

JAN 27 2010

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P. & S. Docket No. D-08-0127
	)	
	)	
Thomas H. McElwee, d/b/a,	)	
Shippensburg Cownet,	)	
	)	
	)	Decision Without Hearing
Respondent	)	By Reason of Consent

Decision

This proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.), hereinafter the "Act," 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 Respondent has willfully violated the Act. This decision is entered pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (Rules of Practice) applicable to this proceeding (7 C.F.R. § 1.138).

Respondent 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.

Complainant agrees to the entry of this decision.

### Findings of Fact

- 1) Thomas H. McElwee (hereinafter referred to as "Respondent") is an individual entity whose mailing address is 250 Jumper Road, Newburg, Pennsylvania 17240.
- 2) Respondent at all times material herein was:
  - a. Engaged in the business of buying and selling livestock in commerce as a dealer for its own account or account of others and as a market agency buying livestock on a commission basis; and
  - b. Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for its own account.

### Conclusions

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

### Order

Respondent, his agents and employees, directly or indirectly through any corporate or other device, in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from:

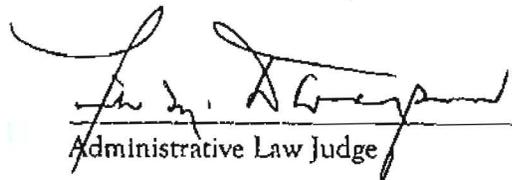
- (1) Issuing checks in payment for livestock without having and maintaining sufficient funds on deposit and available in the bank account upon which they are drawn to pay such checks when presented;
- (2) Failing to pay, when due, the full purchase of livestock; and
- (3) Failing to pay the full purchase price of livestock.

Respondent shall be suspended as a registrant under the Act for 120 days and thereafter as operating as a dealer until all unpaid livestock sellers identified in the Complaint have been paid in full. The suspension may be reduced to 30 days upon proof submitted by Respondent that all unpaid livestock sellers identified in the Complaint have been paid in full.

The provisions of this order shall become final and effective on issuance.

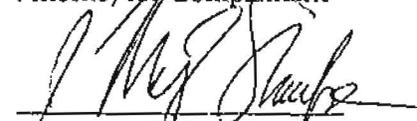
Copies of this decision shall be served upon the parties.

Issued this 27<sup>th</sup> day of January, 2010

  
Administrative Law Judge

Ciarra A. Toomey  
Ciarra A. Toomey, Esq.  
Attorney for Complainant

Jan 11, 2010  
Date

  
J. McDowell Sharpe, Esq.  
Attorney for Respondent

1-13-2010  
Date

Toomey

JAN 27 2010

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

P & S Docket No. D-08-0127

In re: THOMAS H. McELWEE,  
d/b/a SHIPPENSBURG COWNET,

Respondent

ORDER

This matter was set for an oral hearing to commence at 9:00 A.M. Local Time on Tuesday, February 2, 2010 in Harrisburg, Pennsylvania; however, the parties have reached an agreement and a Consent Decision and Order was entered on January 27, 2010.

Accordingly, all issues having been resolved, it is ORDERED that the oral hearing is CANCELLED and this action is STRICKEN from the docket.

Copies of this Order will be served upon the parties by the Hearing Clerk.

Done at Washington, D.C.  
January 27, 2010

  
PETER M. DAVENPORT  
Administrative Law Judge

Copies to: Ciarra Toomey, Esquire  
J. McDowell Sharpe, Esquire  
Neal R. Gross & Co., Inc.

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