

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

RECEIVED
SEP 13 2014 11:03

In re:)	P.Q. Docket No. 04-0010
)	
United Air Lines, Inc.,)	
)	
Respondent)	CONSENT DECISION

This proceeding was instituted under the Plant Protection Act (7 U.S.C. §§ 7701-7772)(Act), by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service alleging that the respondent violated the Act, specifically 7 U.S.C. § 7713(c), and/or the regulations promulgated under the Act (7 C.F.R. §§ 319-56 et seq., 319.74-1 et seq., and 352-1 et seq.). The complainant and the respondent have agreed that this proceeding should be terminated by entry of this Consent Decision.

For the purposes of this Consent Decision only, respondent specifically admits that the Secretary of the United States Department of Agriculture has jurisdiction in this matter, neither admits nor denies the remaining allegations in the complaint, and admits to the Findings of Fact set forth below.

Respondent waives:

- (a) Any further procedure;
- (b) Any requirement that the final decision in this proceeding contain findings and conclusions with respect to all material issues of fact, law, or discretion, as well as the reasons or bases thereof;
- (c) All rights to seek judicial review and otherwise challenge or contest the validity of this decision; and

(d) 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 the respondent in connection with this proceeding.

Findings of Fact

1. United Air Lines, Inc., respondent herein, incorporated in the State of Delaware in 1969, has locations throughout the United States. The mailing addresses for the locations involved in this proceeding are (1) Chicago O'Hare Airport, P.O. Box 66140, Chicago, Illinois 60666; (2) Chicago O'Hare Airport, P.O. Box 66100, Chicago, Illinois 60666; (3) Miami International Airport, 6300 NW 25th Street, Miami, Florida 33015; (4) Building 585 McDonnell Road, San Francisco International Airport, San Francisco, California 94128; and (5) 5932 West Century Boulevard, Los Angeles, California 90045.
2. The Prentice Hall Corporation System, Inc. is listed as the Registered Agent for United Air Lines, Inc., with a mailing address of 33 North LaSalle Street, Chicago, Illinois 60602.
3. On or about April 27, 1999, two hundred sixty-four (264) boxes of fresh persimmons were imported from Brazil (flight # UA988, Airway Bill #016-5965-8793) into the United States at Miami International Airport, Miami, Florida.
4. On or about April 13, 2001, a shipment of fresh vegetables from The Netherlands (flight #UA967, Airway Bill#016-0326-0865) was imported into the United States at Chicago, Illinois.

5. On or about March 8, 2002, a shipment of cut flowers from The Netherlands (flight #UA 931, Airway Bill #016-0332-0785) was imported into the United States at the San Francisco International Airport, San Francisco, California.

6. On or about March 20, 2002, a shipment of fresh cut flowers from New Zealand (flight #UA 842, Airway Bill #016-0977-7751) was imported into the United States at Los Angeles, California.

7. On or about July 21, 2002, a shipment of peppers from Holland (The Netherlands) (flight #UA967, Airway Bill #016-0337-4173) was imported into the United States at Chicago, Illinois.

8. On or about November 12, 2002, mushrooms from France (flight # 961, Airway Bill #016-0471-9326) were imported into the United States at Los Angeles, California and reexported on or about November 14, 2002 (flight # 960, Airway Bill #016-1751-6111).

9. On or about November 23, 2002, a shipment of articles/biologics manifested as "consolidated cargo" from New Zealand (flight #UA842, Airway Bill #016-0984-1915) was imported into the United States at Los Angeles, California.

10. On December 9, 2002, UAL Corporation, United Air Lines, Inc. and related entities (collectively "United") filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of

Illinois, Eastern Division. In re UAL Corp., No. 02-48191 (Bankr. N.D. Ill.).

11. On May 30, 2003, the United States Department of Agriculture filed a prepetition claim against United in the amount of \$446,349.58 (the "USDA Claim"). On June 29, 2004, the United States Department of Agriculture filed an amended proof of claim against United in the amount of \$391,849.58 (the "Amended USDA Claim"). The USDA Claim and the Amended USDA Claim are secured by a right of setoff against funds held by the Internal Revenue Service pursuant to the Stipulation and Agreed Order Under Fed. R. Bankr. P. 9019 Approving the Settlement of Controversy Between the Debtors and the United States of America ("Stipulation and Agreed Order"). Copy attached as Exhibit A. Additionally, the USDA Claim and the Amended USDA Claim are secured, in part, by a statutory lien provided for by 21 U.S.C. § 136a(c)(5).


Conclusions

The respondent has admitted the jurisdictional facts and has agreed to the following Order in disposition of this proceeding; therefore, this Consent Decision will be issued.

Order

1. The respondent is assessed a civil penalty of sixty-two thousand and five hundred dollars (\$62,500.00).
2. The civil penalty shall be paid in accordance with the agreement of the parties as stated herein. The parties have agreed:

- a. The United States shall have an allowed, prepetition claim of \$62,500.00 for violations of the Plant Protection Act (7 U.S.C. §§ 7701-7772).
- b. The civil penalty assessed in paragraph I shall be satisfied through setoff pursuant to 11 U.S.C. §§ 363(a)(7) and 553, from funds held by the Internal Revenue Service pursuant to Paragraph I of the Stipulation and Agreed Order. If United Air Lines, Inc. does not, or is unable to, satisfy its obligation through setoff as provided for in the Stipulation and Agreed Order, the USDA may exercise any or all of the rights set forth in the Stipulation and Agreed Order to recover the civil penalty assessed in this Consent Decision.



UNITED AIR LINES, INC.
Respondent

JEFFREY W. GETTLEMAN
Kirkland & Ellis LLP



DARLENE M. BOLINGER
Attorney for Complainant

Issued this 24 day of April, 2008
at Washington, D.C.



JILL S. CLIFTON
Administrative Law Judge

P-13-2004 17:44

DOJ/CIVIL DIVISION

202 514 9163

P.05/13

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Chapter 11
)
UAL CORPORATION, et al.,) Case No. 02-B-48191
) (Jointly Administered)
Debtors.)
) Honorable Eugene R. Wedoff

SETTLEMENT AGREEMENT

This settlement agreement is entered into by the United States of America ("United States"), on behalf of the United States Department of Agriculture, and UAL Corporation, United Air Lines, and all related Debtors (collectively "United") in these bankruptcy cases.

RECITALS

1. On December 9, 2002, United filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code. United continues to operate their businesses and manage their properties as debtors and debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.
2. On March 27, 2003, the bankruptcy court approved a Stipulation and Agreed Order Under Fed. R. Bankr. P. 9019 Approving the Settlement of Controversy Between the Debtors and the United States ("Stipulation and Agreed Order").
3. On May 30, 2003, the United States Department of Agriculture ("USDA") filed a prepetition claim against United in the amount of \$446,349.58. On June 29, 2004, the USDA filed an amended proof of claim against United in the amount of \$391,849.58 (the "Amended USDA Claim"). The Amended USDA Claim is secured by a right of setoff against funds held by the Internal Revenue Service

1.1.1 A

P-13-2004 17:45

DOJ/CIVIL DIVISION

202 514 9163

P.06/13

pursuant to the Stipulation and Agreed Order. Additionally, the portion of the Amended USDA Claim for aircraft inspection fees is secured, as provided for by 21 U.S.C. § 136a(o)(5).

AGREEMENTS

1. The USDA shall have an allowed claim of \$263,153.25 for commercial aircraft inspection fees.
2. The USDA shall have an allowed claim of \$58,635.22 for reimbursable overtime inspection services and an allowed claim of \$7,561.11 for interest accrued prepetition thereon.
3. The USDA shall have an allowed claim of \$62,500.00 for civil penalties assessed under the Plant Protection Act, 7 U.S.C. § 7701 et seq., as set forth in the Consent Decision attached hereto as Exhibit A.
4. The USDA allowed claims, as set forth in paragraphs 1, 2, and 3 of this agreement and totaling \$391,849.58, shall be satisfied through a setoff pursuant to 11 U.S.C. §§ 363(a)(7) and 553 of funds held by the Internal Revenue Service pursuant to the Stipulation and Agreed Order.
5. Within ten calendar days of execution of this agreement by both parties, United shall file a motion in the United States Bankruptcy Court for the Northern District of Illinois in In re UAL Corp., No. 02-48191 (Bankr. N.D. Ill.), seeking relief from the automatic stay to allow payment of the Amended USDA Claim, as set forth in paragraphs 1, 2, and 3 of this agreement, from funds held by the Internal Revenue Service pursuant to paragraph 1 of the Stipulation and Agreed Order. If

SP-13-2004 17:45

DOJ/CIVIL DIVISION

202 514 9153

P.07/13

United fails to file the required motion or if United is unable to obtain a final, unappealable order allowing setoff within 90 days of the date that this agreement has been executed by all parties, the United States may, in its discretion, declare this agreement null and void. If United does not, or is unable to, satisfy its obligation through setoff as provided for in the Stipulation and Agreed Order, the USDA may exercise any or all of the rights set forth in the Stipulation and Agreed Order to recover the allowed claim of the USDA.

6. The Amended USDA Claim shall be deemed satisfied once the amounts set forth in paragraphs 1, 2, and 3 have been recovered through setoff or as otherwise provided for in the Stipulation and Agreed Order.

For the United States:

PETER D. KEISLER
Assistant Attorney General
Civil Division

PATRICK J. FITZGERALD
United States Attorney

JOEL NATHAN
Assistant United States Attorney
Everett M. Dirksen Bldg,
5th Floor
219 S. Dearborn St.
Chicago, IL 60604

7-13-2004 17:45

DOJ/CIVIL DIVISION

202 514 9163

P.08/13

Dated: _____

J. CHRISTOPHER KOHN
TRACY J. WHITAKER
RUTH A. HARVEY
Attorneys, Civil Division
Department of Justice
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044
(202) 307-0388
Email: ruth.harvey@usdoj.gov

Attorneys for the United States

For UAL Corporation, United Air Lines, Inc. and all
related Debtors in In re UAL Corp., Bankr. No.
48191 (N.D. Ill.)

Dated: 3/7/2006

~~_____~~
JAMES H.M. SPRAYREGEN
MARC KIESELSTEIN
DAVID R. SELIGMAN
KIRKLAND & ELLIS
200 East Randolph Drive
Chicago, IL 60601
(312) 861-2000

Counsel for Debtors and Debtors in Possession