

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



In re:)
)
F & F Farms & Cattle, Inc., and) P&S Docket No. 13-0261
Todd Fortner,) P&S Docket No. 13-0262
)
Respondents) Consent Decision

This proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.) (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 Respondents F & F Farms & Cattle, Inc. and Todd Fortner willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.). This Consent Decision is entered pursuant to the consent decision provision of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.138).

Respondents F & F Farms & Cattle, Inc. and Todd Fortner 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 Consent Decision.

Complainant agrees to the entry of this Consent Decision.

Findings of Fact

1. Respondent F & F Farms & Cattle, Inc. is a corporation organized under the laws of the State of Georgia, with a mailing address of 448 Harrison Road, Kite, GA 31049-7804.

2. Respondent F & F Farms & Cattle, Inc., under the direction, management, and control of respondent Todd Fortner, is, and at all times material herein was:

- (a) Engaged in the business of a dealer buying and selling livestock in commerce and as a market agency buying livestock in commerce on a commission basis; and
- (b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce and as a market agency to buy livestock in commerce on a commission basis.

3. Respondent Todd Fortner is an individual whose business mailing address is 448 Harrison Road, Kite, GA 31049-7804.

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

- (a) President of respondent F & F Farms & Cattle, Inc.;
- (b) Sole owner of respondent F & F Farms & Cattle, Inc.; and
- (c) Responsible for the direction, management and control of Respondent F & F Farms & Cattle, Inc.

5. Respondent Todd Fortner is, and at all times material herein was:

- (a) Engaged in the business of conducting and operating F & F Farms & Cattle, Inc.; and
- (b) Engaged in the business of a dealer buying and selling livestock in commerce and as a market agency buying livestock on a commission basis in commerce.

Conclusions

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

Order

Respondent F & F Farms & Cattle, Inc. and Respondent Todd Fortner, their agents and employees, directly or through any corporate or other device, in connection with their operations subject to the Act, shall cease and desist from:

1. Marking up livestock prices without authorization and collecting undisclosed profits based on the marked up prices beyond authorized commissions;
2. Otherwise engaging in any act, practice, or course of business for the purpose of obtaining money from the purchasers of livestock by false or deceptive pretenses, or which operates or would operate as a fraud or deceit upon any person in connection with the purchase or sale of livestock;
3. Generating or causing to be generated, false or misleading records in connection with their activities subject to the Act, including, but not limited to
 - (a) Purchase invoices and accounts of sale that falsely represent that livestock has been resold through the ring at a livestock market when such livestock has not in fact been resold through the ring at that livestock market;
 - (b) Purchase invoices and accounts of sale that list fabricated prices for livestock;
 - (c) Purchase invoices and accounts of sale that list fabricated weights for livestock;
 - (d) Purchase invoices that list purchase prices for livestock that are higher than the actual purchase prices; and
 - (e) Accounts of sale that falsely represent that livestock has been consigned to a livestock market and sold through the ring at that livestock market, when such livestock has not in fact been consigned nor sold through the ring at that livestock market;

4. Failing to provide to the purchaser of livestock a true and accurate written account of all livestock purchases, as required by sections 312(a) of the Act and section 201.44 of the regulations (9 C.F.R. § 201.44);

5. Failing to otherwise operate in compliance with section 201.44 of the regulations (9 C.F.R. § 201.44);

6. Making, issuing, or circulating any false or misleading record concerning the prices or sale of livestock;

7. Failing to otherwise operate in compliance with section 201.53 of the Regulations (9 C.F.R. § 201.53);

8. Failing to base the payment of livestock on the actual weight of the livestock in accordance with section 201.55 of the Regulations (9 C.F.R. § 201.55); and

9. Failing to otherwise operate in compliance with section 201.55 of the Regulations (9 C.F.R. § 201.55).

Respondent F & F Farms & Cattle, Inc. and Respondent Todd Fortner shall keep and maintain accounts, records, and memoranda, which fully and correctly disclose the true nature of all transactions involved in their business subject to the Act as required by section 401 of the Act (7 U.S.C. § 221), including, but not limited to, purchase invoices and accounts of sale which completely and accurately reflect the true nature of the transactions.

Pursuant to 7 U.S.C. § 204, Respondent F & F Farms & Cattle, Inc. is suspended as a registrant under the Act for a period of 7 days to commence on the effective date of this Order.

Respondent Todd Fortner is prohibited from registering subject to the Act for a period of 7 days to commence on the effective date of this Order.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent F & F Farms & Cattle, Inc. and Respondent Todd Fortner are assessed, jointly and severally, a civil penalty in the amount of fifteen thousand dollars (\$15,000.00). Respondents shall send a certified check or money order for five thousand dollars (\$5,000.00), payable to the Treasurer of the United States, along with this signed Consent Decision and Order, to: Attn: Lauren Axley, OGC, United States Department of Agriculture, Rm. 2319 – South Building, 1400 Independence Ave., SW, Washington, DC 20250. The certified check or money order should include the docket numbers of this proceeding, P&S Docket Nos. 13-0261 and 13-0262.

The remaining ten thousand dollars (\$10,000.00) shall be paid over the course of one year, with the first eleven monthly installments consisting of eight hundred and thirty-three dollars (\$833.00) each, and the final and twelfth installment consisting of eight hundred and thirty-seven dollars (\$837.00). The first installment shall be due on or before October 1, 2013, and the remaining eleven (11) installments shall be due on or before the first day of each month thereafter until the civil penalty is paid in full. Each monthly installment shall be paid by a certified check or money order made payable to the Treasurer of the United States, and shall be mailed to:

USDA GIPSA
P.O. Box 790335
St. Louis, Missouri 63179-0335.

Each certified check or money order should include the docket numbers of this proceeding, P&S Docket Nos. 13-0261 and 13-0262.

This Order shall have the same force and effect as if entered after full hearing. The provisions of this Order shall become effective on the sixth day after service of this Consent Decision and Order on Respondent F & F Farms & Cattle, Inc. and Respondent Todd Fortner.

Copies of this Consent Decision and Order shall be served upon the parties.

Done at Washington, D.C.

this 6 day of Sept, 2013

filed & signed for

Administrative Law Judge

Janice K. Bullard

F & F Farms & Cattle, Inc.

Respondent,

By: Todd Fortner

Title: Partner

Todd Fortner

Todd Fortner

Respondent

William H. McWhorter, Jr.

William H. McWhorter, Jr.

Attorney for Respondents

Lauren C. Axley

Lauren C. Axley

Attorney for Complainant