

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-01-0006
)
Foremost Packing Company)
and William McDermott)
)
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 financial condition of Respondent Foremost Packing Company does not meet the requirements of the Act and 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 Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes applicable to this proceeding (7 C.F.R. § 1.138).

Respondents admit the jurisdictional allegations in paragraph I of the complaint and notice of hearing, 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. Foremost Packing Company, hereinafter referred to as Respondent Foremost, is a corporation organized and existing under the laws of the state of Illinois. Its business mailing address is 1164 13th Avenue, East Moline, Illinois 61244.

2. Respondent Foremost is, and at all times material herein was:

a. Engaged in the business of buying livestock in commerce for purposes of slaughter and manufacturing or preparing meats and meat food products for sale or shipment in commerce, and

b. A packer within the meaning of and subject to the provisions of the Act.

3. William McDermott, hereinafter Respondent McDermott, is an individual whose business mailing address is 1164 13th Avenue, East Moline, Illinois 61244.

4. Respondent McDermott is, and at all times material herein was:

a. Treasurer of Respondent Foremost;

b. Owner of twenty-five percent of the shares of Respondent Foremost;

c. Responsible for the direction, management and control of Respondent

Foremost; and

d. The *alter ego* of Respondent Foremost.

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

Respondent Foremost, and its *alter ego*, Respondent McDermott, their officers, directors agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Issuing checks in payment for livestock purchases without having and maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;
2. Failing to pay, when due, for livestock purchased;
3. Failing to pay for livestock purchased; and
4. Purchasing livestock while Respondent Foremost's current liabilities exceed its current assets unless Respondents pay for such livestock purchases in United States currency, cashier's check or wire transfer.

Respondents Foremost Packing Company and William McDermott agree not to engage in any activity subject to the Packers and Stockyards Act for a period of five years.

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.

FOR RESPONDENT

Foremost Packing Company

By: William McDermott

Title: TREASURER

William McDermott

William McDermott, Respondent
Respondent

Timothy M. Feeny

Timothy M. Feeny
Attorney for Respondent

FOR COMPLAINANT

Ann K. Parnes

Ann K. Parnes
Attorney for Complainant

Issued in Washington D.C.

this 18th day of October, 2002

Sharon A. Baker

Administrative Law Judge