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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:

Jonathan Dyer (PACA-APP Docket No. **14-0166**); and

Drew Johnson, a/k/a Drew R. Johnson (PACA-APP Docket No. **14-0168**); and

Michael S. Rawlings (PACA-APP Docket No. **14-0169**),

Petitioners.

Decision and Order

Appearances:

Stephen P. McCarron, Esq., and Mary Jean Fassett, Esq., McCarron & Diess, Washington, D.C. 20016, for these 3 Petitioners in responsibly connected cases [PACA-APP cases]: Jonathan Dyer; and Drew Johnson, also known as Drew R. Johnson; and Michael S. Rawlings (frequently "3 Petitioners"), and

Charles L. Kendall, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Ave SW, Washington D.C. 20250, for the Respondent, the Administrator, Specialty Crops Program, Agricultural Marketing Service, United States Department of Agriculture (frequently "AMS" or "the Agency").

Decision Summary

1. Each of these 3 Petitioners, Jonathan Dyer; and Drew Johnson, also known as Drew R. Johnson; and Michael S. Rawlings, was a Director (and NOT *only nominally* a Director), of Adams Produce Company LLC during at least part of August 8, 2011 through May 18, 2012, when Adams Produce Company LLC violated the Perishable Agricultural

Commodities Act (PACA), specifically section 2(4) of the PACA (7 U.S.C. § 499b(4)). Yet none of these 3 Petitioners was "responsibly connected" within the meaning of section 1(b)(9) of the PACA (7 U.S.C. § 499a(b)(9)), because none of these 3 Petitioners was actively involved in the activities resulting in the PACA violations during August 8, 2011 through May 18, 2012, and none of these 3 Petitioners was ever an owner of Adams Produce Company LLC which was the alter ego of Chief Executive Officer Scott Grinstead, full name Scott David Grinstead, who was an owner and not only Chief Executive Officer but also a Director with 3 of 6 votes. Chief Executive Officer Scott Grinstead, Director with 3 of 6 votes, through his crimes and fraud and profligate spending, rendered Adams Produce Company LLC's financial statements and information false and misleading beginning with 2009 financial statements and information and continuing thereafter, and destroyed Adams Produce Company LLC's corporate form and made these 3 Petitioners powerless to get Adams Produce Company LLC's suppliers of perishable agricultural commodities paid on time, or at all. Scott Grinstead was the sole owner and operator of Grinstead & Associates, LLC, a 44.7 per cent owner of Adams Produce Company LLC during the PACA violations. Scott Grinstead destroyed and disrupted the corporate form of not only Adams Produce Company LLC, but also Grinstead & Associates, LLC; Scott Grinstead operated both Adams Produce Company LLC and Grinstead & Associates, LLC as if he were the lawless sole proprietor of each of them. Adams Produce Company LLC was the alter ego of its owner Scott Grinstead.

Overview

2. Two factors loom large: (a) the law established by the United States Court of Appeals in *Taylor and Finberg*, 636 F.3d 608 (D.C. Cir. 2011); and (b) the crimes and fraud and profligate spending by Chief Executive Officer Scott David Grinstead, Director with 3 of 6 votes, at the expense of, among others:

(i) suppliers of fresh fruit and vegetables to Adams Produce Company LLC owed more than $10 million not paid when due during August 8, 2011 through May 18, 2012; and

(ii) investors in Adams Produce Company LLC, including CIC Partners with which these 3 Petitioners were affiliated and its wholly-owned subsidiary API Holdings LLC.

3. One paragraph from the 21-page United States Sentencing Memorandum concerning Scott David Grinstead is particularly haunting (PX 3, p. 5):

> A large portion of the reduction in income the defendant [Scott David Grinstead] is advancing here is attributable to false and fraudulent accounts receivables that he required be put on Adams Produce's financial statements. He later supported the false accounts receivables with counterfeited and forged confirmation letters. The defendant benefitted from his deceit then. He should not benefit a second time by reducing tax loss now based on the removal of fraudulently-included income from the Adams Produce financial statements.

PX 3, p. 5.

Procedural History

4. The Hearing was held in Dallas, Texas on March 22, 2016; and in Washington, D.C. on August 31, 2016. The Transcript is Tr. 1 - Tr. 317, in two volumes.

5. Four Petitions were consolidated for Hearing; this Decision addresses 3 of those four Petitions. Each Petitioner requested review of (appealed) the determination by the Director, PACA Division, Specialty Crops Program, Agricultural Marketing Service, United States Department of Agriculture, that each was "responsibly connected" with Adams Produce Company LLC during August 8, 2011 through May 18, 2012 when Adams Produce Company LLC failed to make full payment promptly of the purchase prices or balances thereof totaling $10,735,186.81 for fruits and vegetables, all being perishable agricultural commodities.

6. To understand "responsibly connected", *see* section 1(b)(9) of the Perishable Agricultural Commodities Act, 7 U.S.C. § 499a(b)(9):

> (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).

7. The parties' Updated Stipulation as to Proceedings was filed on June 11, 2015. Petitioners' Exhibits 1 through 26 (PX 1 - PX 26) were admitted into evidence by stipulation. Tr. 29. Respondent's Exhibits, one volume of Agency Records for each Petitioner, were admitted into evidence (Tr. 11); and Government Exhibit 11 (RX 11) and Government Exhibit 12 (RX 12), were admitted into evidence (Tr. 272).

8. The parties filed briefs: (a) January 13, 2017, Petitioners' Opening Brief; (b) March 10, 2017, AMS's Opposition Brief; and (c) April 10, 2017, Petitioners' Reply Brief.

Parties and Allegations

9. This Decision and Order [1] decides Petitions brought by 3 non-government parties, each an individual, challenging "responsibly connected" determinations made in 2014 by the PACA Director. [The cases of 4 Petitioners were consolidated for Hearing; I intend to decide the case of the fourth Petitioner in a separate Decision and Order, to be issued in approximately 6 weeks, because his circumstances are distinct from the 3 whose Petitions are decided here, who were more similarly situated to one another.] These 3 Petitioners became Directors of Adams Produce Company LLC in 2010. The fourth Petitioner, Steven

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1. This Decision and Order does not address the Petition of Steven C. Finberg, a/k/a Steve Finberg (PACA-APP Docket No. **14-0167**), which will be decided separately in approximately 6 weeks.

C. Finberg, was not a Director but an Officer of Adams Produce Company LLC, who had been hired in 2007 to be Executive Vice President of Adams Produce Company, Inc. (Tr. 223), and who remained an officer, becoming Chief Operating Officer in 2009. Tr. 230; RX 11, p. 3.]

10. The PACA Division is a Division of the Specialty Crops Program, Agricultural Marketing Service, United States Department of Agriculture. The 3 Petitioners here are Jonathan Dyer; and Drew Johnson, also known as Drew R. Johnson; and Michael S. Rawlings. Each of these 3 Petitioners was either a "principal" (employee) of, or partner in, CIC Partners, a private equity investment firm that became interested in about 2009 in investing in a company named Adams Produce Company, Inc. CIC Partners did accomplish investment, buying out Adams and McCray family members. *See* PX 7, a letter of intent, dated in February 2010. Adams Produce Company, Inc. created Adams Produce Company LLC, in part to contain the investment. On or about September 29, 2010, CIC Partners through a wholly-owned subsidiary named API Holdings LLC became an investor in Adams Produce Company LLC. Finberg RX 4, pp. 41-93. [The evidence from any of the 4 cases is available for each case. Tr. 16.] On or about September 29, 2010 is when the 3 Petitioners here became 3 of the 6 Directors of Adams Produce Company LLC.

Findings of Fact

11. This timeline consists of Findings of Fact, with additional Findings of Fact following.

2009 - In 2009 the company with which these 3 Petitioners were affiliated, CIC Partners, had not yet invested in the yet-to-

	be-formed Adams Produce Company LLC but had begun investigating the predecessor, Adams Produce Company Inc., performing due diligence.
2010 March 1 -	Frost Cummings Tidwell Group, LLC, an outside accounting firm hired by Adams Produce Company Inc. agreed to audit 2009. PX 8, PX 24 (duplicates).
2010 March 11-16 -	Chief Executive Officer Scott David Grinstead had been "cooking the books" to make Adams Produce Company Inc. look more profitable by fraudulently increasing income and had enlisted the help of the Chief Financial Officer John Stephen ("Steve") Alexander. The email string at PX 9 documents a portion of the fraudulent alterations of the financial statements and information that Chief Executive Officer Scott David Grinstead ordered be done. PX 9.
2010 September 29 -	CIC Partners, through a wholly-owned subsidiary named API Holdings LLC, invested in Adams Produce Company LLC, oblivious to the fraudulent alterations of the 2009 financial statements and information, which fraud induced it to invest. Finberg RX 4, pp. 41-93.
2011 August 8 through 2012 May 18 -	Suppliers of fresh fruit and vegetables were not timely paid by purchaser Adams Produce Company LLC, the overdue amount totaling $10,735,186.81, according to a Default Decision.
2011 October -	Adams Produce Company LLC received a letter from the Department of Justice which advised that DOJ had begun an investigation ("whistle-blower"). Fulbright & Jaworski was hired to assist in the DOJ investigation of Adams Produce Company LLC, ultimately costing CIC Partners, which had to pay this expense, roughly $2 million or more. Tr. 112, 117.
2011 November 9 -	Petitioner Michael S. Rawlings resigned as a Director of Adams Produce Company LLC. PX 26.
2012 February -	Much crime, fraud and profligate spending had been uncovered due to the work of Fulbright & Jaworski and the

	work of the "Special Committee" comprised of Petitioner Jonathan Dyer and Petitioner Drew Johnson; finally Adams Produce Company LLC CEO Scott Grinstead & CFO Steve Alexander, when separated into different rooms and confronted without the other present, confessed wrongdoing to the "Special Committee".
2012 March first week, or mid- to late February -	Chief Executive Officer Scott David Grinstead was removed "let go" Tr. 253 (2012 March, first week, per Steven C. Finberg); Tr. 136-37 (2012 mid- to late February, per Drew Johnson). The damage lived on.
2012 early March -	Chief Restructuring Officer (CRO) Tom Donoghue with Deloitte became management of Adams Produce Company LLC.
2012 March 3rd week -	$1 million deposited by CIC Partners, through its wholly-owned subsidiary named API Holdings LLC; and $1 million deposited by Adams and McCray family members (enough to pay the remainder owed to suppliers of fresh fruit and vegetables, $1,928,417.74). Tr. 118. PNC Bank advised by Petitioner Drew Johnson with CRO Tom Donoghue in telephone conference NOT to sweep the money owed to the suppliers of fresh fruit and vegetables; PNC Bank nevertheless took the $2 million for itself.
2012 April 25 -	Bankruptcy filing of Adams Produce Company LLC.
2012 April -	Adams Produce Company LLC ceased operations.

12. The profligate spending by CEO Scott Grinstead, using the money of Adams Produce Company LLC as if that money were his personal funds, is strong evidence that Adams Produce Company LLC was the alter ego of Scott Grinstead, full name Scott David Grinstead. Adams Produce Company LLC paid for between $200,000.00 and $400,000.00

of personal expenses for Scott David Grinstead during 2011 and early 2012, which Scott David Grinstead charged on his American Express card; then caused Adams Produce to wire funds to American Express in payment; which he falsely promised to reimburse and intentionally did not repay, for clothing, jewelry, personal travel for himself and his family, casino debts, strip clubs, lawn care at his home, and items related to his vacation home. PX 1, PX 2, PX 3.

13. In contrast, CIC Partners invested $8.2 million and lost nearly all of it. A settlement with the auditor (*see* Dyer RX 8) returned some money, but then the $2 million plus paid to Fulbright & Jaworski to assist DOJ used that. Petitioner Drew Johnson testified credibly: "We didn't take a dime. Once the DOJ gave any indication there was a problem, we never took a dime out of this company. All we did is put money in, and that money went to the banks or it went to pay PACA bills. So all the money we put in, none of it went to us." Tr. 116-18.

14. Regarding the Board meetings that these 3 Petitioners attended, CEO Scott Grinstead did 90% of the talking, controlling and communicating the information that the Directors relied on. These 3 Petitioners were 3 of 6 Directors; CEO Scott Grinstead was the only other Director, with 3 votes. Directors rely on management to give accurate information, but that, of course, was not happening at Adams Produce Company LLC. It was not until about February 2012 that the "Special Committee" was formed (Petitioner Jonathan Dyer and Petitioner Drew Johnson) and started to uncover hard evidence that there were problems. (Petitioner Michael S. Rawlings had already been gone about 3 months.) Tr. 111-14.

15. BEFORE CIC Partners invested, fraudulent activities were hidden from them. The audit they relied on, of 2009, was not reliable. Sometime before March 1, 2010, Adams Produce Company, Inc. hired Frost Cummings Tidwell Group LLC to audit the Adams Produce Company, Inc. December 31, 2009 balance sheet and the related statements of operations, stockholders' equity (deficit), and cash flows for 2009. PX 24.

16. BEFORE CIC Partners invested, a number of fraudulent entries regarding 2009 were made and documented with false statements within Adams Produce Company, Inc. by CEO Scott Grinstead, including two Kontos forgeries. These two Kontos forgeries may not have been known to anyone other than CEO Scott Grinstead, except for Adams Produce Company, Inc. CFO Steve Alexander:

(a) the 2010 forgery by Scott Grinstead on Alex Kontos Fruit Co. letterhead appearing to bear the signature of its President John Kontos, falsely promising $390,000.00 reimbursement to Adams Produce Company. PX 22, p. 2.

(b) the 2010 forgery by Scott Grinstead on Alex Kontos Fruit Co. letterhead appearing to bear the signature of its President John Kontos, falsely promising $665,000.00 reimbursement to Adams Produce Company. PX 22, p. 3.

17. Bonus payments to two former employees, Tommy Sundy ($260,000.00) and Mike Alise ($312,000.00), were fraudulently reclassified to inflate earnings. This was CEO Scott Grinstead at work again, with the knowledge of CFO Steve Alexander, changing the

financial history of 2009. Instead of showing these payments as earnings that Adams Produce Company, Inc. was required to pay, these payments were classified as notes receivable. The auditors, Frost Cummings Tidwell Group, LLC, failed to perform any due diligence on the illegal reclassifications of the Tommy Sundy and Mike Alise bonus payments, which falsely increased earnings by $572,000.00. PX 9, Tr. 44-49. Tr. 112.

18. CEO Scott Grinstead fabricated fraudulent receivables from other customers besides Kontos, including a $136,000.00 receivable from Pro Act, a produce vendor to Adams; and a $113,000.00 receivable from Amber Street Produce Company, another produce vendor to Adams. These fraudulent entries were apparently known to no one within Adams Produce Company, Inc. except CEO Scott Grinstead and CFO Steve Alexander. PX 9.

19. On September 24, 2010, a few days before the closing of the transaction on September 29, 2010, CEO Scott Grinstead and CFO Steve Alexander sent a letter to the auditors, Frost Cummings, stating that all representations regarding the accounting transactions were true and correct, which was of course false. PX 25.

20. It was not until about February 2012 that the fraudulent altering of 2009 financial statements and information became known to the "Special Committee" comprised of Petitioner Jonathan Dyer and Petitioner Drew Johnson. The work of Fulbright & Jaworski in uncovering a whole other set of fraud, the fraud against the United States, referred to as the "Tom Lange" or DOJ investigation, was helpful; but much of the fraud against Adams Produce Company LLC (including fraud against investor CIC Partners through its wholly-owned subsidiary named API Holdings LLC), would not have been found except for the

work by Petitioner Jonathan Dyer and Petitioner Drew Johnson. Not counting the fraud against the United States, the fraud against the investors in Adams Produce Company LLC began with about $2 million in fraudulent mis-statement of 2009 earnings.

21. Each of the 3 Petitioners here, Jonathan Dyer; and Drew Johnson, also known as Drew R. Johnson; and Michael S. Rawlings was a Director of Adams Produce Company LLC during a portion of the August 8, 2011 through May 18, 2012 period when Adams Produce Company LLC failed to pay produce sellers timely. Each had become a Director of Adams Produce Company LLC at its inception, on or about September 29, 2010 (RX 5, Tr. 36), after having taken part in a due diligence evaluation without realizing that the financial audit of Adams Produce Company, Inc.'s 2009 performance relied on false and fraudulent accounts receivable and notes receivable that CEO Scott Grinstead had required be put on Adams Produce Company, Inc.'s 2009 financial statements, which false accounts receivable and notes receivable were later supported by counterfeited and forged confirmation letters and other false documents created by CEO Scott Grinstead. On November 9, 2011, Petitioner Michael S. Rawlings stopped being a Director of Adams Produce Company LLC. PX 26. At the end of April 2012, when Adams Produce Company LLC ceased operations after filing bankruptcy, Petitioner Jonathan Dyer and Petitioner Drew Johnson stopped being Directors. Adams Produce Company LLC's suppliers of perishable agricultural commodities were paid all but $1,928,417.74 before the Complaint in PACA-D Docket No. 13-0284 was filed on June 28, 2013, as stated in paragraph III of that Complaint.

22. On or about September 29, 2010, at the formation of Adams Produce Company LLC,

each the 3 Petitioners here was tasked by CIC Partners to be a Director of Adams Produce Company LLC, in part to oversee the investment to Adams Produce Company LLC: $7-1/2 million of CIC Partners' money, invested through a wholly-owned subsidiary API Holdings, LLC; plus $3-1/2 million borrowed from PNC Bank on a term note. Tr. 36. Each was a Director with 1 of 6 votes; Director Scott Grinstead held the other 3 of 6 votes.

23. In or about October 2011, the United States Department of Justice (DOJ) delivered a letter to Adams Produce Company LLC, advising that it was conducting a fraud investigation. Had it not been for a "whistle-blower", DOJ would not have known to investigate, and the Directors of Adams Produce Company LLC would not have known to investigate. Well, one Director knew: Scott Grinstead knew. Scott Grinstead was a Director; in fact, he was the equivalent of 3 Directors. But none of these 3 Petitioners knew or could have known. Scott Grinstead was the equivalent of 3 Directors because he had 3 votes to cast. He was authorized to appoint up to 2 other Directors, but he chose to retain the authority himself.

24. To assist the Department of Justice in its investigation of Adams Produce Company LLC, CIC Partners paid into Adams Produce Company LLC the more than $2 million paid to Fulbright & Jaworski. Tr. 112, 117.

25. Petitioner Jonathan Dyer was an employee, a principal, not a partner, in CIC Partners. Tr. 32, Tr. 199. Petitioner Drew Johnson was a partner in CIC Partners. Tr. 120. Petitioner Michael S. Rawlings was a partner in CIC Partners. Tr. 199.

26. During the telephone conference with PNC Bank and the Chief Restructuring Officer

(CRO) Tom Donoghue, Petitioner Drew Johnson made it clear to management and lenders what the PACA statutes were, and that all the produce sellers needed to be paid in accordance with their contracts. All the money (the new $2 million, one-half provided by former owners Adams and McCray, and the other half provided by the parent company of API Holdings LLC, CIC Partners) needed to go in to assure liquidity to pay PACA. Nevertheless, the PNC Bank swept the accounts. Tr. 126.

Discussion

27. Every witness was credible, and Drew Johnson was especially knowledgeable and persuasive: Drew Johnson's testimony was consistent with the documents in evidence and helpful to me in understanding how Scott David Grinstead could so quickly destroy, without more people being aware, the Adams Produce company with 400 employees that had operated continuously for more than 100 years.

28. Scott Grinstead accomplished his crimes and fraud and profligate spending nearly single-handedly: Grinstead needed the assistance of only Chief Financial Officer John Stephen ("Steve") Alexander and the auditing firm Frost Cummings Tidwell Group. At the end, after Scott Grinstead had been stripped of his authority and had stopped coming to work, PNC Bank completed the destruction. PNC Bank helped itself to the $2 million, $1 million freshly deposited by former owners Adams and McCray and $1 million freshly deposited by the parent company of API Holdings LLC, CIC Partners. PNC Bank had been warned in a conference call not to sweep that $2 million and knew the $2 million was intended to keep the company operating and to pay the suppliers of perishable agricultural

commodities. When PNC Bank instead took the $2 million for itself, Adams Produce was caused to file bankruptcy and cease operations.

29. Hear how Drew Johnson explains it. CIC Partners had been introduced to Scott Grinstead through investments that CIC Partners had made in the food industry. Tr. 107.

Mr. McCarron: All right. And what happened after your introduction with Mr. Grinstead?

Mr. Johnson: We subsequently did extensive diligence to analyze Adams, and met with him over a series of months.

Mr. McCarron: What did that diligence consist of?

Mr. Johnson: We hired third-party firms to meet with management, to assess their capability. We hired a group to do a facilities inspection. We waited for the auditors to finish their audit before we would ever invest, which proved to be a fraudulent audit.

Mr. McCarron: Which proved to be what?

Mr. Johnson: A fraudulent audit. But we waited for that to transpire because we expected the auditors to verify the financials, which they didn't do.

Mr. McCarron: And who was the auditor?

Mr. Johnson: A firm named Frost Cummings Tidwell.

Tr. 107. *See* Johnson RX 8.

30. Hear how Drew Johnson explains the 6 Directors of the newly formed Adams Produce Company LLC Board. Tr. 127-29. *See* Johnson RX 5 (67 page agreement).

Judge Clifton: RX 5. Back to page 28 and on to page 29.

Mr. Johnson: Uh-huh.

Judge Clifton: So, right here in this agreement, it says that the CIC directors would be -- and what does it say?

Mr. Johnson: Drew Johnson, Jonathan Dyer, Michael Rawlings.

Judge Clifton: All right. And on the previous page, it says that there would be six directors.

Mr. Johnson: Uh-huh.

Judge Clifton: But now that we get to RX 5, page 29, it tells about the other three, and what does it tell us about those Grinstead directors?

Mr. Johnson: That he can appoint them at such time as he wishes, or that he can use those votes for himself.

Judge Clifton: Right. So the initial Grinstead director will be Scott Grinstead.

Mr. Johnson: Uh-huh.

Judge Clifton: Until such time as he appoints additional Grinstead directors, Scott Grinstead is entitled to cast three votes.

Mr. Johnson: Yap.

Judge Clifton: So it's not as unbalanced as I thought.

Mr. Johnson: Nope.

Judge Clifton: It's not a matter of four to one or three to one, it's --

Mr. Johnson: I had a note here to talk to you about that, because you asked earlier.

Judge Clifton: I'm glad that Mr. Kendall led us to that, so now I understand that part.

Mr. Johnson: And it's now presumably clear why he didn't want to appoint somebody else, because he wanted to exercise his own votes.

Judge Clifton: Yes.

Mr. Johnson: When you're perpetrating a fraud, it's a little easier to do that when you control them.

Tr. 127-29.

31. Hear how Drew Johnson explains his role as a Director of Adams Produce Company LLC. Tr. 110-119.

Mr. McCarron: So, now, after the investment was made, in September of 2010, what was your role in that -- in the company?

Mr. Johnson: Initially, my role, I would describe as standard role for any director of a privately held company. So, we reviewed information that management supplied us, asked them questions about compliance with various laws and financial issues. My role changed materially once we had the DOJ letter. So, until the DOJ letter, I would say my responsibilities were consistent with a normal board member, which were, you know, limited board meetings. Subsequent to the DOJ letter, my role significantly changed.

Mr. McCarron: Right. And in what respect did your role change? What did you do?

Mr. Johnson: Well, at that point, it became clear that the audit and the management had both made fraudulent, negligent decisions, and so we could not rely on either management nor the audit findings, so we brought in new management, we fired the old management, we took a very active role.

Mr. Johnson: I say "we," Jonathan probably did more -- essentially, more work than I did, but we brought in new people, forensic accountants to try to get to the bottom of the

problems. We met with Sundy on the lease, we tracked down the Kontos fraudulent receivable to try to understand the nature of the problems.

Mr. McCarron: So, when was -- when did you learn about the problem, initially?

Mr. Johnson: Well, we certainly were alerted to a potential problem in October, when we got the DOJ letter. At the time, management continued to maintain their innocence, and we really had no basis for knowing what was going on at that point.

Mr. McCarron: Wait. Can you explain that a little bit more?

Mr. McCarron: At the time the notice came from DOJ, what did Grinstead tell you? Did he continue to say there was no fraud?

Mr. Johnson: Yes, he maintained his innocence really until -- we stopped talking to Grinstead -- the DOJ's case was about the contracting with the government, and I really still to this day don't know much about that.

But because that investigation was going on, we started to ask other questions and scrutinize accounts generally, looking for that fraud or any fraud, and we found other fraud that wasn't part of the DOJ scope.

That fraud included the Kontos forged receivable, the Sundy and Alise re-bookings and mis-bookings. So, we found that because we started to dig and asks questions. That really wasn't the DOJ's scope, even though they ended up using our findings for their prosecution. Does that answer your question?

Mr. McCarron: It does. So, you hired Fulbright, and how much did you pay Fulbright, do you recall?

Mr. Johnson: Exceptionally a lot. If I had to guess, it was over $2 million.

Mr. McCarron: All right. Now, after the October --

Mr. Johnson: You asked when I found out about that. I would say that we had -- our suspicions were raised when the DOJ started -- sent us a letter, we started to dig and ask questions. I would say by February of 2012, we started to uncover specific, hard evidence that there was problems.

Mr. McCarron: And after this October surprise from the DOJ, did you -- and you started -- and Fulbright started to go into the records, what was your contact, if any, with the auditing company, Frost auditing?

Mr. Johnson: Well, it became very clear quickly that they had violated their duties, so we didn't have much discussion with them.

Mr. McCarron: All right. Now, can you just give us a brief overview of these board meetings? How many did you have, to your recollection?

Mr. Johnson: Oh, maybe four, if I had to guess.

Mr. McCarron: All right. And what happened in those meetings?

Mr. Johnson: Well, in a board meeting, you're relying on management to provide you information, you're not auditing their information, you expect, you know, an auditor and the management team to feed you accurate information. So, we would get a report on operations, on finance, on new companies that -- they wanted to buy more companies. Most of that information was controlled and communicated by Scott Grinstead. I would say he did 90 percent of the talking in these meetings.

Mr. McCarron: And what did he tell you at the meetings, in terms of the health of the company and how things were going?

Mr. Johnson: Well, as has been well chronicled, Scott's a master of manipulation, so he thought things were going great, and he was going to take over the world.

Mr. McCarron: Now, after the investigation that you started with Fulbright, what role did you take, as a board member, at that point? Were there still other meetings after Fulbright came on board in October or November?

Mr. Johnson: Other meetings or other board meetings?

Mr. McCarron: Board meetings.

Mr. Johnson: No. Because at that point, the board was comprised of somebody who we knew was a fraud, and we were advised by the lawyers that having a meeting with him was probably not a good idea.

Mr. McCarron: I see. All right. But then, did you form some other sort of an entity that was to investigate everything that happened?

Mr. Johnson: Yeah, we formed a special committee, which I believe included Jonathan and me.

Mr. McCarron: And what did you do, as a special committee?

Mr. Johnson: We terminated Scott Grinstead or put him on leave, I guess was the technical term at the time.

Mr. McCarron: When was that?

Mr. Johnson: I don't recall exact date. We also hired outside -- a new -- somebody with

accounting background to come in and help ascertain the financial health of the business. We also put -- analyzed the situation to decide if we should put more money in to try to help.

Mr. McCarron: What was the result of that analysis about putting more money in to see if you could salvage the situation?

Mr. Johnson: Well, the barriers to putting more money in were two-fold. One, we wanted the DOJ -- we felt like we were cooperating with the DOJ, providing them actual help in their prosecution, which I think if you'll ask them they would say we were great citizens in helping prosecute Scott. But we wanted them to tell us that they were going after him and that they weren't going to go after us, because we couldn't put money into a black hole which would just potentially go away. They, of course, had a hard time doing that, number one. Number two, if we put money in the banks were going to take it. In fact, Counsel here asked if we gave a directive to management to pay PACA vendors instead of others. Management at this time was gone. Scott Grinstead was out of there.

Mr. McCarron: When was this now, just to give an approximate? January? February?

Mr. Johnson: It had to be after January, probably after February, I actually think. I don't recall the exact date. But there was a very specific conversation when we did put money in, we told the lenders, we need you to let us use this for liquidity and to pay PACA. You can't sweep -- you know, we don't want you to sweep this. We don't want to put money in and have you take it all, that's not going to help us.

We hard a hard time getting the lenders to agree to anything in writing. We specifically told them, if you sweep this money, you're sweeping it at the expense of PACA vendors, that's on

you, that's your liability, it's not us. We don't have control over the account. The bank had control. The bank swept the accounts.

So, when we put money in, we'd hope that Tom O'Donoghue, who was in there as a chief restructuring officer, would use it to pay vendors and figure out how to keep the lights on so that we didn't go into bankruptcy, because if we go into bankruptcy, of course, no PACA guys are going to get paid.

So, we specifically gave direction to PNC, do not sweep this. So the people you should be talking to, in my opinion, that's -- USDA Counsel -- is go talk to PNC. They took the money, not us. We didn't take a dime. Once the DOJ gave any indication there was a problem, we never took a dime out of this company. All we did is put money in, and that money went to the banks or it went to pay PACA bills. So all the money we put in, none of it went to us. It all went to PACA or it went to the banks. And if the banks took it instead of PACA, that's their problem, not mine.

Mr. McCarron: So, how much money did CIC lose in this deal?

Mr. Johnson: I think we invested $8.2 million, and we lost nearly all of it. We got a little bit back from the settlement. Well, we invested 8.2, we got back some, but then had to pay Fulbright two plus million. So whatever we got back in settlement from the auditors who defrauded us and from the sellers who defrauded us, all that money basically went back to pay the lawyers, which we funded the DOJ's investigation.

Mr. McCarron: Explain that a little bit more, when you say that you helped fund the DOJ's investigation.

Mr. Johnson: We paid Fulbright. Fulbright then spent money with us going through all the e-mails, and we spent all that time and money. That money was used to uncover the fraud, which then the DOJ used in their prosecution of Grinstead. It's all in the sentencing memo.

Mr. McCarron: Now, so who funded the investigation by Fulbright to uncover --

Mr. Johnson: Technically, the company did, but with the money that we put in.

Mr. McCarron: When you say "we," who do you mean by "we"?

Mr. Johnson: A combination of CIC, the sellers, who at that point realized that they had misrepresented, whether intentionally or not, I don't know, but the sellers signed documents saying that they didn't -- that the financials they were giving us were accurate. That proved not to be true.

So, the sellers put in money, as did we, and the company was making money every day on commercial accounts, not government accounts, and that money also got used to pay Fulbright expenses and the DOJ investigation.

Mr. McCarron: So, when you say -- let me just -- so when you say "we," you're including you, as CIC, and Adams and McCray. Are they the families, is that correct?

Mr. Johnson: That's correct.

Mr. McCarron: Now, how much money did they put in, Adams and McCray, to try to salvage the investment that clearly was fraudulent from the beginning?

Mr. Johnson: I don't recall the exact number.

Mr. McCarron: And then, after Fulbright did the investigation and Grinstead was charged with all these crimes -- and

have you seen the indictment and the plea agreement --

Mr. Johnson: Yes. And I was present at the sentencing because I was a witness against Grinstead.

Mr. McCarron: And what was the nature of your testimony at the criminal sentencing?

Mr. Johnson: That he had defrauded us out of all of our money.

Mr. McCarron: And after PNC swept the account, was it then that the company filed for bankruptcy?

Mr. Johnson: Yes.

Tr. 110-119.

32. Hear Drew Johnson at the end of his testimony, analyzing AMS's "responsibly connected" claim against him for his work at Adams Produce Company LLC. Tr. 132-37.

Mr. Johnson: Well, responsibly connected, I got that one, the alter ego issue. And I don't know where alter ego and fraud overlap, and so forth. I can say this, I was a victim, personally. I lost a significant amount of money, so did my partners and those people whose money I represent. We all lost significant amounts of money because of the fraud here, not just by Grinstead but by an auditing firm.

I think I did everything any reasonable person would do in my position. I haven't heard anybody argue that somehow I wasn't fiscally responsible, as brought up by Counsel Kendall. I believe we were beyond fiscally responsible. In fact, I would argue we put, you know, money in a situation where very few people would because we were trying to help a situation. And, in fact, PACA people were better off because of our actions, not worse.

We didn't know the fraud. It took our money to uncover it. Once we did, we were still putting money in, which some of which went to PNC but some of it did go to the PACA payables. So I would assert the PACA people were better off for our actions, not worse. So, I feel like here I am, I lost enough -- lost a lot of money, that was painful enough, that had reputational impact, et cetera. We aided the DOJ in their investigation, and I would suggest, if you care, talk to the DOJ lawyer, who I think would say, yeah, those guys were great, did everything we asked them to do and more. All the forgeries, all the mis-bookings, that was found by us, not the DOJ. The DOJ was off working on the Tom Lange stuff, which I don't know what happened with that. All I can tell you is, I think we were responsible stewards of our duties and discharging them and getting facts in front of the DOJ to aid their efforts. So, it's a bit offensive to me to have the federal government, who I think should send me a thank you for helping victims get paid, instead of trying to sanction me for behavior that I think is beyond reproach. My reputation has already been besmirched by a fraudulent investor. I did everything I could to help the government. I find it offensive that now, on top of that, my reputation be further besmirched by sanctioning me, when all I did is do everything a responsible person would do and more. Most people would have ran for the hills and said, fine, DOJ, run your own investigation, good luck, because we'd already lost our money. We put in more money. We tried to save the company. We tried to save the employees' jobs. The commercial business was a legitimate business. We were hoping somehow we could keep it going. It didn't work. So, I don't understand how all this law stuff works, but all I know is, we did everything any responsible person would do.

We discharged our duties the best we knew how. I lost a lot of money and a lot of time, and I think the government and the PACA people should be thanking me, not sanctioning me.

Judge Clifton: If it hadn't been for your work, Grinstead would not have been removed, and you would not have brought in the Deloitte management.

Mr. Johnson: Absolutely. And I think the DOJ's case would have been a lot weaker. The smoking gun was the forgery that we found. I don't know even --

he pled to the government contract problem, but I don't even know how good that evidence was. The smoking gun was the forgery, which we found. So, I don't even know if Grinstead -- what would have happened to Grinstead.

The guy needed to be brought to justice, we helped aid.

Judge Clifton: At what point did the chief financial officer begin to help you, if at any?

Mr. Johnson: Well, never really. He -- we had a point where we started to uncover the problems through our -- the special committee's investigation.

We flew Grinstead to see -- and the CFO out. We started scrutinizing them, asking questions about payments to their Amex bills, which we scrutinized what's this Amex bill for, et cetera, et cetera.

Judge Clifton: Now, you're talking about the credit card for personal items of Grinstead that the company paid for.

Mr. Johnson: And by that time, we said, this Kontos thing looks fishy to us, let us understand that. So, we were asking these questions. They were both in the room. At one point, we dismissed one and put one in the other room and put one in the other room and

kept going. We were there until midnight that night, I'm sure, trying to get to the bottom of this.

At that point, the CFO finally said, yeah, I let this go on. We said, why did you not tell us? It's your job. He said, well, I feared for my job.

Grinstead was a persuasive but also a tyrant, and I think he put fear in his CFO, and the CFO was reluctant to share these things with us until he was backed into a corner.

Judge Clifton: Was he also let go, when Grinstead was let go?

Mr. Johnson: I don't recall that. Once the CRO came in, I think he determined who he wanted there to help manage it. I don't recall the exact timing.

Judge Clifton: And what was the date on the time line when Grinstead was let go?

Mr. Johnson: I don't know exactly, must have been after February, this February meeting I'm talking about, but shortly thereafter. So if I had to guess, I would guess late February, mid to late February.

Judge Clifton: And that's 2012.

Mr. Johnson: Yes, ma'am.

Tr. 132-37.

33. I conclude that Scott Grinstead, full name Scott David Grinstead, is an owner. There were 2 owners of Adams Produce Company LLC during the time of the PACA violations: API Holdings, LLC [which was wholly owned by CIC Partners] at 55.3%; and Grinstead & Associates, LLC [which was wholly owned by Scott Grinstead] at 44.7%.

34. Why do I pierce through, to conclude that Scott Grinstead is an owner? - - when I do

NOT do the same with API Holdings, LLC? Scott Grinstead, nearly single-handedly, although he needed the help of Chief Financial Officer John Stephen ("Steve") Alexander, is the one who destroyed and disrupted the corporate form. *See* Findings of Fact, paragraphs 11 through 26. *Taylor and Finberg*, 636 F.3d 608 (D.C. Cir. 2011) instructs me not to choose form over substance. *Taylor and Finberg* controls here.

35. The thievery by Scott Grinstead took years and millions of dollars to detect and prove - - I conclude that Mr. McCarron's theory of the case is correct - - Scott Grinstead managed to use Adams Produce as his personal piggy bank despite corporate structure with the intended safeguards of prudent investment employed by the firm with which the 3 Petitioners were associated. Scott Grinstead destroyed and disrupted the corporate form of Adams Produce Company LLC AND of Grinstead & Associates, LLC, each of which he operated as if he were the lawless sole proprietor. Scott Grinstead was an owner.

Conclusions

36. The Secretary of Agriculture has jurisdiction over Petitioner Jonathan Dyer, and over Petitioner Drew Johnson a/k/a Drew R. Johnson, and over Petitioner Michael S. Rawlings, and over the subject matter involved herein.

37. A Default Decision and Order was issued against Adams Produce Company LLC, filed with the USDA Hearing Clerk on November 25, 2013 in PACA-D Docket No. 13-0284, issued by former Chief Judge Peter M. Davenport. That Default Decision can be seen on the USDA / Office of Administrative Law Judges website, currently

https://www.oaljdecisions.dm.usda.gov/sites/default/files/DD%20-%20Adams%20Produce%20-%2013-0284.pdf

38. I take official notice of the Default Decision and Order identified in paragraph 37 and conclude accordingly that Adams Produce Company LLC willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly during August 8, 2011 through May 18, 2012 of the purchase prices or balances thereof totaling $10,735,186.81 for fruits and vegetables, all being perishable agricultural commodities that Adams Produce Company LLC purchased, received, and accepted in the course of interstate commerce, as specified in Appendix A to the Complaint in PACA-D Docket No. 13-0284. I conclude further that $1,928,417.74 remained unpaid when that Complaint was filed on June 28, 2013, as stated in paragraph III of that Complaint and confirmed by Mr. Kendall in the AMS Brief filed March 10, 2017, p. 2.

39. If this were the usual situation, I would find the Directors during August 8, 2011 through May 18, 2012 of Adams Produce Company LLC to be "responsibly connected" (within the meaning of the PACA) to Adams Produce Company LLC, which would subject those Directors to licensing restrictions under section 4(b) of the PACA, 7 U.S.C. § 499d(b); and employment sanctions under section 8(b) of the PACA, 7 U.S.C. § 499h(b). This is NOT the usual situation; here, only one of the Directors, Scott Grinstead, full name Scott David Grinstead, who was also the Chief Executive Officer, was in a position to know of his own crimes and fraud and profligate spending which destroyed Adams Produce Company LLC's ability to make full payment promptly for the fruits and vegetables it purchased. So

long as AMS was effective in subjecting Scott Grinstead to licensing restrictions under section 4(b) of the PACA, 7 U.S.C. § 499d(b); and employment sanctions under section 8(b) of the PACA, 7 U.S.C. § 499h(b), AMS has met its duty under the PACA with regard to the Directors. No other Director of Adams Produce Company LLC need be similarly sanctioned. *See* paragraphs 27 through 35.

40. Each of these 3 Petitioners, Jonathan Dyer; Drew Johnson a/k/a Drew R. Johnson; and Michael S. Rawlings, was not an officer of Adams Produce Company LLC. Each of these 3 Petitioners was a Director of Adams Produce Company LLC during a portion of August 8, 2011 through May 18, 2012, but each of these 3 Petitioners was NOT "responsibly connected" within the meaning of the PACA to Adams Produce Company LLC for the following reasons. Each of these 3 Petitioners was NOT actively involved in the activities that resulted in the failures to make full payment promptly to the Adams Produce Company LLC's suppliers of perishable agricultural commodities. Each of these 3 Petitioners' contributions to Adams Produce Company LLC were positive and exemplary and in direct contrast and opposition to the crimes and fraud and profligate spending of Scott Grinstead. Each of these 3 Petitioners was not an owner of Adams Produce Company LLC. There were 2 owners: API Holdings, LLC [which was wholly owned by CIC Partners] and Grinstead & Associates, LLC [which was only Scott Grinstead]. Scott Grinstead destroyed and disrupted the corporate form of Adams Produce Company LLC AND of Grinstead & Associates, LLC, each of which he operated as if he were the lawless sole proprietor. Scott Grinstead was an owner, and Adams Produce Company LLC was the alter ego of its owner Scott Grinstead.

Order

41. The PACA Division Director's Determinations in July 2014 regarding each of these 3 Petitioners, Jonathan Dyer; Drew Johnson a/k/a Drew R. Johnson; and Michael S. Rawlings, are reversed: each of these 3 Petitioners was NOT responsibly connected with Adams Produce Company LLC during August 8, 2011 through May 18, 2012. Each of these 3 Petitioners, even though he was a Director with 1 of 6 votes of Adams Produce Company LLC from September 28, 2010 through April 2012, was NOT responsibly connected with Adams Produce Company LLC during August 8, 2011 through May 18, 2012, because the crimes and fraud and profligate spending of Scott Grinstead, who was not only Chief Executive Officer but also a Director with 3 of 6 votes, destroyed Adams Produce Company LLC's ability to make full payment promptly for the fruits and vegetables it purchased and destroyed the corporate form by concealing Scott Grinstead's activities from the Directors and others; and made Adams Produce Company LLC the alter ego of Scott Grinstead; consequently the corporate form must be disregarded so as not work an injustice. Consequently, NO licensing restrictions under section 4(b) of the PACA, 7 U.S.C. § 499d(b); and NO employment sanctions under section 8(b) of the PACA, 7 U.S.C. § 499h(b); will be imposed on any of these 3 Petitioners.

Finality

42. This Decision and Order shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days

after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties, with a courtesy copy to Steven C. Finberg, a/k/a Steve Finberg (PACA-APP Docket No. **14-0167**), for whom a Decision and Order will be issued separately.

Done at Washington, D.C.
this 19th day of May 2017

Jill S. Clifton
Administrative Law Judge

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APPENDIX A

7 C.F.R.:

TITLE 7—-AGRICULTURE

SUBTITLE A—-OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—-ADMINISTRATIVE REGULATIONS

. . . .

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