

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P&S Docket No. D-05-0005
)
Todd Syverson, d/b/a)
Syverson Livestock Brokers,)
)
Respondent) **Decision and Order on Remand**

PROCEDURAL HISTORY

On August 27, 2008, I issued a Decision and Order: (1) concluding Todd Syverson violated the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act], by engaging in an unfair and deceptive practice and failing to produce documents required to be kept; (2) ordering Mr. Syverson to cease and desist from engaging in an unfair and deceptive practice, in violation of 7 U.S.C. § 213(a); (3) ordering Mr. Syverson to cease and desist from failing to produce documents required to be kept under 7 U.S.C. § 221; and (4) suspending Mr. Syverson as a registrant under the Packers and Stockyards Act for a period of 5 years. *In re Todd Syverson*, 67 Agric. Dec. 1326 (2008). The United States Court of Appeals for the Eighth Circuit affirmed the conclusion that Mr. Syverson violated the Packers and Stockyards Act but vacated the 5-year suspension of

Mr. Syverson as a registrant under the Packers and Stockyards Act and remanded the case to me for reconsideration of the period of suspension, as follows:

We agree with the judicial officer that a suspension is appropriate because this case involves a serious violation of 7 U.S.C. § 213(a), as well as a violation of 7 U.S.C. § 221 that hindered the investigation. These serious offenses are deserving of a significant sanction, especially in light of the prior cease and desist order for price manipulation that had been imposed upon Syverson. A five-year suspension, however, is not a “reasonable specified period,” given the judicial officer’s deviation from the requirements of his own sanction policy and the facts of this case. It is unwarranted in law and without justification in fact. As such, it constituted an abuse of discretion and must be reconsidered.

III.

The judicial officer’s determinations that Syverson acted as a market agency under the [Packers and Stockyards Act] and that he violated the [Packers and Stockyards Act] are affirmed. The sanction is vacated and the case is remanded to the judicial officer for reconsideration of the sanction.

Syverson v. U.S. Dep’t of Agric., 601 F.3d 793, 805 (8th Cir. 2010).

On July 27, 2010, I conducted a conference call with E. Lawrence Oldfield, counsel for Mr. Syverson, and Charles E. Spicknall, counsel for the Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter GIPSA], to discuss the remand order in *Syverson v. U.S. Dep’t of Agric.*, 601 F.3d 793 (8th Cir. 2010). Mr. Oldfield and Mr. Spicknall requested an opportunity to file briefs, no later than October 27, 2010, regarding the appropriate period of suspension,

if any, to be imposed on Mr. Syverson on remand, which I granted.¹ On October 26, 2010, Mr. Syverson filed “Respondent Todd Syverson’s Brief Regarding Sanctions” recommending that I suspend Mr. Syverson as a registrant under the Packers and Stockyards Act for “less than 30 days, if any.” On October 27, 2010, GIPSA filed “Complainant’s Brief on Remand” recommending that I suspend Mr. Syverson as a registrant under the Packers and Stockyards Act for a period of 2 years. On November 1, 2010, the Hearing Clerk transmitted the record to me for consideration and a decision on remand.

DECISION ON REMAND

The United States Court of Appeals for the Eighth Circuit found I did not examine the nature of Mr. Syverson’s violations in relation to the remedial purposes of the Packers and Stockyards Act and I did not consider all relevant circumstances. The Court also noted three previous disciplinary cases involving violations of the Packers and Stockyards Act similar to Mr. Syverson’s violations that resulted in significantly lesser suspensions than I imposed upon Mr. Syverson. *Syverson v. U.S. Dep’t of Agric.*, 601 F.3d 793, 804-05 (8th Cir. 2010).

¹Order Regarding Time for Filing Briefs on Remand.

*Mr. Syverson's Violations Directly Relate to the Remedial
Purposes of the Packers and Stockyards Act*

The Packers and Stockyards Act is remedial legislation designed to protect farmers and ranchers in the livestock industry.² “The primary purpose of [the Packers and Stockyards] Act is to assure fair competition and fair trade practices in livestock marketing. . . .” H.R. Rep. No. 85-1048, at 1 (1957), *as reprinted in* 1958 U.S.C.C.A.N. 5212, 5213. The United States Court of Appeals for the Eighth Circuit found Mr. Syverson acted as a market agency in connection with his purchases of cattle for Lance Quam that are the subject of the instant proceeding. As a market agency, Mr. Syverson owed a fiduciary duty to Mr. Quam,³ and Mr. Syverson’s failure to disclose that he had repurchased cattle from his own consignment was an unfair and deceptive practice and a violation of 7 U.S.C. § 213(a). *Syverson v. U.S. Dep’t of Agric.*, 601 F.3d 793, 802 (8th Cir. 2010). Thus, I conclude Mr. Syverson’s violation of 7 U.S.C. § 213(a) was directly related to the primary purpose of the Packers and Stockyards Act to assure fair trade practices in livestock marketing. Moreover, Mr. Syverson thwarted the Secretary of Agriculture’s ability to enforce the Packers and Stockyards Act when he

² *Van Wyk v. Bergland*, 570 F.2d 701, 704 (8th Cir. 1978); *Bruhn’s Freezer Meats of Chicago, Inc. v. U.S. Dep’t of Agric.*, 438 F.2d 1332, 1337-38 (8th Cir. 1971); *In re Gary Chastain*, 47 Agric. Dec. 395, 420 (1988), *aff’d per curiam*, 860 F.2d 1086 (8th Cir. 1988) (unpublished), *printed in* 47 Agric. Dec. 1395 (1988).

³ *See United States v. Donahue Bros., Inc.*, 59 F.2d 1019, 1022 (8th Cir. 1932).

failed to produce records, which he was required to keep, for examination by United States Department of Agriculture investigators, in violation of 7 U.S.C. § 221.

Relevant Circumstances Not Previously Considered

The United States Court of Appeals for the Eighth Circuit cited three circumstances, which the Court found relevant, that I did not consider in *In re Todd Syverson*, 67 Agric. Dec. 1326 (2008): (1) Mr. Syverson's violation of 7 U.S.C. § 213(a) only harmed one individual, (2) Mr. Syverson's violation of 7 U.S.C. § 213(a) only involved a small number of livestock, and (3) a 5-year suspension would likely bankrupt Mr. Syverson and deprive Mr. Syverson of his livelihood. *Syverson v. U.S. Dep't of Agric.*, 601 F.3d 793, 804-05 (8th Cir. 2010).

I did not consider that Mr. Syverson's violation of 7 U.S.C. § 213(a) only directly harmed one individual and only involved a small number of livestock when imposing the 5-year suspension of Mr. Syverson as a registrant under the Packers and Stockyards Act in *In re Todd Syverson*, 67 Agric. Dec. 1326 (2008). Having been sufficiently admonished by the Court, I find the facts that Mr. Syverson's violation of 7 U.S.C. § 213(a) only directly harmed one individual and that Mr. Syverson's violation of 7 U.S.C. § 213(a) only involved a small number of livestock, mitigating factors⁴ that form

⁴GIPSA concedes Mr. Syverson only directly harmed one individual but argues the mitigating effect of the small number of livestock involved should be limited. GIPSA states its investigators could only trace 24 of the 44 cattle Mr. Syverson repurchased for Mr. Quam back to the original purchase because of Mr. Syverson's failure to produce

(continued...)

part of the basis for my reduction of the 5-year period of suspension which I imposed on Mr. Syverson in *In re Todd Syverson*, 67 Agric. Dec. 1326 (2008).

The United States Court of Appeals for the Eighth Circuit also found relevant the fact that a 5-year period of suspension of Mr. Syverson as a registrant under the Packers and Stockyards Act would likely bankrupt Mr. Syverson and deprive Mr. Syverson of his livelihood. The Court stated the remedial purposes of the Packers and Stockyards Act would be achieved by Mr. Syverson's continuing to conduct business in a fair and honest manner and complying with the record keeping requirements in the Packers and Stockyards Act; "[a] five-year suspension, if it permanently forces Syverson from the industry, appears to bear no relation to the remedial purposes of the [Packers and Stockyards Act]." *Syverson v. U.S. Dep't of Agric.*, 601 F.3d 793, 804 (8th Cir. 2010).

Mr. Syverson contends "[a]ny substantial suspension will result in [his] financial ruin and his bankruptcy. This is true whether the suspension is for five years or for one year." (Respondent Todd Syverson's Brief Regarding Sanctions at 6.) Mr. Syverson requests no more than a 30-day suspension; "[a]ny more than that, and his choice will be

⁴(...continued)

records, in violation of 7 U.S.C. § 221 (Tr. 320-21; CX 6-CX 14). (Complainant's Brief on Remand at 5 n.11.) I reject GIPSA's argument that Mr. Syverson's unfair and deceptive practice involved 44 cattle rather than 24 cattle. GIPSA only proved Mr. Syverson engaged in an unfair and deceptive practice with respect to 24 of the cattle sold to Mr. Quam. Nonetheless, even if Mr. Syverson's unfair and deceptive practice did involve 44 cattle sold to Mr. Quam, Mr. Syverson does not benefit from his violation of 7 U.S.C. § 221, as the period of suspension I impose in this Decision and Order on Remand reflects Mr. Syverson's violation of 7 U.S.C. § 221.

to either go out of business or to appeal again.” (Respondent Todd Syverson’s Brief Regarding Sanctions at 8.) On the other hand, GIPSA, citing Mr. and Mrs. Syverson’s other sources of income (Tr. 414, 451, 456, 475-76, 482, 493, 515-16, 522-24, 539), states a 2-year suspension of Mr. Syverson as a registrant under the Packers and Stockyards Act is unlikely to bankrupt Mr. Syverson or visit extreme hardship on his family (Complainant’s Brief on Remand at 15-16).

Based upon the Court’s finding that a 5-year suspension of Mr. Syverson as a registrant under the Packers and Stockyards Act is likely to bankrupt Mr. Syverson and deprive Mr. Syverson of his livelihood, I do not impose a 5-year suspension of Mr. Syverson in this Decision and Order on Remand. I agree with the Court that the remedial purposes of the Packers and Stockyards Act would be achieved if Mr. Syverson (and all others) would conduct business in a fair and honest manner and comply with the record keeping requirements of the Packers and Stockyards Act. However, I note Mr. Syverson’s violations of the Packers and Stockyards Act are serious and, in my view, a significant period of suspension as a registrant under the Packers and Stockyards Act is necessary to deter Mr. Syverson and others from violating the Packers and Stockyards Act in the future, even if the suspension poses some risk that Mr. Syverson may declare bankruptcy and poses a threat to Mr. Syverson’s livelihood. While I empathize with the hardship a suspension may cause a violator, the hardship a suspension may cause an individual violator is not dispositive in determining the sanction since the national interest

of having fair conditions in the livestock industry prevails over the violator's interest in continuing to conduct business as a registrant under the Packers and Stockyards Act. This Decision and Order on Remand does not operate as an absolute bar to Mr. Syverson's employment in the livestock industry during the period of suspension as a registrant under the Packers and Stockyards Act. There are many occupations in the livestock industry for which registration under the Packers and Stockyards Act is not required. Therefore, even though Mr. Syverson asserts a suspension in excess of 30 days will cause him to go out of business, I reject Mr. Syverson's request for a suspension of 30 days and impose a 16-month period of suspension on Mr. Syverson for his violations of the Packers and Stockyards Act.

Previous Disciplinary Decisions Noted by the Court

The United States Court of Appeals for the Eighth Circuit noted three disciplinary cases involving alleged violations of the Packers and Stockyards Act by persons other than Mr. Syverson, which cases are similar to the instant proceeding, but resulted in significantly lesser suspensions than I imposed upon Mr. Syverson, stating:

We, however, take note that other disciplinary cases for similar conduct resulted in significantly lesser suspensions. *In re: Stanley Gildersleeve & William Eberle*, P & S Docket No. 6848 (Apr. 28, 1988) (twenty-one day suspension for Gildersleeve and six months' suspension for Eberle); *In re: Marvin J. Dinner & Kenneth S. Ross*, 41 Agric. Dec. at 2203 (ninety-day suspension for Dinner); *In re: Marvin J. Dinner & Kenneth S. Ross*, 41 Agric. Dec. 2196, 2197 (1982) (ninety-day suspension for Ross). Although there are aggravating factors present here and uniformity in sanctions is not required, the extreme variance in suspensions is troubling.

Syverson v. U.S. Dep't of Agric., 601 F.3d 793, 805 (8th Cir. 2010).

All three of the decisions noted by the Court are consent decisions issued by administrative law judges in which the alleged violators neither admitted nor denied the alleged violations of the Packers and Stockyards Act. A consent decision is a signed agreement by the parties in the form of a decision that must be entered by the administrative law judge, unless an error is apparent on the face of the agreement (7 C.F.R. § 1.138). Generally, consent decisions do not come before the Judicial Officer, and none of the three cases noted by the Court came before the Judicial Officer.

I have long held that sanctions in consent decisions, which involve parties other than the party before me, are given no weight in determining the sanction in a litigated case.⁵ The former Judicial Officer briefly articulated the reasons for this position, as follows:

Consent orders issued without a hearing should be given no weight whatsoever in determining the sanction to be imposed in a litigated case. In a case where a consent order is agreed to by the parties, there is no record or argument to establish the basis for the sanction. It may seem less than appears warranted because of problems of proving the allegations of the complaint or because of mitigating circumstances not revealed to the Administrative Law Judge or the Judicial Officer. Other circumstances, such as personnel and budget considerations and the delay inherent in litigation, may also cause a consent order to seem less severe than appropriate. Conversely, a consent order may seem more severe than appears warranted because of aggravated circumstances not revealed by the complaint.

In re Braxton McLinden Worsley, 33 Agric. Dec. 1547, 1569 (1974).

⁵*In re Steven Thompson* (Decision as to Darrell Moore), 50 Agric. Dec. 392, 407 (1991); *In re Paul Rodman*, 47 Agric. Dec. 1400, 1416 (1988); *In re Blackfoot Livestock Comm'n Co.*, 45 Agric. Dec. 590, 636 (1986); *In re Braxton McLinden Worsley*, 33 Agric. Dec. 1547, 1569 (1974).

Moreover, two of the three decisions noted by the Court, *In re Marvin J. Dinner* (Consent Decision as to Marvin J. Dinner), 41 Agric. Dec. 2201 (1982), and *In re Marvin J. Dinner* (Consent Decision as to Kenneth S. Ross), 41 Agric. Dec. 2196 (1982), predate a 1983 change in the United States Department of Agriculture's sanction policy regarding violations of Title III of the Packers and Stockyards Act (7 U.S.C.

§§ 201-217a):

[D]uring the year 1983, the complainant conducted a complete review of the sanctions imposed for violations falling under Title III of the [Packers and Stockyards] Act. That review disclosed that sanctions clearly had not been sufficiently severe to effectively deter registrants violating the law. The complainant found that the same violations were occurring repeatedly and in some instances the same people were found to repeatedly commit the same offenses. As a result of that review, the complainant indicated that it has since markedly increased the severity of sanctions sought to be imposed in all cases.

In re Mark V. Porter, 47 Agric. Dec. 656, 668 (1988). "Since 1983, GIPSA has typically sought a suspension of six months or more in breach of fiduciary cases, depending on the facts and circumstances of the individual cases." (Complainant's Brief on Remand at 7.)

Unlike two of the three consent decisions noted by the Court, the events relevant to the instant proceeding occurred after the 1983 United States Department of Agriculture sanction policy change and, unlike all of the consent decisions noted by the Court, the instant proceeding was fully litigated and the respondent was found to have committed serious violations of the Packers and Stockyards Act. Therefore, I did not consider *In re Stanley Gildersleeve* (Consent Decision), 47 Agric. Dec. 807 (1988); *In re Marvin J.*

Dinner (Consent Decision as to Marvin J. Dinner), 41 Agric. Dec. 2201 (1982); or *In re Marvin J. Dinner* (Consent Decision as to Kenneth S. Ross), 41 Agric. Dec. 2196 (1982), when determining the appropriate sanction in *In re Todd Syverson*, 67 Agric. Dec. 1326 (2008). As the Court found these three consent decisions noteworthy, I have carefully reviewed them; however, with all due respect, I do not give them any weight in my determination regarding the appropriate sanction to be imposed on Mr. Syverson in this Decision and Order on Remand.

Sanction on Remand

The United States Department of Agriculture's sanction policy is set forth in *In re S.S. Farms Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), *aff'd*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3):

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

The recommendations of administrative officials charged with the responsibility for achieving the congressional purpose of the regulatory statute are highly relevant to any sanction to be imposed and are entitled to great weight in view of the experience gained by administrative officials during their day-to-day supervision of the regulated industry. *In re S.S. Farms Linn County, Inc.*, 50 Agric. Dec. at 497. The administrative

officials charged with the responsibility of administering the Packers and Stockyards Act recommend that I suspend Mr. Syverson as a registrant under the Packers and Stockyards Act for a period of 2 years. However, the recommendation of administrative officials as to the sanction is not controlling, and, in appropriate circumstances, the sanction imposed may be considerably less, or different, than that recommended by administrative officials.⁶ I reject GIPSA's sanction recommendation because, as noted, in this Decision and Order on Remand, *supra*, GIPSA does not appear to have taken into account the mitigating fact that Mr. Syverson's violation of 7 U.S.C. § 213(a) only involved a small number of livestock.

The purpose of an administrative sanction is to accomplish the remedial purposes of the Packers and Stockyards Act by deterring future violations of the Packers and Stockyards Act by the violator and others. This case involves serious violations of the Packers and Stockyards Act. Furthermore, Mr. Syverson committed these violations within a year of Mr. Syverson's consenting to a decision in which he was ordered to cease and desist from "[i]ssuing accounts of purchase or sale which fail to show the true and

⁶*In re Ronald Walker*, __ Agric. Dec. __, slip op. at 28 (Jan. 13, 2010), *appeal docketed*, No. 10-9511 (10th Cir. Feb. 24, 2010); *In re Lorenza Pearson*, __ Agric. Dec. __, slip op. at 69 (July 13, 2009); *In re Amarillo Wildlife Refuge, Inc.*, __ Agric. Dec. __, slip op. at 16 (Jan. 6, 2009).

correct nature of the livestock transaction accounted for therein” and “causing false records to be prepared.” *See* CX 5 at 2-3, *In re Todd Syverson*, 60 Agric. Dec. 302 (2001).

Based on the record before me, including the mitigating fact that only one person was directly affected by Mr. Syverson’s violation of 7 U.S.C. § 213(a), the mitigating fact that Mr. Syverson’s violation of 7 U.S.C. § 213(a) only involved 24 cattle, and the likelihood that a 5-year suspension of Mr. Syverson as a registrant under the Packers and Stockyards Act will bankrupt Mr. Syverson and deprive Mr. Syverson of his livelihood, I find Mr. Syverson’s violations warrant a suspension as a registrant under the Packers and Stockyards Act for a period of 16 months.⁷ However, Mr. Syverson may apply to the Packers and Stockyards Programs for permission to be a salaried employee of another registrant or packer after serving 8 months of the 16-month suspension.

For the foregoing reasons and the reasons in *In re Todd Syverson*, 67 Agric. Dec. 1326 (2008), the following Order is issued.

ORDER

1. Mr. Syverson, his agents and employees, directly or indirectly through any corporate or other device, including, but not limited to, Syverson Livestock Brokers, in

⁷I suspend Mr. Syverson for a period of 1 year for his violation of 7 U.S.C. § 213(a) and for a period of 4 months for his violation of 7 U.S.C. § 221.

connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from:

a. failing to comply with the requirements of section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)), and specifically, Mr. Syverson shall not represent to any buyer that his cost of cattle is based on a “purchase price” resulting from the “purchase” of cattle from his own inventory unless he discloses that he bought the cattle from his own consignment and his initial purchase price of the cattle; and

b. failing without good cause to produce for examination, within a reasonable time when asked by GIPSA, all of the accounts, records, and memoranda as are required to be kept under section 401 of the Packers and Stockyards Act (7 U.S.C. § 221), including, but not limited to, a purchase journal (recording, at minimum: the date of purchase; seller; number of head; description of livestock; purchase price(s); date(s) received; commission charges, if any; other fees or charges; whether the livestock were purchased for the account of another, and if so, the identity of that person or firm) together with all invoices, buyer bills, consignment sheets, and other records associated with individual livestock purchases and sales.

Paragraph 1 of this Order shall become effective on the day after service of this Order on Mr. Syverson.

2. Mr. Syverson is suspended as a registrant under the Packers and Stockyards Act for a period of 16 months; *Provided, however,* That this Order may be modified upon

application to Packers and Stockyards Programs to permit the salaried employment of Mr. Syverson by another registrant or packer after the expiration of 8 months of the suspension term.

Paragraph 2 of this Order shall become effective on the 60th day after service of this Order on Mr. Syverson.

Done at Washington, DC

November 16, 2010

William G. Jenson
Judicial Officer