

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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In re: ) P. & S. Docket No. D-00-0013  
)  
Bert Smith, III and Eddie McNally )  
)  
)  
Respondents ) Decision  
)  
)

**CONSENT DECISION REGARDING RESPONDENT EDDIE MCNALLY**

This proceeding was instituted under the Packers and Stockyard Act (7 U.S.C. §181 et seq.) by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondents Bert Smith, III and Eddie McNally willfully violated the Act and the regulations issued thereunder. On April 6, 2001, a Decision Without Hearing By Reason of Default was issued by Administrative Law Judge Jill S. Clifton as to Respondent Bert Smith, III. (hereinafter referred to as "Respondent Smith"). This decision regarding Respondent Eddie McNally (hereinafter referred to as "Respondent McNally") is now entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. §1.138).

The Complaint in this matter alleged that:

1. Respondent McNally engaged in an unfair and deceptive practice by misrepresenting the nature of livestock transactions for the purpose of misleading the sellers, their agents, and/or buyers of cattle into believing that Respondent Smith purchased the cattle for Respondent McNally, and not for Respondent Smith himself or as the agent of someone other than Respondent McNally;
2. Respondent McNally knowingly accepted, caused or authorized the preparation of purchase invoices and/or other documents representing that Respondent Smith purchased cattle on behalf of Respondent McNally when, in fact, Respondent Smith purchased cattle for himself or as the agent for someone other than Respondent McNally, and paid Respondent McNally to issue checks in payment for Respondent Smith's purchases;
3. Respondent McNally purchased livestock and in purported payment issued checks which were returned unpaid by the bank upon which they were drawn because Respondent did not have sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented;
4. Respondent McNally purchased livestock and failed to pay, when due, the full purchase price of such livestock;
5. Respondent McNally purchased livestock and failed to pay the full purchase price of such livestock; and
6. Respondent McNally failed to keep and maintain accounts, records, and memoranda which fully and accurately disclosed all transactions involved in his business,

including, but not limited to, check book registers, check numbers, returned, canceled, voided and reissued checks, and bank statements.

Respondent McNally admits the jurisdictional allegations in paragraph I of the complaint and specifically admits that the Secretary has jurisdiction in this matter, neither admits nor denies the remaining allegations, waives oral hearing and further procedure, and consents and agrees, 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 Eddie McNally is an individual whose mailing address is 140 Christina Drive, Rogersville, Tennessee 37857. Respondent McNally is and at all times material herein was:

- (a) Engaged in the business of a dealer buying and selling livestock in commerce for the accounts of others; and
- (b) Not registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account or as a market agency to buy livestock in commerce on a commission basis.

#### Conclusions

Respondent Eddie McNally having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, such decision will be entered.

Order

Respondent McNally, in connection with activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to pay, when due, the full purchase price of livestock;
2. Failing to pay the full purchase price of livestock;
3. Issuing checks in payment for livestock purchases without maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;
4. Engaging in business in any capacity for which registration and bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations, without registering with the Secretary of Agriculture and filing an adequate bond or its equivalent, as required by the Act and the regulations;
5. Misleading sellers, their agents, and/or other buyers of cattle as to the true purchaser or principal in any livestock transaction; and
6. Knowingly accepting, causing or authorizing the preparation of purchase invoices and/or other documents falsely representing the identity of the purchaser or principal in any livestock transaction.

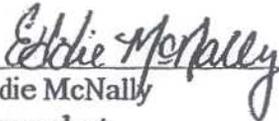
In addition, Respondent McNally shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business pursuant to section 401 of the Act (7 U.S.C. § 221).

Respondent Eddie McNally shall not be registered with the Secretary of Agriculture for a period of five (5) years. Pursuant to section 303 of the Act (7 U.S.C. § 203), Respondent

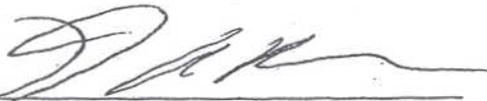
McNally is prohibited from operating subject to the Act without being registered. Provided, however, that upon application to the Packers and Stockyards Programs a supplemental order may be issued allowing Respondent McNally to register with the Secretary of Agriculture at any time after the expiration of 240 days upon demonstration by Respondent McNally that all unpaid livestock sellers identified in the complaint have been paid in full, and provided further that this order may be modified upon application to the Packers and Stockyards Programs to permit the salaried employment of Respondent McNally by another registrant or packer after the expiration of the initial 240 days.

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

Copies of this decision shall be served upon the parties.

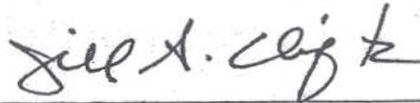


Eddie McNally  
Respondent



David A. Richman  
Attorney for Complainant

Issued this 24 day of January 2002



Administrative Law Judge