

J. Butler
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UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF POLICY/LITIGATION SUPPORT
BEFORE THE SECRETARY OF AGRICULTURE

2009 JUN 30 PM 1:12

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In re:) P. & S. Docket No. D-09-0067
)
)
) Fergus Falls Livestock Auction)
) Market, Inc. and Joe Varner,)
)
) Respondents) Decision Without Hearing
) By Reason of Consent

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, United States Department of Agriculture, alleging that the Respondents willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*). This decision is entered pursuant to the consent decision provision of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By the Secretary (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.

The Complainant agrees to the entry of this decision.

Findings of Fact

1. Fergus Falls Livestock Auction Market, Inc., (hereinafter "Corporate Respondent"), is a corporation organized and existing under the laws of the State of Minnesota, with a mailing address of P.O. Box 602, Fergus Falls, Minnesota 56537. The auction market is located at 16722 County Highway 116, Fergus Falls, Minnesota 56537.

C.F. Powell

2. Corporate Respondent, at all times material herein, was:

(a) Engaged in the business of conducting and operating a posted stockyard subject to the provisions of the Act (hereinafter "the stockyard");

(b) Engaged in the business of a market agency selling livestock in commerce on a commission basis at the stockyard; and

(c) Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis.

3. Joe Varner, (hereinafter "Individual Respondent"), at all times material herein was:

(a) President of Corporate Respondent;

(b) 100 percent shareholder of Corporate Respondent;

(c) The manager of Corporate Respondent; and

(d) The *alter ego* of Corporate Respondent.

Conclusions

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

Order

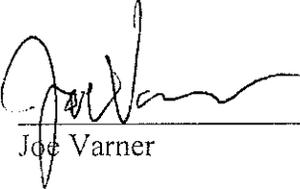
Respondents Fergus Falls Livestock Auction Market, Inc. and Joe Varner, their agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to deposit in the Custodial Account for Shippers' Proceeds, within the times prescribed in 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; and
2. Failing to otherwise maintain the Custodial Account for Shippers' Proceeds in strict conformity with the provisions of section 201.42 of the regulations (9 C.F.R. § 201.42).

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondents Fergus Falls Livestock Auction Market, Inc. and Joe Varner are assessed jointly and severally, a civil penalty in the amount of Seven Thousand and Five Hundred Dollars (\$7,500.00).

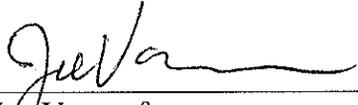
The provisions of this order shall become effective on the sixth day after service of this order on the Respondents.

Copies of this decision shall be served upon the parties.



Joe Varner

Date Signed: 6-16-09



Joe Varner for
Fergus Falls Livestock Auction Market, Inc

Date Signed: 6-16-09



Ernest H. Van Hooser, Esq.
Attorney for Respondents

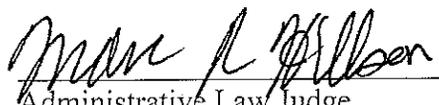
Date Signed: 6/15/09



Charles L. Kendall
Attorney for Complainant

Date Signed: 6/29/09

Issued this 30th day of June, 2009



Administrative Law Judge