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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	PACA Docket Nos.:
	)	
LBD Produce, Inc.,	)	D-09-0171
	)	
Randall Berger,	)	D-09-0172
	)	
Michael Hirsch,	)	D-09-0173
	)	
John Thomas,	)	D-09-0174
	)	
Respondents	)	<b>Decision Without Hearing By Reason of Consent</b>

This is a disciplinary proceeding which involves four consolidated cases under the Perishable Agricultural Commodities Act, 1930, as amended, (7 U.S.C. §499a et seq.; hereinafter "PACA"), and the regulations issued thereunder (7 C.F.R. Part 46; hereinafter "regulations"). The proceeding was initiated by four separate, but related, Complaints filed in the above captioned cases on August 13, 2009, by the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, pursuant to the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R §1.130 et seq.; hereinafter "Rules of Practice").

The Complaint against LBD Produce, Inc. (hereinafter "LBD") alleged that the company LBD unlawfully employed or was affiliated with John Thomas, Michael Hirsch, and Randall Berger during the period that the three individuals were under employment sanctions, after each was found responsibly connected to Kleiman and Hochberg, Inc., when that company committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)). The Complaints

against John Thomas, Michael Hirsch, and Randall Berger allege that each named individual was unlawfully employed by or affiliated with LBD, a PACA licensee, during the period in which employment restrictions were in effect under section 8(b) of the PACA (7 U.S.C. § 499h(b)) following a finding that John Thomas, Michael Hirsch, and Randall Berger were responsibly connected to Kleiman and Hochberg, Inc. when that company violated the PACA. The Complaint against LBD requested that the company's PACA license be revoked, and the Complaints against each individual requested that each be subject to an additional year of employment sanctions pursuant to section 8(b) of the Act (7 U.S.C. § 499h(b)). On September 2, 2009, Respondents filed an Answer denying the allegations listed in the Complaint.

The parties have now agreed to the entry of a Decision Without Hearing by Reason of Consent as set forth herein. Therefore, this Decision Without Hearing by Reason of Consent is entered without further procedure or hearing pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 et seq.; hereinafter "Rules of Practice") applicable to this proceeding (7 C.F.R. §1.138).

#### Findings of Fact

1. LBD is a corporation whose business address is listed with the PACA Branch of the Agricultural Marketing Service as B232 NYC Terminal Market, Bronx, New York.
2. At all times material herein, LBD was licensed under the provisions of the PACA. License number 2003-0717 was issued to Respondent on March 5, 2003. This license is currently active.
3. At all times material herein, John Thomas, an individual, was subject to employment

restrictions under section 8(b) of the PACA (7 U.S.C. §499h(b)). John Thomas' employment restrictions began on December 7, 2007.

4. At all times material herein, Randall Berger, an individual, was subject to employment restrictions under section 8(b) of the PACA (7 U.S.C. §499h(b)). Randall Berger's employment restrictions began on December 7, 2007.
5. By letters dated January 8, 2008, and January 15, 2008, the PACA Branch of the Agricultural Marketing Service informed LBD that pursuant to the Act, unlawful employment of or affiliation with John Thomas or Randall Berger during the period they were subject to employment restrictions could result in suspension or revocation of LBD's PACA license. The January 8, 2008 letter stated that John Thomas and Randall Berger could not be employed by or affiliated with any PACA licensee between December 7, 2007 and December 8, 2008, and that after that period, could only be employed by or affiliated with another PACA licensee with the approval of the Secretary of Agriculture and the posting of a suitable surety bond.
6. At all times material herein, Michael Hirsch, an individual, was subject to employment restrictions under section 8(b) of the PACA (7 U.S.C. §499h(b)). Michael Hirsch's employment restrictions began on August 24, 2008.
7. By letter dated September 17, 2008, the PACA Branch of the Agricultural Marketing Service informed LBD that pursuant to the Act, unlawful employment of or affiliation with Michael Hirsch could result in suspension or revocation of LBD's PACA license. The letter stated that Michael Hirsch could not be employed by or affiliated with any PACA licensee between August 24, 2008 and August 24, 2009,

and that after that period, he could only be employed or affiliated with another PACA licensee with the approval of the Secretary of Agriculture and the posting of a suitable surety bond.

8. Respondents acknowledge that John Thomas, Michael Hirsch, and Randall Berger were affiliated with LBD during the period of each individual's employment sanctions under section 8(b) of the PACA (7 U.S.C. §499h(b)).

#### Conclusions

Respondent LBD and Respondents John Thomas, Michael Hirsch, and Randall Berger were unlawfully affiliated during the period of each individual's employment sanctions under section 8(b) of the PACA (7 U.S.C. §499h(b)). Respondents' unlawful affiliation is a violation of section 8(b) of the PACA (7 U.S.C. §499h(b)).

#### Order

Based on Respondents' violations of the PACA, the parties agree that:

1. Respondents are jointly and severally assessed a civil penalty of \$300,000.00, to be paid immediately in certified or "bank check" form, payable to the United States Treasury. Respondent will send the payments to the following address:

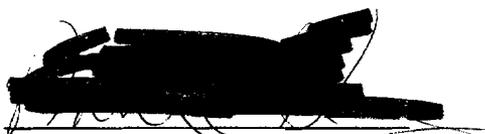
United States Department of Agriculture  
PACA Branch, Attn: Phyllis Hall  
1400 Independence Ave.  
Room 2095, South  
Washington, D.C. 20250

2. Respondents John Thomas and Michael Hirsch will maintain their current PACA employment surety bond for an additional 2 years following each respective bond's original termination date, and if maintained satisfactorily during this period, will be released nine months

after the additional two year period has ended.

3. Randall Berger will obtain an employment surety bond satisfactory to the PACA Branch of the Agricultural Marketing Service in the amount of \$50,000.00. The bond will be maintained for a period of two (2) years, and if maintained satisfactorily during this period, will be released nine months after the two year period has ended.

This order shall become final upon issuance. Copies of this order shall be served upon the parties.

  
Robert C. Keeney  
Deputy Administrator  
Fruit and Vegetable Programs  
Agricultural Marketing Service

4-12-10  
Date signed

  
Christopher Young-Morales, Esq.  
Attorney for Complainant

4-5-10  
Date Signed

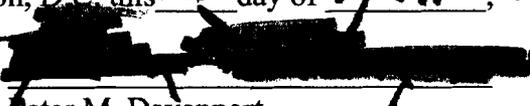
  
Charles Kendall, Esq.  
Attorney for Complainant

4-7-10  
Date Signed

  
Mark C.H. Mandell, Esq.  
Attorney for Respondents

4/6/10  
Date Signed

Done at Washington, D.C. this 12<sup>th</sup> day of April, 2010

  
Peter M. Davenport  
Administrative Law Judge