

USDA
OALJ/OHC
2006 OCT 30 PM 2:00
RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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

DECISION WITHOUT HEARING BY REASON
OF CONSENT AS TO PETITIONER ROBERT D. HAWK, JR.

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, Chief of the PACA Branch, Fruit and Vegetable Programs, AMS, issued a determination that Petitioner Robert D. Hawk, Jr., was responsibly connected to Hale-Halsell Company, Tulsa, Oklahoma, against which a disciplinary complaint

had been filed alleging that Hale-Halsell Company had committed willful, flagrant and repeated violations of the PACA by failing to make full payment promptly to 14 sellers 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 August 6, 2003, through February 12, 2004. Hale-Halsell Company was determined to have committed the alleged violations in a Decision Without Hearing by Reason of Default, issued on January 20, 2006, and affirmed by the Department's Judicial Officer on April 20, 2006.

On February 8, 2006, Petitioner Robert D. Hawk, Jr., filed a Petition for Review of his responsibly connected status pursuant to sections 1.133(b)(2) and 1.135(b) of the Rules of Practice (7 C.F.R. §§ 1.133(b)(2) and 1.135(b)).

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 16, 2005, a disciplinary complaint was filed against Hale-Halsell Company (PACA Docket No. D-05-0019), alleging that it committed willful, flagrant and repeated violations of the PACA by failing to make full payment promptly to 14 sellers 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 August 6, 2003, through February 12, 2004. The complaint was served upon Hale-Halsell Company on August 23, 2005.

2. On January 30, 2006, Administrative Law Judge Peter M. Davenport issued a Decision Without Hearing by Reason of Default against Hale-Halsell Company, finding that its failures to pay for perishable agricultural commodities as alleged in the complaint constituted willful, repeated and flagrant violations of section 2(4) of the Act (7 U.S.C. § 499b(4)), and ordered publication of the facts and circumstances of the violations. Hale-Halsell Company appealed and the Judicial Officer affirmed the default decision in an order issued on April 20, 2006, effective 60 days after service on Hale-Halsell Company.

3. The parties have stipulated to a resolution of this proceeding whereby Petitioner Robert D. Hawk, Jr., does not admit liability, agrees to abide by the terms of the document entitled Understanding Regarding the Consent Decision as to Petitioner Robert D. Hawk, Jr. (hereinafter "Understanding"), and agrees, along with Respondent, to the following order:

Order

Petitioner Robert D. Hawk, Jr., is found to be responsibly connected to Hale-Halsell Company during the period in which it committed willful, flagrant and repeated violations of the PACA by failing to make full payment promptly to 14 sellers in the total amount of \$412,968.87 for 113 lots of perishable agricultural commodities that it purchased, received and accepted in interstate commerce.

The finding that Petitioner Robert D. Hawk, Jr., is responsibly connected to Hale-Halsell Company shall be held in abeyance in accordance with the terms of the Understanding entered into between Respondent and Petitioner Robert D. Hawk, Jr. If Petitioner Robert D. Hawk, Jr., fails to satisfy the terms of the Understanding, Respondent will issue a notification of such failure to the Administrative Law Judge, and the finding that Petitioner Robert D. Hawk, Jr., is

responsibly connected to Hale-Halsell Company will take effect as of the date of Respondent's notification, without further procedure or opportunity for hearing. If Petitioner Robert D. Hawk, Jr., meets the requirements of the Understanding, Respondent will file a motion requesting the Administrative Law Judge to vacate the finding of responsible connection held in abeyance and an order will be issued vacating the finding of responsible connection.

Petitioner Robert D. Hawk, Jr., explicitly waives all further procedure and opportunity for hearing in this matter. Petitioner Robert D. Hawk, Jr., states that he has received independent legal advice with regard to the advisability of executing this Consent and the accompanying Understanding, has received legal advice concerning the nature and extent of this Consent and the Understanding, and has determined to accept this Consent and the Understanding. Petitioner Robert D. Hawk, Jr., 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 Respondent's notification to the Administrative Law Judge that Petitioner Robert D. Hawk, Jr., has failed to comply with the terms of the Understanding.

The Administrative Law Judge will retain jurisdiction over this case pending any final motions by the parties.

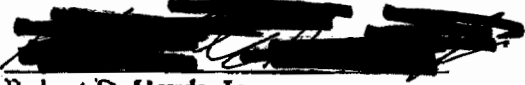
This order shall become final upon issuance. Copies of this order shall be served upon the parties.

Done at Washington, D.C.

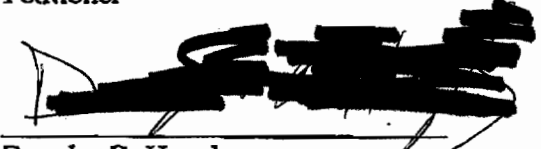
this 30th day of October, 2006



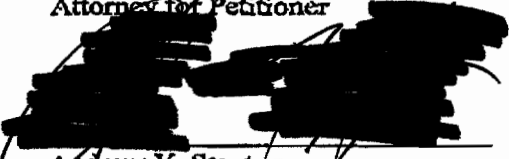
Administrative Law Judge


Robert D. Hawk, Jr.
Petitioner

10-19-06
Date Signed


Douglas R. Haughey
Attorney for Petitioner

10-19-06
Date Signed


Andrew Y. Stanton
Attorney for Respondent

10/30/06
Date Signed