

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	P & S Docket No. 17-0243
)	17-0244
Fred Berger, Ltd., d/b/a Berger)	
Cattle Company and)	
Fred J. Berger, d/b/a F T Ranch)	
)	
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 Acting Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that Respondents Fred Berger, Ltd., d/b/a Berger Cattle Company and Fred J. Berger, d/b/a F T Ranch willfully violated the Act and the regulations promulgated thereunder by the Secretary of Agriculture (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 Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.138).

Respondents Fred Berger, Ltd., d/b/a Berger Cattle Company and Fred J. Berger, d/b/a F T Ranch 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. Fred Berger, Ltd., d/b/a Berger Cattle Company is a corporation organized and existing under the laws of the State of North Dakota. Its current business mailing address is PO Box 308, Mandan, ND 58554-0308.

2. Respondent Fred Berger, Ltd., d/b/a Berger Cattle Company, under the direction, management, and control of Respondent Fred J. Berger, d/b/a as F T Ranch, is and at all times material to this Complaint was:

- (a) Engaged in the business of a dealer buying and selling livestock in commerce for its own account;
- (b) Engaged in the business of a market agency buying livestock in commerce on a commission basis, and;
- (c) Registered with the Secretary of Agriculture as a dealer buying and selling livestock in commerce for its own account and as a market agency buying livestock in commerce on a commission basis.

3. Respondent Fred J. Berger, d/b/a as F T Ranch, is an individual whose business mailing address is PO Box 308, Mandan, ND 58554-0308.

4. Respondent Fred J. Berger, d/b/a as F T Ranch, is, and at all times material to this Complaint was:

- (a) One hundred percent owner of Respondent Fred Berger, Ltd., d/b/a Berger Cattle Company;
- (b) President of Respondent Fred Berger, Ltd., d/b/a Berger Cattle Company;
- (c) Registered agent of Respondent Fred Berger, Ltd., d/b/a Berger Cattle Company;
- (d) Responsible for the direction, management, and control of Respondent

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

(e) Operating under the F T Ranch trade name;

(f) Engaged in the business of a dealer buying and selling livestock in commerce for his own account; and

(g) Engaged in the business of a market agency buying livestock in commerce on a commission basis.

Conclusion

Respondents Fred Berger, Ltd., d/b/a Berger Cattle Company and Fred J. Berger, d/b/a F T Ranch having admitted the jurisdictional facts and the parties having agreed to the entry of this Consent Decision, the Consent Decision will be entered.

Order

Respondents Fred Berger, Ltd., d/b/a Berger Cattle Company and Fred J. Berger, d/b/a F T Ranch, 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. Consigning their own livestock to a market and repurchasing such livestock under their own names, the name of any business entity in which they have a financial interest, or any trade name under which they buy or sell livestock, to fill an order on a commission basis for the purpose or with the effect of increasing the price of such livestock to the person(s) for whom such purchases are made;

2. Consigning their own livestock to a market and repurchasing such livestock under their own names, the name of any business entity in which they have a financial interest, or any trade name under which they buy or sell livestock, to fill an order on a commission basis without disclosing to the person(s) for whom such purchases are made, prior to the purchase and in accordance with section 201.44 of the Regulations (9 C.F.R. § 201.44), all relevant information necessary to show fully the true nature of the transaction, including, but not limited to, which head of livestock Respondents have an ownership interest in, any profits realized beyond authorized commissions, and the original purchase price, purchase weight, and purchase location of such livestock; and

3. Failing to otherwise operate in compliance with section 201.44 of the Regulations (9 C.F.R. § 201.44).


In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondents Fred Berger, Ltd., d/b/a Berger Cattle Company and Fred J. Berger, d/b/a F T Ranch are assessed, jointly and severally, a civil penalty in the amount of Ten Thousand Dollars (\$10,000.00).

This Order shall have the same force and effect as if entered after full hearing. The provisions of this Order shall become effective upon issuance.

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

Done at Washington, D.C.


this 31st day of March, 2017


Administrative Law Judge *CMS*

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


Title: _____


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


Leah C. Battaglioli
Attorney for Complainant