corporation organized under the laws of the State of Ohio, with its principal place of business located at 102 Buckeye Street, Sugarcreek, Ohio, 44681. Its mailing address is P.O. Box 452, Sugarcreek, Ohio, 44681.

(b) Respondent Leroy H. Baker, Jr., is an individual whose mailing address is 29357 State Route 172, East Rochester, Ohio, 44625.

(c) Respondent Sugarcreek Livestock Auction, Inc., under the direction, management, and control of respondent Leroy H. Baker, Jr., is, and at all times material herein was:

(1) Engaged in the business of conducting and operating Sugarcreek Livestock Auction, Inc., a stockyard posted under and subject to the provisions of the Act;

(2) Engaged in the business of a market agency buying and selling livestock on a commission basis in commerce;

(3) Engaged in the business of a dealer buying and selling livestock in commerce;

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

(d) Respondent Leroy H. Baker, Jr. is, and at all times material herein was:

(1) President of respondent Sugarcreek Livestock Auction, Inc.;

(2) Owner of 80% of the stock issued by respondent Sugarcreek Livestock Auction, Inc.;

(3) Responsible for the direction, management and control of respondent Sugarcreek Livestock Auction, Inc.

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, their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Act, shall cease and desist from:

(1) Engaging in business subject to the Act while current liabilities exceed current assets.

(2) Failing to maintain their "Custodial Account for Shippers' Proceeds" in conformity with the provisions of section 201.42 of the regulations (9 C.F.R. § 201.42);

(3) Failing to deposit in their "Custodial Account for Shippers' Proceeds" within the times prescribed by section 201.42 of the regulations (9 C.F.R § 201.42) amounts equal to the outstanding proceeds receivable from the sale of consigned livestock;

(4) Using funds received from the sale of consigned livestock for the payment of bank fees, or for any purpose other than payment to consignors of the amount due from the sale of their livestock and the payment of lawful marketing charges;

(5) Failing to keep and maintain accounts, records and memoranda as fully and correctly disclose all transactions involved in their business, as required by section 401 of the Act (7 U.S.C. § 221), including, but not limited to: (1) a complete and accurate custodial account check register showing all custodial checks issued; and (2) complete and accurate schedules of outstanding checks on custodial analysis dates; and

(6) Failing to pay and failing to pay, when due, the full purchase price of livestock as required by section 409 of the Act (7 U.S.C. § 228b).

Respondents Sugarcreek Livestock Auction, Inc. and Leroy H. Baker, Jr., are, commencing on August 19, 2012, suspended as registrants under the Act for a period of twenty-one (21) days and thereafter until respondents demonstrate to the satisfaction of the Packers and Stockyards Program that: (1) their custodial account shortages have been corrected; and (2) current liabilities no longer exceed current

assets. After the expiration of the initial 21-day suspension period, and provided that respondents demonstrate that their: (1) custodial account shortages have been corrected; and (2) current liabilities no longer exceed current assets, upon application to the Packers and Stockyards Program, a supplemental order may be issued terminating the suspension.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), respondents are further assessed, jointly and severally, a civil penalty in the amount of ten thousand dollars ($10,000.00). Five thousand dollars ($5,000) of this amount will be payable immediately upon entry of this consent decision and order. The remaining balance of five thousand dollars ($5,000) shall be payable on or before November 1, 2012, and shall be mailed to the following address: USDA, GIPSA, P.O. Box 790335, St. Louis, MO, 63179-0335.

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

Copies of this decision shall be served upon the parties.

Leroy H. Baker, Jr., Respondent,
on behalf of himself and on behalf of
Sugarcreek Livestock Auction, Inc.
Respondents

Ernest H. Van Hooser
Van Hooser & Eftink, P.C.
Attorney for Respondents

Krishna G. Ramaraju
Attorney for Complainant

Done at Washington, D.C.

this 23 day of July, 2012

Jill S. Clifton
Administrative Law Judge