

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P&S Docket No. D-20-J-0014
)
Merle Olson)
Olson Cattle Co.)
) Consent Decision and Order
Respondent)

REC'D - USDA/DALJ/DHC
2020 JUL 14 AM 11:00

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. §§ 181 et seq.), by a complaint filed by the Deputy Administrator, Fair Trade Practices Program, Agriculture Marketing Service (AMS), United States Department of Agriculture, alleging that respondents Merle Olson and Olson Cattle Co. (hereinafter, Respondent), willfully violated the Act and related regulations (9 C.F.R. 201.1-.200). This decision is entered pursuant to the consent decision provision of the rules of practice applicable to this proceeding (7 C.F.R. § 1.138).

Respondent admits the jurisdictional allegations in the complaint and specifically admits that the Secretary has jurisdiction in this matter, neither admits nor denies the remaining allegations, waives oral hearing and further procedure, waives 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 under the Administrative Procedure Act and the Constitution of the United States, and waives 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 connection with this proceeding or any action against any USDA employee in their individual capacity. Respondent

further consents and agrees, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

The complainant agrees to the entry of this decision.

Findings of Fact

1. Respondent Merle Olson is an individual with a mailing address of record which will not be repeated here.

2. Respondent Olson Cattle Co. was a Montana registered corporation that has discontinued operations and subsequently dissolved and which was owned and controlled by Respondent Merle Olson.

3. Respondent was, at all times material herein:

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

4. In three separate instances in 2015, Respondent contracted to purchase a fixed number of livestock at a negotiated price, but at or near delivery dates, Respondent failed to honor the pre-negotiated terms of the contract and re-negotiated to buy less than all the original livestock at lower prices per count weight. Some portion of the breached price was eventually compensated by payment from respondent's bond.

(a) It is an unfair and deceptive trade practice (i) to breach the contracts, (ii) to fail to pay contracted-for amounts and (iii) to fail to pay amounts owed when they are due.

(b) Seller One remains damaged in the net amount of \$627.50

5. In July 2015, in a transaction totaling \$61,500, Respondent purchased approximately 59 head of cattle, but Respondent closed the account upon which the check was drawn prior to negotiation and without prior issuance of a replacement check.

(a) It is an unfair and deceptive trade practice to fail to pay sellers.

(b) Seller Two (jointly with Farm Service Agency) was damaged in the net amount of \$61,500.00.

6. In six transactions in October 2015, Respondent marked up the cost of livestock as if he was dealing, before selling the cattle. At the same time, Respondent charged the buyer a commission as if Respondent was acting as a market agency buying on commission. Respondent did not disclose the self-dealing arrangement to the buyer.

(a) It is an unfair and deceptive trade practice to self-deal by marking up prices as a dealer while charging a commission as a market agency buying on commission.

(b) Buyer was damaged by a dealer mark-up in the amount of \$15,036.00.

Conclusions

The respondent having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, such decision will be entered.

Order

1. *Cease and Desist.* Respondent, his agents and employees, directly or indirectly through any corporate or other device, shall cease and desist from breaching contracts,

failing to pay contracted amounts, marking up livestock prices and collecting undisclosed profits based on the marked up prices beyond authorized commissions, and failing to pay livestock sellers or their duly authorized representatives the full amount of the purchase price for livestock before the close of the next business day following each purchase of livestock, as required by sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a) and 228b).

2. **Civil Penalty.** In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), respondent is jointly and severally assessed a civil penalty in the amount of Forty Thousand Dollars (\$40,000.00). The civil penalty, however, will be reducible one dollar-for-every two dollars of restitution made by Respondent to the damaged parties noted above, up to a total reduction of Twenty-Five Thousand Dollars (\$25,000.00) and if paid in full by December 31, 2022. If Respondent fails to make full restitution, the remaining civil penalty, which has not been reduced, will become due in full immediately, upon application of Complainant to the Administrative Law Judge, without further procedure. If Respondent makes restitution, Complainant, after verifying proof of restitution supplied by Respondent, shall request that the Administrative Law Judge issue an order reducing the civil penalty for restitution made.

Respondent shall immediately send a certified check or money order for Fifteen Thousand Dollars (\$15,000.00), payable to the U.S. Department of Agriculture, to:

**USDA-AMS-FTPP-PSD,
PO Box 979064,
St. Louis, Missouri 63197-9000**

within thirty (30) days from the effective date of this order as determined by the issuing Administrative Law Judge. Respondent shall indicate on the certified check or money order that payment is in reference to P&S Docket No. D-20-J-0014.

3. Suspension. Beginning 30 days after the date this Agreement is approved by the Administrative Law Judge, Respondent is suspended from operating in any capacity subject to the Act and regulations for a period of three years and nine months. Provided, however, that after seven (7) months' suspension, and upon application to the Packers and Stockyards Program, Respondent may request a supplemental order that permits his salaried employment by another registrant or packer or other modification of the prohibition. A request to permit salaried employment by another registrant or packer would be subject to Complainant's verification of Respondent's employment status with the registrant or packer, and Complainant's research of the registrant or packer's history of compliance with the Act and regulations. However, one year of the prohibition will be abated upon receipt and verification of evidence that the damaged Sellers/Buyer have been made whole in the amounts noted above.

The provisions of this order shall become effective on the sixth day after service of this consent decision and order on respondent.

Copies of this decision shall be served upon the parties.


Merle Olson
Respondent


Jamie Vines
Counsel for Respondent


Mary E. Sajna
Attorney for Complainant

Done at Washington, D.C.

this 14 day of July, 2020


Administrative Law Judge

Jill S. Clifton