

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/OHC  
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In re: ) Docket No. 18-0024  
)  
Lewis Macleod, )  
)  
Petitioner ) **Consent Decision and Order**

This is a “responsibly connected” proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (PACA), which is conducted pursuant to the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 CFR § 1.130 *et seq.*) (Rules or Rules of Practice).

On February 15, 2018, the Director of the PACA Division, Agricultural Marketing Service (Respondent), issued a final determination that Lewis Macleod was “responsibly connected” as that term is defined under section 1(b)(9) of the PACA (7 U.S.C. § 499a(b)(9)), to Huxtable’s Kitchen, Inc. (Huxtable’s) during the period of time the company violated section 2 of the PACA (7 U.S.C. § 499b).

On April 27, 2018, Lewis Macleod, (Petitioner), filed a Petition for Review of the determination of the Director pursuant to section 47.49 of the Regulations attendant to the PACA (7 C.F.R. § 47.49) and sections 1.133-1.135 of the Rules of Practice (7 C.F.R. § 1.133-1.135), challenging Respondent’s determination that he was responsibly connected to Huxtable’s when the company allegedly committed violations of the PACA.

Respondent and Petitioner now consent and agree, for the purpose of settling this matter, to the entry of this Consent Decision and Order, pursuant to section 1.138 of the Rules of Practice

(7 CFR § 1.138). Petitioner admits that the Secretary has jurisdiction in this matter. The parties agree to the issuance of the following Consent Decision and Order without further procedure or hearing. Petitioner further waives all rights to seek judicial review and otherwise challenge or contest the validity of this decision, including waiving challenges to the Administrative Law Judge's authority to enter this Decision and Order under the Administrative Procedure Act and the Constitution of the United States, and waives any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 et seq.) for fees and other expenses incurred by Petitioner in connection with this proceeding or any action against any USDA employee in their individual capacity.

Pertinent Statutory Provision:

Section 1(b)(9) of the PACA (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 Act 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.*

Findings of Fact

1. AMS filed a disciplinary Complaint on October 24, 2017, alleging that Huxtable's willfully violated the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (PACA or Act), and the regulations issued thereunder (7 CFR Part 46).

2. Huxtable's failed to respond to the Complaint within 20 days, the time allotted under 7 CFR § 1.136(a).
3. AMS filed a Motion for Decision Without Hearing by Reason of Default on January 23, 2018.
4. On February 2, 2018, counsel for Huxtable's filed a Notice of Appearance and a Suggestion of Bankruptcy, which Huxtable's and its related entities filed on June 24, 2016, in the United States Bankruptcy Court for the District of Delaware, consolidated case no. 2016-bk-11540.
5. In the Notice of Appearance and Suggestion of Bankruptcy, Huxtable's argued that AMS was barred from continuing its action against Huxtable's in the wake of its pending bankruptcy proceeding.
6. On February 15, 2018, AMS determined that Lewis Macleod was "responsibly connected" to Huxtable's pursuant to section 1(9) of the PACA (7 U.S.C 499a(9)).
7. On March 30, 2018, the Chief Administrative Law Judge (CALJ) issued an Order denying Huxtable's Suggestion of Bankruptcy and denying AMS' Default Motion, finding that Huxtable's had not been served with the Complaint; that the time for Huxtable's to answer had not run; and that Huxtable's was not in default for failure to timely answer.
8. In the same Order, the CALJ consolidated for hearing, within the meaning of 7 CFR § 1.137(b), Docket No. 18-007, the disciplinary proceeding against Huxtable's, with Docket No. 18-0024, concerning AMS' determination that Mr. Macleod was "responsibly connected" to Huxtable's.

9. On April 27, 2018, Mr. Macleod filed a Petition for Review of AMS' determination that he was "responsibly connected" to Huxtable's alleged PACA violations.
10. Three days later, on April 30, 2018, AMS filed an Appeal of the March 30, 2018 Order denying the Motion for Decision Without Hearing by Reason of Default.
11. On May 16, 2019, Judicial Officer McCartney issued a Decision and Order Affirming in Part and Reversing in Part the CALJ's Order--affirming the ruling that AMS' Complaint was not barred by Bankruptcy Code Section 362; reversing the ruling denying AMS' Motion for Decision Without Hearing by Reason of Default; and holding Huxtable's in default for failing to timely answer AMS' Complaint. Because Huxtable's admitted AMS' material allegations by reason of default, the Judicial Officer held Huxtable's had committed willful, flagrant, and repeated violations of section 2(4) of the PACA and ordered that the facts and circumstances of the violations be published.
12. The Judicial Officer's Order severed Docket No. 18-0024, Mr. Macleod's Petition for Review, from Docket No. 18-0007, Huxtable's disciplinary proceeding. Docket No. 18-0024 is all that remains before the CALJ and is the sole action addressed in this filing.
13. The Petitioner and Respondent agree, for the purpose of settling this matter, Petitioner effectively withdraws its Petition for Review of the Director of the PACA Division's final determination that Petitioner was "responsibly connected" to Huxtable's Kitchen, Inc. at the time of its violations.
14. The parties further agree that the "responsibly connected" determination itself does not impose personal liability upon Petitioner for any debt that may remain owing by Huxtable's Kitchen, Inc. or subject the Petitioner to any penal sanctions, other than as specifically set out herein.

Conclusion

Petitioner, Lewis Macleod, was “responsibly connected” as that term is defined in 7 U.S.C. § 499a(b)(9) to Huxtable’s Kitchen, Inc. at the time of its PACA violations.

Order

Petitioner, Lewis Macleod, is subject to the licensing restrictions identified in section 4(b) of the PACA (7 U.S.C. § 499d(b)) and the employment sanctions identified in section 8(b) of the PACA (7 U.S.C. § 499h(b)).

This Consent Decision and Order and attendant sanctions are effective upon issuance.

/s/

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David L. Durkin  
Counsel for Petitioner

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Christopher Young-Morales  
Co-Counsel for Respondent

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Shelton S. Smallwood  
Co-Counsel for Respondent

Issued at Washington, D.C.

this 2nd day of February, 2021

  
Channing D. Strother  
Chief Administrative Law Judge