

AGRICULTURE DECISIONS

Volume 76

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THIS IS A COMPILATION OF DECISIONS ISSUED BY THE
SECRETARY OF AGRICULTURE AND THE COURTS
PERTAINING TO STATUTES ADMINISTERED BY THE
UNITED STATES DEPARTMENT OF AGRICULTURE

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DEPARTMENTAL DECISIONS

In re: COSTA LIVE POULTRY, INC.

Docket No. 16-0116.

Decision and Order.

Filed June 27, 2017.

P&S-D.

Tracey Manoff, Esq., for Complainant.

Paul Costa, representing Respondent.

Initial Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER ON THE WRITTEN RECORD

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, 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

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(7 U.S.C. § 181 *et seq.*) (frequently herein the “Packers and Stockyards Act” or the “Act”), specifically 7 U.S.C. § 228b-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 Rob 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 overtime 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 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.

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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

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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.

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MISCELLANEOUS ORDERS & DISMISSALS

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Editor's Note: This volume continues the new format of reporting Administrative Law Judge orders involving non-precedent matters [Miscellaneous Orders] with the sparse case citation but without the body of the order. Miscellaneous Orders (if any) issued by the Judicial Officer will continue to be reported here in full context. The parties in the case will still be reported in Part IV (List of Decisions Reported – Alphabetical Index). Also, the full text of these cases will continue to be posted in a timely manner at: <https://www.oaljdecisions.dm.usda.gov/misc-current>.

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No Miscellaneous Orders or Dismissals reported.

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DEFAULT DECISIONS

Editor's Note: This volume continues the new format of reporting Administrative Law Judge orders involving non-precedent matters [Default Orders] with the sparse case citation but without the body of the order. Default Orders (if any) issued by the Judicial Officer will continue to be reported here in full context. The parties in the case will still be reported in Part IV (List of Decisions Reported – Alphabetical Index). Also, the full text of these cases will continue to be posted in a timely manner at: www.dm.usda.gov/oaljdecisions/.

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Sam Kane Beef Processors, LLC.

Docket No. D-17-0161.
Consent Decision and Order.
Filed January 17, 2017.

Brian D. Jones.

Docket No. 17-0012.
Consent Decision and Order.
Filed January 19, 2017.

Ernest R. Gard, d/b/a Gard Cattle Company.

Docket No. 17-0009.
Consent Decision and Order.
Filed March 14, 2017.

Glacial Lakes Livestock, Inc.

Docket No. 17-0016.
Consent Decision and Order.
Filed March 15, 2017.

Jim Jensen, III.

Docket No. 17-0017.
Consent Decision and Order.
Filed March 15, 2017.

Rick Woehlhaff.

Docket No. 17-0018.
Consent Decision and Order.
Filed March 15, 2017.

Fred Berger Ltd., d/b/a Berger Cattle Company.

Docket No. 17-0243.
Consent Decision and Order.
Filed March 31, 2017.

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Fred J. Berger, d/b/a F T Ranch.

Docket No. 17-0244.
Consent Decision and Order.
Filed March 15, 2017.

Southern Colorado Livestock Auction, Inc.

Docket No. 17-0019.
Consent Decision and Order.
Filed May 25, 2017.

John R. Malouff, Jr.

Docket No. 17-0020.
Consent Decision and Order.
Filed May 25, 2017.

JJJ Ranch, Inc.

Docket No. D-17-0218.
Consent Decision and Order.
Filed May 30, 2017.

Cesar P. Borges Arroyo.

Docket No. D-17-0219.
Consent Decision and Order.
Filed May 30, 2017.
