

UNITED STATES DEPARTMENT OF AGRICULTURE 2002 DEC -2 10:23

BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D- 02-0001
)
Sugarcreek Livestock Auction, Inc.,)
and Leroy H. Baker, Jr.)
)
Respondents) Decision

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.), hereinafter “the Act”, by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyard Administration (GIPSA), United States Department of Agriculture alleging that the Respondents have 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 provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

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.

Complainant agrees to the entry of this decision.

Findings of Fact

1. Sugarcreek Livestock Auction, Inc. is a corporation organized and existing under the

laws of the state of Ohio. Its business mailing address is P.O. Box 452, Sugarcreek Ohio, 44681.

2. Sugarcreek Livestock Auction, Inc. is, and at all times material herein was:

- a. Engaged in the business of conducting and operating Sugarcreek Livestock Auction, Inc., a posted stockyard subject to the provisions of the Act;
- b. Engaged in the business of a market agency selling livestock on a commission basis;
- c. Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis.

3. Leroy H. Baker, Jr. is an individual whose business mailing address is 29357 State Route 172, East Rochester, Ohio, 44625.

4. Leroy H. Baker, Jr. is, and at all times material herein was:

- a. President of the corporate Respondent Sugarcreek;
- b. Owner of 80% of the stock issued by Respondent Sugarcreek;
- c. Responsible for the direction, management and control of Respondent Sugarcreek;
- d. The *alter ego* of Sugarcreek Livestock Auction, Inc. ¹;

¹ As of May 2, 2001, Leroy H. Baker, Jr. was registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce, and to buy livestock in commerce on a commission basis.

Order

Respondent Sugarcreek Livestock Auction, Inc., its officers, directors, agents and employees, successors and assigns, directly or through any corporate or other device, and Respondent Leroy H. Baker, Jr., 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. Failing to reimburse the Custodial Account for Shippers' Proceeds (hereinafter "custodial account") for owners' and officers' purchases within the time prescribed by section 201.42 of the Regulations (9 C.F.R. § 201.42);
2. Failing to deposit in the Custodial Account, within the time prescribed by section 201.42 of the regulations (9 C.F.R. § 201.42), an amount equal to the proceeds receivable from the sale of consigned livestock;
3. Failing to otherwise maintain the Custodial Account in strict conformity with the provisions of Section 201.42 of the regulations (9 C.F.R. § 201.42);
4. Misusing the Custodial Account by allowing bank fees to be charged to the account and making unlawful withdrawals from the account.

Respondent Sugarcreek Livestock Auction, Inc, and its *alter ego*, Respondent Leroy H. Baker, Jr., are suspended as registrants under the Act for a period of 14 days and thereafter until they demonstrate that any deficiency in Sugarcreek Livestock Auction, Inc.'s Custodial Account for Shippers' Proceeds has been eliminated. The suspension will begin on December 8, 2002. When Respondents demonstrate that any deficiency in Sugarcreek Livestock Auction , Inc.'s

custodial account has been eliminated, a Supplemental Order will be issued in this proceeding terminating the suspension after the expiration of the 14-day period.

Respondents are jointly and severally assessed a civil penalty in the amount of three thousand eight hundred dollars (\$3,800), payable on or before December 8, 2002.

The provisions of this order shall become effective on the sixth (6th) day after service of this order on Respondents.

Copies of this decision shall be served upon the parties.

Sugarcreek Livestock Auction, Inc.

By: Leroy H. Baker

Title: Pres.

Leroy H. Baker

Leroy H. Baker

Respondent

Ernest H. Van Hooser

Ernest H. Van Hooser

Attorney for Respondent

Christopher Young-Morales

Christopher Young-Morales

Attorney for Complainant

Issued in Washington D.C.

this 3rd day of December, 2002

James W. Hunt

JAMES W. HUNT
Administrative Law Judge