UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	PACA-APP Docket No. 05-0004
	)	
Ray Justice	)	
	)	
Petitioner	)	

DECISION

In this decision, I find that Ray E. Justice, Sr. was responsibly connected with Do Ripe Farms, Inc., when Do Ripe committed disciplinary violations of the Perishable Agricultural Commodities Act (PACA). I find that Mr. Justice was both actively involved in the activities that lead to the violations committed by Do Ripe, and that he was not only a nominal shareholder of Do Ripe.

Procedural History

On July 20, 2004, Ray Justice was notified by a letter from Karla Whalen, Head of the Trade Practice Section, PACA Branch, Fruit and Vegetable Programs, that an initial determination had been made that as a 50 percent stockholder and director of Do Ripe, he was "responsibly connected" to Do Ripe during the period of time when it committed violations of the PACA. RX 2. Mr. Justice was informed that if he did not contest the initial determination letter within thirty days by requesting that the Chief of

the PACA Branch review the initial determination, he would be subject to licensing and employment restrictions under the PACA.

By letter of August 19, 2004, Mr. Justice, through his counsel, denied that he was responsibly connected to Do Ripe. RX 3. After review of documentation supplied by counsel for Mr. Justice, a final determination was made on January 4, 2005 by Bruce W. Summers, Acting Chief, PACA Branch, Fruit and Vegetable Programs, that Mr. Justice was responsibly connected with Do Ripe during the period Do Ripe violated the PACA. The letter informed Mr. Justice of his right to seek review of the final decision by filing a petition for review within thirty days from receipt of the letter.

Meanwhile, the PACA Branch had filed a disciplinary complaint against Do Ripe Farms, Inc. on July 9, 2004, alleging that Do Ripe, during the period from September 2002 through April 2003, failed to make full payment promptly to sixteen sellers in the amount of over one million dollars for one hundred lots of perishable agricultural commodities that Do Ripe had purchased, received, and accepted in interstate commerce. Upon failure of Do Ripe to file an answer to the complaint, the Complainant moved on February 10, 2005 for a default decision, which I issued on August 10, 2005, finding that the violations alleged were established as willful, flagrant and repeated violations of section 2(4) of the PACA.

On February 4, 2005, Mr. Justice filed a timely Petition for Review with the USDA's Office of the Hearing Clerk seeking to reverse the determination that he was responsibly connected to Do Ripe. I conducted a hearing in this matter in Atlanta, Georgia on December 13, 2005. Andrew B. Hellinger, Esq. and Coralee G. Penabad,

Esq. represented Petitioner, and Christopher Young-Morales, Esq., represented Respondent.

Petitioner testified on his own behalf and also called Robert Hoch to testify. Respondent called Josephine E. Jenkins to testify as its sole witness. Petitioner introduced exhibits PX 1 through PX 12, and Respondent introduced exhibits RX 1 through RX 8. Both parties submitted Proposed Findings of Fact and Conclusions of Law and accompanying briefs.

Facts

Ray Justice is an astute and experienced businessman who has owned and invested in a number of businesses over the past 35 years. Tr. 14-15, 31. At the time of the hearing, he had been acquainted with Robert Hoch, president of Do Ripe Farms, for over 30 years. Tr. 31. He had loaned Hoch money many times over the years and had always been paid back. Tr. 32. However, in early 2002, Hoch owed him $600,000 and indicated he needed more funds. Tr. 22-23. A series of transactions occurred which resulted in Justice owning 50% of Do Ripe. The significance of this 50% ownership, and some of the transactions which Justice participated in during the period during which Do Ripe committed violations, are the key to my determination as to whether Justice was responsibly connected to Do Ripe at the time Do Ripe committed violations of the PACA.

At the time that Do Ripe Farms, Inc. originally received its PACA license on March 24, 2000, Robert Hoch was the sole shareholder and president of the company. RX 1, pp. 3-5. License number 2000-0951 was issued to Do Ripe on that date and was terminated on March 24, 2002 for failure to pay the required annual license fee. RX 1, p.

1. Thus, Do Ripe was operating without a PACA license during the entire time period when the violations occurred. Do Ripe was in the produce business and 95% of its business was in tomatoes. Tr. 64. Hoch handled the company's day-to-day business. Hoch's family had been in the produce business and Hoch had been involved in the business for approximately 30 years. Tr. 31-32.

Hoch described Justice as a "fatherly type" who frequently gave him advice on business during the course of their thirty-year acquaintance. Tr. 73-74. Their relationship began as a result of Hoch having gone to school with Justice's children. Tr. 35. When Hoch founded Do Ripe he would occasionally have conversations with Justice as to how his business was doing. Hoch borrowed money from a number of financial institutions, and also began borrowing money from Justice, and paying it back with interest to help him pursue his business. Tr. 49, 88. There came a point in early 2002 when the debt of Do Ripe to Justice was approximately $600,000, and the company was unable to pay back the loans. Tr. 16-17. Hoch represented to Justice that he needed up to another $500,000 to "get to the next stage" and make his tomato business a success. Tr. 32. Rather than simply loaning Hoch and Do Ripe the additional funds, Justice insisted that some sort of measures be taken to safeguard his investment. Tr. 17, 22. On January 14, 2002, he set up a line of credit with Hoch (and Hoch's wife) for $1.1 million, representing the $600,000 he was already owed and the additional $500,000 Hoch wanted to borrow on behalf of Do Ripe. PX 6. As part of the collateral for this line of credit, the Hochs secured the loan with their personal residence. Tr. 39. In addition, he conditioned the series of transactions on his being made a 50 per cent shareholder in the company.[1]

[1] As a result of these transactions, Justice became a 50% shareholder in both Do Ripe Farms, Inc and DRF, which was a related company set up to handle some of the aspects of financing. When DRF was set up in

Justice considered the stock as part of the collateral he was receiving for his $1.1 million loan. Tr. 50. There is no dispute that Justice was a 50 per cent shareholder of Do Ripe throughout the period Do Ripe was found to have violated the PACA.

Justice throughout this proceeding has characterized his role as that of a "passive investor." Tr. 30. He stated that other than providing the funds to Do Ripe so that Hoch could improve the company's ability to do business, he had no role in the day to day operations of the company. Tr. 25, 27. While he stopped by the office on occasion to have lunch, it was generally a fairly casual event, based on his proximity to Do Ripe, and most of his conversations with Hoch about business were fairly general in nature, according to both Hoch and Justice. Tr. 35-36, 74-75. Justice testified that he did not review Do Ripe's bills; that he did not decide which bills to pay; that he did not review Do Ripe's invoices; that he did not sign any contracts on behalf of Do Ripe; and that he did not receive compensation from Do Ripe or sign any loan documents for Do Ripe. Tr. 28-29. On the other hand, Justice was generally aware of the financial condition of the company; knew generally why Hoch needed to borrow the additional funds; and was receiving statements regarding the financial condition of Do Ripe--although not always on a timely basis. Tr. 51.

Further, for a period of time during the violation period, Justice loaned Do Ripe additional funds--$70,000--above and beyond the $1.1 million to tide the company over during the holiday season to cover expenses at a time when the company was being slow paid by some of its customers. Tr. 41-45, 50-51. Not only were these loans repaid by

---

early 2002, Justice was made a 50% shareholder in both Do Ripe and DRF. Tr. 17. When Hoch wanted to borrow money on behalf of Do Ripe, he would request it of DRF who would request it from Justice, who would "draw it down" and send it to DRF who would then send it to Do Ripe. Id. It is only Justice's relationship with Do Ripe Farms, Inc. that is material to the responsibly connected determination.

Do Ripe during the very period the company was committing violations of the PACA, but in February 2003, when Justice was made aware that he was on the company's bank signature card, he signed the company's checks to himself paying off the $70,000 loan, including interest. Tr. 42-43, 49.[2]

With respect to the produce business, Justice generally claimed ignorance as to how the produce business functioned. As he put it, when he first began loaning Hoch money, "I never really got into his business." Tr. 16. At the time of making his initial loans and the loans through DRF, Justice had no familiarity with the PACA. Tr. 20. However, he did not loan the additional funds to Hoch blindly. He was given to understand that Do Ripe needed to expand geographically; that they needed to retool and rent more space; that Hoch told him that he had additional commitments from companies who wished to purchase produce from Do Ripe; and that additional equipment, including a machine that cost $125,000 to sort tomatoes, needed to be purchased in order to successfully compete. Tr. 21-23. Hearing this information from Hoch convinced him to make the additional funds available to Do Ripe in exchange for the ownership share in the company. Justice testified that he never actually received any stock certificate with his name on it indicating that he was a 50% shareholder, Tr. 23, but there is no dispute that he was such a shareholder throughout the relevant time period. Tr. 31. He also indicated that he never considered himself to be an officer or director of Do Ripe. Tr. 24.

His failure to look into the details of the produce business before investing so heavily in Do Ripe appears to be inconsistent with his prior practice as an astute

[2] The "Payment to insiders" attachment to Do Ripe's bankruptcy filing, RX 6, p. 64, indicated that Petitioner received four checks from the company, totaling over $84,000, in February and March, 2003. Apparently the first three checks, totaling over $77,000, were for the repayment of the loans to tide Do Ripe over the holiday season, with the additional $7,000 check for a loan covering some telephone equipment. Tr. 46.

businessman. As he stated during cross-examination, "To make that large of an investment in any business you should know the ins and outs of the business, I agree, but I had a lot of faith in that individual." Tr. 34. Because of his then apparent faith in Hoch, Justice did not follow his normal precautions before investing, choosing to rely instead on Hoch's representations and periodic updates as to the state of the business.

Matters came to a head for Do Ripe when their assets were frozen as a result of a PACA Trust action initiated by Six L's Packaging Co. in March 2003. Tr. 75-79. Shortly thereafter, Do Ripe ceased doing business and filed a voluntary petition for Chapter 11 bankruptcy protection. PX 3F, RX 6. Both Hoch and Justice signed the relevant documents as the holders of 100% of the outstanding shares of Do Ripe. The bankruptcy filings also listed Justice as a director of the company, PX 3F, p. 53, although Justice testified that he never was informed that he was a director and that he was basically presented the forms to sign by the bankruptcy attorney. Tr. 41.

Statutory and Regulatory Background

The Perishable Agricultural Commodities Act governs the conduct of transactions in interstate commerce involving perishable agricultural commodities. Among other things, it defines and seeks to sanction unfair conduct in transactions involving perishables. Section 499b provides:

> It shall be unlawful in or in connection with any transaction in interstate or foreign commerce:
>
> (4) For any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity which is received in interstate or foreign commerce by such commission merchant, or bought or sold, or contracted to be bought, sold, or consigned, in such commerce by such dealer, or the purchase or sale of which in such

> commerce is negotiated by such broker; or to fail or refuse truly and correctly to account and make full payment promptly in respect of any transaction in any such commodity to the person with whom such transaction is had; or to fail, without reasonable cause, to perform any specification or duty, express or implied, arising out of any undertaking in connection with any such transaction; or to fail to maintain the trust as required under section 499e(c) of this title. However, this paragraph shall not be considered to make the good faith offer, solicitation, payment, or receipt of collateral fees and expenses, in and of itself, unlawful under this chapter.

7 U.S.C. § 499a(b)4.

In addition to penalizing the violating merchant, which in this case would be Do Ripe, the Act also imposes severe sanctions against any person "responsibly connected" to an establishment that has had its license revoked or suspended.[3] 7 U.S.C. §499h(b). The Act prohibits any licensee from employing any person who was responsibly connected with any other licensee whose license "has been revoked or is currently suspended" for as long as two years, and then only upon approval of the Secretary. Id.

> (9) The term "responsibly connected" means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association. A person shall not be deemed to be responsibly connected if the person demonstrates by a preponderance of the evidence that the person was not actively involved in the activities resulting in a violation of this chapter and that the person either was only nominally a partner, officer, director, or shareholder of a violating licensee or entity subject to license or was not an owner of a violating licensee or entity subject to license which was the alter ego of its owners.

7 U.S.C. § 499a(b)9.

Discussion

[3] Since Do Ripe's license had already been terminated for failure to pay the required fee, my default ruling did not include an order revoking or suspending its license. Instead, I ordered that "the facts and circumstances of the violation shall be published." The Judicial Officer has ruled that "Publication of the facts and circumstances of Respondent's violations has the same effect on Respondent and persons responsibly connected with Respondent as revocation of Respondent's PACA license." In re M. Trombetta & Sons, Inc., Agric. Dec. (2005), slip op. at 41.

I conclude that Petitioner has failed to meet his two-step burden of showing by a preponderance of the evidence that he (1) was not actively involved in the activities resulting in a violation of this chapter, and (2) was only nominally a 50% shareholder of a violating licensee or entity subject to license.

Petitioner Justice was actively involved in the activities resulting in a violation of this chapter. Even though Justice and Hoch both considered Justice to be a "passive investor;" (a) the degree of his knowledge of Do Ripe's condition at the time he assumed half-ownership; (b) his general knowledge of the business's problems; (c) his knowledge of how his investment was going to be used; (c) his failure to investigate the regulations and laws pertinent to the produce business; and (d) his decision, at a time when he knew the company was unable to pay its creditors, to pay the company's debt to him for the short term loan—in effect a decision by a co-owner to grant his claim a higher priority than other claims, all constituted active involvement under the statute.

The burden of proof is on the Petitioner to demonstrate that he was not actively involved in the activities resulting in Do Ripe's violations. Although Hoch was clearly in charge of running the business, and made the day-to-day decisions, Petitioner's decision to invest in the business in exchange for half ownership of the business, when he had very good knowledge as to how his investment was going to be used, and when he knew the business was not doing well, convinces me, and I so find, that his role within the company was active under the statute. An individual does not have to be the major corporate decision maker to be actively involved. As the Judicial Officer held in In re Lawrence D. Salins, 57 Agric. Dec. 1474, 1489 (1998), ". . . there are many functions within the company, e.g., corporate finance, corporate decision making, check writing,

and choosing which debt-in-arrears to pay, which can cause an individual to be actively involved in failure to promptly pay for produce, even though the individual does not ever actually purchase produce." Indeed, Justice had a far lesser role in the activities of Do Ripe than did Salins who, as Petitioner points out in his reply brief, was extensively and regularly involved in his company's business. There is no evidence that Justice was involved in Do Ripe's day-to-day activities; or that he did buying or selling of produce; or did sign or write checks (with the exception of paying back his short term holiday loan to the company); or was generally aware of who Do Ripe's creditors were prior to the time the accounts were frozen; or was a part of many of the decisions that are traditionally linked with high-level management.

However, that he was less involved than the petitioner in the Salins case does not necessarily warrant a finding that Justice was not actively involved. While he apparently made the unusual decision to forego the type of investigation that he normally would conduct into the affairs of a business in which he was about to invest a substantial amount of money, due to his long-term acquaintance with Hoch, he did know enough to realize that the business was in trouble and that it was continually borrowing money even before he became half-owner. He knew generally what his investment was going to be used for. He had to personally authorize each increment of the loan that was financed through DNF, and his multiple exercise of that authority, particularly in light of his awareness of Do Ripe's financial conditions, is not consistent with being a "passive investor," but rather indicates active participation in the company's decisions. And the decision to pay back his own short term loan at a time when Do Ripe was in trouble with a number of

creditors is utterly inconsistent with "passive" investment, while being an extremely strong indicator of active involvement.

Petitioner was not merely a nominal shareholder in Do Ripe. Petitioner did not meet his burden of showing, by a preponderance of the evidence, that he was only a nominal 50 percent shareholder of Do Ripe. In order to show that his 50% ownership was only nominal, Justice would have to demonstrate, by a preponderance of the evidence, that he did not have an "actual, significant nexus" with Do Ripe during the period Do Ripe was violating the PACA. In re Anthony Thomas, 59 Agric. Dec. 367, 386 (2000), In re Edward S. Martindale, Agric. Dec. (slip op. p. 28)(July 26, 2006).

I am basing my finding that Justice was responsibly connected to Do Ripe on his role as 50% shareholder, and not on his being an officer or director of the company. While Justice did sign a bankruptcy document indicating that he was a director, neither he nor Hoch had any recollection of him being made a director or an officer. The bankruptcy filing papers, signed by Justice at the request of the bankruptcy attorney, appear to be the only mention of Justice being a director. The evidence does not support a finding that Justice was a director or officer of Do Ripe. However, Justice's stock ownership is more than sufficient to establish his responsibly connected status, particularly in view of his overall business background, his knowledge of Do Ripe's financial condition, and his involvement in financial transactions during the violation period.

Respondent contends, correctly, that the basic fact that Petitioner owned 50% of the corporate stock of Do Ripe at the time the violations were committed is strong evidence that Petitioner was not a nominal shareholder. Resp. brief at 16. With Congress

setting 10% ownership as the threshold for an individual to be found responsibly connected based on percentage ownership of a violating entity, 50% ownership is a rather powerful indication that an individual is responsibly connected to a company. As the Judicial Officer stated in In re Edward S. Martindale, supra, at slip op. p. 29, "Petitioner's ownership of a substantial percentage of stock alone is very strong evidence that he was not a nominal shareholder." The "substantial percentage" referred to in Martindale was 20 per cent, far less than the 50% ownership of Petitioner in this case.[4] Simply by virtue of his ownership interest in Do Ripe, Justice could have taken measures to investigate further the problems the company was having in paying its debts, monitored the company more closely, and simply paid more attention to the business. Instead, he decided to trust Hoch and Do Ripe's employees, and to make no attempts to fix the conduct that was leading the company to PACA violations and bankruptcy.

In making a determination as to whether a shareholder is nominal, it is appropriate to look at his overall business background and knowledge. It has been recognized that a person may be in a nominal position, even if they are a more than 10% shareholder, if they have little or no training and experience. Thus, in Minotto v. USDA, 711 F. 2d 406, 409, the court found that Minotto, who was only a bookkeeper and had very little training or experience, was only a nominal director. Although Petitioner here had little knowledge of the produce business, he had a long history of owning successful businesses and in investing. He testified that he had been a businessman for 35 years prior to investing in Do Ripe, and that he had owned approximately twenty businesses during that time. While he remained relatively unaware of the details of Do Ripe's

[4] See, also, the cases cited in footnote 8 of Martindale, where the Judicial Officer and the courts have held that ownership of 20 to 33.3 percent of the stock of a violating entity was "strong evidence" that a person was responsibly connected to that entity.

business, he was well aware that the company was having severe financial difficulties at the time he became a shareholder. Indeed, the failure of Do Ripe to repay $600,000 in loans was both a crystal clear indicator that the company was in trouble, as well as the inducement for Justice to seek further protection, in the form of a 50% share of Do Ripe, before he would set up the mechanism to loan additional funds. He knew the purpose of the additional funding, and approved each incremental advance of funds until the additional $500,000 was distributed. As an experienced businessman, he certainly had the capability of inquiring further into the details of a business he knew was losing money, and as a 50% stockholder he had the obligation, even if he was not actively involved in the activities resulting in the violations of the PACA, to take action to counteract or obviate the fault of Hoch. Instead, Justice was content to stay away from learning about the details of the business, and to not take any measures to correct the situation. His situation is a far cry from that in Minotto, where a bookkeeper with no real business knowledge or ownership role in the company was put on the board to essentially cast a figurehead vote in favor of every resolution supported by the company's ownership. Rather, as a successful businessman who actively sought ownership as a condition of advancing further loans to Do Ripe, and who hoped to make a profit with his investment in the company, Tr. 50, 52-53, Justice's position with Do Ripe contrasts sharply with the facts of the Minotto case.

Two other factors deemed significant by the Judicial Officer in determining whether an individual's stock ownership was "merely nominal" are active participation in corporate decision making and knowledge of the company's financial condition. Once again, Petitioner's actions are inconsistent with those of a nominal shareholder. In Salins,

the Judicial Officer stated that active participation in corporate decision making was another indicia whether an individual was serving in a nominal capacity. While Justice clearly was not participating in day-to-day decision-making at Do Ripe, he played a significant role in corporate finance decision making. Thus, if he did not advance the funds to purchase the tomato sorter and to otherwise finance Do Ripe's anticipated expansion of business, it is likely that those events would not have occurred. His approval of the additional funding on an incremental basis confirms that he gave his individual approval to numerous steps in the company's financing decisions. He also participated in the company's decision to file for bankruptcy, a rather pivotal decision. In addition, he made the decision to repay loans that he made to the corporation, that were above the $1.1 million, Tr. 50, even when he knew the company was suffering financially. The fact that he issued four separate checks to repay himself contradicts his claim that his involvement in the company was only passive.

In Salins, the Judicial Officer also stated that knowledge of the company's financial condition was an additional factor to be looked at in determining whether a shareholder was only serving in a nominal capacity. Justice's knowledge of Do Ripe's financial condition was clearly established—he discussed the company's condition numerous times with Koch even before he became a shareholder; was well-aware there were significant problems as his loans were not being repaid; and saw numerous financial statements reflecting the company's troubles before and during the violation period. Rather than attempt to take action to learn more about the produce business or otherwise apply his considerable business savvy towards taking measures to improve the company's practices, Petitioner appeared to be content to let Hoch and his employees run

the business without interference. As a major shareholder in the company, Petitioner cannot avoid his responsibilities under the PACA. As a major shareholder he knew, or should have known, that the company was delinquent in paying for its purchases, and should have taken prompt measures to correct this situation. While he became a shareholder in part in order to secure his loaning Do Ripe additional funds, he at the same time became a person who was responsible for assuring that Do Ripe was compliant with the PACA, a responsibility he did not fulfill.

Petitioner invested in Do Ripe to make money. While he originally loaned the company money with the goal of getting repaid with interest, the series of transactions that lead him to become a 50% shareholder was entered into as a means of assuring he could get all his money back with interest and to make a profit as well. He was a voluntary investor who received money from Do Ripe during the time Do Ripe was committing violations of the PACA. The receipt of compensation from the violating company is another factor cited by the Judicial Officer in Salins, and the voluntary investment of substantial funds with the expectation of eventually receiving compensation in the way of profits and increased value of his investment interest is consistent with my finding that he is responsibly connected to Do Ripe.

Findings of Fact

1. Petitioner Ray Justice is an experienced businessman, who has owned over 20 companies.

2. Do Ripe Farms, Inc. held PACA license 2000-0951 from March 24, 2000 through March 24, 2002, when the license terminated for non-payment of the annual fee. During this period Robert Hoch was the sole owner and president of Do Ripe.

3. Even though it was unlicensed, Do Ripe continued its produce operations until it filed for voluntary bankruptcy on April 18, 2003. Between September 2002 and April 2003, Do Ripe failed to make full payment promptly for 100 lots of perishable agricultural commodities to 16 sellers in the amount of over $1 million.

4. Petitioner has been acquainted with Robert Hoch for over 30 years, since his children went to school with Hoch. Hoch had discussed Do Ripe's tomato business with Petitioner on numerous occasions, and had borrowed, and subsequently repaid with interest, funds from Petitioner on a number of occasions.

5. In early 2002, at a time when Do Ripe owed Petitioner approximately $600,000, he requested that Petitioner loan him an additional $500,000. Petitioner indicated that he needed some sort of collateral to safeguard his investment, and agreed to set up a $500,000 line of credit through a newly created entity called DRF in exchange for being made a 50% shareholder in Do Ripe.

6. From February 2002 until the company filed for bankruptcy protection, Petitioner was a 50% shareholder in Do Ripe.

7. Before investing in Do Ripe, Petitioner did not investigate or learn about the workings of the produce business. He was unaware of the PACA and the requirement of a PACA license. He was aware that Do Ripe was having financial difficulties, and was further aware of some or most of the purposes for which Hoch desired to borrow the additional funds.

8. While a shareholder in Do Ripe, Petitioner incrementally advanced funds to the company from DRF.

9. While a shareholder in Do Ripe, Petitioner made additional loans, above and beyond the $1.1 million, to tide the company over during the holiday season. On four different occasions during the period Do Ripe was violating the PACA, Petitioner, having found out that he was authorized to sign checks, wrote checks to himself to pay off loans he had made to Do Ripe.

Conclusions of Law

1. Petitioner was a 50% shareholder in Do Ripe Farms, Inc. from February 2002 through the time the company filed for bankruptcy in April 2003.

2. Between September 2002 and April 2003 Do Ripe Farms, Inc. committed willful, flagrant and repeated violations of section 2(4) of the PACA by failing to make full payment promptly to sixteen sellers in the amount of over one million dollars for one hundred lots of perishable agricultural commodities Do Ripe had purchased, received, and accepted in interstate commerce.

3. Petitioner was actively involved in the violations committed by Do Ripe.

4. Petitioner was not a nominal 50% shareholder in Do Ripe.

5. Petitioner was responsibly connected to Do Ripe during the time Do Ripe committed violations of the PACA.

Conclusion and Order

Petitioner has failed to show, by a preponderance of the evidence, that he was not responsibly connected to Do Ripe Farms, Inc. at a time when Do Ripe committed willful, flagrant and repeated violations of section 2 (4) of PACA for failing to make full payment promptly for produce purchases. Petitioner was actively involved in the activities resulting in the violations, and was more than a nominal 50% shareholder.

Wherefore, I affirm the finding of the Chief of the PACA Branch that Ray Justice was responsibly connected with Do Ripe at the time the violations were committed.

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

Copies of this decision shall be served upon the parties.

Done at Washington, D.C.
this 11th day of August, 2006

_____
MARC R. HILLSON
Chief Administrative Law Judge