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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	PACA-APP Docket No. 14-0166
	)	PACA-APP Docket No. 14-0167
Jonathan Dyer, Steven C. Finberg,	)	PACA-APP Docket No, 14-0168
Drew Johnson, and	)	PACA-APP Docket No. 14-0169
Michael S. Rawlings,	)	
	)	
Petitioners	)	**Remand Order as to Steven C. Finberg**

On July 25, 2017, Administrative Law Judge Jill S. Clifton issued a "Decision and Order" as to Steven C. Finberg. On August 21, 2017, Mr. Finberg filed an "Appeal Petition;" on August 23, 2017, Specialty Crops Program, Agricultural Marketing Service, United States Department of Agriculture [AMS], filed "Respondent's Appeal Petition of the Decision and Order as to Steven C. Finberg (PACA Docket No. 14-0167);" on August 29, 2017, Mr. Finberg filed "Petitioner's Opposition to Respondent's Appeal Petition;" and on September 8, 2017, AMS filed "Respondent's Opposition to Appeal Petition of Steven C. Finberg (PACA Docket No. 14-0167)." On September 13, 2017, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture, transmitted the record to the Office of the Judicial Officer for consideration and decision as to Mr. Finberg.

On November 29, 2017, the Solicitor General, on behalf of the United States, submitted a brief in *Lucia v. SEC*, (No. 17-130), in which the Solicitor General took the position that administrative law judges of the Securities and Exchange Commission are inferior officers for purposes of the Appointments Clause, U.S. Const. Art. II, § 2, cl. 2. On July 24, 2017, the Secretary of Agriculture ratified the United States Department of

Agriculture's prior written appointment of Administrative Law Judge Clifton and renewed her oath of office.[1]

To put to rest any Appointments Clause claim that may arise in this proceeding, I remand this proceeding to Administrative Law Judge Clifton who shall: (1) issue an order providing AMS and Mr. Finberg an opportunity to submit new evidence; (2) consider the record, including any newly submitted evidence and all her previous substantive and procedural actions; (3) determine whether to ratify or revise in any respect all her prior actions; and (4) issue an order stating that she has completed consideration of the record and setting forth her determination regarding ratification.

Administrative Law Judge Clifton issued the Decision and Order as to Mr. Finberg after ratification of her appointment and renewal of her oath of office. Under this circumstance, I would not generally remand this proceeding as to Mr. Finberg to Administrative Law Judge Clifton. However, I previously remanded this proceeding as to Messrs. Dyer, Johnson, and Rawlings to Administrative Law Judge Clifton (Dyer (Remand Order), __ Agric. Dec. ___ (U.S.D.A. Dec. 28, 2017)), based upon Administrative Law Judge Clifton's issuance of a Decision and Order as to Messrs. Dyer, Johnson, and Rawlings prior to ratification of her appointment and renewal of her oath of office. The record as it relates to Mr. Finberg is intertwined with the record as it relates to Messrs. Dyer, Johnson, and Rawlings.[2] Therefore, I remand this proceeding as to Mr. Finberg to Administrative Law

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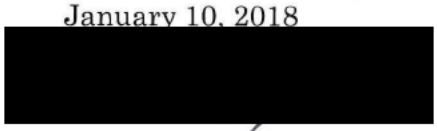
[1] Attach. 1.

[2] For example, the hearing with respect to Messrs. Dyer, Finberg, Johnson, and Rawlings was consolidated and all of the Petitioners (Messrs. Dyer, Finberg, Johnson, and Rawlings) and AMS stipulated that the evidence in the consolidated hearing would be available to be considered with respect to each Petitioner (Updated Stipulation as to Proceedings ¶ 6 at 2 (filed June 11, 2015)).

Judge Clifton even though Administrative Law Judge Clifton issued a Decision and Order as to Mr. Finberg after ratification of her appointment and renewal of her oath of office.

Done at Washington, DC

January 10, 2018



William G. Jenson
Judicial Officer

I, Sonny Perdue, Secretary of Agriculture, conducted a thorough review of the qualifications of this Department's administrative law judges. I affirm that in a ceremony conducted on July 24, 2017, I ratified the agency's prior written appointments of Chief Administrative Law Judge Bobbie McCartney, and Administrative Law Judges Jill S. Clifton and Channing Strother before administering their oath of office by making the following statement:

> **"I hereby ratify the appointments of Bobbie McCartney, Jill Clifton, and Channing Strother as United States Administrative Law Judges for the United States Department of Agriculture and hereby renew their oaths of office."**

Signed this 5th day of December, 2017, in Washington, D.C.

[redacted]

Sonny Perdue
Secretary
United States Department of Agriculture

Attachment 1