

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

PACA Docket No. D-05-0001
PACA Docket No. D-05-0002
PACA Docket No. D-05-0003
PACA APP Docket No. 05-0010
PACA APP Docket No. 05-0011
PACA APP Docket No. 05-0012
PACA APP Docket No. 05-0013
PACA APP Docket No. 05-0014
PACA APP Docket No. 05-0015

In re: PERFECTLY FRESH FARMS, INC.;
PERFECTLY FRESH CONSOLIDATION, INC.;
PERFECTLY FRESH SPECIALTIES, INC.

Respondents

and

JAIME O.ROVELO;
JEFFREY LON DUNCAN; and
THOMAS BENNETT

Petitioners

ORDER

These three disciplinary proceedings were brought by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture alleging willful, flagrant and repeated violations of the Perishable Agriculture Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*)

(hereafter “PACA”) and the regulations promulgated thereunder (7 C.F.R. § 46.1 *et seq.*) (hereafter “Regulations”). Subsequent to the filing of the three disciplinary complaints, the Chief of the PACA Branch determined that the three individual Petitioners, Jaime Rovelo, Thomas Bennett and Jeffrey Duncan, were “responsibly connected” to one or more of the Perfectly Fresh entities.¹ The three individuals have contested those determinations and filed petitions for review in each instance. As the corporations all appeared inter-related,² I consolidated the disciplinary case in which the service deficiency had been detected with the six responsibly connected cases.

Review of the records in each of the disciplinary cases however reflects that in each case, service was attempted by certified mail and the certified mail was returned as other than unclaimed or refused. Notwithstanding this deficiency, in error, default decisions were entered by me in Perfectly Fresh Consolidations, Inc. and Perfectly Fresh Specialties, Inc. My error in entering decisions in those two cases will now be corrected and those decisions will be vacated as part of this Order.

Counsel for the Complainant in the disciplinary cases has argued that service of the disciplinary complaint upon the individuals in the responsibly connected proceedings by means “other than by mail” should be considered as service in the disciplinary cases. I rejected that argument in my Order of March 10, 2006 and directed the Complainant to show cause why the disciplinary case should not be dismissed for failure to effect service

¹ Jaime Rovelo was found to be responsibly connected to all three of the entities; Thomas Bennett was found to be responsibly connected to Perfectly Fresh Farms, Inc.; and Jeffrey Duncan was found to be responsibly connected to Perfectly Fresh Consolidations, Inc. and Perfectly Fresh Specialties, Inc.

² Each of the corporations had the same address as well as some commonality of officers and or directors. The extent to which the corporations were inter-related appears to have been an issue before the bankruptcy court.

and for failure to comply with the Order of August 22, 2005 directing exchange of witness and exhibit lists.³

A Response to the Show Cause Order (which was entered on March 10, 2006) was filed on April 17, 2006 with the explanation that counsel failed to receive a copy of the Order and was unaware of its existence until April 6, 2006. While the record does contain a Document Distribution Form indicating that a copy of the order was sent to counsel by Inter-Office Mail, counsel's representation that he did not receive his copy will be accepted.

As counsel for the Complaint in each of the disciplinary cases has proposed to reserve the disciplinary complaints, leave will be granted to allow him to do so, notwithstanding the unopposed general stay of proceedings entered as part of the Order of March 10, 2006.⁴

Being sufficiently advised, it is **ORDERED** as follows:

1. The Default Decision entered on March 31, 2005 in the case of *In re Perfectly Fresh Consolidation, Inc.*, PACA Docket NO. D-05-0002 is **VACATED**.
2. The Default Decision entered on March 31, 2005 in the case of *In re Perfectly Fresh Specialties, Inc.*, PACA Docket No. D-05-0003 is **VACATED**.
3. So much of the general stay that was entered on March 10, 2006 is **LIFTED** for the limited purpose of effecting service of the complaint in *In re Perfectly Fresh*

³ Although the Response filed on April 17, 2006 now indicates a willingness to file at least a partial exhibit and witness list, the Complainant/Respondent to date has not complied with the Order entered on August 22, 2005 concerning exchange of witness and exhibit lists.

⁴ Although counsel in his Response to the Show Cause Order indicated that he had intended to contest the Stay sought by the Petitioners, no pleading was ever filed setting forth the Complainant/Respondent position.

Farms, Inc., PACA Docket No. D-05-0001, but otherwise shall remain in full force and effect, until an appropriate Motion is filed requesting its relief.

4. Counsel for the parties are directed to consult with each other and in the event a Joint Status Report cannot be agreed to, each is directed to file a Status Report on or before June 1, 2006.

Copies of this Order will be served upon the parties by the Hearing Clerk.

April 19, 2006

PETER M. DAVENPORT
Administrative Law Judge

Copies to: Christopher Young-Morales, Esquire
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