

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/DALJ/DHC
2020 JAN 2 PM 1:40

In re:)	
)	
Ashville Stockyard, Inc.,)	P&S Docket No. 19-J-0084
)	
and)	
)	
Bradley M. Plunkett,)	P&S Docket No. 19-J-0085
)	
And)	
)	
Tilda Plunkett,)	P&S Docket No. 19-J-0086
)	
Respondents)	Consent Decision and Order

This proceeding was instituted under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.) (the Act), by a complaint filed by the Deputy Administrator, Fair Trade Practices Program (FTPP), Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), alleging that respondents Ashville Stockyard, Inc., (respondents), Bradley M. Plunkett, and Tilda Plunkett violated the Act and the regulations promulgated pursuant thereto (9 C.F.R. § 201.1 et seq.) (the regulations). This consent decision and order is entered pursuant to section 1.138 (7 C.F.R. § 1.138) of the Rules of Practice Governing Formal Adjudicatory Procedures Instituted by the Secretary under Various Statutes (7 C.F.R. § 1.130 et seq.).

The Respondents admit the jurisdictional allegations set forth 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, waive 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 waive 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 Respondents in connection with this proceeding or any action against any USDA employee in their individual capacity,

Complainant agrees to the entry of this consent decision and order.

Findings of Fact

1. Ashville Stockyard, Inc. (respondent Ashville), is a corporation organized under the Laws of the State of Alabama, with its principal place of business located at 18390 U.S. Highway 11 South, Ashville, Alabama 36953. Its mailing address is P.O. Box 580, Ashville, Alabama 36953.

2. Respondent Ashville, under the direction, management, and control of respondent Bradley M. Plunkett, is, and at all times material herein, was:

- (a) Engaged in the business of, and operating as, a stockyard posted under and subject to the provisions of the Act;
- (b) Engaged in the business of a market agency buying and selling livestock in commerce on a commission basis;
- (c) Engaged in the business of a dealer buying and selling livestock in commerce for its own account; and
- (d) Registered with the Secretary of Agriculture as a market agency to buy and sell livestock in commerce on a commission basis, and registered as a dealer to buy and sell

livestock in commerce for its own account.

3. Bradley M. Plunkett (respondent B. Plunkett), is an individual whose business mailing address is (b) (6) Respondent B. Plunkett is, and at all times material herein, was:

- (a) President of respondent Ashville;
- (b) Owner of 100% of the stock issued by respondent Ashville;
- (c) The registered agent of respondent Ashville;
- (d) Responsible for the direction, management, and control of respondent Ashville;
- (e) Engaged in the business of conducting and operating respondent Ashville, a stockyard posted under and subject to the provisions of the Act;
- (f) Engaged in the business of a market agency buying and selling livestock in commerce on a commission basis; and
- (g) Engaged in the business of a dealer buying and selling livestock in commerce for his own account.

3. Respondent Tilda Plunkett is, and at all times material herein, was:

- (a) Secretary and Treasurer of respondent Ashville; and
- (b) Responsible, together with respondent B. Plunkett, for the direction, management, and control of respondent Ashville.

Conclusion

Respondents having admitted the jurisdiction facts, and the parties having agreed to the entry of this consent decision, the consent decision and order will be entered.

Order

Respondents Ashville Stockyard, Inc., Bradley M. Plunkett, and Tilda Plunkett, their agents and employees, directly and through any corporate or other device, in connection with their operations subject to the Act, shall cease and desist from:

- a. failing to properly maintain their Custodial Account for Shippers' Proceeds (custodial account) in strict conformity with the Act and section 201.42 of the regulations (9 C.F.R. § 201.42);
- b. failing to deposit into their custodial account an amount equal to the proceeds receivable from the sale of consigned livestock within the time prescribed by section 201.42 of the regulations;
- c. misusing custodial account funds by transferring funds from their custodial account into their general bank account when the custodial account already has a shortage or in a way that would create a shortage; and
- d. misusing custodial account funds by depositing proceeds from the sale of consigned livestock directly into their general account rather than into their custodial account.

Pursuant to 7 U.S.C. § 204, respondent Ashville is suspended as a registrant under the Act for a period of fourteen (14) days, beginning on Sunday, January 5, 2020, continuing through the week beginning Sunday, January 12, and thereafter until the custodial account shortage is proven to have been corrected.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), respondents are assessed, jointly and severally, a civil penalty in the amount of twenty thousand dollars (\$20,000.00). Respondents shall prepare a certified check or money order for ten thousand

dollars (\$10,000.00), payable to the U.S. Treasury, and send it to USDA-AMS-FTPP-PSD along with this signed consent decision and order. The signed consent decision and order and the check or money order for ten thousand dollars (\$10,000.00) shall be mailed to Counsel for the Complainant at Room 2343 South Building, 14th & Independence Avenue, S.W., Washington, DC 20250-1400. Respondents shall indicate on the certified check or money order that payment is made in reference to P&S Docket Nos. 19-J-0084, 19-J-0085, and 19-J-0086. Respondents shall pay an additional ten thousand dollars (\$10,000.00) in monthly installments of one thousand six hundred sixty seven dollars and sixty seven cents (\$1,667.67) for a period of six (6) months, with the first installment being due on or before January 1, 2020, and continuing on or before the first day of each month thereafter until the \$10,000.00 is paid in full. Each monthly payment shall be made by certified check or money order payable to the U.S. Treasury, shall be mailed to USDA-AMS-FTPP-PSD, P.O. Box 979064, St. Louis, Missouri 63197-9000, and shall indicate that the payment is made in reference to P&S Docket Nos. 19-J-0084, 19-J-0085, and 19-J-0086.

The provisions of this order shall become effective upon service of this signed and executed order upon respondents or respondents' counsel.

Copies of this decision and order shall be served on the parties.

Done at Washington, D.C.

this 20th day of January 2008.

[Redacted Signature]

for

Administrative Law Judge

Chief
Jill S. Clifton, Administrative Law
Judge

Ashville Stockyard, Inc.
Respondent

By: [Redacted Signature]

Title: president

[Redacted Signature]

Bradley M. Plunkett,
Respondent

[Redacted Signature]

Tilda Plunkett
Respondent

[Redacted Signature]

Jara Settles, Esq.
Attorney for Complainant

[Redacted Signature] OGC
for

Thomas N. Bolick
Attorney for Respondent