

UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	PACA Docket No. APP- 04-0007
)	
Daniel S. Dubinsky,)	
)	
Petitioner)	

DECISION WITHOUT HEARING BY REASON OF CONSENT

This is a responsibly connected proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.; hereinafter “PACA”).

For purposes of settlement only, the parties have stipulated to a resolution of this proceeding in order to avoid further litigation, without a finding or admission of liability and without any resolution of the disputed facts. 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). The parties’ agreement is based upon the following facts:

A. On October 24, 2001, a PACA disciplinary Complaint (PACA Docket No. D-02-0002) was filed against William Dubinsky and Son, Inc., alleging that during the period October 30, 1999 through December 1, 2000, that company purchased, received, and accepted, from 138 sellers in interstate commerce, 967 lots of perishable agricultural commodities, but failed to

make full payment promptly of the agreed purchase prices in the total amount of \$1,795,045.82.

An Answer to the Complaint was filed on December 13, 2001.

B. William Dubinsky and Son, Inc. ceased doing business on November 3, 2000 and all of its assets were sold at or about that time. According to Petitioner, a fund was created from the proceeds of those sales to pay outstanding PACA Trust claims against the company. The creation of this fund resulted in the payment of \$1,694,255.89 in PACA Trust claims to various PACA creditors. Mr. Dubinsky was not involved in the sale of the company or any of its operations after the company ceased doing business on November 3, 2000. On August 21, 2006 Chief Administrative Law Judge Marc Hillson issued a Decision Without Hearing in the case PACA Docket No. D-02-0002 against William Dubinsky and Son, Inc., finding that William Dubinsky and Son, Inc. willfully, flagrantly, and repeatedly violated Section 2(4) of the PACA.

C. On February 27, 2004, James R. Frazier, Chief of the PACA Branch, determined that Daniel S. Dubinsky was responsibly connected to William Dubinsky and Son, Inc., during the period in which it violated the PACA. This determination was subject to appeal by Petition for Review under Section 1.135 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”).

D. On April 2, 2004, Daniel S. Dubinsky (hereinafter “Petitioner”), filed a Petition for Review and appealed his responsibly connected status pursuant to Section 1.135 of the Rules of Practice. Respondent PACA Branch alleged that Petitioner was an officer of William Dubinsky and Son, Inc., and that he was involved in purchases of produce during the period in which the company allegedly committed willful, flagrant, and repeated violations of Section 2(4)

of the PACA. Petitioner disputed Respondent's allegations. Petitioner alleged that during the period identified and alleged by Respondent, he was solely a produce salesman for William Dubinsky and Son, Inc.

E. The parties have stipulated to a resolution of this proceeding in order to avoid further litigation, without an admission of responsible connection by Petitioner and without a finding by the Secretary affirming the February 27, 2004 determination of the Chief of the PACA Branch regarding the Petitioner's responsibly connected status.

Order

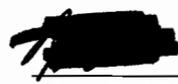
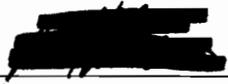
The February 27, 2004 determination that Daniel Dubinsky was responsibly connected to William Dubinsky and Son, Inc. is not affirmed at this time, and is held in abeyance in accordance with the terms of the Understanding between Respondent and Petitioner with respect to this Consent Decision.

Petitioner explicitly waives all further proceedings in this matter. The Administrative Law Judge will retain jurisdiction over this case pending any final motions by the parties.

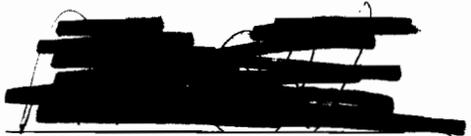
This Order shall become final upon issuance. Copies of this Order shall be served upon the parties.

Done at Washington, D.C.

this 22nd day of April, 2008

Marc R. Hillson
Chief Administrative Law Judge



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

4-17-08
Date signed

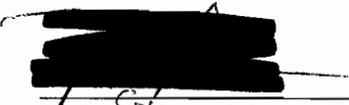


Christopher Young-Morales, Esq.
Attorney for Respondent

3-28-08
Date Signed

Daniel S. Dubinsky
Petitioner

Date Signed



Robert M. Andalman, Esq.
Attorney for Petitioner

4-2-08
Date Signed