

IOWA STATE FAIR BOARD

IN RE: : DOCKET NO. 03DGS002

JENNA, BRYAN & LISA SIEVERS :
27135 1ST AVENUE :
NEW LIBERTY, IOWA 52765 :

Appellees, :

vs. :

IOWA STATE FAIR BOARD : APPEAL DECISION

Appellant. :

STATEMENT OF THE CASE

This case of *Sievers vs. Iowa State Fair Board* comes back to the Iowa State Fair Board [hereinafter the Board] on an appeal filed by the Board.

On August 16, 2002, the Board voted unanimously to disqualify steer number 227, shown by Jenna Sievers, from the Iowa State Fair 4-H steer show. Sievers appealed the Board's decision to an administrative law judge who reversed and concluded the Board was incorrect in its decision to disqualify steer number 227 from being named the 2002 Iowa State Fair Market Steer Grand Champion. The Board appeals the decision of the administrative law judge. Exhibits 1 through 27 and Exhibits A through H consecutively were received into evidence before the administrative law judges. The Board considered the exhibits and the transcript of the administrative hearing in arriving at its decision. Each party submitted briefs and presented oral

arguments before the Board which were also considered in arriving at this decision.

FINDINGS OF FACT

Jenna Sievers is a member of the Scott County 4-H. On August 11, 2002, Jenna entered a steer with ear tag number 227 in the market beef competition at the Iowa State Fair. (Ex. 8.) Positive identification is required of all market beef entrants by January 15, 2002. (Ex. 1, p. 10.) If a steer is not weighed in by the deadline it is not eligible for show. (Tr. p. 326.) On December 28, 2001, Jenna and her father, Bryan Sievers, took six calves to the Rock Island Sale Barn for weigh in and identification. (Tr. p. 279-280.) The Sievers' steers were tagged with numbers 120 through 125. (Ex. 3.) In 2002, identification of a steer was required through an official 4-H ear tag.¹ (Tr. p. 326.) A nose or muzzle print of each steer was taken at the request of the Sievers to allow them to participate in a competition at Ak-Sar-Ben in Omaha, Nebraska. (Tr. p. 416.) In July 2002, steer number 124 lost its ear tag and was retagged with number 227. (Ex. 6.) The nose print for steer number 124 taken on December 28, 2001 at weigh-in should correspond to the nose print of steer number 227, as they should be one in the same animal. (Tr. p. 381.)

Steer number 227 was named the Grand Champion Market Steer at the 2002 Iowa State Fair. (Tr. p. 41.) Being named the Grand Champion is an honor which also allows the entrant to participate in the Sale of Champions. (Tr. p. 42.) In compliance with the rules, a nose print of steer number 227 was taken after it was named Grand Champion. Exhibit 9 are the two nose prints taken of steer number 227. Due to an earlier controversy, which will be more fully described below, the nose print of steer number 124 taken in December 2001 was requested from

¹4-H rules did not require nose printing in 2002. 4-H rules have changed since 2002 and more detailed information, including DNA sampling is required of each animal. (Tr. p. 51.)

Ak-Sar-Ben to compare with the nose print of steer number 227. (Tr. p. 44.) Janet Williams, from the Iowa State Fair, contacted Donald Lock to review the muzzle print of steer number 124 taken in December of 2001 (Ex. 4) and the muzzle prints of number 227 taken following being named Grand Champion. (Ex. 9.) Lock is self employed as a forensic consultant. (Tr. p. 189.) Lock has worked with the Missouri State Fair for ten years muzzle printing cattle and lambs. (Tr. p. 196.) The muzzle prints contained in exhibit 4 and exhibit 9 were scanned and e-mailed to Lock. (Tr. p. 209.) On August 16, 2002, Lock wrote a report concluding that "nose print of Q1 [ear tag #124 obtained December 28, 2001] and the known nose prints of K1 [two known nose prints obtained August 14, 2002] are not the prints of the same animal." (Ex. 14.)

On August 16, 2002, the Board met concerning the discrepancy in the identification of steer number 227. The Board voted unanimously to disqualify steer number 227. (Ex. 19, p. 2.) The Board reconvened at 7:40 p.m. with Bryan and Jenna's brother, Jon Sievers, in attendance. After additional consideration, the Board declined to change their motion to disqualify steer number 227. (Ex. 19, p. 2.) An additional meeting of the Board was held on August 17, 2002, and the Board again declined to reconsider the disqualification. (Ex. 19, p. 3.) Sievers appealed the Board's decision and an evidentiary hearing was held before an administrative law judge.

Burdell Arp testified at the administrative hearing. Arp is the Scott County Youth Coordinator for the 4-H program. She is responsible for organizing events for Scott County. (Tr. p. 112.) Arp was responsible for the organization of the Scott County weigh-in which was held at the Rock Island Sale Barn in Rock Island, Illinois. (Tr. p. 114.) In November of 2001, Arp sent out a letter to all 4-Her's enrolled in the market beef program with directions to the Rock

Island stockyard, and rules for the county and state fair. Arp also included a sample ID sheet for the 4-Her's (Tr. p. 115.)

Arp explained the weigh in process. One trailer is backed up to a loading chute where the animals are unloaded. The animals run down a narrow alleyway, usually one at a time, because the alleyway is narrow. One animal at a time is run into a head gate. At that time, any present ear tags are removed and the animal is tagged with the new 4-H tag. The 4-Her's are asked whether they are going to Ak-Sar-Ben and, if so, the animal is nosed printed while still in the head gate. The card with the nose print is handed to the 4-Her. The volunteers work with only one animal at a time and the exhibitor is able to observe the process. (Tr. p. 117-18.)

Bryan Sievers testified that he arrived with his daughter Jenna and her six calves close to noon. (Tr. p. 280.) The cattle were unloaded into a small holding pen. From there they were run into an alleyway and head gate located at the end of the alleyway. Once the cattle are tagged and nose printed, they were run down another alleyway to a gate where they were held in a sales ring until they are weighed. (Tr. p. 281 and 285.) Bryan was shuttling the truck and trailer while Jenna moved the calves through the tagging process. (Tr. p. 282.) Bryan was not there to watch every steer be nosed printed. (Tr. p. 284.) While in the sales ring, two people help identify the calf for the livestock ID sheet. (Ex. 2 and 3.) The volunteers looked at the ear tags, wrote the ear tag down on the livestock ID sheets and moved the animals to the scale where the volunteers filled out the livestock ID sheet and actually weighed the calves. (Tr. p. 285-86.)

Jenna testified that she watched Janet Frederichs, a volunteer, write the ear tag number on the informational side of the Ak-Sar-Ben card then hand it to Brent Arp who took the nose print. (Tr. p. 438-439.) Jenna was facing her calves while they were being tagged and nosed printed.

(Tr. p. 440.) Jenna had been through this process in the past, however, she was normally with her brother who was unable to attend. Jenna testified that she did not ask to view the ear tag number at the time the animal was printed; however, she could. (Tr. p. 444.) Brent handed Jenna the card for each animal once it had been nose printed. According to Jenna, the ear tag was in the steer when the animal was nose printed. (Tr. p. 453.) Nothing prevented Jenna from checking to see if the ear tag number of the steer in the chute matched the Ak-Sar-Ben card number. (Tr. p. 456.)

Frederichs was responsible for marking the Ak-Sar-Ben 4-H market beef card with the ear tag of the animal. Bryan testified that he observes Frederichs make erasures to the information side of the card but he had no recollection as to which numbers were erased. (Tr. p. 286-87.) The only information Frederich wrote on the card was the ear tag number in pencil on the upper right hand portion of the card. (Tr. 287-88.) Exhibit 4 is the original form for steer number 124 with the accompanying nose print on the back. The 4-Her was required to provide her address and sign the Ak-Sar-Ben card with the ear tag number and nose print and turn the card in before leaving the sale barn. (Tr. p. 124.) Jenna inadvertently took her cards home. (Tr. p. 288.)

Bryan called Arp on January 3, 2002, to make changes to the ID sheet (exhibit 3) at which time he reported that Jenna had mistakenly taken the Ak-Sar-Ben cards. (Tr. 124.) One change Bryan made to the ID sheet was to change the breed for number 124 from Maine Anjou to cross breed. (Tr. p. 122 and ex. 3, p. 1.) Arp told Bryan that she needed the Ak-Sar-Ben cards and Bryan said he would bring them on the following day, Friday. (Tr. p. 124-25.) Arp called Bryan on Monday, January 7, 2002, when the cards had not been turned in and offered to stop by and

pick up the cards. (Tr. p. 125.) It is the responsibility of the exhibitor to ensure that the information on the Ak-Sar-Ben card is correct. (Tr. p. 125-26.) Neither Bryan nor Jenna expressed any concerns to Arp about any information or tag numbers on the Ak-Sar-Ben cards. (Tr. p. 125.)

Bryan testified that he noticed that some of the ear tag numbers for the Ak-Sar-Ben cards had been written in pencil in the upper right hand corner of the card. Bryan testified that he wrote over the original ear tag number in pen. (Tr. p. 289.) Bryan also wrote the ear tag number on the muzzle print side of the card. (Tr. p. 290.) Bryan testified that he completed all the information on the Ak-Sar-Ben card including the weight which he pulled off of the livestock ID sheet. (Ex. 3; Tr. p. 290.) Bryan testified that he recorded, to the best of his ability, the ear tag number which had been written in pencil by Frederich. (Tr. p. 291.) Bryan did not tell Arp that he had written over the pencil ear tag number of any of the Ak-Sar-Ben cards with ink. (Tr. p. 125.)

On January 7, 2002, two volunteers who had been present at the weigh-in, Kerry Meyer and Dean Holst, contacted Arp with concerns. They believed that some ear tags had been removed from animals on the Sievers' farm and there was one animal that was not at the beef weigh-in that now had an ear tag. Meyer and Holst told Arp that they believed that steer number 124 was not present at weigh-in on December 28, 2001. (Tr. p. 128 and Ex. 12.) Arp discussed the accusations with Scott County officials but no immediate action was taken. Sometime later, Arp was made aware of a weight gain in steer number 124. Steer number 124 weighed in on December 28, 2001, at 665 pounds. Steer number 124 was shown in January and weighed 930 pounds. (Tr. p. 129 and Ex. B-1, p. 6.) Arp testified that this was a "red flag". (Tr. p. 129.)

Denise Schwab is the 4-H Youth Development Specialist for Iowa State University. She is the livestock superintendent and provides guidance to all the of the 4-H agriculture events. (Tr. p. 21.) Scott County officials contacted Schwab in late February 2002 concerning the allegations that ear tags had been switched on animals on the Sievers' farm. (Tr. p. 32.) There is no question that switching ear tags would be a violation of 4-H rules. (Tr. p. 32, and 326-27.) Schwab tried to get a beef specialist to serve as a neutral third party to resolve the dispute, none were available. (Tr. p. 33.) Schwab and a volunteer, Lowell Tiedet, traveled to the Sievers' farm and a second farm and renose printed the six steers. (Tr. p. 304.) Schwab and Tiedet checked the ear tags to see if they were still moveable. (Tr. p. 433.) The Scott County committee asked the Sievers on several occasions if the ear tags could be removed and examined by the manufacturer to verify that they had not been tampered with, Bryan said no. (Tr. p. 131 and 376, and Ex. 12.) The Scott County 4-H committee attempted to compare the nose prints of the animals but they were not experts and were unable to reach an agreement. (Tr. p. 433.) After much discussion the committee concluded that there was not enough evidence to disqualify Jenna from showing the animals. (Tr. p. 131.)²

On or about July 8, 2002, Bryan contacted Arp to report that steer number 124 had lost its tag and needed to be retagged as soon as possible as they were going to show the steer. (Tr. p. 133 and 295.) Bryan called the next day and Arp returned the call and told him that there were several calves ahead of him. (Tr. p. 133.) An ear tag consists of two pieces. See Exhibit D. Jenna's brother, Jon Sievers, testified regarding the lost ear tag. The back or button portion of

²There is no dispute that the Board is not required to follow the decision of Scott County. The Board has the final decision as to matters related to competition at the Fair. (Tr. p. 96.)

the ear tag was still in the steer's ear. Jon removed that portion and saved it so the steer could be retagged. (Tr. p. 414.) Jon testified that the button portion of the tag was ripped and jagged. The top metal portion of the button was missing. (Tr. p. 415.) Bryan also testified that the button was not completely there, that it had been ripped, and the part just prior to the point was missing. (Tr. p. 380.) Jon and Jenna were unable to find the large tag portion of the ear tag. (Tr. 414.) Steer number 124 was retagged with number 227. (Tr. p. 295.) There is no dispute that Jenna entered steer number 227 in the Iowa State Fair and that steer number 227 was named the Grand Champion of the Fair. (Ex. 8 and Tr. p. 41.)

At the administrative hearing, the Board offered the testimony of Donald Lock. Lock is self-employed as a forensic consultant. (Tr. p. 189.) Prior to becoming self-employed, Lock was working as a criminalist for the Missouri State Highway Patrol State Crime Lab for approximately thirty-four years. (Tr. p. 190.) He is a certified police instructor. He instructs law enforcement agencies in latent print identification and fingerprint identification. (Tr. p. 191.) He is certified in the area of latent print identification and is a certified latent print examiner. (Tr. p. 192.) Lock also worked for the Missouri State Fair for the last ten years assisting in muzzle printing lambs and cattle for their fair. (Tr. p. 196.) According to Lock, no two muzzle prints are identical. (Tr. p. 199-200.) Lock compared exhibit 4, which was the nose print taken of steer number 124 at the time of weigh-in, and exhibit 9 which were the nose prints of steer 227 (formerly number 124) taken following being named Grand Champion. Lock concluded the prints were not made by the same animal. (Tr. p. 212 and Ex.14.)

For quality assurance/quality control purposes, Lock sent the muzzle prints to Kenneth Gill for review. (Tr. p. 263.) Lock did not give Gill a summary of his findings. (Tr. p. 215 and

266.) Gill agreed with Lock that the prints in exhibit 4 and exhibit 9 were not from the same animal. (Tr. p. 215 and 265 and Ex. 16.) Gill's findings were made after the Fair had ended and were not available to the Board at the time it made its decision to disqualify steer 227.

Gill testified at the administrative hearing. He is currently employed with the Mississippi Crime Laboratory as a Forensic Scientist. (Tr. p. 249.) He is a latent print examiner. Gill teaches latent prints and advanced latent prints to local law enforcement officers. (Tr. p. 250.) He is a certified latent print examiner. (Tr. p. 252.) Gill explained the review he did of exhibits 4 and 9 following the Fair and his conclusion that the prints were not made by the same animal. (Tr. p. 265.)

CONCLUSIONS OF LAW

In an agency action, where the Appellant is challenging an agency determination, the burden of proof is upon the Appellant, in this case the Sievers, to show that the Board's decision to disqualify steer number 227 was unreasonable, arbitrary, or capricious or characterized by an abuse of discretion. *Empire Cable v. Dept. of Revenue & Fin.*, 507 N.W.2d 705, 707 (Iowa App. 1993); *Busing v. Iowa Dept. of Transp, MVD*, 455 N.W.2d 921, 922 (Iowa 1990).

Review by the Iowa State Fair Board of a proposed decision rendered by an administrative law judge is de novo. See Iowa Code § 17A.15(3) (2003). "On appeal from or review of the proposed decision, the agency has all the power which it would have in initially making the final decision except as it may limit the issues on notice to the parties or by rule." Iowa Code § 17.15(3) (2003). Because the decision was appealed to the agency (the Board) within the time provided by rule, the Board, pursuant to section 17A.15(3), assumed full

responsibility for deciding anew all issues of fact and law. *Tussing v. George A. Hormal & Co.*, 461 N.W.2d 450, 452, (Iowa 1990). The Board may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or may reverse or modify any conclusion of law that the Board finds in error. § 17A.15(3).

The Iowa State Fair Board is required to hold an annual fair and exposition on the Iowa State Fairgrounds. *See* Iowa Code § 173.14(1) (2003). Accordingly, the Board has been delegated authority to "[p]repare premium lists and establish rules of exhibitors for the fair which shall be published by the board not later than sixty days prior to the opening of the fair." Iowa Code § 173.14(2). Pursuant to this authority, the Iowa State Fair Board published the 2002 4-H Premium Book to govern the conduct of exhibitors in the 4-H livestock exhibitions at the 2002 Iowa State Fair. (Ex. 1.)

All 4-H animals intended to be shown at the Iowa State Fair "must be entered for exhibition strictly in accordance with the rules and regulations of the Iowa State Fair." (Ex. 1, p. 3.) Each exhibited animal "is to be an outgrowth of work done as planned part of a project or program through 4-H." (Ex. 1, p. 2.) Only livestock projects that have been enrolled by the exhibitor and listed on a Livestock Identification Report Form ... may be entered" for competition at the Iowa State Fair. (Ex. 1, p. 4.) "Positive identification is required on all market beef. All animals must be tagged with an official Iowa 4-H tag by January 15. Any evidence of tampering with the official 4-H tag will be scrutinized. (Ex. 1, p. 10.) "All market beef will be measured, weighed and checked for appropriate county identification." Any cattle which do not correspond with the Market Beef Identification Report will not be accepted." (Ex. 1, p. 11.) "Tampering and/or misrepresentation as to breeding, age, ownership and any other

irregularity in showing will be considered fraud and deception” and will subject the exhibitor and his or her family to sanctions, including disqualification. (Ex. 1, pp. 5-6.) 371 Iowa Admin. Code § 6.7 states: “[s]hould any individual enter an animal or article in a name other than that of a bona fide owner or attempt to perpetrate a fraud by misrepresenting any fact, the entry shall not be allowed to compete for or receive any premium.”

Various facts of this case give the Board concerns regarding whether steer tagged with number 124 at weigh-in on December 28, 2001, was the same animal that was named the Grand Champion. First, the fact that the Ak-Sar-Ben cards were not turned in at the time of weigh-in. While Sievers’ provided a reasonable explanation for the error, it still raises some concern. The Board is equally concerned with the fact the Bryan Sievers wrote in pen over the pencil ear tag number in the upper right hand corner of the Ak-Sar-Ben card. Again, while this fact is not dispositive, it too causes concern regarding the proper identification of steer number 124. Next, steer number 124 weighed in on December 28, 2001, at 665 pounds. The steer was then shown at Sioux Falls on January 28, 2002, and weighed 930 pounds. (Ex. B-1, p. 6.) Arp testified that this fact raised a red flag. (Tr. p. 129.) As noted in the 4-H Committee Minutes a “rate of gain of over 9 pounds per day” is practically unheard of. (Ex. 12, p. 2.) Again, while there is no evidence regarding an expected weight gain for a steer during this period, this raises a red flag to the Board as it did for the county board.

On February 24, 2002, the Scott County 4-H committee met to discuss whether to disqualify Jenna’s steers from future competition. (Ex. 12.) The committee requested that the Sievers allow the committee to remove the ear tags and send the ear tags to the manufacturer to determine whether the ear tags had been tampered with. The Sievers declined. Again, this is a

concern for the Fair, but as with the other cited evidence, it is not dispositive to the outcome.

The Scott county committee did not have the benefit of two experts to analyze the nose prints of the Ak-Sar-Ben cards with the nose prints taken by Tiedt. While the nose prints were not required for competition at the 2002 Fair, and a different result may have occurred had the nose prints not been taken, the evidence is available and should not be discarded. There is no reason to question its reliability. The 4-H Premium Book states that any evidence of tampering with the official 4-H tag will be scrutinized. (Ex. 1, p. 10.) The Board feels there is sufficient evidence, given the facts set forth above, to call into question whether steer 227 was in fact steer number 124 at the weigh-in on December 28, 2001.

The burden rests upon the Sievers to prove that steer number 227 was steer number 124 at the December 28, 2001, weigh-in. The Sievers offered pictures and testimony for various individuals at the hearing. None of the photographs show steer number 124 at the weigh-in. (Tr. p. 384.) Photograph 1 shows Jon with a calf, however, there is no visible ear tag present. The remaining photographs were taken after the 4-H investigation and nose printing in February 2002. No one disputes that, according to the nose print evidence, steer number 124 was on the Sievers' farm in February 2002, and no one disputed that the steer was retagged with number 227 and was later named Grand Champion at the State Fair. The photographs do not prove that steer number 124 was at weigh-in on December 28, 2001.

In addition, much of the testimony offered by the Sievers' fails to address the pivotal issue. While Bryan was at the weigh-in on December 28, 2001, with his daughter, he was not present when the steers were tagged and nosed printed. Therefore, his testimony is not helpful on this issue. Bart Elder, from National Livestock Exhibitor, testified that he believed he saw the

steer called Pickles (Pickles is the name given to the steer by the Sievers' family) on Russ Harkema's farm in December 2001, however, he was not at the Scott County weigh-in. (Tr. p. 360.) Again, his testimony is not helpful to the issue at hand. Edward Carter testified at the hearing. Steer number 227 was born on the Carter farm; however, Carter was not at the Scott County weigh-in and is unable to offer testimony on the issue of whether steer number 124 was at the weigh-in. (Tr. p. 400-01.) Jon Sievers testified at the hearing but he too was not at the weigh-in and his testimony is not persuasive. (Tr. p. 400-01.)

Jim Buesing, a childhood friend of the Sievers family, testified that he was: "[a]bsolutely confident" that he saw steer with ear tag 124 at weigh-in on December 28, 2001. (Tr. p. 370.) The Board does not find Buesing's testimony to be persuasive. Buesing testified that he looked into Sievers' trailer while waiting in line for weigh-in. (Tr. p. 365-66.) The trailer contained six calves. Buesing testified that the remaining five calves were unrecognizable from other steers but steer 124 stood out to him. (Tr. p. 368.) Buesing also looked at the calves while they were in the holding pen. (Tr. p. 369.) Buesing's observations were made more than a year and a half before the administrative hearing. The observations occurred for a short period of time and one occurred when Buesing looked into a trailer containing six calves. The Board does not have the same confidence in the identification made by Buesing that the administrative law judge had.

Buesing testified as follows:

- Q. do you have any recollection with what ear tag numbers Jenna's calves would have had?
- A. No.
- Q. Okay. Do you recall seeing ear tag numbers in those calves when you were looking at them?
- A. No, not really.
- Q. Okay. Did you ever go to the Sievers farm and observe the calves or steers there?

A. No, I don't think I seen that group of calves ever at the farm.

(Tr. p. 373.)

Certainly Buesing's testimony does not support the administrative law judge's conclusion that "Pickles weighed in on December 28, 2001, and was ear tagged with number 124." (Dec. P. 11.) At best, Buesing's testimony places steer number 124 at the weigh-in, nothing more. The Board does not find the testimony of Buesing more persuasive than the testimony and forensic evidence presented by Lock and Gill.

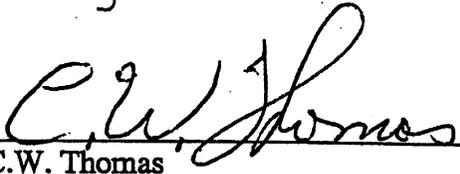
Jenna testified that she was able to see whatever steer was being tagged and nose printed. (Tr. p. 451.) The steer was tagged and then nose printed. (Tr. p. 453.) Brent Arp did the nose printing. If he was unable to obtain a readable print, the nose card was discarded on the floor. Jenna testified that Frederick, who was entering the ear tag number onto the card, did not pick up the discarded nose print cards from the floor. (Tr. p. 453-54.) Arp verified that ear tag numbers corresponded to the number on the Ak-Sar-Ben card. (Tr. p. 454-56.) After the steer was tagged and nose printed, Jenna could have taken the card to verify that the ear tag number matched the card. (Tr. p. 456.) There is no evidence of any confusion or mix up at the weigh-in. This is confirmed by the testimony of Buesing. He testified that things ran smoothly at weigh-in for his calves. (Tr. p. 372-73.) The Sievers's trailer was next in line behind Buesing. (Tr. p. 365.)

Given these facts, the Board must rely, as it did in its original decision, on the independent forensic evidence which was uncontroverted at the hearing. Both Lock and Gill testified that the nose print of steer number 124 did not match the nose prints of the Grand Champion Steer. (Tr. p. 212 and 285 and Ex. 14 and 16.) The Sievers presented no evidence to the contrary nor did they offer any explanation as to why the nose print of steer number 124 did

not match the nose print of steer number 227.

The Iowa State Fair Board hereby reverses the decision of the administrative law judge and disqualifies steer number 227 as the Grand Champion Steer of the 200²~~1~~ Iowa State Fair. In accordance with the 4-H Premium Book, all premium money should be withheld and the championship banner and trophies returned to the Iowa State Fair.

SIGNED this 20 day of February, 2004.



C.W. Thomas
President of the Iowa State Fair Board

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