

9 11 10

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P & S. Docket No. D-08-0082
Evans & Evans Farms, Inc., a/k/a)
Evans and Evans, Inc., and Peterson)
Farms, Inc.,)
Respondents) Consent Decision

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.), hereinafter "the Act", by a Complaint filed by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that the Respondents wilfully violated the Act. This decision is entered pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.138)

Respondents admit the jurisdictional allegations in paragraph 1 of the Complaint (with modifications) 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 decision.

Complainant agrees to the entry of this decision

Findings of Fact

(1) Respondent Evans & Evans Farms, Inc., hereinafter "Respondent Evans", is an Arkansas corporation, also known as Evans and Evans, Inc., whose business mailing address is P.O. Box 248, Decatur, AR 72722

(2) Respondent Evans is and at all times material herein was:

(a) Engaged with Respondent Peterson Farms, Inc., in the business of obtaining live poultry under a poultry growing arrangement for the purpose of slaughter and the sale and shipment of poultry products in commerce; and

(b) A live poultry dealer within the meaning of and subject to the provisions of the Act.

(3) Respondent Peterson Farms, Inc., hereinafter "Respondent Peterson" is an Arkansas corporation whose business mailing address is P.O. Box 248, Decatur, AR 72722.

(4) Respondent Peterson is and at all times material herein was.

(a) Engaged with Respondent Evans in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of slaughter and the sale and shipment of poultry products in commerce; and

(b) A live poultry dealer within the meaning of and subject to the provisions of the Act.

(5) Respondent Evans is, and at all times material herein was, the exclusive provider of live poultry for slaughter by Respondent Peterson. Respondent Evans contracts with and issues payment to the growers raising live poultry for slaughter. Respondent Peterson issues the settlement sheets to the growers raising live poultry for slaughter, and pays all employees of Respondent Peterson and of Respondent Evans, pursuant to a lease agreement. Respondent Evans buys the eggs (which are hatched by Respondent Peterson, *see infra*). Respondent Peterson owns the hatcheries, feed mill, feed trucks, live haul equipment, and Respondent Peterson provides custom hatches and feed to Respondent Evans

(6) Between approximately May 28, 2005 and December 10, 2005, Respondent Evans obtained live poultry raised pursuant to written poultry growing arrangements with poultry growers. Following an investigation, the Grain Inspection, Packers and Stockyards Administration (GIPSA) determined that certain of the poultry growers were paid less than the full amount due pursuant to the growing arrangements entered by the poultry growers. Subsequent to the investigation, Respondent Evans caused to be paid to the poultry growers the balances of the full amounts due as alleged in the Complaint.

Conclusions

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

Order

Respondents Evans & Evans Farms, Inc. and Peterson Farms, Inc., and their agents and employees, directly, or through any corporate or other device, in connection with their activities subject to the Packers and Stockyards Act, shall cease and desist from:

(1) Paying less than the full and accurate amount due to poultry growers on account of live poultry obtained under poultry growing arrangements before the close of the fifteenth day following the week in which the poultry was slaughtered; and

(2) Using a carcass condemnation factor or other adjustment affecting the calculation of the full and accurate amount due for poultry obtained under a poultry growing arrangement that is not included in the written contract in effect at the time the live poultry is grown and accepted for slaughter.


In accordance with section 411(b) of the Act (7 U.S.C. § 411(b)), Respondents Evans & Evans Farms, Inc. and Peterson Farms, Inc., are jointly and severally assessed a civil penalty in the amount of \$1,500.00.

The provisions of this Order shall become effective on the sixth day after service on Respondents Evans & Evans Farms, Inc. and Peterson Farms, Inc.

Copies of this decision shall be served upon the parties


EVANS & EVANS FARMS, INC

Respondent

By: 
Blake Evans

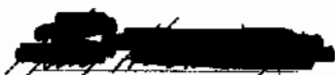
PETERSON FARMS, INC.

Respondent

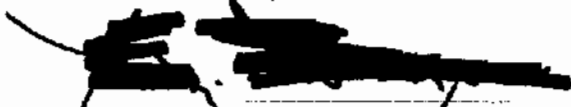
By: 
Blake Evans

Gary V. Weeks
Vince Chadick
BASSETT LAW FIRM L.L.P.
Attorneys for Respondents

By: 


ERIC PAUL
Attorney for Complainant

Issued this ^{9th} day of ^{October} ~~June~~, 2008


Administrative Law Judge