

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	P&S Docket No. 17-0262
New Holland Sales Stables, Inc.,)	17-0263
and David Kolb,)	
)	
Respondents)	Consent Decision and Order

This proceeding was instituted under the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) (the Act) by a Complaint filed by the Acting Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA)¹, United States Department of Agriculture, alleging that the Respondents willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*) (Regulations). This consent decision is entered pursuant to the consent decision provision of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

Respondents New Holland Sales Stables, Inc. and David Kolb 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, waive all rights to seek judicial review and otherwise challenge or contest the validity of this decision, including waiving challenges to the Administrative Law Judge's authority to enter this Decision and Order under the Administrative Procedure Act and the Constitution of the United States, and waive any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 *et seq.*) for fees and other expenses incurred by respondent in

¹ On November 14, 2017, Secretary of Agriculture, Sonny Perdue, issued a memorandum eliminating GIPSA as a standalone agency, and transferring the Packers and Stockyards Act functions to the Agricultural Marketing Service (AMS).

connection with this proceeding or any action against any USDA employee in their individual capacity.

Respondents 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 New Holland Sales Stables, Inc. (New Holland) is a business organized under the laws of and located in the Commonwealth of Pennsylvania, with a mailing address of P.O. Box 96, New Holland, Pennsylvania 17557.

2. New Holland is, and 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;

b) Engaged in the business of a market agency selling consigned livestock in commerce on a commission basis at the stockyard, and buying and selling livestock in commerce as a dealer; and

c) Registered with the Secretary of Agriculture as a market agency selling livestock in commerce on a commission basis, and buying and selling livestock in commerce as a dealer.

3. David Kolb (Kolb) is an individual whose business mailing address is P.O. Box 96, New Holland, Pennsylvania 17557.

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

a) An 80 percent owner and president of New Holland;

b) Responsible for the day-to-day direction, management, and control of

New Holland; and

c) A market agency within the meaning of and subject to the provisions of the Act.

Conclusions of Law

Respondents New Holland and Kolb having admitted the jurisdictional facts, and the parties having agreed to the entry of this consent decision, the consent decision will be entered.

Order

1. Respondents New Holland and Kolb, 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:

a) failing to deposit into its Custodial Account for Shippers' Proceeds an amount equal to the proceeds receivable from the sale of consigned livestock within the time prescribed by section 9 C.F.R. § 201.42(c) of the Regulations;

b) using "Custodial Account for Shippers' Proceeds" funds for any purpose other than authorized by 9 C.F.R. § 201.42, such as:

i transferring funds from the Custodial Account for Shippers' Proceeds to accounts other than the Custodial account during a time when the Custodial Account for Shippers' Proceeds is short; and

ii depositing proceeds from the sale of livestock on a commission basis to accounts other than the Custodial Account for Shippers' Proceeds;

c) failing to otherwise maintain the Custodial Account for Shippers' Proceeds in strict conformity with the Act and section 201.42 of the Regulations (9 C.F.R. § 201.42).

2. In accordance with sections 307 and 312(a) of the Act (7 U.S.C. §§ 208 and 213(a)) and section 201.42 of the Regulations (9 C.F.R. § 201.42), Respondents are assessed, jointly and severally, a civil penalty in the amount of \$10,000, to be paid by certified check or money order made payable to the Treasurer of the United States and sent to USDA GIPSA, PO Box 790335, St. Louis, Missouri 63179-0335. The certified check or money order shall include the docket numbers of this proceeding, Docket Nos. 17-0262 and 17-0263. The civil penalty will become due and payable 30 days after the effective date of this order.

3. Respondents New Holland and David Kolb, in connection with their operations as a market agency selling on commission, shall keep and maintain such accounts, records, and memoranda as fully and correctly disclose all transactions subject to the Act and the regulations. Specifically, Respondents will maintain accounts receivable and payable ledgers, monthly reconciliations of its custodial and general account, replaced or cancelled checks and/or check images, and consistently record the clearance, or the voiding and replacement of checks or payment by other means drawn on their custodial account.

4. Respondent New Holland will provide a completed "Status of Custodial Bank Account for Shippers' Proceeds" form (P&SP Form 7001) each month for 24 consecutive months beginning January 2018. Such report shall be due to AMS no later than the 30th day after the month for which the form is completed.

5. Respondent New Holland will increase its bond coverage to \$1,173,000 by March 1, 2018 and maintain the bond at that level for a minimum of two years. Proof of such increased bond coverage shall be provided to USDA-AMS. Failure to increase bond coverage as required will cause the suspension described in paragraph 6 below to become effective until proof of such bond coverage is provided. After two years, Respondent may petition AMS to reevaluate the adequacy of the bond

coverage.

6. Respondents New Holland and David Kolb shall be suspended as a registrant under the Act for a period of seven (7) days and thereafter until Respondents demonstrate to the satisfaction of AMS that their custodial account is in balance. However, this period of suspension will be held in abeyance provided that Respondents are in compliance with terms one (1), four (4) and five (5) of this Consent Decision and Order. If AMS determines that Respondents are not in compliance with these terms of this Consent Decision and Order, AMS may petition the Administrative Law Judge to order the seven (7) day suspension held in abeyance to become effective within 30 days of the date of the Order. If AMS has not petitioned the ALJ to order the seven (7) day suspension against Respondents within two years from the effective date of this Consent Decision and Order, the suspension will terminate.

This Order shall have the same force and effect as if entered after a full hearing. The provisions of this Order shall become effective on the day after service of this order on the Respondents.

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

Done at Washington, D.C.

this ^{12th} ~~12th~~ day of December 2017


Administrative Law Judge

Channing O. Strother

Respondent,
New Holland Sales Stables, Inc.

By: 

FOR Lauren E. Becker ✓
Attorney for Complainant

Title: Dues


David Kolb
Respondent