

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/OHC
2020 SEP 30 AM 11:35

In re:) P&S Docket Nos.
)
)
Quinter Livestock Market, LLC,) 19-J-0081 and
and Clint Kvasnicka,) 19-J-0082
)
Petitioners)

**ORDER DENYING RESPONDENTS' PETITION FOR RECONSIDERATION OF THE
JUDICIAL OFFICER'S AUGUST 27, 2020 DECISION AND ORDER**

Appearances:

*Buren W. Kidd, Esq., with the Office of the General Counsel, United States Department of
Agriculture, 1400 Independence Ave SW, Washington, DC 20250, for the Complainant (AMS),¹
and*

Clint Kvasnicka, pro se, for Respondent Quinter Livestock Market, LLC and himself.

Decision and Order issued by Judge Bobbie J. McCartney, Judicial Officer.

Summary of Procedural History

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181 et seq.) ("Act"); the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. §§ 201.1 et seq.) (Regulations); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) (Rules of Practice).

On May 7, 2019, Complainant filed a complaint against Respondents (Petitioners) alleging violations of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §181 *et seq.*)(Act) and the Regulations. On June 3, 2019, Petitioners filed an Answer,

¹ The Complainant is the Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture (AMS or Complainant).

wherein Petitioners failed to deny any of the allegations contained in the Complaint. On July 16, 2019, Complainant filed a Motion for Decision without a Hearing. Petitioners failed to file an Answer to Complainant's Motion. By Order issued April 8, 2020, Administrative Law Judge Jill Clifton granted Complainant's Motion for a Decision without a Hearing, in which Judge Clifton Ordered Petitioners to cease and desist from violating the Act and Regulations, and suspending the Petitioners' registration for a period of five (5) years. On May 19, 2020, Petitioners appealed Judge Clifton's Decision and Order to the undersigned Judicial Officer.

On August 27, 2020, I affirmed Judge Clifton's Initial Decision and Order with a proviso that in the event that Respondents could demonstrate to AMS within sixty (60) days of the date of entry of the Order that they have made payment in full as to all transactions referenced therein and that they have operated their business in a manner compliant with the specific requirements of the Act since November 2018, AMS may waive such suspension in whole or in any part.

On September 15, 2020, Petitioners sent an electronic mail response to the Hearing Clerk regarding the August 27, 2020 Order, which was deemed by the Hearing Clerk to be a Petition for Reconsideration. As detailed in the Rules of Practice, "[a] petition to rehear or reargue the proceeding or to reconsider the decision of the Judicial Officer shall be filed within 10 days after the date of service of such decision upon the party filing the petition." (7 C.F.R. §§1.146(a)(3)). Here, the Decision and Order was filed on August 27, 2020, and served upon Petitioners on August 31, 2020, pursuant to the methods specified in the Rules of Practice (see Hearing Clerk's Letter of August 31, 2020). Ten days from that day made the Petition for Reconsideration due September 10, 2020; accordingly, the Petition for Reconsideration was untimely filed.

Discussion

Assuming, *arguendo*, that objections to the late filing of the Petition for Reconsideration were to be waived, the Petition fails to comply with the Rules of Practice in several important

respects: no new issues were raised to support reconsideration, nor did the Petition state specifically the grounds relied upon for reconsideration, as required by the Rules of Practice at § 1.146 (a)(1); further, the Petition fails to specifically state the matters claimed to have been erroneously decided or to provide a brief statement of the alleged errors (§ 1.146 (a)(3)).

Petitioners assert the same argument as they presented in their Answer and in their appeal, albeit with embellishments. In their Answer to the Complaint, Petitioners claimed a simple banking mistake, in which the bank inadvertently deposited a single check into an incorrect account. Now, the Petitioners assert that a drunk loan officer failed to set up a line of credit, which, presumably, resulted in all the violations alleged in the Complaint. In the August 27, 2020, Order affirming Judge Clifton's Initial Decision and Order, I explained that "[s]imply blaming the bank does not 'clearly admit, deny, or explain each of the allegations of the Complaint.' 7 C.F.R. § 1.136 (b)(1). In any event, assertions that the bank was at fault are insufficient to explain the evidence of record documenting the repeated instances of failure to maintain sufficient funds in the custodial account." Because the Petitioners fail to raise any new arguments and simply raise the same general arguments as they did in their appeal, which I have already considered and rejected, the Petitioners' Petition for Reconsideration would be denied on this basis alone even if it had been timely filed. Further, the Petition fails to "state specifically the matters claimed to have been erroneously decided" and failed to briefly state the alleged errors as required by the Rules of Practice governing this proceeding. 7 C.F.R. § 1.146 (a)(3).

ORDER

For all the reasons stated above, Petitioners' Petition for Reconsideration is hereby **DENIED** and the Judicial Officer's August 27, 2020 Decision and Order is hereby **AFFIRMED**.

1. Respondents Quinter Livestock Market, LLC and Clint Kvasnicka, their agents and employees, directly or through any corporate or other device, in connection with operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in operations subject to the Packers and Stockyards Act without paying timely for each and every livestock transaction and purchase from sellers of livestock and shall cease and desist from issuing checks without sufficient funds to pay those checks.
2. Respondents Quinter Livestock Market, LLC and Clint Kvasnicka are suspended as registrants from all livestock operations as a market agency buying and selling consigned livestock in commerce on a commission basis and as a dealer for a period of five (5) years from the date when this Decision and Order becomes final; **EXCEPT THAT** in the event that Respondents can demonstrate to Atv1S within sixty (60) days of the date of entry of this Order that they have made payment in full as to all transactions referenced hereinabove and that they have operated their business in a manner compliant with the specific requirements of the Act since November 2018, AMS may waive such suspension in whole or in any part.

RIGHT TO SEEK JUDICIAL REVIEW

Petitioner has the right to seek judicial review of the Order in this Decision and Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. Judicial review must be sought within sixty (60) days after the date of entry of the Decision and Order, as indicated in the caption above, or it will become final and unappealable by operation of law.²

Copies of this Decision and Order shall be served by the Hearing Clerk upon each party. The Hearing Clerk will use both certified mail and regular mail for Respondents, and as a courtesy, also email copies to Complainant and to Respondent Clint Kvasnicka at the email address he used to reach the Hearing Clerk.

Done at Washington, D.C.,

this 30th day of September 2020

**Judge Bobbie
J. McCartney**

Digitally signed by
Judge Bobbie J.
McCartney
Date: 2020.09.30
11:10:35 -04'00'

Judge Bobbie J. McCartney
Judicial Officer

Hearing Clerk's Office
United States Department of Agriculture
South Building, Room 1031
1400 Independence Avenue, SW
Washington, DC 20250-9203
Tel.: 202-720-4443
Fax: 202-720-0776
SM.OHA.HearingClerks@OHA.USDA.GOV

² 28 U.S.C. § 2344.