

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
MEDHAT MAHMOUD, an individual)	AMAA Docket No. 04-0003
doing business as MEDHAT)	
MAHMOUD PRODUCE, a sole)	
proprietorship; JOSE LUIS TORRES,)	Decision and Order as to
an individual; and FERNANDO TORRES,)	MEDHAT MAHMOUD, an
an individual doing business as TORRES)	individual doing business as
DATES, a sole proprietorship,)	MEDHAT MAHMOUD PRODUCE,
)	a sole proprietorship,
Respondents)	by Reason of Default

This proceeding was instituted under the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. § 601 *et seq.* (the “Act”), and the Marketing Order for Domestic Dates Produced or Packed in Riverside County, California, 7 C.F.R. §§ 987.1 - 987.84 (“Marketing Order”), and the Administrative Rules, 7 C.F.R. §§ 987.101-172 (“Rules”), by a complaint filed on July 21, 2004, by the Administrator of the Agricultural Marketing Service, United States Department of Agriculture, alleging that respondent Medhat Mahmoud violated the Marketing Order.

On November 15, 2004, the Hearing Clerk sent to respondent Medhat Mahmoud, by certified mail to his last known address, return receipt requested, a copy of the complaint and Rules

of Practice governing proceedings under the Act (7 C.F.R. §§ 1.130-1.151).¹ The United States Postal Service marked said mailing “unclaimed” and returned it to the Hearing Clerk.

On January 4, 2005, in accordance with section 1.147(c)(1) of the rules of Practice, the Hearing Clerk served respondent Medhat Mahmoud, by regular mail, a copy of the complaint and the Rules of Practice governing proceedings under the Act (7 C.F.R. §§ 1.130-1.151). Respondent Medhat Mahmoud was informed in the accompanying letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation. Respondent Medhat Mahmoud has failed to file an answer. The material facts alleged in the complaint, which are admitted by respondent Medhat Mahmoud’s failure to file an answer, are adopted and set forth herein as Findings of Fact. This Decision and Order is issued pursuant to section 1.139 of the Rules of Practice.

Findings of Fact

1. Respondent Medhat Mahmoud is an individual doing business as Medhat Mahmoud Produce, whose last known mailing address was The Green Connection, 746 Market Court, Unit B-243, Los Angeles California 90021; and whose previous address was 1314 W. Vine Avenue, West Covina, California 91790. Medhat Mahmoud Produce is a sole proprietorship located at the same address. At all times mentioned herein, respondent Medhat Mahmoud was engaged in business as a handler of dates grown in Riverside County, California, and was subject to the Act and Marketing Order and Rules.

2. On or about October 31, 2001, respondent Medhat Mahmoud handled approximately 8,400 pounds of dates without having them inspected, in violation of section 987.41(a) of the Marketing Order. 7 C.F.R. § 987.41(a).

¹See Domestic Return Receipt for Article Number 7004 1160 0001 9221 3649.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. By reason of the facts set forth in the Findings of Fact above, respondent Medhat Mahmoud has violated section 987.41(a) of the Marketing Order. 7 C.F.R. § 987.41(a)).
3. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. Respondent Medhat Mahmoud, an individual doing business as Medhat Mahmoud Produce, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the Marketing Order and Rules, and in particular, from handling dates without having them inspected.
2. Respondent Medhat Mahmoud is assessed a civil penalty of **\$1,100**, in accordance with section 608c(14)(B) of the Act. 7 U.S.C. § 608c(14)(B). Respondent Medhat Mahmoud shall pay the \$1,100 by cashier's check, certified check, or money order, made payable to the order of the **Treasurer of the United States** and forwarded within 30 days from the effective date of this Order by a commercial carrier such as FedEx or UPS to:

Bernadette R. Juarez, Esq.
United States Department of Agriculture
Office of the General Counsel, Marketing Division
South Building, Room 2343
1400 Independence Avenue SW
Washington DC 20250-1417

Respondent Medhat Mahmoud shall indicate that the payment is in reference to:

AMAA Docket No. 04-0003.

3. This Order shall be effective on the first day after this Decision and Order becomes final. This Decision and Order shall have the same force and effect as if entered after a full

hearing and shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties, including counsel for the remaining respondents.

Done at Washington, D.C.
this 9th day of May 2005

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue SW
Room 1031, South Building
Washington, D.C. 20250-9203

202-720-4443
Fax: 202-720-9776

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

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SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be

deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145