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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	PACA Docket No. D-02-0024
Coosemans Specialties, Inc)	
)	
Respondent)	
)	
	and	
In re:)	PACA Docket No. APP-03-0002
Eddy C. Creces)	
)	
Petitioner)	
)	
	and	
In re:)	PACA Docket No. APP-03-0003
Daniel F. Coosemans)	
)	
Petitioner)	

Decision and Order

On August 16, 2002, the Fruit and Vegetable Branch, Agricultural Marketing Service, United States Department of Agriculture (USDA), filed a disciplinary complaint initiating this proceeding. The complaint seeks the revocation of the license of Respondent, Coosemans Specialties, Inc., that allows it to sell produce in interstate and foreign commerce. Revocation is sought because bribes were paid on Respondent's behalf to a USDA produce inspector in alleged violation of section 2(4) of the Perishable Agricultural Commodities Act (7 U.S.C. § 499b(4); "PACA" or "the Act"). The bribes were paid in 1999, by Joe Faraci, Vice President, Director and partial owner of Coosemans Specialties, Inc., in respect to 14 inspections of produce. The payments of the bribes are alleged to be "willful, flagrant and repeated" violations of the PACA in that each was, under section 2(4) of the PACA, a "...failure, without reasonable cause, to perform a duty, express or implied, arising out of any understanding in connection with a produce transaction...."

Revocation of a corporation's PACA license has serious, adverse consequences for those officers and owners who are found to be "responsibly connected" with the corporate licensee. For that reason, Eddy C. Creces and Daniel F. Coosemans have filed Petitions for Review of Determinations by the Chief of the PACA Branch that they are responsibly connected with Coosemans Specialties Inc. Their petitions have been consolidated with the disciplinary proceeding.

An oral hearing was held on October 27-29, 2003, in New York, New York, before Administrative Law Judge Leslie Holt in which 672 pages of testimony were transcribed ("Tr._") and exhibits were received from both Complainant ("Cx_") and Respondent ("Rx_"). Complainant was represented by Ruben D. Rudolph, Jr., Attorney, Office of the General Counsel, United States Department of Agriculture, Washington, DC. Respondent, Coosemans Specialties, Inc., and Petitioner Eddy C. Creces were represented by Steven McCarron, Attorney, Washington, DC. Petitioner Daniel F. Coosemans was represented by Martin Shulman, Attorney, Woodside, NY.

Subsequent to the hearing, Judge Holt became unavailable to decide this matter and it was reassigned to me. The parties initially asked for a new hearing and a hearing date was scheduled. Subsequently, the motion for a new hearing was withdrawn and further proceedings waived. I thereupon scheduled briefing dates and briefing was completed on May 20, 2005.

Upon review of the record evidence and consideration of the arguments by the parties, I have concluded that the PACA license of Coosemans Specialties, Inc. should be revoked for willful, flagrant and repeated violations of the Act, and that both Eddy C.

Creces and Daniel F. Coosemans are responsibly connected with Coosemans Specialties, Inc.

FINDINGS OF FACT

1. On March 23, 1999, William J. Cashin, a produce inspector employed by USDA, Agricultural Marketing Service, Fresh Products Branch, was arrested by agents of the Federal Bureau of Investigation and USDA's Office of Inspector General for taking bribes in violation of 18 U.S.C. § 201(b)(2). He decided to cooperate and participate in their investigation of bribery practices at the Hunts Point Terminal Market, Bronx, New York City, New York. The investigation was dubbed "Operation Forbidden Fruit" and William Cashin helped carry it forward by being wired by the FBI with audio and audio/visual equipment he then used to tape the inspections he conducted at Hunts Point. At the end of each day, he turned over the tapes and the bribe money he received, and was then de-briefed by FBI and OIG agents who prepared FBI 302 reports that identified the person paying the cash bribe, the company that employed that person, the type of produce inspected and the amount of the cash payment. For his cooperation, William Cashin was allowed to plead guilty to one (1) count of bribery for which he served no jail time and was not required to pay a fine. He was allowed to retain his future federal pension for serving as an inspector from July 1979 through August 1999, and the official reason given for his resignation from USDA was to "pursue a different career opportunity" (Tr. 131-137, Tr. 181, Cx 19 and Cx 11-18).

2. William Cashin was one of nine (9) inspectors who were taking bribes for inspections they performed for those Hunts Point wholesalers who were "warm money people". Their supervisors assigned requested inspections so that the corrupt inspectors

would perform the inspections for the "warm money people", i.e., the bribe paying wholesalers. For their participation, the supervisors received kickbacks (Tr. 174-176). The bribery practices at Hunts Point had existed for some 20 years when William Cashin was arrested; but not all inspectors had been taking bribes and not all wholesalers were paying them (Tr. 177 and Tr. 186-187).

3. Coosemans Specialties, Inc. is a New York corporation doing business at the Hunts Point Market with a mailing address of 249 Row B, NYC Terminal Market, Bronx, NY 10474. It has held license number 861254 since May 28, 1986 and has renewed the license annually through the present. (Tr. 41-42, Cx 1 and Cx 1A).

4. In 1999, the three principal officers of Coosemans Specialties, Inc. were Daniel F. Coosemans, President; Eddy C. Creces, Secretary and Treasurer; and Joe Faraci, Vice President. In 1999, each owned 33 1/3 % of the outstanding shares of stock in the corporation until July 1, 1999, when Joe Faraci sold most of his shares of stock to the others for \$150,000.00 and reduced his ownership share to 9%. (Tr. 507, Cx.1 p. 11 and Cx 4 p. 1).

5. Since 1994, William Cashin dealt with Joe Faraci whenever an inspection was requested by Coosemans Specialties, Inc. Joe Faraci regularly made illegal payments of \$50.00 to William Cashin for each inspection he performed from 1994 through 1999. (Tr. 124-127). In exchange for the \$50.00 payments, William Cashin understood that he would "help" Coosemans Specialties, Inc. when needed by preparing inspection reports that he would falsify by (1) increasing the percentage of defects; (2) increasing the number of containers inspected; or (3) changing the temperatures of the load. (Tr. 128-

129). William Cashin gave such "help" on 75% to 80% of the inspections he conducted for Coosemans Specialties, Inc. (Tr. 130).

6. After becoming a participant in the FBI investigation, William Cashin conducted 14 inspections in 1999, for Coosemans Specialties, Inc. for which Joe Faraci paid him \$60.00 for one inspection and \$50.00 for each of the others. These payments resulted in the indictment of Joe Faraci, on October 21, 1999, by the United States District Court for the Southern District of New York. The indictment specified eight counts of Bribery of a Public Official, a felony. The indictment alleged that Joe Faraci (Cx 7):

...[U]nlawfully, willfully, knowingly, directly and indirectly, did corruptly give, offer and promise things of value to a public official, with intent to influence official acts, to wit, Joe Faraci, the defendant, made cash payments to a United States Department of Agriculture produce inspector in order to influence the outcome of inspections of inspections of fresh fruits and vegetables conducted at Coosemans Specialties, Inc., Hunts Point Terminal Market, Bronx, New York

7. Joe Faraci was arrested on October 27, 1999 and, on June 22, 1999, he pled guilty to Count One of the indictment that alleged his payment of a bribe on April 1, 1999, at Coosemans Specialties, Inc.'s Hunts Point place of business. Joe Faraci was sentenced to 15 months in prison, three years of supervised release, and a \$4,000.00 fine; he was also ordered to make restitution to victims pursuant to PACA proceedings (Cx 8).

8. William Cashin testified that, in 1999, he was paid bribes by Joe Faraci in respect to 14 inspections of produce performed for Coosemans Specialties, Inc. There was no contradicting testimony. His testimony combined with the 8 count indictment filed against Joe Faraci, the FBI's 302 reports and the contemporaneous inspection reports he prepared establish that bribes were paid to William Cashin on behalf of Coosemans Specialties, Inc. in respect to the following 14 inspections he performed:

Inspection 1.

On April 1, 1999, William Cashin performed one (1) inspection of garlic at Coosemans for which Joe Faraci paid him a bribe of \$60.00. (Cx 11).

Inspections 2 and 3.

On May 11, 1999, William Cashin performed two (2) inspections (one of mangoes and one of plantains) at Coosemans for which Joe Faraci paid him a bribe of \$350.00 that included bribe money for five prior inspections. (Cx 12).

Inspections 4, 5 and 6.

On May 17, 1999, William Cashin performed three (3) inspections (one of snow peas and sugar snap peas, one of Haitian mangoes and one of peppers) at Coosemans for which Joe Faraci paid him a bribe of \$150.00. (Cx 13).

Inspection 7.

On May 26, 1999, William Cashin performed one (1) inspection of a load of radicchio at Coosemans for which Joe Faraci paid him a bribe of \$50.00. (Cx 14).

Inspections 8, 9 10 and 11.

On July 23, 1999, William Cashin performed four (4) inspections (one of radicchio, one of tomatoes, one of plum tomatoes and one of mesculin) at Coosemans for which Joe Faraci paid him a bribe of \$200.00. (Cx 15).

Inspection 12.

On August 2, 1999, William Cashin performed one (1) inspection of sweet peppers at Coosemans for which Joe Faraci paid him a bribe of \$50.00. (Cx 16).

Inspection 13.

On August 2 or 3, 1999, William Cashin performed one (1) inspection of tomatoes at Coosemans for which Joe Faraci paid him a bribe of \$50.00. (Cx 17).

Inspection 14.

On August 12, 1999, William Cashin performed one (1) inspection of asparagus at Coosemans for which Joe Faraci paid him a bribe of \$50.00. (Cx 18).

9. Coosemans Specialties, Inc. employs at its Hunt Point Terminal Market facilities some forty (40) employees. Twenty-five (25) of its employees are Hispanics residing in the Bronx who work as porters loading and unloading produce and performing other warehouse duties. Eight (8) or nine (9) of its employees are office workers and five (5) are salespeople. (Tr. 428).

10. There are 52 merchants at the Hunts Point Terminal Market. In comparison to the others, Coosemans Specialties, Inc. is medium sized. It owns four (4) of the Terminal's warehouse units and receives about 100 lots of produce on each of the five days per week it operates. (Tr. 428-429). Coosemans Specialties, Inc.'s 2002 gross revenue was just over \$24 million with an annual payroll of \$2.1 million.

11. Daniel F. Coosemans who now principally resides in Miami and Panama, came to the United States in the 1980's to introduce a marketing concept he started in Belgium for franchising the specialty fruit and vegetable business. He started his first company in Belgium. He then started businesses on a partnership basis in the United States. His method has been to identify a market, then start a new company in that market, and then find a partner who would run the company allowing Mr. Coosemans to move on and start other companies elsewhere. His first American company was started in Los Angeles. He

located his second company, which Eddy C. Creces runs for him, at the Hunts Point Terminal Market in New York. There are now 27 such companies around the world and 20 of them are in the United States. (Tr. 619-624). After he set up these companies, Mr. Coosemans' involvement with each of them has been to be its financing entity and to check its monthly statements to determine whether it is achieving the profits he believes to be appropriate. (Tr. 625, Tr. 629). Eddy C. Creces is also his partner in Boston and Philadelphia. (Tr. 626). Altogether his companies have 550 employees in the United States with overall weekly revenues in the tens of thousands. (Tr. 627).

CONCLUSIONS

- 1. In 1999, Respondent, Coosemans Specialties, Inc. committed willful, flagrant and repeated violations of Section 2 (4) of the Perishable Agricultural Commodities Act when Joe Faraci, its Vice President, Director and part owner, paid bribes to a USDA produce inspector for 14 inspections of produce he performed on behalf of the Respondent.**

The record evidence establishes that Joe Faraci, Respondent's Vice President, Director and partial owner during 1999, paid bribes to a USDA produce inspector in respect to 14 inspections of produce performed at Respondent's request. The produce inspector who received the bribes so testified. Joe Faraci who pled guilty to one count of the indictment thereby admitting he paid one of the bribes as charged, was not called to testify in this proceeding.

Section 16 of the PACA (7 U. S. C. § 499p) provides that:

“... the act, omission, or failure of any agent, officer, or any other person acting for or employed by any commission merchant, dealer, or broker, within the scope of his employment or office, shall in every case be deemed the act, omission, or failure of such commission merchant, dealer or broker....

There is no need for the other officers and owners of a PACA licensee to have actual knowledge of the illegal payments by one officer or agent, for the licensee to be held to

have committed knowing and willful violations of the PACA. *See Post & Taback, Inc.*, 62 Agric. Dec. 802, 820-821(2003); *affirmed, Post & Taback v. Dept. of Agriculture*, 2005 WL 348466, 2005 U.S. App. Lexis 2576 (D.C. Cir. 2005).

Respondent argues that the payment of a bribe to a USDA inspector though a reprehensible violation of other federal laws, is not a violation of the PACA. Even though *Post & Taback, supra* and *Kleinman and Hochberg, Inc.*, PACA Docket No. D-02-0021, December 2, 2004, have held otherwise, Respondent contends those case were wrongly decided and overstated the goals of the PACA.

Respondent's argument is unpersuasive.

Firstly, the Judicial Officer's decision in *Post & Taback*, as affirmed by the D. C. Circuit, is binding in this proceeding.

Secondly, Respondent's premises are flawed.

Respondent argues that violations of the PACA are limited to "regulating the conduct of licensees towards other merchants which results in some financial detriment on a specific transaction." (Respondent's brief, p. 21). Respondent further asserts that the code of fair dealing between produce merchants which the PACA was enacted to establish, was not violated by the illegal payments to the USDA produce inspector.

To support these propositions, Respondent contends that the \$50.00 payments to William Cashin were really nothing more than tips for prompt service, citing *Kleinman and Hochberg, Inc, supra*, presently on appeal to the Judicial Officer. In that case a finding was made that similar payments "were not used to gain a competitive advantage over any shipper or grower and that there is not any credible evidence that ...these payments (were made) for any reason other than to receive expedited inspections". *Ibid*,

slip opinion, p. 25. However, the statement was made in the context of the appropriate sanction to be imposed and not to infer that the PACA had not been violated. Indeed, the Chief Administrative Law Judge did conclude that the payments were willful, repeated and flagrant violations of the PACA.

The evidence before me also differs from that in *Kleinman*. Unlike *Kleinman*, the only evidence as to the reason for the payments is the testimony of the USDA produce inspector that he was being paid bribes to “help” Respondent with the inspections. The person who actually paid the bribes did not testify to contradict the inspector as was the case in *Kleinman*. Respondent can only point to the following statement by Joe Faraci at the time he pled guilty (Rx 15, pp 14-15):

Whenever we need an inspection I gave or I asked to insure them to come faster, I gave them a \$50.00 gift...I gave William Cashin \$50.00 to come quicker to do the inspection....

However, this was a self-serving statement looking to downplay the seriousness of his crime and possibly lessen his sentence. It was contrary to Joe Faraci’s admission when he pled guilty to Count One of his indictment that specified (see Finding 5 and Cx 7):

...Joe Faraci, the defendant, made cash payments to a United States Department of Agriculture produce inspector in order to influence the outcome of inspections of fresh fruits and vegetables conducted at Coosemans Specialties, Inc., Hunts Point Terminal Market, Bronx, New York (Emphasis supplied).

In addition to Joe Faraci’s admission, William Cashin spelled out the ways in which he would “help” Coosemans Specialties, Inc. in respect to 75% to 80% of the inspections he conducted for Respondent. (Finding 4 and Tr.130). Even if there was contradicting, credible evidence showing that the bribes were not given to influence the outcome of the inspections, the fact that the inspector was, to use the vernacular, “on the

take” and “in the pocket” of the Respondent, gave Respondent an unfair and unconscionable competitive advantage over its shippers who supplied it with produce. It also gained an unfair advantage over competing wholesalers.

The PACA was designed to protect the producers of perishable agricultural products who in many instances send their products to a buyer or commission merchant who is thousand of miles away. It was enacted to provide a measure of control over a branch of industry which is almost exclusively in interstate commerce, is highly competitive, and presents many opportunities for sharp practice and irresponsible business conduct. *See Zwick v. Freeman*, 373 F. 2d 110, 116 (2d Cir. 1967).

The PACA seeks to bring about fair dealing between members of the produce industry who conduct interstate and foreign commerce long-distance by phone and fax, where shipments must move quickly to avoid losses caused by rot and decay. When the receiver tells the shipper that the value of the shipment has been lowered because of rot and decay, the distant out-of-state or foreign shipper has only the receiver’s word as verified by a USDA inspection report. A report that supports the receiver’s claim that the produce has deteriorated can cause a shipper to accept a lower than anticipated price. It can also induce the shipper to continue to deal with the receiver in the future since a certificate that supports the receiver’s evaluation of a shipment’s condition on receipt makes him appear to be reliable and trustworthy. So having an inspector in its pocket gave Respondent an unfair competitive advantage over the shippers and growers who supplied it with produce as well as over competing wholesalers.

Even if the bribed inspector never falsified any of his inspection reports, the fact that Respondent gave the inspector illegal payments, standing alone, violated the PACA.

Section 2(4) of the PACA makes it unlawful for a licensee (7 U.S.C. § 499 b(4)):

...in connection with any transaction involving any perishable agricultural commodity which is received in interstate or foreign commerce...to fail, without reasonable cause, to perform any specification or duty, express or implied, arising out of any undertaking in connection with any such transaction....

Koam Produce, Inc. v. DiMare Homestead, Inc., 329 F.3d 123 (2nd Cir. 2003),

upheld a reparation award given to a shipper who accepted reduced prices from a receiver based on inspections by three of the inspectors at Hunt's Point who were convicted of accepting bribes. A finding was made in the case by the Judicial Officer that there was no showing that falsified inspections were issued as to the produce, but that nevertheless all of the price adjustments were voidable because of the shipper's mistake and the receiver's misrepresentation regarding the integrity of the inspection process. The Court, in affirming the Judicial Officer, stated:

...It is clear that, when the parties agreed to the price adjustments, DiMare (the shipper) was mistaken as to both whether Koam (the receiver) had paid bribes to USDA inspectors to influence the outcome of inspections and whether the USDA inspectors who examined the tomatoes had accepted the bribes.

* * * * *

...Koam's fault obviously caused DiMare's mistake, as Koam knew that its employee had bribed USDA inspectors, yet Koam neglected to inform DiMare of this fact. In addition, in light of Koam's involvement in bribery (as demonstrated by (its employee) Friedman's guilty plea), it would be unconscionable to enforce the price-adjustment agreements, which resulted from the work of inspectors who had accepted bribes.

Ibid, at 127-129.

As was the case in *Koam*, when Respondent paid bribes in respect to inspections without informing the shipper, it violated its duty to inform the shipper of that fact. Its duty to do so is found in section 2 (4) of the PACA and its failure to inform the shipper each time a bribe was paid in respect to an inspection was a separate violation of that section of the PACA.

There were fourteen inspections where bribes were paid in 1999. The violations were therefore repeated. *See H.C. MacClaren v. U.S. Dept. of Agriculture*, 342 F. 3d 584, 592 (6th Cir. 2003).

The violations were also flagrant. *See Post & Taback, supra*, at 825.

And the violations were willful. *See Post & Taback, supra*, at 828-829; and *Kleinman & Hochberg, supra*, at 23.

Accordingly, it is concluded that Respondent committed willful, flagrant and repeated violations of section 2 (4) of the PACA.

2. License Revocation is the appropriate disciplinary sanction.

Whenever, there is a determination by the Secretary that a PACA licensee has violated a provision of section 2 of the PACA, under section 8 of the PACA (7 U.S.C. § 499h (a)):

...the Secretary may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, except that, if the violation is flagrant or repeated, the Secretary may, by order, revoke the license of the offender.

Alternately, a monetary civil penalty may be imposed (7 U.S.C. § 499h (e)):

In lieu of suspending or revoking a license under this section...the Secretary may assess a civil penalty not to exceed \$2,000 for each violative transaction....In assessing the amount of a penalty under this subsection, the Secretary shall give due consideration to the size of the business, the number of employees, and the seriousness, nature, and amount of the violation....

Both Mr. Coosemans and Mr. Creces request that if violations by respondent are found, civil penalties be imposed instead of revocation. They so request because if they are determined to be "responsibly connected" to a PACA licensee that has had its license revoked, each will be barred from all industry employment for one year, and after one

year, employment shall be conditioned upon the posting of a surety bond acceptable to USDA. *See* subsection (b) of section 8 of the PACA.

The fact that some forty employees will lose their jobs, with many of them unlikely to find other employment is the most forceful argument against license revocation.

However, bribery is such an egregious violation of law that the only appropriate sanction is one that will deter this licensee and other industry members from paying bribes to inspectors in the future. If civil penalties were instead imposed, the maximum penalty that could be assessed for the 14 tainted inspections would be \$28,000.00, in that the Act limits the civil penalty that may be assessed to \$2,000.00 per violation. (7 U.S.C. § 499h(e)). This amount would hardly be sufficient to deter future violations in a market where bribes paid to produce inspectors are likened to tips. A twenty-year culture of bribery needs to be turned around. This is unlikely to happen if the only consequence to a licensee when caught is to pay a sum that is insignificant when compared to the competitive advantages its misconduct allowed it to unfairly and illegally gain.

Mr. Coosemans also argues that the restrictions that revocation will place upon his participation in the activities of the 20 other PACA licensed companies in which he has an ownership interest is excessive and a consequence never intended by Congress. However, the language of the Act is clear and unambiguous. If it requires change, the modifications must come from Congress and may not be made here. It is noted that Mr. Coosemans present involvement with each of the licensed companies is that of a financing entity seeking a return on his investments by sharing in the profits of the company. Seemingly, his financial interests may be protected by creating appropriate

loan or other creditor security instruments that may permit his financial stake to be converted back to an ownership interest upon the end of the limitations placed upon him by the revocation. At any rate, once he is no longer employed by the other 20 licensed companies, they will be unaffected by the revocation.

The Department's sanction policy is set forth in *S.S. Farms Linn County, Inc.*, 50 Agric.Dec. 476, 497 (1991), *aff'd*, 991 F.2d 803 (9th Cir. 1993):

...the 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.

I have considered and discussed the nature of the violations as they relate to the purposes of the PACA and the various circumstances that I believe are relevant to an appropriate disciplinary sanction. My views accord with those of John Koller, the administrative official who testified at the hearing. (Tr. 549-554).

Mr. Koller stated that approximately 150,000 produce inspections are performed each year and if there is any suspicion that the inspections are tainted in any way, the entire industry is affected. Inasmuch as the inspection certificates are used to resolve hundreds of disputes each day, the objectivity of the inspector should not be compromised by payments he receives from wholesalers, nor should other wholesalers be made to feel that they too should make such payments in order to be competitive. The PACA Branch recommends license revocation to deter Respondent and any future potential violators from making illegal payments to produce inspectors. The recommendation is consistent with prior case law.

Accordingly, the PACA license of Respondent, Coosemans Specialties, Inc. should be revoked.

3. Both Eddy C. Creces and Daniel F. Coosemans are responsibly connected with the PACA licensee, Coosemans Specialties, Inc.

The PACA provides that (7 U.S.C. § 499a(9)):

The term “responsibly connected” means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association. A person shall not be deemed to be responsibly connected if the person demonstrates by a preponderance of the evidence that the person was not actively involved in the activities resulting in a violation of this chapter and that the person either was only nominally a partner, officer, director, or shareholder of a violating licensee or entity subject to license or was not an owner of a violating licensee or entity subject to license which was the alter ego of its owners.

Mr. Creces and Mr. Coosemans each owned “over 10 per centum of the outstanding stock” and each was an officer of the licensed corporation. Neither can be said to have been only nominally an officer of the corporation nor a nominal shareholder. Mr. Creces was its Secretary and Treasurer and Mr. Coosemans was its President. In 1999, each owned 33 1/3 % of its stock that increased on July 1, 1999, to 45 1/2%.

Nonetheless, Mr. Creces argues he should not be found to be responsibly connected to the corporate licensee because he did not willfully commit the bribery violations. But the payment of bribes by an employee of a licensee is a willful violation of the PACA. *See Post & Taback, supra*, at 828-829.

Mr. Creces further argues that a determination of responsible connection would deprive him of his property, specifically his stock ownership, without due process in violation of the Fifth Amendment. A similar argument was advanced and rejected in *Zwick, supra*, at 118-119. *Zwick* was followed and other constitutional objections to the

employment bar provisions of the PACA were raised and rejected in *Bama Tomato Co. v. U. S. Dept. of Agriculture*, 112 F. 3d 1542, 1546-1547 (11th Cir. 1997).

Mr. Coosemans similarly argues that the application of the employment bar provisions to him constitutes a denial of his constitutional rights. He cites in support of his argument various cases that concern constitutional restrictions on governmental regulation of other trades and professions. However, the cited cases are inapposite. *Zwick* and *Bama Tomato Co.* considered such arguments in the specific context of the PACA's employment bar provisions and found them to be unavailing. Therefore this argument is again rejected as contrary to applicable case law. His other argument that Congress never intended the employment bar provisions to apply to one holding ownership interests in multiple PACA licensed corporations, has been previously discussed and rejected, *supra*.

For the foregoing reasons, Eddy C. Creces and Daniel F. Coosemans are each determined to be responsibly connected to Coosemans Specialties, Inc.

Accordingly, the following Order is being entered.

ORDER

Respondent, Coosemans Specialties, Inc. has committed willful, repeated and flagrant violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

The PACA license of Respondent, Coosemans Specialties, Inc. shall upon the day this order becomes effective, be revoked.

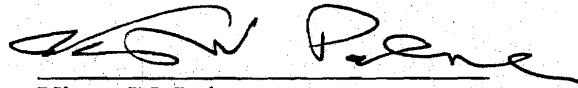
Petitioner, Eddy C. Creces, was and is, at all times material hereto, responsibly connected to the Respondent, Coosemans Specialties, Inc.

Petitioner, Daniel F. Coosemans, was and is, at all times material hereto, responsibly connected to the Respondent, Coosemans Specialties, Inc.

The provisions of this order shall become effective on the first day after this decision becomes final. Unless appealed within 30 days of receiving service of this decision as provided in the Rules of Practice at 7 C.F.R. § 1.145(a), this decision shall become final without further proceedings 35 days after service as provided in the Rules of Practice at 7 C.F.R. § 1.142(c)(4).

Copies of this decision shall be served upon the parties.

Done at Washington, DC
this 13th day of July, 2005



Victor W. Palmer
Administrative Law Judge