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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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| In re: | ) | |
| | ) | |
| Sugarcreek Livestock Auction, Inc., | ) | P&S Docket No. 19-J-0087 |
| | ) | |
| and | ) | |
| | ) | |
| Leroy H. Baker, Jr., | ) | P&S Docket No. 19-J-0088 |
| | ) | |
| | ) | |
| 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 Sugarcreek Livestock Auction, Inc., and Leroy H. Baker, Jr. (respondents), 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.).

Respondents 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; 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 and Order 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. The parties 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 consent decision and order.

## Findings of Fact

1. Sugarcreek Livestock Auction, Inc. (respondent Sugarcreek), is a corporation organized under the laws of the State of Ohio, with its principal place of business located at 102 Buckeye Street, Sugarcreek, Ohio 44681. Its mailing address is P.O. Box 452, Sugarcreek, Ohio 44681.

2. Respondent Sugarcreek, under the direction, management, and control of respondent Leroy H. Baker, Jr., is, and at all times material to the complaint, 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. Leroy H. Baker, Jr. (respondent Baker), is an individual whose current mailing address is in the [redacted] His mailing address will not be stated in this consent decision and order to protect his privacy, but it previously was provided to the Hearing Clerk, U.S. Department of Agriculture.

4. Respondent Baker is, and at all times material to the complaint, was:

a. President of respondent Sugarcreek;

b. Owner of 80% of the stock issued by respondent Sugarcreek;

c. The registered agent of respondent Sugarcreek;

d. Responsible for the direction, management, and control of respondent Sugarcreek.

e. Engaged in the business of a market agency buying and selling livestock in commerce on a commission basis; and

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

## 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 Sugarcreek Livestock Auction, Inc., and Leroy H. Baker, Jr., 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 timely reimburse their custodial account for owner, officer, or employee livestock purchases or to otherwise timely reimburse said account as required by section 201.42 of the regulations;

c. 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;

d. issuing custodial account checks without having sufficient funds on deposit and available in their custodial account upon which the checks are drawn to pay the checks when presented for payment;

e. issuing checks from their general account in purported payment for livestock without having sufficient funds available in the account upon which said checks are drawn to pay the checks when presented for payment;

f. failing to remit, when due, the proceeds of livestock sales to consignors in strict conformity with section 201.43 of the regulations (9 C.F.R. § 201.43);

g. failing to pay, when due, the full purchase price of livestock as required by section 409 of the Act (7 U.S.C. § 228b); and

h. failing to operate while solvent as required by 7 U.S.C. § 204 and consistent with the Statement with Respect to Insolvency found at 9 C.F.R. § 203.10.

Pursuant to 7 U.S.C. § 204, respondent Sugarcreek is suspended as a registrant under the Act for a period of fourteen (14) days and thereafter until the custodial account shortage and insolvency are 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 thirty nine thousand dollars ($39,000.00). Respondents shall send a certified check or money order for five thousand dollars ($5,000.00), payable to the U.S. Treasury, to USDA-AMS-FTPP-PSD, P.O. 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. Respondents shall indicate on the certified check or money order that payment is made in reference to P&S Docket Nos. 19-J-0087 and 19-J-0088. Respondents shall pay an additional ten thousand dollars ($10,000.00) in monthly installments of four hundred sixteen dollars and sixty-seven cents ($416.67) for a period of two (2) years, with the first installment being due on or before the first day of the first month after respondents make their initial payment of $5000.00, 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. Department of Agriculture, shall be mailed to the address referenced above, and shall indicate that the payment is made in reference to P&S Docket Nos. 19-J-0087 and 19-J-0088.

The cease and desist order, suspension of Respondent Sugarcreek's registration, and civil penalty set forth herein shall be in settlement of (i) respondents' violations of the Act and its accompanying regulations that were alleged in the administrative complaint that initiated this proceeding, and (ii) any and all other violations of the Act and its accompanying regulations that the Deputy Administrator, FTPP, has alleged or might allege that respondents have committed up to and including the effective date of this consent decision and order.

The fourteen (14) day suspension of respondent Sugarcreek's registration and payment of the remaining twenty- four thousand dollars ($24,000.00) shall be held in abeyance during the

same two (2) year period in which respondents shall make the aforementioned monthly payments. If respondents fully comply with all of the provisions of the Packers and Stockyards Act, the regulations promulgated pursuant thereto, and this consent decision and order during the aforementioned two (2) year period, the fourteen (14) day suspension of respondent Sugarcreek's registration and payment of the remaining twenty-four thousand dollars ($24,000.00) shall be dismissed at the end of the two (2) year period. If, however, (1) respondents fail to make full and timely payment of the initial payment of five thousand dollars ($5,000.00) and any of the monthly installments of four hundred sixteen dollars and sixty-seven cents ($416.67) referenced above, or (2) complainant determines that respondents have violated the Act, the regulations, or any terms or conditions of this consent decision order during the aforementioned two (2) year period, then complainant may send a written notice of said missed payment(s) or violation(s) to respondents, and respondents or their counsel may respond in writing by verified pleading within fourteen (14) days from the date of respondents' receipt of the written notice. Immediately thereafter the matter shall be reviewed by the Packers and Stockyards Division (PSD), FTPP, AMS, USDA, and a decision made within thirty (30) days as to the alleged missed payment(s) and/or violation(s). If PSD determines that such missed payment(s) and/or violation(s) have occurred, it may seek full and immediate payment of the thirty-nine thousand dollar ($39,000.00) civil penalty, less any amount of the civil penalty that has already been paid by respondents, and immediate imposition of the fourteen (14) day suspension of respondent Sugarcreek's registration, without the need for any further proceedings. In addition, any future violations of the Packers and Stockyards Act, the regulations promulgated thereunder, and the terms and conditions of this consent decision and order may result in a referral of said violations to the

appropriate U.S. Attorney's Office with a request for an action to enforce the terms of this consent decision and order and the assessment of further civil penalties, in accordance with sections 314 and 315 of the Packers and Stockyards Act (7 U.S.C. §§ 215 and 216).

The provisions of this order shall become effective on the sixth day after service of this order on respondents' counsel.

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

Done at Washington, D.C.
this 7th day of January, 2019.

[redacted]
Chief Administrative Law Judge
Channing D. Strother

Respondent Sugarcreek Livestock Auction, Inc.

By: [redacted]

Title: Pres

[redacted]
LeRoy H. Baker, Jr.
Respondent

[redacted]
J. Trent Snavley, Esq.
Attorney for Respondent

[redacted]

**Thomas N. Bolick**
**Attorney for Complainant**