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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:

Costa Live Poultry, Inc. (PS-D Docket No. 16-0116)

Respondent.

Decision and Order on the Written Record

Appearances:

Tracey Manoff, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington D.C. 20250, for the Complainant (Packers and Stockyards);¹ and

Paul Costa, representing Costa Live Poultry, Inc., Respondent.

Decision Summary

1. For Respondent Costa Live Poultry, Inc.'s failures to comply with the Packers and Stockyards Act, by failing to make full payment timely when due during January, February, and March 2014 to Clark's Feed Mills, Inc., I impose: (a) a **cease and desist order**; *see* paragraph 20; and (b) civil penalties totaling **\$11,000** (eleven thousand dollars); *see* paragraphs 21 and 22.

Parties and Allegations

2. The Complainant is the Deputy Administrator, Packers and Stockyards Program,

1. The Complainant is the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture ("Packers and Stockyards" or "Complainant").

Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (frequently herein “Packers and Stockyards” or “Complainant”).

3. The Respondent is Costa Live Poultry, Inc. (frequently herein “Respondent Costa Live Poultry” or “Respondent”).

4. The Complaint, filed on June 9, 2016, alleged there was reason to believe that the Respondent Costa Live Poultry willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181, *et seq.*) (frequently herein the “Packers and Stockyards Act” or the “Act”), specifically 7 U.S.C. § 228h-1(a).

5. The Respondent Costa Live Poultry, through its President, Paul Costa, filed an Answer on August 22, 2016, denying the allegations.

Procedural History

6. Packers and Stockyards’ “Status Report and Request to Rule on Motion for Summary Judgment”, filed June 26, 2017, is before me. Packers and Stockyards filed a Motion for Summary Judgment on April 21, 2017 (including Amendment filed May 8, 2017). The Respondent, Costa Live Poultry, Inc. failed to respond. Packers and Stockyards’ Motion is GRANTED as follows: this Decision and Order on the Written Record is issued.

7. On May 4, 2017, I held a trial preparation telephone conference. Packers and Stockyards, through counsel, participated. Costa Live Poultry, Inc., through Paul Costa, President, participated. Also participating was Roh Clark of Clark’s Feed Mills, Inc., who emphasized how grateful his company is to have been paid in full, even if the payments were not made on time. Mr. Clark applauded Costa Live Poultry, Inc. for working to repay all the

debt. (Mr. Clark described how much better Costa Live Poultry had done than other companies that had owed Clark's Feed Mills, Inc. and chose to discharge in bankruptcy their debt to Clark's Feed Mills, Inc., instead of paying over time as Costa Live Poultry did.) Also participating was Louis Costa, who emphasized that everybody's been paid in full.

Findings of Fact

8. Costa Live Poultry, Inc., the Respondent, is a business incorporated in the Commonwealth of Pennsylvania with a mailing address of

Paul Costa, President
Costa Live Poultry, Inc.
1231 Friedline Road
Danville PA 17821

which was engaged during late 2013 and early 2014 as a live poultry dealer.

9. The Respondent, Costa Live Poultry, Inc., did not pay in full when due the amounts that were due to Clark's Feed Mills, Inc. during January, February, and March 2014 but has since paid those amounts in full.

Conclusions

10. The Secretary of Agriculture has jurisdiction over the parties and the subject matter.

11. Respondent Costa Live Poultry, Inc. during late 2013 and early 2014 was engaged in business as a live poultry dealer in the Commonwealth of Pennsylvania.

12. Respondent Costa Live Poultry, Inc. purchased live poultry for which it failed to make full payment timely during January, February, and March 2014 to Clark's Feed Mills, Inc.

13. Respondent Costa Live Poultry, Inc. eventually paid Clark's Feed Mills, Inc. in full.

14. Based on Packers and Stockyards' Motions filed on April 21, 2017 (including Amendment filed May 8, 2017); and on June 26, 2017, Packers and Stockyards recommended an \$11,000 civil penalty against Costa Live Poultry, Inc.

15. Based on the assertions of Rob Clark of Clark's Feed Mills, Inc. during the May 4, 2017 telephone conference, Clark's Feed Mills, Inc. finds no need for any civil penalty to be imposed against Respondent Costa Live Poultry, Inc.

16. Based on the assertions of Rob Clark of Clark's Feed Mills, Inc. during the May 4, 2017 telephone conference, I conclude that the restructuring of Clark's Feed Mills, Inc. business arrangements - - doing business directly with the farmers and hiring Costa Live Poultry, Inc. for transportation - - takes Costa Live Poultry, Inc. out of being the "middle man" for payments from the farmers to Clark's Feed Mills, Inc.

17. Respondent Costa Live Poultry, Inc.'s Answer also referenced "the termination of the buying/selling of chickens of Costa Live Poultry, Inc. from Clark's Feed Mills".

18. Costa Live Poultry, Inc. and Clark's Feed Mills, Inc. have amicably resolved Costa Live Poultry, Inc.'s failures to pay timely for live poultry.

19. Costa Live Poultry, Inc. violated the Packers and Stockyards Act by purchasing live poultry from Clark's Feed Mills, Inc. and failing to make full payment timely when due during January, February, and March 2014 to Clark's Feed Mills, Inc. as required by section 410(a) of the Act (7 U.S.C. §228b-1(a)).

Order

20. Respondent Costa Live Poultry, Inc. and its agents and employees, directly or

indirectly through any corporate or other device, in connection with activities subject to the Packers and Stockyards Act, **shall cease and desist** from purchasing live poultry and failing to **pay the full purchase price** of poultry **when due** as required by section 410(a) of the Act (7 U.S.C. §228b-1(a)). 7 U.S.C. §228b-2(b).

21. Respondent Costa Live Poultry shall pay civil penalties totaling **\$11,000** (eleven thousand dollars) in accordance with section 411(b) of the Act (7 U.S.C. §228b-2(b)) payable in **22 monthly installments of \$500.00, beginning by August 23 (Wed) 2017**. I conclude there is good cause for the additional time, through May 23, 2019, to liquidate the debt. Payments may of course be made earlier than when due without penalty. But if payments are made late or are less than the scheduled amount, then the remaining balance will become due immediately and in full upon request by the government.

22. Each payment shall be paid by a certified check, cashier's check, or money order, made payable to the order of the **U. S. Department of Agriculture**, marked with **PS-D** No. **16-0116** and sent to:

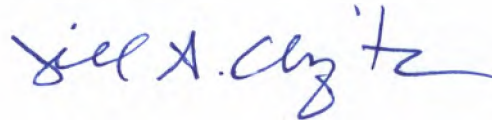
USDA-GIPSA
P.O. Box 790335
St. Louis, Missouri 63179-0335

Finality

23. This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145; *see* Appendix A).

Copies of this Decision and Order on the Written Record shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 27th day of June 2017



Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
Stop 9203 South Building Room 1031
1400 Independence Ave SW
Washington, DC 20250-9203
202-720-4443
FAX 202-720-9776
OALJHearingClerks@ocio.usda.gov

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145

CERTIFICATE OF SERVICE

Costa Live Poultry, Inc., Respondent

Docket: 16-0116

Having personal knowledge of the foregoing, I declare under penalty of perjury that the information herein is true and correct and this is to certify that a copy of the DECISION & ORDER ON THE WRITTEN RECORD & HEARING CLERK'S LETTER has been furnished and was served upon the following parties on June 27, 2017 by the following:

USDA (OGC) - Electronic Mail

Tracey Manoff, OGC

Tracey.Manoff@ogc.usda.gov

Donna Erwin, OGC

Donna.Erwin@ogc.usda.gov

USDA (GIPSA) - Electronic Mail

GIPSA-PSP

GIPSA-PSP@usda.gov

Respondent(s) – Certified & Electronic Mail

Paul Costa 7015 3010 0001 5187 5716

1231 Friedline Rd.

Danville, PA 17821

musclehead1977@gmail.com

Respectfully Submitted,



Renee Leach-Carlos, Hearing Clerk
USDA/Office of Administrative Law Judges
Hearing Clerk's Office
1400 Independence Ave., SW, Room 1031-S
Washington, DC 20250-9203
Phone: 202-720-4443