SUMMARY OF MAJOR DECISIONS BY THE JUDICIAL OFFICER

Fiscal Year 2005

In *In re Dennis Hill*, AWA Docket No. 04-0012, decided by the Judicial Officer on October 8, 2004, the Judicial Officer reversed Administrative Law Judge Victor W. Palmer's denial of Complainant's motion for a default decision. The Judicial Officer issued a decision in which he found Respondents violated the Animal Welfare Act and the regulations and standards issued under the Animal Welfare Act. The Judicial Officer concluded Respondents filed a late answer to the Amended Complaint and, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), were deemed to have admitted the allegations in the Amended Complaint and waived the opportunity for a hearing. The Judicial Officer rejected Respondents' contention that they had filed meritorious objections to Complainant's motion for a default decision. The Judicial Officer issued a cease and desist order against Respondents, assessed Respondents a $20,000 civil penalty, and revoked Respondent Dennis Hill's Animal Welfare Act license.

In *In re Lion Raisins, Inc.*, 2003 AMA Docket No. F&V 989-7, decided by the Judicial Officer on October 19, 2004, the Judicial Officer affirmed Administrative Law Judge Victor W. Palmer's Order Dismissing Petition with Prejudice. The Judicial Officer stated proceedings under 7 U.S.C. § 608c(15)(A) do not afford a forum to debate questions of policy, desirability, or effectiveness of a marketing order. Moreover, arguments that competitors fare better than Petitioners are not appropriate for consideration in a proceeding under 7 U.S.C. § 608c(15)(A). The Judicial Officer concluded that Petitioners did not state a legally cognizable claim.

In *In re Eric John Drogosch*, AWA Docket No. 04-0014, decided by the Judicial Officer on October 28, 2004, the Judicial Officer affirmed the Default Decision issued by Administrative Law Judge Victor W. Palmer: (1) finding Respondent violated the regulations and standards issued under the Animal Welfare Act (Regulations and Standards) as alleged in the Complaint; (2) ordering Respondent to cease and desist from violating the Regulations and Standards; and (3) revoking Respondent's Animal Welfare Act license. The Judicial Officer deemed Respondent's failure to file a timely answer an admission of the allegations in the Complaint and a waiver of hearing (7 C.F.R. §§ 1.136(c), .139). The Judicial Officer held Respondent's subsequent correction of his violations neither eliminated Respondent's violations of the Regulations and Standards nor constituted a meritorious basis for denying Complainant's Motion for Default Decision. The Judicial Officer agreed with Respondent's contention that revocation of his Animal Welfare Act license is a severe sanction, but the Judicial Officer held revocation was warranted in law and justified in fact. The Judicial Officer rejected Complainant's contention that Respondent's appeal was late-filed and that the Judicial Officer had no jurisdiction to hear Respondent's appeal.

In *In re Beverly Burgess* (Decision as to Winston T. Groover, Jr.), HPA Docket No. 01-0008, decided by the Judicial Officer on November 15, 2004, the Judicial Officer affirmed the decision by Administrative Law Judge Victor W. Palmer concluding that Winston T. Groover, Jr., exhibited Stocks Clutch FCR in a horse show while the horse was sore, in violation of 15 U.S.C. § 1824(2)(A). The Judicial Officer assessed Respondent a $2,200 civil penalty and

disqualified Respondent from participating in horse shows, horse exhibitions, horse sales, and horse auctions for 1 year. The Judicial Officer rejected Respondent's contention that Complainant failed to prove by a preponderance of the evidence that Stocks Clutch FCR was sore when exhibited. The Judicial Officer found past recollection recorded in the form of affidavits and APHIS Form 7077 reliable, probative, and substantial evidence. The Judicial Officer further stated, while Respondent presented competent evidence in support of his position that Stocks Clutch FCR was not sore when exhibited, he gave more weight to Complainant's evidence.

In *In re John F. Cuneo, Jr.*, AWA Docket No. 03-0023 (Order Dismissing Complainant's Appeal Petition as to John F. Cuneo, Jr., and The Hawthorn Corporation), decided by the Judicial Officer on November 22, 2004, the Judicial Officer dismissed Complainant's interlocutory appeal from a ruling by Chief Administrative Law Judge Marc R. Hillson on the ground that interlocutory appeals are not permitted under the Rules of Practice.

In *In re David Gilbert* (Order Denying Late Appeal), AWA Docket No. 04-0001, decided by the Judicial Officer on November 30, 2004, the Judicial Officer denied Respondent's late-filed appeal. The Judicial Officer concluded he had no jurisdiction to hear Respondent's appeal filed 1 day after Chief Administrative Law Judge Marc R. Hillson's decision became final.

In *In re Dennis Hill* (Order Denying Petition for Reconsideration), AWA Docket No. 04-0012, decided by the Judicial Officer on November 30, 2004, the Judicial Officer rejected Respondents' contention that only an administrative law judge has authority under 7 C.F.R. § 1.139 to determine whether a respondent has filed meritorious objections to a complainant's motion for adoption of a proposed default decision. The Judicial Officer also rejected Respondents' contentions that the Judicial Officer erroneously defaulted Respondents, erroneously held that Respondents' reliance on the Hearing Clerk's letter dated April 27, 2004, was misplaced, and erroneously used formalities and clerical errors to default Respondents.

In *In re Lion Raisins, Inc.* (Order Granting Petition for Reconsideration), 2003 AMA Docket No. F&V 989-7, decided by the Judicial Officer on December 7, 2004, the Judicial Officer granted Respondent's petition to reconsider one sentence in *In re Lion Raisins, Inc.*, 63 Agric. Dec. ___ (Oct. 19, 2004). The Judicial Officer concluded that the sentence erroneously states that the Agricultural Marketing Agreement Act of 1937, as amended, requires that each agricultural commodity marketing order contain an inspection requirement. The Judicial Officer amended the sentence to reflect that 7 U.S.C. § 608c(6) provides that each agricultural commodity marketing order, other than milk marketing orders, contain one or more of the terms and conditions in 7 U.S.C. § 608c(6)(A)-(J), and that one of the terms and conditions, which is set forth in 7 U.S.C. § 608c(6)(F), is an inspection requirement.

In *In re Lion Raisins, Inc.*, I&G Docket No. 01-0001 (Ruling on Certified Questions), decided by the Judicial Officer on December 21, 2004, the Judicial Officer ruled, in response to questions certified by Administrative Law Judge Jill S. Clifton: (1) the Secretary of

Agriculture's authority to prescribe regulations for the inspection, certification, and identification of the class, quality, quantity, and condition of agricultural products and to issue regulations and orders to carry out the purposes of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. §§ 1621-1631) (Agricultural Marketing Act of 1946), includes authority to issue debarment regulations and to debar persons from benefits under the Agricultural Marketing Act of 1946; and (2) the Agricultural Marketing Act of 1946 does not authorize the Secretary of Agriculture to issue subpoenas.

In *In re Miguel A. Hidalgo*, P.Q. Docket No. 03-0008, decided by the Judicial Officer on January 24, 2005, the Judicial Officer affirmed the Default Decision by Administrative Law Judge Jill S. Clifton concluding Respondent imported six mangoes into the United States from Peru in violation of the Plant Protection Act (7 U.S.C. §§ 7701-7772) and regulations issued under the Plant Protection Act (7 C.F.R. § 319.56 *et seq*.) and assessing Respondent a $500 civil penalty. The Judicial Officer rejected Respondent's contention that he was not served with the complaint. The Judicial Officer stated the Hearing Clerk properly served Respondent with the complaint on November 12, 2002, in accordance with 7 C.F.R. § 1.147(c)(1), by mailing the complaint by certified mail to Respondent's last known residence where someone signed for the complaint. The Judicial Officer stated the Rules of Practice are reasonably calculated to apprise parties of the pendency of an action and afford them an opportunity to be heard. Therefore, the Rules of Practice, which were followed in the proceeding, meets the requirements of due process.

In *In re Ricky M. Watson* (Decision as to Ricky M. Watson and Cheri Watson), AWA Docket No. 04-0017, decided by the Judicial Officer on February 23, 2005, the Judicial Officer reversed Administrative Law Judge Victor W. Palmer's denial of Complainant's motion for a default decision. The Judicial Officer issued a decision in which he found Respondents Ricky M. Watson and Cheri Watson violated the Animal Welfare Act and the regulations and standards issued under the Animal Welfare Act. The Judicial Officer concluded Respondents Ricky M. Watson and Cheri Watson filed a late answer to the Complaint and, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), were deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. The Judicial Officer rejected Respondents Ricky M. Watson's and Cheri Watson's contention that they had filed meritorious objections to Complainant's motion for a default decision. The Judicial Officer issued a cease and desist order against Respondents Ricky M. Watson and Cheri Watson and assessed each of them a $17,050 civil penalty.

In *In re St. Johns Shipping Company, Inc.* (Decision as to Bobby L. Shields), P.Q. Docket No. 03-0015, decided by the Judicial Officer on March 1, 2005, the Judicial Officer affirmed Chief Administrative Law Judge Marc R. Hillson's decision holding that Respondent Bobby L. Shields violated section 413(c) of the Plant Protection Act (7 U.S.C. § 7713(c)) by moving from a port of entry cargo from the Bahamas without inspection by, and authorization for entry or transit through the United States from, the United States Department of Agriculture. The Judicial Officer found Respondent Bobby L. Shields failed to file an answer that denied or otherwise responded to the Complaint; therefore, Respondent Bobby L. Shields was deemed to have admitted the allegations of the Complaint. The Judicial Officer assessed Respondent Bobby L.

Shields a $1,000 civil penalty. The Judicial Officer held that Respondent Bobby L. Shields failed to prove, by producing documents, that he was not able to pay the civil penalty.

In *In re Patti Magee*, HPA Docket No. 02-0004 (Ruling Dismissing Complainant's Motion to Abrogate Consent Decision), decided by the Judicial Officer on March 22, 2005, the Judicial Officer dismissed Complainant's Motion to Abrogate Consent Decision. The Judicial Officer stated the Rules of Practice (7 C.F.R. § 1.143(a)) provides that motions filed or made prior to the filing of an appeal of an administrative law judge's decision, except motions which directly relate to an appeal, shall be ruled on by the administrative law judge. As no appeal from an administrative law judge's decision had been filed in the proceeding and Complainant's motion did not relate to an appeal from an administrative law judge's decision, the Judicial Officer could not entertain Complainant's motion.

In *In re Diana R. McCourt*, AWA Docket No. 05-0003, decided by the Judicial Officer on March 29, 2005, the Judicial Officer reversed Chief Administrative Law Judge Marc R. Hillson's denial of Complainant's motion for a default decision. The Judicial Officer issued a decision in which he found Respondents violated the Animal Welfare Act and the regulations issued under the Animal Welfare Act. The Judicial Officer concluded Respondents filed a late answer to the Complaint and, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), were deemed to have admitted the allegations in the Complaint and waived opportunity for hearing. The Judicial Officer issued a cease and desist order against Respondents, assessed Respondent Diana R. McCourt an $18,070 civil penalty, and assessed Respondent Siberian Tiger Conservation Association a $16,420 civil penalty.

In *In re Chad Way*, HPA Docket No. 03-0005, decided by the Judicial Officer on April 11, 2005, the Judicial Officer reversed Administrative Law Judge Peter M. Davenport's denial of Complainant's motion for default decision. The Judicial Officer issued a decision in which he found Respondents failed and refused to permit the Secretary of Agriculture to inspect a horse and entered a horse in a horse show while the horse was wearing a prohibited substance in violation of the Horse Protection Act (15 U.S.C. § 1824(7), (9)) and the regulations issued under the Horse Protection Act (9 C.F.R. §§ 11.2(c), .4(b)). The Judicial Officer concluded Respondents filed a late answer to the Amended Complaint and, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), were deemed to have admitted the allegations in the Amended Complaint and waived opportunity for hearing. The Judicial Officer found Respondents' objections to Complainant's motion for default decision timely filed; however, the Judicial Officer did not find Respondents' objections meritorious. The Judicial Officer found Respondents' decision to proceed pro se did not excuse Respondents from failing to file a timely answer to the Amended Complaint and found no basis for Respondents' mistaken belief that a timely answer to the Complaint operated as an answer to the Amended Complaint. The Judicial Officer assessed Respondents, jointly and severally, a $4,400 civil penalty and disqualified Respondents from showing, exhibiting, or entering any horse and from judging, managing, or participating in any horse show, horse exhibition, horse sale, or horse auction for 2 years.

In *In re Ricky M. Watson* (Order Denying Petition to Reconsider as to Ricky M. Watson and Cheri Watson), AWA Docket No. 04-0017, decided by the Judicial Officer on April 13, 2005, the Judicial Officer rejected Respondents' request for a reduction of the $17,050 civil penalty assessed against each Respondent for 31 willful violations of the Animal Welfare Act and the regulations and standards issued under the Animal Welfare Act. The Judicial Officer rejected Respondents' contention that their violations were not willful stating, based on Respondents' failure to file a timely answer to the Complaint, Respondents were deemed to have admitted their violations were willful as alleged in the Complaint. The Judicial Officer found Respondents' reason for filing a late answer and the tax-exempt status and non-profit status of Respondents' business irrelevant to Respondents' request that the Judicial Officer reduce the civil penalty. The Judicial Officer rejected Respondents' contention that they did not operate a large business. The Judicial Officer also found Respondents' 31 willful violations of the Animal Welfare Act and the regulations and standards issued under the Animal Welfare Act belied Respondents' assertion that they "tried to do the right thing as far as [their] animals were concerned." Finally, the Judicial Officer rejected Respondents' contention that their cessation of all activities regulated under the Animal Welfare Act was a basis for reducing the civil penalty. The Judicial Officer pointed out that the civil penalty assessed against Respondents was 20 percent of the maximum that could have been assessed and that the civil penalty was not only appropriate and necessary to deter Respondents from future violations of the Animal Welfare Act, but also appropriate and necessary to deter others from future violations of the Animal Welfare Act.

In *In re Lion Raisins, Inc.*, 2005 AMA Docket No. F&V 989-1, decided by the Judicial Officer on April 25, 2005, the Judicial Officer affirmed Administrative Law Judge Peter M. Davenport's (ALJ's) Order striking Petitioner's Amended Petition and dismissing Petitioner's Petition. The Judicial Officer stated, when a motion to dismiss has been filed, a petitioner may file an amended petition after the Hearing Clerk serves the petitioner with the administrative law judge's order dismissing the petition (7 C.F.R. § 900.52(c)(2)). The Judicial Officer struck Petitioner's Amended Petition as premature because Petitioner filed it 33 days prior to being served with the ALJ's Order dismissing Petitioner's Petition. The Judicial Officer dismissed Petitioner's Petition with prejudice because it did not state a legally-cognizable claim. In addition, the Judicial Officer found Petitioner's Petition did not contain the information required by 7 C.F.R. § 900.52(b).

In *In re Marla Garcia Gonzalez*, A.Q. Docket No. 05-0004, decided by the Judicial Officer on April 27, 2005, the Judicial Officer affirmed the Default Decision by Administrative Law Judge Peter M. Davenport concluding Respondent imported 1.5 kilograms of pork into the United States from Spain in violation of the Animal Health Protection Act and regulations issued under the Animal Health Protection Act (9 C.F.R. § 94.9(b) (2002)) and assessing Respondent a $500 civil penalty. The Judicial Officer rejected Respondent's contention that she had previously paid a $100 civil penalty, stating Respondent failed to file a timely answer to the complainant and failed to file timely objections to Complainant's motion for a default decision; therefore, Respondent is deemed to have admitted the allegations in the complaint, waived her defense to

the assessment of a civil penalty, and waived opportunity for hearing (7 C.F.R. §§ 1.136(c), .139, .141(a)).

In *In re Robert Raymond Black, II* (Order Dismissing Interlocutory Appeal as to Robert Raymond Black, II, and Remanding the Proceeding to the ALJ), HPA Docket No. 04-0003, decided by the Judicial Officer on May 3, 2005, the Judicial Officer dismissed Complainant's appeal of Administrative Law Judge (ALJ) Peter M. Davenport's January 21, 2005, Order. The Judicial Officer rejected Complainant's contention that the ALJ's Order denied Complainant's motion for a default decision and found Complainant's appeal was interlocutory. The Judicial Officer held Complainant's interlocutory appeal must be dismissed because the Rules of Practice do not permit interlocutory appeals.

In *In re Southern Minnesota Beet Sugar Cooperative*, SMA Docket No. 03-0001, decided by the Judicial Officer on May 9, 2005, the Judicial Officer affirmed Chief Administrative Law Judge (Chief ALJ) Marc R. Hillson's decision denying Petitioner's request for an increase in its beet sugar marketing allotment allocation. The Judicial Officer rejected Petitioner's contention that its modification of a sugar beet processing factory constituted opening a sugar beet processing factory, thereby entitling Petitioner to an allocation adjustment under the Agricultural Adjustment Act of 1938 (7 U.S.C. § 1359dd(b)(2)(D)(i)(I), (b)(2)(D)(ii)(I)). The Judicial Officer held the common meaning of the verb *to open* is *to begin, initiate, or commence* and the word *opened* would not be commonly understood to include the mere modification of an existing sugar beet processing factory. The Judicial Officer also rejected Petitioner's contention that a beet sugar processor that suffers substantial quality losses in two separate crop years is entitled to two adjustments to its beet sugar marketing allotment allocation under the Agricultural Adjustment Act of 1938 (7 U.S.C. § 1359dd(b)(2)(D)(i)(IV), (b)(2)(D)(ii)(IV)). The Judicial Officer, stating that he gives great weight to administrative law judge credibility determinations, rejected Petitioner's contention that the Chief ALJ erroneously found credible Intervenors' claims that, if Petitioner were entitled to an allocation adjustment for opening a new sugar beet processing factory, some of the Intervenors would likewise be entitled to the same adjustment. Finally, the Judicial Officer rejected Petitioner's claims that it was denied due process and that the failure to adjust Petitioner's allocation constitutes a regulatory taking.

In *In re Gallo Cattle Company* (Order Denying Interim Relief), NDPRB Docket No. 05-0001, decided by the Judicial Officer on May 20, 2005, the Judicial Officer denied Petitioner's application for interim relief. Under the applicable Rules of Practice (7 C.F.R. §§ 900.52(c)(2)-.71, 1200.50-.52) interim relief is only available to a person who files a petition pursuant to 7 C.F.R. § 900.52. Petitioner filed its petition pursuant to 7 C.F.R. § 1200.52, not 7 C.F.R. § 900.52; therefore, interim relief was not available to Petitioner. Further, even if interim relief had been available, Petitioner did not file a separate application for interim relief, as required by the Rules of Practice (7 C.F.R. § 900.70(a)). Finally, even if interim relief had been available to Petitioner and Petitioner had filed a separate application for interim relief, Petitioner's request for interim relief would be denied based upon established precedent.

In *In re Bodie S. Knapp*, AWA Docket No. 04-0029, decided by the Judicial Officer on May 31, 2005, the Judicial Officer affirmed the Default Decision by Chief Administrative Law Judge Marc R. Hillson (Chief ALJ) concluding Respondent committed 84 violations of the regulations and standards issued under the Animal Welfare Act during the period March 13, 2002, through March 13, 2004. The Judicial Officer stated Respondent is deemed, by his failure to file a timely answer, to have admitted the allegations of the Complaint (7 C.F.R. § 1.136(c)). The Judicial Officer held Respondent's appearance pro se, Respondent's belief that filing was effective on the date of mailing, Respondent's unsuccessful attempts to contact Complainant's counsel and a United States Department of Agriculture inspector, and Respondent's purported receipt of erroneous information did not constitute good cause to set aside the Chief ALJ's Default Decision. The Judicial Officer issued a cease and desist order and revoked Respondent's Animal Welfare Act license.

In *In re For The Birds, Inc.* (Decision as to For The Birds, Inc., and Jerry L. Korn), AWA Docket No. 04-0033, decided by the Judicial Officer on June 22, 2005, the Judicial Officer concluded that For The Birds, Inc., committed at least 1,545 violations of the regulations and standards issued under the Animal Welfare Act and Jerry L. Korn committed at least 749 violations of the regulations and standards issued under the Animal Welfare Act during the period March 2001 through August 2003. The Judicial Officer stated For The Birds, Inc., and Jerry L. Korn are deemed, by their failures to file timely answers, to have admitted the allegations of the Complaint (7 C.F.R. § 1.136(c)). The Judicial Officer issued a cease and desist order, revoked Jerry L. Korn's Animal Welfare Act license, assessed For The Birds, Inc., a $28,050 civil penalty, and assessed Jerry L. Korn a $20,597 civil penalty.

In *In re For The Birds, Inc.* (Remand Order as to Susan F. Korn), AWA Docket No. 04-0033, decided by the Judicial Officer on June 22, 2005, the Judicial Officer concluded that Administrative Law Judge Peter M. Davenport (ALJ) failed to provide Susan F. Korn 20 days within which to file objections to Complainant's motion for a default decision as required by the applicable rules of practice (7 C.F.R. § 1.139). Consequently, the Judicial Officer vacated the ALJ's February 25, 2005, Initial Decision, as it relates to Susan F. Korn, and remanded the proceeding, as it relates to Susan F. Korn, to the ALJ to provide Susan F. Korn an opportunity to file objections to Complainant's motion for default decision.

In *In re Jackie McConnell*, HPA Docket No. 99-0034, decided by the Judicial Officer on June 23, 2005, the Judicial Officer concluded Cynthia McConnell shipped a horse to a horse show with reason to believe that the horse may be shown or exhibited while sore, in violation of 15 U.S.C. § 1824(1) and Jackie McConnell and Cynthia McConnell entered a horse in a horse show while the horse was sore, in violation 15 U.S.C. § 1824(2)(B). The Judicial Officer rejected Respondents' contentions that they were the subjects of selective prosecution and malicious prosecution. The Judicial Officer rejected Cynthia McConnell's contention that Complainant could not institute a Horse Protection Act proceeding against her for her violations because she previously paid a fine and completed a suspension imposed by a Horse Industry Organization for the same violations. The Judicial Officer rejected Jackie McConnell's contention that the Secretary of Agriculture's past practice has been to forgo enforcement of the

Horse Protection Act against persons who are merely custodians of horses and merely present those horses for pre-show inspections. The Judicial Officer assessed Jackie McConnell a $2,200 civil penalty, disqualified Jackie McConnell for 5 years, assessed Cynthia McConnell a $4,400 civil penalty, and disqualified Cynthia McConnell for 2 years.

In *In re Mary Jean Williams* (Decision as to Deborah Ann Milette), AWA Docket No. 04-0023, decided by the Judicial Officer on June 29, 2005, the Judicial Officer issued a decision in which he found Deborah Ann Milette (Respondent) violated regulations (9 C.F.R. §§ 2.40(a), (b)(1), .131(a)(1) (2004)) issued under the Animal Welfare Act. The Judicial Officer concluded Respondent failed to file a timely answer to the Complaint and, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), was deemed to have admitted the allegations of the Complaint and waived opportunity for hearing. The Judicial Officer found Respondent's denial of the allegations of the Complaint in her appeal petition far too late to be considered. The Judicial Officer rejected Respondent's contention that interstate movement of an animal was a prerequisite to finding a violation of the Animal Welfare Act stating the Animal Welfare Act applies to activities that take place entirely in one state, as well as to those that involve traffic across state lines. The Judicial Officer also rejected Respondent's contention that a violation of the Lacey Act Amendments of 1981 is a prerequisite to finding a violation of the Animal Welfare Act. The Judicial Officer issued a cease and desist order against Respondent and assessed Respondent a $2,500 civil penalty.

In *In re Lion Raisins, Inc.* (Remand Order), I & G Docket No. 03-0001, issued by the Judicial Officer on June 30, 2005, the Judicial Officer stated the United States District Court for the Eastern District of California found the Judicial Officer had abused his discretion by entering a default judgment against Respondents because of their minor deviation from the Rules of Practice with no showing of prejudice to Complainant and remanded the case to the Judicial Officer for further proceedings. *Lion Raisins, Inc. v. United States Dep't of Agric.* No. CV-F-04-5844 REC DLB (E.D. Cal. May 12, 2005). Therefore, the Judicial Officer remanded the proceeding to the administrative law judge to whom the case had been previously assigned for further proceedings in accordance with the Rules of Practice.

In *In re Alliance Airlines*, P.Q. Docket No. 04-0009, decided by the Judicial Officer on July 5, 2005, the Judicial Officer affirmed in part the Default Decision by Administrative Law Judge Peter M. Davenport (ALJ) concluding Respondent failed to assemble imported callaloo and peppers for inspection, in violation of 7 C.F.R. § 319.56-6(b). The Judicial Officer stated Respondent is deemed, by its failure to file a timely answer, to have admitted the allegations of the Complaint (7 C.F.R. § 1.136(c)). The Judicial Officer found the Complaint contained no allegation that Respondent violated 7 C.F.R. § 319.56-5(a) and reversed the ALJ's finding that Respondent imported callaloo and peppers and failed to provide the Animal and Plant Health Inspection Service with advance notice of arrival, in violation of 7 C.F.R. § 319.56-5(a). The Judicial Officer assessed Respondent a $9,000 civil penalty.

In *In re Bodie S. Knapp* (Order Denying Motion for Reconsideration), AWA Docket No. 04-0029, decided by the Judicial Officer on July 5, 2005, the Judicial Officer denied

Respondent's motion for reconsideration of *In re Bodie S. Knapp*, 64 Agric. Dec. ___ (May 31, 2005). The Judicial Officer rejected Respondent's request that he reconsider the May 31, 2005, Decision and Order for the same reasons as set out in Respondent's appeal stating Respondent does not identify specific aspects of the May 31, 2005, Decision and Order that are error, and he found no error in the May 31, 2005, Decision and Order. The Judicial Officer also rejected Respondent's contention that the Hearing Clerk's failure to serve Respondent with Complainant's response to Respondent's appeal petition until after the Judicial Officer issued the May 31, 2005, Decision and Order unfairly deprived Respondent of an opportunity to address Complainant's response. The Judicial Officer noted that the Rules of Practice do not provide litigants an opportunity to address a response to an appeal petition (7 C.F.R. § 1.145(c), (i)). Finally, the Judicial Officer rejected Respondent's objection to the Judicial Officer's denial of Respondent's March 11, 2005, request for oral argument stating the Rules of Practice gives the Judicial Officer broad discretion to grant, refuse, or limit any request for oral argument (7 C.F.R. § 1.145(d)), Respondent did not identify the bases for his objection to the refusal to grant Respondent's request for oral argument, and the Judicial Officer's reexamination of the ruling on Respondent's request for oral argument revealed no error.

In *In re Lion Raisins, Inc.*, 2005 AMA Docket No. F&V 989-2, decided by the Judicial Officer on July 12, 2005, the Judicial Officer affirmed Administrative Law Judge Victor W. Palmer's Order Dismissing Petition With Prejudice. Petitioner instituted the proceeding under Agricultural Marketing Agreement Act of 1937 (7 U.S.C. § 608c(15)(A)) seeking modification of the Raisin Order (7 C.F.R. pt. 989). The Judicial Officer stated the Raisin Order did not contain the provisions which Petitioner sought to have modified. Instead, the Judicial Officer found the provisions which Petitioner challenged were in 7 C.F.R. pt. 52, regulations promulgated under the Agricultural Marketing Act of 1946. The Judicial Officer concluded the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. § 608c(15)(A)) does not provide a mechanism for seeking amendment of 7 C.F.R. pt. 52; instead, the mechanism by which Petitioner may seek amendment of 7 C.F.R. pt. 52 is set forth in 5 U.S.C. § 553(e) and 7 C.F.R. § 1.28.

In *In re Lion Raisins, Inc.* (Ruling Striking Petitioner's Second Amended Petition), 2005 AMA Docket No. F&V 989-1, decided by the Judicial Officer on July 13, 2005, the Judicial Officer issued a ruling stating proceedings for judicial review of *In re Lion Raisins, Inc.*, 64 Agric. Dec. ___ (Apr. 25, 2005), dismissing Petitioner's original petition, were not concluded and Petitioner's filing a second amended petition resulted in the Secretary of Agriculture and the United States District Court for the Eastern District of California simultaneously reviewing the proceeding. The Judicial Officer struck Petitioner's second amended petition in order to avoid wasting judicial and agency resources and in order to avoid a confusing and muddled record.

In *In re Chad Way* (Remand Order), HPA Docket No. 03-0005, issued by the Judicial Officer on July 15, 2005, the Judicial Officer stated the United States Court of Appeals for the Sixth Circuit remanded the proceeding based upon the Secretary of Agriculture's certification that he would accept jurisdiction from the court to proceed with an administrative hearing sought by the parties. *Chad Way v. United States Dep't of Agric.*, No. 05-3536 (6th Cir. July 8, 2005)

(Order). Therefore, the Judicial Officer vacated *In re Chad Way*, 64 Agric. Dec. ___ (Apr. 11, 2005), and remanded the proceeding to the administrative law judge to whom the case had been previously assigned for further proceedings in accordance with the Rules of Practice.

In *In re Glenn Mealman*, PACA-APP Docket No. 03-0013, decided by the Judicial Officer on July 28, 2005, the Judicial Officer reversed Chief Administrative Law Judge Marc R. Hillson's (Chief ALJ) decision concluding Glenn Mealman (Petitioner) was not responsibly connected with Furr's Supermarkets, Inc. (Furr's), when Furr's violated the PACA. The Judicial Officer found, during the period September 29, 1998, through February 23, 2001, Furr's willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4). During the violation period, Petitioner was a director of Furr's. The Judicial Officer concluded Petitioner proved by a preponderance of the evidence that he was not actively involved in the activities resulting in Furr's violations of the PACA. However, the Judicial Officer concluded Petitioner failed to prove by a preponderance of the evidence that he was only nominally a director of Furr's. The Judicial Officer rejected Petitioner's claim that he was deprived of due process of law because he was not allowed to introduce evidence to show that Furr's did not violate the PACA. The Judicial Officer found the Chief ALJ had explicitly permitted Petitioner to introduce evidence contesting the prior determination that Furr's had violated the PACA. The Judicial Officer also rejected Petitioner's contention that 7 U.S.C. §§ 499d(b), 499h(b) require a final decision concluding a commission merchant, dealer, or broker violated the PACA before issuance of an initial determination that a person was responsibly connected with that commission merchant, dealer, or broker. Finally, the Judicial Officer rejected Petitioner's claim that disparate treatment of Furr's directors was arbitrary and capricious, stating agency officials have broad prosecutorial discretion to decide against whom to issue responsibly connected determinations.

In *In re Richard Mielke* (Decision as to Richard Mielke and Kaye Mielke), AWA Docket No. 05-0006, decided by the Judicial Officer on July 29, 2005, the Judicial Officer affirmed the Default Decision issued by Administrative Law Judge Jill S. Clifton (ALJ) concluding: (1) Respondents operated as dealers without an Animal Welfare Act license in willful violation of the Animal Welfare Act (AWA) (7 U.S.C. § 2134) and the regulations issued under the AWA (9 C.F.R. § 2.1(a)(1)); and (2) Respondents knowingly failed to obey a cease and desist order made by the Secretary of Agriculture on December 3, 2003, in *In re Richard Mielke*, 62 Agric. Dec. 726 (2003) (Consent Decision). The Judicial Officer issued a cease and desist order; increased the civil penalty assessed against Richard Mielke by the ALJ from $500 to $3,000; increased the civil penalty assessed against Kaye Mielke by the ALJ from $3,000 to $18,000; and assessed Respondents, jointly and severally, the $5,875 civil penalty which was held in abeyance in *In re Richard Mielke*, 62 Agric. Dec. 726 (2003) (Consent Decision). The Judicial Officer rejected Respondents' request for a substantial reduction in the civil penalties based upon their inability to pay the civil penalties. The Judicial Officer stated a respondent's ability to pay a civil penalty is not one of the factors that the Secretary of Agriculture must consider when determining the amount of a civil penalty.

In *In re Sand Creek Farms, Inc.* (Ruling Denying Motion to Stay Sanctions), HPA Docket No. 01-C022, decided by the Judicial Officer on August 2, 2005, the Judicial Officer

denied Respondent's motion to stay sanctions imposed by Administrative Law Judge Jill S. Clifton (ALJ). The Judicial Officer concluded the ALJ's decision was not final or effective because Respondent had appealed the decision to the Judicial Officer pursuant to 7 C.F.R. § 1.145. Consequently, Respondent's motion to stay sanctions was premature.

In *In re Sand Creek Farms, Inc.* (Remand Order), HPA Docket No. 01-C022, issued by the Judicial Officer on August 11, 2005, the Judicial Officer vacated Administrative Law Judge Jill S. Clifton's (ALJ) Ruling Denying Motion to Amend First Amended Answer and remanded the proceeding to the ALJ for proceedings in accordance with the Rules of Practice. The Judicial Officer agreed with the ALJ that Respondent denied a statutory provision that was not alleged in the Complaint; nonetheless, the Judicial Officer found Respondent's incorrect citation of 15 U.S.C. § 1824(2)(A), rather than 15 U.S.C. § 1824(2)(B), was only a technical pleading defect and Respondent put Complainant on notice that Respondent denied the material allegations of the Complaint. The Judicial Officer stated he has long held technical defects, including incorrect citations to statutes and regulations, are not fatal to a complaint in an administrative proceeding before the Secretary of Agriculture, as long as the respondent is reasonably apprised of the issues in controversy. Similarly, technical defects should not be fatal to an answer as long as the complainant is not misled.

In *In re Baiardi Chain Food Corp.*, PACA Docket No. D-01-0023, decided by the Judicial Officer on September 2, 2005, the Judicial Officer affirmed the Decision issued by Chief Administrative Law Judge Marc R. Hillson (Chief ALJ) concluding Respondent willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4) by failing to make full payment promptly to 67 sellers for 343 lots of produce and publishing the facts and circumstances of Respondent's violations. The Judicial Officer rejected Respondent's contention that the Chief ALJ was required to find the exact amount Respondent failed to pay its produce sellers in accordance with the PACA and the exact amount Respondent owed its produce sellers at the commencement of the hearing. The Judicial Officer also rejected Respondent's contention that the prompt payment provision in 7 U.S.C. § 499b(4) is inapplicable to a transaction in which a produce buyer and produce seller agree to extend the time for payment after the transaction, which is the subject of the extension. Finally, the Judicial Officer rejected Respondent's contention that, based on Respondent's substantial efforts to pay its produce sellers, the only sanction justified by the facts is assessment of a civil monetary penalty.

In *In re Jozset Mokos* (Order Denying Late Appeal), A.Q. Docket No. 03-0003, decided by the Judicial Officer on September 6, 2005, the Judicial Officer denied Respondent's late-filed appeal. The Judicial Officer concluded he had no jurisdiction to hear Respondent's appeal filed 6 days after Chief Administrative Law Judge Marc R. Hillson's decision became final.

In *In re G & T Terminal Packaging Co., Inc.*, PACA Docket No. D-03-0026, decided by the Judicial Officer on September 8, 2005, the Judicial Officer held Respondents' payments to United States Department of Agriculture inspectors in connection with the inspection of perishable agricultural commodities constituted failures to perform an implied duty arising out of an undertaking in connection with transactions involving perishable agricultural commodities

purchased, received, and accepted in interstate or foreign commerce, in violation of 7 U.S.C. § 499b(4). The Judicial Officer found, even if all of Respondents' payments were extorted from Respondents by United States Department of Agriculture inspectors and the payments were made to obtain prompt inspection of perishable agricultural commodities and accurate United States Department of Agriculture inspection certificates, Respondents violated the PACA. The Judicial Officer stated a payment to a United States Department of Agriculture inspector to obtain a prompt inspection of perishable agricultural commodities and an accurate United States Department of Agriculture inspection certificate negates, or gives the appearance of negating, the impartiality of the United States Department of Agriculture inspector and undermines the confidence that produce industry members and consumers place in quality and condition determinations rendered by the United States Department of Agriculture inspector. Commission merchants, dealers, and brokers have a duty to refrain from making payments to United States Department of Agriculture inspectors in connection with the inspection of perishable agricultural commodities which will or could undermine the trust produce sellers place in the accuracy of the United States Department of Agriculture inspection certificates and the integrity of United States Department of Agriculture inspectors.

In *In re Mary Jean Williams* (Order Denying Petition to Reconsider as to Deborah Ann Milette), AWA Docket No. 04-0023, decided by the Judicial Officer on September 9, 2005, the Judicial Officer denied Respondent's petition to reconsider *In re Mary Jean Williams* (Decision as to Deborah Ann Milette), 64 Agric. Dec. ___ (June 29, 2005). The Judicial Officer rejected Respondent's contention that the default decision should be set aside because Respondent's physical and mental incapacity affected her ability to file a timely response to the Complaint. The Judicial Officer also rejected Respondent's denial of the allegations of the Complaint, stating Respondent was deemed by her failure to file a timely answer to have admitted the allegations of the Complaint (7 C.F.R. § 1.136(c)). Finally, the Judicial Officer rejected Respondent's request to reduce the civil penalty based on her inability to pay the civil penalty, stating a respondent's ability to pay a civil penalty is not one of the factors the Secretary of Agriculture must consider when determining the amount of a civil penalty.

In *In re Mary Jean Williams* (Decision as to Mary Jean Williams), AWA Docket No. 04-0023, decided by the Judicial Officer on September 14, 2005, the Judicial Officer issued a decision in which he found Mary Jean Williams (Respondent) violated the regulations (9 C.F.R. §§ 2.1(a)(1), .40(a), (b)(1)-(2), (4), .131(a)(1) (2004)l;p'[]') issued under the Animal Welfare Act (Regulations). The Judicial Officer concluded Respondent failed to file a timely answer to the Complaint and, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), was deemed to have admitted the allegations of the Complaint and waived opportunity for hearing. The Judicial Officer found Respondent's denial of the allegations of the Complaint in her appeal petition far too late to be considered. Moreover, the Judicial Officer rejected Respondent's request to reduce the civil penalty based on her inability to pay the civil penalty, stating a respondent's ability to pay a civil penalty is not one of the factors the Secretary of Agriculture must consider when determining the amount of a civil penalty. The Judicial Officer ordered Respondent to cease and desist from violating the Animal Welfare Act and the Regulations and assessed Respondent a $5,500 civil penalty.

In *In re Gwain Wilson* (Remand Order as to William Russell Hyneman), HPA Docket No. 02-0003, issued by the Judicial Officer on September 27, 2005, the Judicial Officer remanded the proceeding to Administrative Law Judge Peter M. Davenport (ALJ) to issue a Consent Decision and Order as to William Russell Hyneman. The Judicial Officer stated voluntary settlements are highly favored in proceedings under the Rules of Practice. The Judicial Officer further stated, under 7 C.F.R. § 1.138, the parties may agree to the entry of a consent decision at any time before the administrative law judge files a decision; therefore, prior to the ALJ's entry of the Consent Decision and Order as to William Russell Hyneman, the ALJ must vacate his previously issued default decision.

In *In re M. Trombetta & Sons, Inc.*, PACA Docket No. D-02-0025, decided by the Judicial Officer on September 27, 2005, the Judicial Officer affirmed Administrative Law Judge Jill S. Clifton's (ALJ) decision concluding Respondent's payments, through its employee Joseph Auricchio, to United States Department of Agriculture inspectors in connection with the inspection of perishable agricultural commodities constituted violations of 7 U.S.C. § 499b(4). The Judicial Officer rejected Respondent's contention that Joseph Auricchio was not acting within the scope of his employment when he made illegal payments to United States Department of Agriculture produce inspectors. The Judicial Officer found Administrative Law Judge Jill S. Clifton relied on the proper factors to determine whether Joseph Auricchio was acting within the scope of his employment and found no basis upon which to reverse the ALJ's credibility determinations. The Judicial Officer rejected Respondent's contention that revocation of Respondent's PACA license was unduly harsh, stating the revocation of Respondent's PACA license was warranted in law and justified in fact.