

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	
)	PACA-APP Docket No. 06-0001
James O. Lewis,)	
)	
Petitioner)	
)	
In re:)	
)	PACA-APP Docket No. 06-0003
Jim J. Snell)	
)	
Petitioner)	
)	
In re:)	
)	PACA-APP Docket No. 06-0004
Robert Hawk, Jr.)	
)	
Petitioner)	

DECISION WITHOUT HEARING BY REASON OF CONSENT WITH
REGARD TO PETITIONER JAMES O. LEWIS

This is a responsibly connected proceeding brought pursuant to the provisions of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. 499a *et seq.*; hereinafter the "PACA"), the Regulations promulgated pursuant to the PACA (7 C.F.R. §§ 46.1 through 46.45, and 47.47 through 47.49), and the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By the Secretary (7 C.F.R. §§ 1.130 through 1.151; hereinafter the "Rules of Practice").

On January 9, 2006, Bruce W. Summers, Acting Chief of the PACA Branch, determined that James O. Lewis was responsibly connected to Hale-Halsell Company during the period in which it violated the PACA. On or about February 7, 2006, Petitioner James O. Lewis filed a Petition for Review of his responsibly connected status pursuant to section 1.135 of the Rules of Practice.

Respondent alleged that Petitioner Lewis was president and a director of the Hale-Halsell Company during the period in which the company wilfully, flagrantly and repeatedly violated section 2 (4) of the PACA.

The parties have now agreed to the entry of a Decision Without Hearing by Reason of Consent as set forth herein. Therefore, this Decision Without Hearing by Reason of Consent is entered without further procedure or hearing pursuant to section 1.138 of the Rules of Practice (7 C.F.R. § 1.138).

Findings of Fact

1. On August 23, 2005, PACA disciplinary complaint PACA Docket No. D-05-0019 was served on the Hale-Halsell Company, alleging that during the period of August 6, 2003, through February 12, 2004, Hale-Halsell Company failed to make full payment promptly to fourteen (14) sellers of the agreed purchase prices in the total amount of \$412,968.87 for 113 lots of perishable agricultural commodities that it purchased, received and accepted in interstate commerce.
2. On January 30, 2006, Administrative Law Judge Peter Davenport issued a Decision Without Hearing by Reason of Default in PACA Docket No. D-05-0019 based on the facts set forth in Finding of Fact 1, above, finding that the Hale-Halsell Company's failures to pay for perishable agricultural commodities as alleged in the complaint, constituted wilful, repeated and flagrant violations of section 2(4) of the Act (7 U.S.C. § 499b(4)). The Hale-Halsell Company appealed the default decision on February 15, 2006, and the Judicial Officer affirmed ALJ Davenport's default decision on April 20, 2006, ordering publication of a finding that the Hale-Halsell Company had committed wilful, flagrant, and repeated violations of section 2(4) of the Act. The Judicial Officer stated the April 20, 2006, Decision and Order would be effective 60 days after service on the Hale-Halsell Company.

3. The parties have stipulated to a resolution of this proceeding without an admission from Petitioner of liability, so long as Petitioner abides by the terms of the document titled Understanding Regarding the Consent Decision as to Petitioner James O. Lewis (hereinafter "Understanding"). The parties agree that for the period of time set forth in the Understanding, Petitioner Lewis will not own, operate, seek to be employed in the produce industry by, or be affiliated with, any entity subject to license under the PACA, as expressed and explained in the Understanding.

Order

Petitioner James O. Lewis is found to be responsibly connected to the Hale-Halsell Company when the company wilfully, flagrantly and repeatedly violated section 2 (4) of the PACA by failing to make full payment promptly to fourteen (14) sellers of the agreed purchase prices in the total amount of \$412,968.87 for 113 lots of perishable agricultural commodities that it purchased, received and accepted in interstate commerce during the period of August 6, 2003, through February 12, 2004.

However, that finding shall be held in abeyance in accordance with the terms of the Understanding entered into between Respondent and Petitioner. If the Petitioner fails to satisfy the terms of the Understanding, upon application of Respondent to the Administrative Law Judge, the finding that James O. Lewis is responsibly connected to the Hale-Halsell Company will take effect without further procedure or opportunity for hearing. If Petitioner Lewis meets the requirements of the Understanding, the finding of responsible connection held in abeyance will abate upon motion of Respondent requesting that the Administrative Law Judge vacate the finding.

Petitioner explicitly waives all further procedure and opportunity for hearing in this matter. Petitioner states that he has received independent legal advice with regard to the advisability of executing this Consent and the accompanying Understanding Regarding the Consent Decision as to Petitioner James O. Lewis, has received legal advice concerning the nature and extent of this Consent and Understanding, and has determined to accept this Consent and Understanding. Petitioner specifically understands that if he fails to comply with the terms of the Understanding, he will receive no further opportunity for hearing or for dispute regarding the imposition of a finding of responsible connection under the PACA, and that the sanctions that pertain to that finding would be imposed as of the date of the activation of the finding of responsible connection.

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 16th day of October, 2006

A blacked-out signature, likely of the Administrative Law Judge, positioned above a horizontal line.

Administrative Law Judge

[Redacted signature]

James O. Lewis
Petitioner

9/27/06
Date Signed

[Redacted signature]

P. David Newsome, Jr.
Attorney for Petitioner

9/26/06
Date Signed

[Redacted signature]

Ruben D. Rudolph, Jr.
Attorney for Respondent

10/6/06
Date Signed