

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-03-0003
Atlanta Egg & Produce Co., Inc.,)	
)	
Respondent)and	
)	
Charles R. Brackett and)	PACA Docket No. D-03-0004
Tom D. Oliver)	
)	
Petitioners)	Three Rulings

I grant the parties' joint motion for extension of time for prehearing exchanges. I deny the Motion of Petitioners Brackett and Oliver to intervene in the Atlanta Egg proceeding. I am today signing the default judgment against Atlanta Egg. However, in order to provide Petitioners with due process in their responsibly connected proceedings, I will allow them, as part of their case presentation, to demonstrate that Atlanta Egg did not commit violations that were charged in the complaint against Atlanta Egg.

Ruling I

The parties have requested that the exchanges ordered in the Brackett and Oliver cases, as ordered by Judge Jill Clifton on May 8, 2003, be delayed until ten days after I issue a decision on the Motion to Intervene in Atlanta Egg. Since I am issuing that decision today, I order that the submission by Counsel for Brackett and Oliver originally scheduled for November 26, 2003 is now due fifteen days after the date I sign this Ruling, and that the submission by Counsel for AMS originally scheduled for December 19, 2003 be scheduled 30 days after Petitioners' submissions.

Ruling II

The complaint against Atlanta Egg was filed in October, 2002, approximately eight months after the company had filed for bankruptcy. No response to the complaint was ever filed by Atlanta Egg and Complainant in February, 2003 filed a Motion for Decision Without Hearing by Reason of Default. No response to this Motion was ever received from Atlanta Egg, although they apparently were properly served on May 20, 2003. In the meantime, Petitioners Brackett and Oliver were also notified in February,

2003, by the Chief of the PACA Branch, that they were responsibly connected with Atlanta Egg. They filed a timely petition challenging the responsibly connected determination in March. Then, in May, with the Atlanta Egg Default Motion still pending, Brackett and Oliver filed a Motion to Intervene in the Atlanta Egg proceeding.

The gist of Petitioners' argument for intervention is that the decision by Atlanta Egg not to respond to the Complaint was outside of their hands, since Atlanta Egg is bankrupt and Petitioners have no authority to tell the bankruptcy trustee what to do, and that it would be a denial of due process for the findings in the default decision to apply to their responsibly connected cases. If they were unable to defend Atlanta Egg against the many violations alleged by Complainant, they contend, then they would effectively be denied any defense, unless they could show that they were not responsibly connected to Atlanta Egg. In other words, any violations that Atlanta Egg was found to have committed would automatically be attributed to them, if they were responsibly connected with Atlanta Egg at the time of the violations' occurrence.

Complainant, on the other hand, argues that Petitioners receive all the due process they are entitled to in the course of the responsibly connected hearing, even though the violations committed by Atlanta Egg would be held against them without their having an opportunity to contest them. Further, Complainant points out that there is no provision for intervention in PACA cases, and that, as officers in Atlanta Egg, Petitioners had the ability to cause Atlanta Egg to timely contest the complaint.

USDA case law is clear on this issue. There is no right to intervene in "responsibly connected" proceedings, whether brought under PACA or other statutes. I agree with Complainant that Syracuse Sales Co., 52 Agric. Dec. 1511, 1513 (1993) and In re Bananas, Inc., 42 Agric. Dec. 426 (1983), unequivocally hold that in the absence of a specific provision in the rules of practice allowing intervention in disciplinary cases, as opposed to reparation cases, there is no authority to allow intervention. Although I have no basis to find, as urged by Complainant, that Petitioners, as officers of a bankrupt corporation whose affairs are now being handled by a trustee, somehow had the ability to cause Atlanta Egg to timely contest its disciplinary case, any such finding would not affect my disposition of this matter, given that I simply have no authority to allow intervention.

Since Petitioners have no right to intervene, I am today signing the default decision against Atlanta Egg.

Ruling III

Even though I denied Petitioners the right to intervene in the Atlanta Egg matter, I believe that due process considerations require that they be given some leeway to attack or explain the violation findings against Atlanta Egg, to the extent that they can

demonstrate, in the event they are found to be responsibly connected, that certain violations did not occur, or that the violations were of lesser severity than alleged. I believe this approach is necessary so that deciding officials will be better able to impose appropriate sanctions in the event I do find Petitioners to be responsibly connected. The very close relationship between disciplinary proceedings and responsibly connected proceedings has been recognized by the USDA for a number of years, and was a basis for the 1996 changes in the Rules of Procedure requiring consolidation of disciplinary and responsibly connected cases where they arise from the individuals' relationship with the company during the time in question. 7 C.F.R. 1.137(b); 61 Fed. Reg. 11501-4 (March 21, 1996). Petitioners' ability to challenge the underlying violations, when such violations can lead directly to a sanction against Petitioners, should not rise or fall solely based on whether the company charged in the disciplinary proceeding elects to contest the charges, particularly where, as here, the company has filed for bankruptcy and is under the supervision of a bankruptcy trustee.

I am not unmindful that, as pointed out by the PACA Branch in its October 15 Brief, many of the allegations raised by Petitioners in defense of Atlanta Egg, such as the making of partial or late payments, would not change the sanctions against Atlanta Egg, even if they had contested the complaint. However, to the extent it might impact the Secretary's decision on sanctions against Petitioners, I anticipate that some development of the record in this area is appropriate.

MARC R. HILLSON
Administrative Law Judge

December 4, 2003