SUMMARY OF DECISIONS BY THE JUDICIAL OFFICER

Fiscal Year 2006

In *In re Gwain Wilson* (Remand Order as to John R. LeGate, Sr.), HPA Docket No. 02-0003, issued by the Judicial Officer on October 3, 2005, the Judicial Officer remanded the proceeding to Administrative Law Judge Peter M. Davenport (ALJ) to issue a Consent Decision and Order as to John R. LeGate, Sr., unless the ALJ finds an error is apparent on its face. The Judicial Officer stated the entry of a consent decision is preferable to the issuance of a default decision. 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 John R. LeGate, Sr., the ALJ must vacate his previously-issued default decision.

In *In re Glenn Mealman* (Order Denying Petition to Reconsider), PACA-APP Docket No. 03-0013, decided by the Judicial Officer on October 3, 2005, the Judicial Officer denied Petitioner's petition to reconsider *In re Glenn Mealman*, 64 Agric. Dec. ___ (July 28, 2005). The Judicial Officer rejected Petitioner's assertion that Respondent determined Petitioner was responsibly connected with Furr's Supermarkets, Inc., prior to the determination that Furr's violated the PACA stating that the record did not support Petitioner's assertion. The Judicial Officer also rejected Petitioner's contention that Respondent engaged in selective prosecution, in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States, stating the due process clause of the 14th Amendment, by its terms, is applicable to the states and is not applicable to the federal government. Finally, the Judicial Officer rejected Petitioner's contention that he was only a nominal director of Furr's because he had been appointed to Furr's board of directors by his former employer, Fleming Companies, Inc., and Fleming paid Petitioner for attending Furr's board meetings.

In *In re Tim Gray*, HPA Docket No. 01-D022, decided by the Judicial Officer on October 17, 2005, the Judicial Officer denied Respondent's late-filed appeal. The Judicial Officer concluded he had no jurisdiction to hear Respondent's appeal filed the day after Administrative Law Judge Jill S. Clifton's (ALJ) decision became final. The Judicial Officer rejected Respondent's contention that the ALJ's decision was not final because she had no authority to sever the proceeding against Respondent and Sand Creek Farms, Inc., and as the proceeding as to Sand Creek Farms, Inc., is not yet final, the proceeding as to Respondent would not be final until it is final as to all issues and all respondents.

In *In re Mike Turner*, HPA Docket No. 01-0023, decided by the Judicial Officer on October 26, 2005, the Judicial Officer reversed the initial decision by Administrative Law Judge Peter M. Davenport (ALJ) and concluded Respondents entered a horse known as "The Ultra Doc" in a horse show while the horse was sore, in violation of 15 U.S.C. § 1824(2)(B). The Judicial Officer agreed with Complainant that Complainant's exhibit 2 (APHIS Form 7077) had probative value despite two errors on the form and despite Complainant's failure to call as witnesses the persons who completed the form. The Judicial Officer also found that bilateral, reproducible pain responses to palpation are sufficient to be considered abnormal sensitivity,

even if the responses are mild, and trigger the presumption in 15 U.S.C. § 1825(d)(5) that the horse manifesting such responses, is sore. The Judicial Officer also found the test in *Baird v. United States Dep't of Agric.*, 39 F.3d 131 (6th Cir. 1994), inapposite because Complainant did not seek a finding that the owner of the horse violated 15 U.S.C. § 1824(2)(D). The Judicial Officer assessed each Respondent a $2,200 civil penalty and disqualified each Respondent for 1 year.

In *In re Hunts Point Tomato Co., Inc.*, PACA Docket No. D-03-0014, decided by the Judicial Officer on November 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 33 sellers for 118 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, the exact number of produce sellers that had not been paid in full by the date of the hearing, and the exact amount Respondent owed these produce sellers on the date of the hearing. The Judicial Officer agreed with Respondent that Complainant had the burden of proof in the proceeding, but the Judicial Officer found Complainant proved by a preponderance of the evidence that Respondent violated 7 U.S.C. § 499b(4) and was not in full compliance with the PACA within 120 days after the Hearing Clerk served Respondent with the Complaint. The Judicial Officer rejected Respondent's contention that Complainant's failure to accept Respondent's settlement offer was an abuse of discretion. The Judicial Officer stated voluntary settlements are favored in proceedings under the rules of practice, but a party is not required to accept another party's settlement offer. The Judicial Officer also rejected Respondent's contention that the Chief ALJ's failure to direct Complainant to accept Respondent's settlement offer was an abuse of discretion. The Judicial Officer stated that the rules of practice (7 C.F.R. § 1.140(a)) authorize administrative law judges to direct parties to attend conferences and, at those conferences, to consider the negotiation, compromise, or settlement of issues or other matters as may expedite and aid in the disposition of the proceeding; however, administrative law judges have no authority under the rules of practice to direct a party to accept another party's settlement offer.

In *In re Red Hawk Farming & Cooling*, AMA WRPA Docket No. 01-0001, decided by the Judicial Officer on November 8, 2005, the Judicial Officer affirmed Administrative Law Judge Jill S. Clifton's decision dismissing Petitioner's Petition. Based upon *Johanns v. Livestock Marketing Ass'n*, 125 S. Ct. 2055 (2005), the Judicial Officer concluded watermelon advertising and promotion authorized by the Watermelon Research and Promotion Act (7 U.S.C. §§ 4901-4916) are government speech not susceptible to First Amendment compelled-subsidy challenge; consequently, the Judicial Officer dismissed Petitioner's Petition in which Petitioner sought exemption from assessments imposed by the National Watermelon Promotion Board and used for generic advertising and promotion of watermelons. The Judicial Officer found the National Watermelon Promotion Board's advertising and promotional materials were not attributable to Petitioner and rejected Petitioner's "as-applied" First Amendment claim.

In *In re Baiardi Chain Food Corp.* (Order Denying Petition to Reconsider), PACA Docket No. D-01-0023, decided by the Judicial Officer on November 15, 2005, the Judicial Officer denied Respondent's petition to reconsider *In re Baiardi Chain Food Corp.*, 64 Agric. Dec. ___ (Sept. 2, 2005). The Judicial Officer rejected Respondent's contention that Complainant was required to prove and the Judicial Officer was required to find the exact amount Respondent owed each of its produce sellers 120 days after the Hearing Clerk served Respondent with the Complaint in order to determine whether the case was a "no-pay" case or a "slow-pay" case. The Judicial Officer found that *American Banana Co. v. Republic Bank of New York*, 362 F.3d 33 (2d Cir. 2004), did not support 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.

In *In re Tim Gray* (Order Denying Petition to Reconsider or for a Stay Pending Judicial Review), HPA Docket No. 01-D022, decided by the Judicial Officer on November 15, 2005, the Judicial Officer denied Respondent's petition to reconsider *In re Tim Gray* (Order Denying Late Appeal), 64 Agric. Dec. ___ (Oct. 17, 2005). The Judicial Officer concluded that, under 7 C.F.R. § 1.146(a)(3), a party may file a petition to reconsider the Judicial Officer's decision, but that an order denying a late-filed appeal petition is not a *decision* as that word is defined in 7 C.F.R. § 1.132. Moreover, the Judicial Officer denied Respondent's petition for a stay pending judicial review stating an order denying late appeal is not a final decision of the Judicial Officer upon appeal and the matter should not be considered by a reviewing court since, under 7 C.F.R. § 1.142(c)(4)), no decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal.

In *In re Walter L. Wilson*, HRPCIA Docket No. 01-0001, decided by the Judicial Officer on November 28, 2005, the Judicial Officer affirmed Administrative Law Judge Jill S. Clifton's decision dismissing Petitioners' Petition. Based upon *Johanns v. Livestock Marketing Ass'n*, 125 S. Ct. 2055 (2005), the Judicial Officer concluded honey advertising and promotion authorized by the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. §§ 4601-4613) are government speech not susceptible to First Amendment compelled-subsidy challenge. Citing *Livestock Marketing Ass'n*, the Judicial Officer rejected Petitioners' and The American Honey Producers, Inc.'s claim that honey promotion authorized by the Honey Research, Promotion, and Consumer Information Act was not government speech because the speech was not initiated by the government and United States Department of Agriculture oversight, review, and approval of the speech only served as a negative check on the speech, not as an affirmative mechanism for compelling particular content or viewpoints.

In *In re Cargill, Inc.*, SMA Docket No. 03-0002, decided by the Judicial Officer on December 8, 2005, the Judicial Officer affirmed Chief Administrative Law Judge Marc R. Hillson's decision denying Petitioner's request for an allocation of the beet sugar marketing allotment. The Judicial Officer rejected Petitioner's contention that it was a sugar beet processor entitled to a beet sugar allocation under the "new entrant" provisions of the Agricultural Adjustment Act of 1938 (7 U.S.C. § 1359dd(b)(2)(H) (Supp. III 2003)). The Judicial Officer

found Petitioner did not purchase sugar beets from growers and process those sugar beets through a "tolling agreement" with Southern Minnesota Beet Sugar Cooperative. Instead, the Judicial Officer found Petitioner received beet thick juice, "sugar" for the purposes of the Agricultural Adjustment Act of 1938, and, at Petitioner's Dayton, Ohio, facility, processed that beet thick juice into another form of sugar. As Petitioner was not a sugar beet processor, but rather a processor of one form of sugar into another form of sugar, Petitioner was not entitled to a beet sugar allocation under the "new entrant" provisions of the Agricultural Adjustment Act of 1938.

In *In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), HPA Docket No. 02-0001, decided by the Judicial Officer on December 28, 2005, the Judicial Officer reversed the initial decision by Chief Administrative Law Judge Marc R. Hillson and concluded Respondent entered a horse known as "Lady Ebony's Ace" in a horse show while the horse was sore, in violation of 15 U.S.C. § 1824(2)(B). The Judicial Officer found Complainant proved by a preponderance of the evidence that Lady Ebony's Ace was "sore" as that term is defined in the Horse Protection Act and Lady Ebony's Ace manifested abnormal sensitivity in both of her forelimbs triggering the statutory presumption that she was a horse which was sore (15 U.S.C. § 1825(d)(5)). The Judicial Officer found Respondent did not rebut the statutory presumption and found Respondent's evidence did not outweigh Complainant's evidence that Lady Ebony's Ace was sore. The Judicial Officer assessed Respondent a $2,200 civil penalty and disqualified Respondent for 1 year.

In *In re Hunts Point Tomato Co.* (Order Denying Petition to Reconsider), PACA Docket No. D-03-0014, decided by the Judicial Officer on January 9, 2006, the Judicial Officer denied Respondent's petition to reconsider *In re Hunts Point Tomato Co.*, 64 Agric. Dec. ___ (Nov. 2, 2005). The Judicial Officer rejected: (1) Respondent's contention that the finding that Respondent violated 7 U.S.C. § 499b(4) was not supported by the evidence; (2) Respondent's contention that the Judicial Officer's conclusion that Chief Administrative Law Judge Marc R. Hillson was not required to determine the exact amount of money Respondent failed to pay its produce sellers in accordance with the PACA, was error; (3) Respondent's assertion that the Judicial Officer imposed employment restrictions against Respondent in *In re Hunts Point Tomato Co.*, 64 Agric. Dec. ___ (Nov. 2, 2005); (4) Respondent's contention that it cannot be found to have violated the prompt payment provision of the PACA because its produce sellers and the United States District Court for the Southern District of New York determined the timing and the amount of Respondent's payments for produce; (5) Respondent's suggestion that Complainant was required to accept Respondent's settlement offer; and (6) Respondent's suggestion that the Judicial Officer has authority under the Rules of Practice to direct a party to accept another party's settlement offer.

In *In re Kim Bennett*, HPA Docket No. 04-0001, decided by the Judicial Officer on January 13, 2006, the Judicial Officer reversed the initial decision by Administrative Law Judge Victor W. Palmer and concluded Respondent refused to permit a United States Department of Agriculture veterinary medical officer to complete an inspection of a horse named "The Duck" at the 64th Annual Tennessee Walking Horse National Celebration Show, in violation of 15 U.S.C. § 1824(9). The Judicial Officer stated the Horse Protection Act (15 U.S.C. § 1824(9)) prohibits

the failure or refusal to permit inspection, as required by 15 U.S.C. § 1823(e), which authorizes the Secretary of Agriculture's representatives, upon presentation of appropriate credentials, to inspect any horse at any horse show, horse exhibition, horse sale, or horse auction. The Judicial Officer concluded Respondent's belief that the Secretary of Agriculture's representative was not conducting the inspection of The Duck in a reasonable manner was not relevant to Respondent's violation of 15 U.S.C. § 1824(9), and the failure of a representative of the Secretary of Agriculture to conduct an inspection in a reasonable manner, as required by 15 U.S.C. § 1823(e), may be used to challenge the results of the inspection, but may not be used as a basis to refuse to permit completion of the inspection. The Judicial Officer assessed Respondent a $2,200 civil penalty and disqualified Respondent for 1 year.

In *In re James E. Thames, Jr.* (Decision as to James E. Thames, Jr.), PACA-APP Docket Nos. 04-0003, 03-0021, 03-0020, decided by the Judicial Officer on January 24, 2006, the Judicial Officer affirmed Administrative Law Judge Victor W. Palmer's decision concluding James E. Thames, Jr. (Petitioner), was responsibly connected with John Manning Co., Inc., when John Manning Co., Inc., violated the PACA. The Judicial Officer found John Manning Co., Inc., during the period October 13, 2001, through August 28, 2002, willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4). During the violation period, Petitioner was an officer, a director, and a holder of more than 10 per centum of the outstanding stock of John Manning Co., Inc. The Judicial Officer stated the burden was on Petitioner to demonstrate by a preponderance of the evidence that he was not responsibly connected with John Manning Co., Inc., despite his being an officer, a director, and a holder of more than 10 per centum of the outstanding stock of John Manning Co., Inc. The PACA (7 U.S.C. § 499a(b)(9)) provides a two-pronged test which a petitioner must meet in order to demonstrate that he or she was not responsibly connected. First, a petitioner must demonstrate by a preponderance of the evidence that he or she was not actively involved in the activities resulting in a violation of the PACA. If a petitioner satisfies the first prong, then for the second prong, the petitioner must demonstrate by a preponderance of the evidence one of two alternatives: (1) the petitioner was only nominally a partner, an officer, a director, or a shareholder of the violating PACA licensee or entity subject to a PACA license; or (2) the petitioner was not an owner of the violating PACA licensee or entity subject to a PACA license, which was the alter ego of its owners. The Judicial Officer concluded Petitioner failed to prove by a preponderance of the evidence that he met the second prong of the two-pronged test. The Judicial Officer stated, since Petitioner failed to carry his burden of proof that he met the second prong of the two-pronged test, a discussion of the issue of Petitioner's active involvement in the activities resulting in a violation of the PACA (the first prong of the two-pronged test), was unnecessary.

In *In re Hereford, Texas, Factory* (Order Denying Petitioner's Appeal Petition), SMA Docket No. 04-0005, decided by the Judicial Officer on February 2, 2006, the Judicial Officer affirmed Administrative Law Judge Victor W. Palmer's (ALJ) order dismissing Petitioner's Petition for Review as time-barred. The Judicial Officer found the Executive Vice President, Commodity Credit Corporation (Executive Vice President), issued a reconsidered determination on January 28, 2003, and Petitioner failed to file a petition for review within 20 days after the issuance as required by 7 C.F.R. § 1435.319(b) (2004) and Rule 3 of the applicable rules of

practice. The Judicial Officer stated the ALJ did not have jurisdiction to consider a petition for review filed after the time for filing the petition for review expired.

In *In re Ronald Beltz* (Order Denying Motion for Reconsideration as to Christopher Jerome Zahnd), HPA Docket No. 02-0001, decided by the Judicial Officer on February 6, 2006, the Judicial Officer denied Respondent's Motion for Reconsideration. The Judicial Officer rejected Respondent's contention that the findings of fact, conclusions of law, and order in *In re Ronald Beltz* (Decision as to Christopher Jerome Zahnd), 64 Agric. Dec. ___ (Dec. 28, 2005), were not supported by the record.

In *In re Kim Bennett* (Order Denying Petition for Reconsideration), HPA Docket No. 04-0001, decided by the Judicial Officer on February 8, 2006, the Judicial Officer denied Respondent's Petition for Reconsideration. The Judicial Officer rejected Respondent's contention that a respondent cannot be proven to have refused inspection in violation of 15 U.S.C. § 1824(9) unless the inspection is conducted reasonably in accordance with 15 U.S.C. § 1823(e). The Judicial Officer also rejected Respondent's contention that the Judicial Officer erroneously failed to make findings regarding the United States Department of Agriculture inspector's prior conduct and reputation stating the inspector's conduct prior to the date of Respondent's violation and the inspector's reputation on the date of Respondent's violation are not relevant to the issue of whether Respondent refused to permit completion of inspection of a horse. Finally, the Judicial Officer rejected Respondent's contention that the Judicial Officer erroneously failed to address the United States Department of Agriculture inspector's failure to testify or to prepare a written statement regarding Respondent's alleged violation. The Judicial Officer stated Complainant proved by a preponderance of the evidence that Respondent refused to permit the inspector to complete an inspection of a horse in violation of 15 U.S.C. § 1824(9), and the inspector's testimony and written statement were not necessary to Complainant's case.

In *In re Amalgamated Sugar Company, L.L.C.*, SMA Docket No. 04-0003, decided by the Judicial Officer on March 3, 2006, the Judicial Officer reversed Administrative Law Judge Victor W. Palmer's order requiring the Commodity Credit Corporation to distribute the amount of the beet sugar marketing allocation that the CCC transferred to American Crystal Sugar Company from Pacific Northwest Sugar Company on September 16, 2003, to all beet sugar processors in accordance with 7 U.S.C. § 1359dd(b)(2)(E) (Supp. III 2003). The Judicial Officer concluded that the Commodity Credit Corporation's September 16, 2003, transfer of Pacific Northwest Sugar Company's beet sugar marketing allocation to American Crystal Sugar Company was in accordance with 7 U.S.C. § 1359dd(b)(2)(F) (Supp. III 2003).

In *In re Charles R. Brackett* (Ruling on Respondent's Appeal Limited to Procedural Issue), PACA Docket No. APP-03-0004, decided by the Judicial Officer on April 4, 2006, the Judicial Officer vacated Chief Administrative Law Judge Marc R. Hillson's (Chief ALJ) ruling providing Petitioners an opportunity to raise defenses to the Perishable Agricultural Commodities Act (PACA) violations found to have been committed by Atlanta Egg & Produce Co. in *In re Atlanta Egg & Produce Co.*, 63 Agric. Dec. 459 (2003). The Judicial Officer rejected the Chief ALJ's conclusion that denial of Petitioners' request for an opportunity to raise

defenses to the PACA violations found to have been committed by Atlanta Egg & Produce Co. in *In re Atlanta Egg & Produce Co.*, 63 Agric. Dec. 459 (2003), would be inconsistent with the PACA, the Rules of Practice, and Petitioners' due process rights.

In *In re Kleiman & Hochberg, Inc.*, PACA Docket No. D-02-0021, PACA Docket No. APP-03-0005, and PACA Docket No. APP-03-0006, decided by the Judicial Officer on April 5, 2006, the Judicial Officer affirmed Chief Administrative Law Judge Marc R. Hillson's decision concluding that Kleiman & Hochberg, Inc., willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4) as a consequence of its vice president and part owner, John Thomas, paying bribes to United States Department of Agriculture inspectors in connection with the inspection of perishable agricultural commodities. The Judicial Officer also concluded that Michael H. Hirsch, the president, a director, and a part owner, and Barry J. Hirsch, the treasurer and part owner, were responsibly connected with Kleiman & Hochberg, Inc., at the time Kleiman & Hochberg, Inc., violated the PACA. The Judicial Officer rejected Kleiman & Hochberg, Inc.'s, Michael H. Hirsch's and Barry J. Hirsch's contentions that: (1) John Thomas' payments to United States Department of Agriculture inspectors were not bribes, but, instead, the result of extortion; (2) Kleiman & Hochberg, Inc., did not violate the PACA when John Thomas paid United States Department of Agriculture inspectors because no produce supplier or grower was economically disadvantaged by John Thomas' payments; (3) John Thomas was not acting within the scope of his employment when he paid United States Department of Agriculture inspectors; (4) Kleiman & Hochberg, Inc., is not liable for John Thomas' payments to United States Department of Agriculture inspectors because Kleiman & Hochberg, Inc.'s other officers and owners had no knowledge of the payments; (5) Kleiman & Hochberg, Inc., could not avoid liability under 7 U.S.C. § 499p once John Thomas pled guilty to bribing United States Department of Agriculture inspectors; and (6) the imposition of employment sanctions on individuals responsibly connected with Kleiman & Hochberg, Inc., unconstitutionally violates their right to engage in a chosen occupation.

In *In re Hale-Halsell Company*, PACA Docket No. D-05-0019, decided by the Judicial Officer on April 20, 2006, the Judicial Officer issued a decision in which he found that Hale-Halsell Company (Respondent) violated section 2(4) of the PACA (7 U.S.C. § 499b(4)). 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 in the Complaint and waived the opportunity for hearing. The Judicial Officer found Respondent's denial of the allegations in the Complaint in its appeal petition far too late to be considered. The Judicial Officer ordered the publication of the facts and circumstances of Respondent's PACA violations.

In *In re Coosemans Specialties, Inc.*, PACA Docket No. D-02-0024, PACA Docket No. APP-03-0002, and PACA Docket No. APP-03-0003, decided by the Judicial Officer on April 20, 2006, the Judicial Officer affirmed Administrative Law Judge Victor W. Palmer's decision concluding Cooseman Specialties, Inc., willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4) as a consequence of its vice president and part owner, Joe Faraci, paying bribes to a United States Department of Agriculture inspector in connection with the inspection of

perishable agricultural commodities. The Judicial Officer also concluded that Eddy C. Creces, the secretary, the treasurer, and a part owner, and Daniel F. Coosemans, the president and a part owner, were responsibly connected with Coosemans Specialties, Inc., when Coosemans Specialties, Inc., violated the PACA. The Judicial Officer held: (1) Coosemans Specialties, Inc.'s payments of bribes to a United States Department of Agriculture inspector violate the PACA, even if Coosemans Specialties, Inc., paid the bribes only to obtain prompt produce inspections; (2) Coosemans Specialties, Inc.'s payments of bribes were willful; therefore, the notice and opportunity to determine or achieve compliance provisions in the Administrative Procedure Act (5 U.S.C. § 558(c)), are inapplicable; (3) Coosemans Specialties, Inc.'s bribery of a United States Department of Agriculture inspector violates the PACA, even if the United States Department of Agriculture inspector did not falsify any United States Department of Agriculture inspection certificates; (4) bribery of a United States Department of Agriculture inspector is a serious violation of the PACA and, where willful, flagrant, and repeated, warrants revocation of the violator's PACA license; (5) the Administrative Procedure Act provisions relating to notice and opportunity to demonstrate or achieve compliance (5 U.S.C. § 558(c)) are not applicable to responsibly connected proceedings; (6) the employment bar in the PACA is not limited based upon the number of PACA licensees by whom the responsibly connected person is employed; (7) the imposition of employment sanctions under the PACA on persons responsibly connected with a PACA violator, does not unconstitutionally violate the right to engage in a chosen occupation; and (8) conducting an administrative disciplinary proceeding simultaneously with related responsibly connected proceedings does not violate the due process rights of persons determined to be responsibly connected.

In *In re John F. Cuneo, Jr.* (Decision as to James G. Zajicek), AWA Docket No. 03-0023, decided by the Judicial Officer on May 2, 2006, the Judicial Officer affirmed the decision by Chief Administrative Law Judge Marc R. Hillson dismissing the Amended Complaint. The Judicial Officer concluded Complainant failed to prove by a preponderance of the evidence that Respondent James G. Zajicek violated the regulations issued under the Animal Welfare Act as alleged in the Amended Complaint.

In *In re Jewel Bond*, AWA Docket No. 04-0024, decided by the Judicial Officer on May 19, 2006, the Judicial Officer affirmed Administrative Law Judge Victor W. Palmer's decision: (1) finding that Respondent violated the regulations and standards issued under the Animal Welfare Act (Regulations and Standards); (2) ordering Respondent to cease and desist from violating the Animal Welfare Act and the Regulations and Standards; (3) assessing Respondent a $10,000 civil penalty; and (4) suspending Respondent's Animal Welfare Act license for 1 year. The Judicial Officer rejected Respondent's contention that the correction of Respondent's violations negated Respondent's violations. The Judicial Officer also rejected Respondent's contention that her violations were not repeated, stating *repeated* means more than once.

In *In re Kleiman & Hochberg, Inc.* (Order Denying Petition to Reconsider), PACA Docket No. D-02-0021, PACA Docket No. APP-03-0005, and PACA Docket No. APP-03-0006, decided by the Judicial Officer on June 2, 2006, the Judicial Officer denied Kleiman &

Hochberg, Inc.'s, Michael H. Hirsch's, and Barry J. Hirsch's petition to reconsider. The Judicial Officer rejected Kleiman & Hochberg, Inc.'s, Michael H. Hirsch's, and Barry J. Hirsch's contentions that: (1) Kleiman & Hochberg, Inc., did not violate the PACA when John Thomas paid a United States Department of Agriculture produce inspector because Kleiman & Hochberg, Inc., had no means to control John Thomas' payments to the United States Department of Agriculture produce inspector; and (2) the imposition of employment sanctions on Michael H. Hirsch and Barry J. Hirsch unconstitutionally violates their right to engage in their chosen occupation.

In *In re KOAM Produce, Inc.*, PACA Docket No. D-01-0032, decided by the Judicial Officer on June 2, 2006, the Judicial Officer affirmed Administrative Law Judge Jill S. Clifton's decision concluding KOAM Produce, Inc. (Respondent), willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4) as a consequence of its employee, Marvin Friedman, paying bribes to a United States Department of Agriculture produce inspector in connection with the inspection of perishable agricultural commodities. The Judicial Officer rejected Respondent's contentions that: (1) Marvin Friedman's payments to the United States Department of Agriculture produce inspector were not bribes, but, instead, gratuities; (2) the United States Department of Agriculture had a conflict of interest in the proceeding; (3) Marvin Friedman was not acting within the scope of his employment when he paid the United States Department of Agriculture produce inspector; and (4) Respondent was not liable for Marvin Friedman's payments to the United States Department of Agriculture produce inspector because Respondent's officers and owners had no knowledge of the bribes. The Judicial Officer concluded that the ALJ's revocation of Respondent's PACA license was not an appropriate sanction because, 6 months prior to the ALJ's issuance of the Initial Decision, Respondent's PACA license had terminated due to Respondent's failure to pay the required annual PACA license renewal fee. The Judicial Officer ordered the publication of the facts and circumstances of Respondent's violations.

In *In re Philip J. Margiotta*, PACA-APP Docket No. 03-0007, decided by the Judicial Officer on June 21, 2006, the Judicial Officer affirmed Administrative Law Judge Jill S. Clifton's decision concluding Philip J. Margiotta (Petitioner) was responsibly connected with M. Trombetta & Sons, Inc., when M. Trombetta & Sons, Inc., violated the PACA. The Judicial Officer found M. Trombetta & Sons, Inc., during the period April 1999 through July 1999, willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4). During the violation period, Petitioner was the secretary of M. Trombetta & Sons, Inc. The Judicial Officer stated the burden was on Petitioner to demonstrate by a preponderance of the evidence that he was not responsibly connected with M. Trombetta & Sons, Inc., despite his being the secretary of M. Trombetta & Sons, Inc. The PACA provides a two-prong test which a petitioner must meet in order to demonstrate he or she was not responsibly connected. First, a petitioner must demonstrate by a preponderance of the evidence that he or she was not actively involved in the activities resulting in a violation of the PACA. If a petitioner satisfies the first prong, then for the second prong, the petitioner must demonstrate by a preponderance of the evidence one of two alternatives: (1) the petitioner was only nominally a partner, an officer, a director, or a shareholder of the violating PACA licensee or entity subject to a PACA license; or (2) the petitioner was not an owner of the violating PACA licensee or entity subject to a PACA license, which was the alter ego of its

owners. The Judicial Officer concluded Petitioner failed to prove by a preponderance of the evidence that he met the second prong of the two-prong test. The Judicial Officer also held: (1) employment restrictions in 7 U.S.C. § 499h(b) imposed on a responsibly connected person do not violate the constitutional right to engage in a particular occupation; (2) the Administrative Procedure Act provision relating to notice and opportunity to demonstrate or achieve compliance (5 U.S.C. § 558(c)) is not applicable to responsibly connected proceedings under the PACA; (3) Petitioner was not irrebuttably presumed to be responsibly connected with M. Trombetta & Sons, Inc.; and (4) imposing employment sanctions on Petitioner carries out the purpose of the Perishable Agricultural Commodities Act.

In *In re Jewel Bond* (Order Denying Petition to Reconsider), AWA Docket No. 04-0024, decided by the Judicial Officer on July 6, 2006, the Judicial Officer denied Jewel Bond's (Respondent's) petition to reconsider. The Judicial Officer found irrelevant Respondent's contention that the United States Department of Agriculture inspector who inspected her facilities, animals, and records on August 25, 2003, "was a little harsh." The Judicial Officer also rejected Respondent's contention that the $10,000 civil penalty assessed in *In re Jewel Bond*, __ Agric. Dec. ___ (May 19, 2006), for her violations of the regulations and standards issued under the Animal Welfare Act (Regulations and Standards) should be reduced because she paid $45,000 to improve her kennel; she corrected the violations of the Regulations and Standards found during a May 13, 2003, United States Department of Agriculture inspection of her kennel; and she was not able to pay the $10,000 civil penalty. The Judicial Officer rejected Respondent's objection to the frequency of the United States Department of Agriculture inspections, stating the Secretary of Agriculture has authority to inspect to determine whether any dealer or exhibitor has violated the Animal Welfare Act or the Regulations and Standards, and the Animal Welfare Act provides, in order to accomplish this purpose, that the Secretary of Agriculture shall, at all reasonable times, have access to the places of business and the facilities, animals, and records of any dealer or exhibitor (7 U.S.C. § 2146(a)). Finally, the Judicial Officer denied Respondent's renewed request for oral argument.

In *In re Cheryl Morgan*, AWA Docket No. 05-0032, decided by the Judicial Officer on July 6, 2006, the Judicial Officer issued a decision in which he found that Cheryl Morgan (Respondent) violated the regulations and standards 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 rejected Respondent's contention that the revocation of her Animal Welfare Act licenses and assessment of a $16,280 civil penalty was too harsh, stating that the sanction was warranted in law and justified in fact.

In *In re Edward S. Martindale*, PACA-APP Docket No. 04-0010, decided by the Judicial Officer on July 26, 2006, the Judicial Officer affirmed Chief Administrative Law Judge Marc R. Hillson's (Chief ALJ) decision concluding Edward S. Martindale (Petitioner) was responsibly connected with Garden Fresh Produce, Inc., when Garden Fresh Produce, Inc., violated the PACA. The Judicial Officer found Garden Fresh Produce, Inc., violated the PACA during the

period January 14, 2002, through February 26, 2003. During the violation period, Petitioner was the secretary, a director, and a holder of 20 percent of the outstanding stock of Garden Fresh Produce, Inc. The Judicial Officer stated the burden was on Petitioner to demonstrate by a preponderance of the evidence that he was not responsibly connected with Garden Fresh Produce, Inc., despite his being the secretary, a director, and a major shareholder of Garden Fresh Produce, Inc. The PACA provides a two-prong test which a petitioner must meet in order to demonstrate that he or she was not responsibly connected. First, a petitioner must demonstrate by a preponderance of the evidence that he or she was not actively involved in the activities resulting in a violation of the PACA. If a petitioner satisfies the first prong, then for the second prong, the petitioner must demonstrate by a preponderance of the evidence one of two alternatives: (1) the petitioner was only nominally a partner, an officer, a director, or a shareholder of the violating PACA licensee or entity subject to a PACA license; or (2) the petitioner was not an owner of the violating PACA licensee or entity subject to a PACA license, which was the alter ego of its owners. The Judicial Officer concluded Petitioner failed to prove by a preponderance of the evidence that he met the first prong and second prong of the responsibly-connected test. The Judicial Officer also rejected Petitioner's contention that the Chief ALJ held Petitioner to a standard of proof higher than preponderance of the evidence to demonstrate that Petitioner was only a nominal 20 percent shareholder of Garden Fresh Produce, Inc.

In *In re Marjorie Walker*, AWA Docket No. 04-0021, decided by the Judicial Officer on August 10, 2006, the Judicial Officer affirmed Administrative Law Judge Peter M. Davenport's (ALJ) decision concluding Marjorie Walker (Respondent) violated the regulations and standards issued under the Animal Welfare Act (Regulations and Standards). The Judicial Officer found Respondent failed to file a timely answer to the Amended Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), Respondent was deemed to have admitted the allegations of the Amended Complaint and waived opportunity for hearing. The Judicial Officer rejected Respondent's request for a reduction of the civil penalty assessed by the ALJ based on her inability to pay the civil penalty. The Judicial Officer stated the Animal Welfare Act (7 U.S.C. § 2149(b)) sets forth factors that must be considered when determining the amount of the civil penalty to be assessed against a respondent for violations of the Animal Welfare Act and the Regulations and Standards, and a respondent's ability to pay the civil penalty is not one of those factors. Therefore, Respondent's inability to pay the civil penalty was not a basis for reducing the civil penalty. The Judicial Officer ordered Respondent to cease and desist from violating the Animal Welfare Act and the Regulations and Standards, assessed Respondent a $14,300 civil penalty, and revoked Respondent's Animal Welfare Act license.

In *In re Cheryl Morgan* (Order Denying Petition to Reconsider), AWA Docket No. 05-0032, decided by the Judicial Officer on August 15, 2006, the Judicial Officer denied Cheryl Morgan's (Respondent) petition to reconsider *In re Cheryl Morgan*, __ Agric. Dec. ___ (July 6, 2006). The Judicial Officer rejected Respondent's contention that she filed a timely response to the Complaint. The Judicial Officer stated the record established that the Hearing Clerk served Respondent with the Complaint on November 9, 2005, and Respondent's first filing in the proceeding was dated and filed December 28, 2005, 29 days after Respondent's answer was due.

Moreover, Respondent's first filing, which responded to the Complaint, was filed on January 31, 2006, 2 months 2 days after Respondent's answer was due. The Judicial Officer concluded that, in accordance with the Rules of Practice, Respondent was deemed, for purposes of the proceeding, to have admitted the allegations in the Complaint, and Respondent had waived opportunity for hearing.

In *In re KOAM Produce, Inc.* (Order Denying Petition to Reconsider), PACA Docket No. D-01-0032, decided by the Judicial Officer on August 21, 2006, the Judicial Officer denied KOAM Produce, Inc.'s (Respondent) petition to reconsider *In re KOAM Produce, Inc.*, __ Agric. Dec. ___ (June 2, 2006). The Judicial Officer concluded: (1) the Judicial Officer's conclusion that Respondent violated 7 U.S.C. § 499b(4) was not based exclusively on a plea of guilty to bribery; (2) Complainant's witness, William Cashin, testified truthfully regarding the reasons for Respondent's bribery; (3) the Judicial Officer did not erroneously omit Respondent's material and relevant proposed findings of fact; and (4) the publication of the facts and circumstances of Respondent's violations of the PACA was an appropriate sanction.

In *In re Karen Schmidt*, AWA Docket No. 03-0024, decided by the Judicial Officer on August 30, 2006, the Judicial Officer affirmed Chief Administrative Law Judge Marc R. Hillson's decision (1) finding Karen Schmidt (Respondent) committed seven violations of the regulations and standards issued under the Animal Welfare Act (Regulations and Standards), (2) ordering Respondent to cease and desist from violating the Animal Welfare Act and the Regulations and Standards, and (3) assessing Respondent a $2,500 civil penalty. The Judicial Officer rejected Respondent's contention that her allegations of inspector misconduct constituted a basis for dismissing the Complaint. The Judicial Officer also held that the 16-month period between the hearing and the Chief ALJ's issuance of the Initial Decision was not relevant to the disposition of the proceeding and did not violate the right to a speedy trial in the Sixth Amendment to the Constitution of the United States. The Judicial Officer also rejected Respondent's contentions that willfulness was an issue in the proceeding and that she did not commit three of the violations found by the Chief ALJ.

In *In re Mark Levinson*, AWA Docket No. D-06-0005, decided by the Judicial Officer on September 11, 2006, the Judicial Officer affirmed Administrative Law Judge Peter M. Davenport's (ALJ) decision concluding the Animal Care, Animal and Plant Health Inspection Service, Regional Director's, denial of Mark Levinson's (Petitioner) application for an Animal Welfare Act license was in accordance with 9 C.F.R. § 2.11(a)(6) and reasonable under the circumstances. The Judicial Officer rejected Petitioner's contention that the ALJ found 9 C.F.R. § 2.11(a)(6) mandates denial of Petitioner's license application and Petitioner's contention that his violations of state laws pertaining to animals were inadvertent. The Judicial Officer held there is no requirement that once an applicant's license application has been terminated, the Regional Director is prohibited from denying the applicant's subsequent application on grounds different from the grounds for termination of the earlier application. Finally, the Judicial Officer characterized as speculative Petitioner's claim that, if the Regional Director's denial of his application were not reversed, Petitioner would be permanently banned from obtaining an Animal Welfare Act license.

In *In re Donald R. Beucke*, PACA-APP Docket No. 04-0009, decided by the Judicial Officer on September 28, 2006, the Judicial Officer affirmed Chief Administrative Law Judge Marc R. Hillson's (Chief ALJ) decision concluding Donald R. Beucke (Petitioner) was responsibly connected with Garden Fresh Produce, Inc., when Garden Fresh Produce, Inc., violated the PACA. The Judicial Officer found Garden Fresh Produce, Inc., violated the PACA during the period January 14, 2002, through February 26, 2003. During the violation period, Petitioner was a vice president, a director, and a holder of 20 percent of the outstanding stock of Garden Fresh Produce, Inc. The Judicial Officer stated the burden was on Petitioner to demonstrate by a preponderance of the evidence that he was not responsibly connected with Garden Fresh Produce, Inc., despite his being a vice president, a director, and a major shareholder of Garden Fresh Produce, Inc. The PACA provides a two-prong test which a petitioner must meet in order to demonstrate that he or she was not responsibly connected. First, a petitioner must demonstrate by a preponderance of the evidence that he or she was not actively involved in the activities resulting in a violation of the PACA. If a petitioner satisfies the first prong, then for the second prong, the petitioner must demonstrate by a preponderance of the evidence one of two alternatives: (1) the petitioner was only nominally a partner, an officer, a director, or a shareholder of the violating PACA licensee or entity subject to a PACA license; or (2) the petitioner was not an owner of the violating PACA licensee or entity subject to a PACA license, which was the alter ego of its owners. The Judicial Officer concluded Petitioner failed to prove by a preponderance of the evidence that he met the first prong and second prong of the responsibly-connected test. The Judicial Officer also rejected Petitioner's contention that the Chief ALJ held Petitioner to a standard of proof higher than preponderance of the evidence to demonstrate that Petitioner was only a nominal 20 percent shareholder of Garden Fresh Produce, Inc. Finally, the Judicial Officer rejected Petitioner's contention that the bar on his employment by PACA licensees should have commenced on the day that Garden Fresh Produce, Inc., was found to have violated the PACA.