UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
Tuscany Farms, Inc.,	)	PACA Docket No. D-04-0015
	)	
Respondent	)	
	)	
	and	
	)	
In re:	)	
Joe Genova & Associates, Inc.	)	PACA Docket No. D-04-0016
	)	
Respondent	)	
	)	
	and	
In re:	)	
Gencon Consulting, Inc.	)	PACA Docket No. D-06-0017
	)	
Respondent	)	
	)and	
	)	
In re:	)	
Joe A. Genova	)	PACA-APP Docket No. 06-0005
	)	
Petitioner	)	
	)	
	and	
	)	
In re:	)	
Nicole Wesner	)	PACA-APP Docket No. 06-0006
	)	
Petitioner	)	

Decision

In this decision involving five consolidated cases, I find that Tuscany Farms, Inc. and Joe Genova & Associates, Inc. willfully, flagrantly and repeatedly violated the

Perishable Agricultural Commodities Act ("PACA" of "the Act") by failing to fully pay for produce it purchased in a timely manner. I further find that both Nicole Wesner and Joe Anthony Genova were responsibly connected to Tuscany Farms. I also find that Respondent Gencon Consulting, Inc. did not show cause as to why its license application should not be denied by the PACA Branch.

Procedural History

On June 2, 2004, Eric M. Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture, issued a Complaint against Tuscany Farms, Inc., d/b/a Genovas, alleging that Respondent Tuscany Farms committed willful violations of the PACA by failing to make full payment promptly to three sellers in 2002 of $336,200 for 65 lots of perishable agricultural commodities. Tuscany Farms filed an Answer denying the alleged violations.

On June 3, 2004, Mr. Forman issued a Complaint against Joe Genova & Associates, Inc., alleging that between February and November, 2002, Joe Genova & Associates committed willful violations of the PACA by failing to make full payment promptly to nine sellers, in the amount of $315, 806, for 123 lots of perishable agricultural commodities. Joe Genova & Associates filed an Answer denying the alleged violations.

On January 12, 2006, Karla D. Whalen, Acting Chief , PACA Branch, Fruit and Vegetable Programs, Agricultural Marketing Services, USDA, informed Douglas Kerr, counsel to Nicole Wesner, that Ms. Wesner was determined to be responsibly connected with Tuscany Farms. On that same day, Ms. Whalen issued a similar determination with

respect to Joe A. Genova (generally referred to in this proceeding as "Joe Anthony Genova"). Both Wesner and Genova filed timely Petitions to review these determinations, which were received by the Hearing Clerk on February 10, 2006.

Also on January 12, 2006, counsel for Complainant in the Tuscany Farms and Joe Genova and Associates cases moved to set the matters for a consolidated hearing. I conducted a telephone conference on April 11, 2006, during which time I consolidated the two disciplinary cases with the two responsibly connected cases, as is required under the Rules of Practice. I set the matter for hearing in September 2006 and established a schedule for the parties to exchange documents and witness lists.

On July 13, 2006, Eric Forman issued a Notice to Show Cause to Gencon Consulting, Inc., as to why that entity should not be denied a license under the PACA. The Notice alleged that Joe Genova, Jr., the principal of Gencon, was the same individual who was a 100% owner of Respondent Joe Genova & Associates and was a 24% shareholder of Tuscany Farms, and that he was unfit to receive a PACA license. Respondent Gencon filed a timely response. While the rules governing license denial proceedings under the PACA require that an expedited hearing be held within 60 days of the filing of the Show Cause Order, the parties agreed to consolidate the Gencon hearing with the other four consolidated cases.

I conducted a hearing on the five consolidated cases in Santa Ana, California from September 12-15, 2006. Eric Paul, Esq. and Jonathan Gordy, Esq. represented Complainant (Respondent in the two responsibly connected cases). Douglas B. Kerr, Esq. and Jonathan Barry Sexton, Esq. represented Respondents Tuscany Farms, Joe Genova & Associates and Gencon, and Petitioners Nicole Wesner and Joe Anthony

Genova. Complainant called seven witnesses, including David Studer, the lead government investigator and six industry witnesses who testified they had engaged in transactions covered by the PACA with the two Respondent companies without receiving full payment promptly. Respondents/Petitioners called three witnesses, including Joe Anthony Genova. Complainant then called John Koller as a witness concerning what sanctions would be appropriate if I were to find the Respondent companies to have committed the violations as charged.

During the hearing, Counsel for Petitioner Nicole Wesner stipulated that she was responsibly connected to Tuscany Farms. Tr. 689.

Subsequent to the hearing, the parties filed simultaneous opening briefs on January 4, 2007, and simultaneous reply briefs on February 2, 2007.

Statutory and Regulatory Background

The Perishable Agricultural Commodities Act governs the conduct of transactions in interstate commerce involving perishable agricultural commodities. Among other things, it defines and seeks to sanction unfair conduct in transactions involving perishables. Section 499b provides:

> It shall be unlawful in or in connection with any transaction in interstate or foreign commerce:
>
> (4) For any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity which is received in interstate or foreign commerce by such commission merchant, or bought or sold, or contracted to be bought, sold, or consigned, in such commerce by such dealer, or the purchase or sale of which in such commerce is negotiated by such broker; or to fail or refuse truly and correctly to account and make full payment promptly in respect of any transaction in any such commodity to the person with whom such transaction is had; or to fail, without reasonable cause, to perform any specification or duty, express or implied, arising out of any undertaking in connection with any such transaction; or to fail to maintain the trust as required

> under section 499e(c) of this title. However, this paragraph shall not be considered to make the good faith offer, solicitation, payment, or receipt of collateral fees and expenses, in and of itself, unlawful under this chapter.

7 U.S.C. § 499a(b)4.

When the Secretary of Agriculture determines that a "merchant, dealer or broker has violated any of the provisions of section 499b of this title"

> the Secretary may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, except that, if the violation is flagrant or repeated, the Secretary may, by order, revoke the license of the offender.

The regulations define "full payment promptly" and illustrate the default rule for defining prompt payment and when deviation from the default is acceptable.

> (aa) Full payment promptly is the term used in the Act in specifying the period of time for making payment without committing a violation of the Act. "Full payment promptly," for the purpose of determining violations of the Act, means:
>
> (5) Payment for produce purchased by a buyer, within 10 days after the day on which the produce is accepted;
>
> (11) Parties who elect to use different times of payment than those set forth in paragraphs (aa) (1) through (10) of this section must reduce their agreement to writing before entering into the transaction and maintain a copy of the agreement in their records. If they have so agreed, then payment within the agreed upon time shall constitute "full payment promptly": Provided, that the party claiming the existence of such an agreement for time of payment shall have the burden of proving it.

7 C.F.R. § 46.2.

The Act also imposes on every licensee the duty to "keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business." 7 U.S.C. § 499i.

In addition to penalizing the violating merchant, dealer or broker, the Act also imposes severe sanctions against any person "responsibly connected" to an establishment that has had its license revoked or suspended or has been found to have committed flagrant or repeated violations of Section 2 of the Act. 7 U.S.C. §499h(b). The Act prohibits any licensee under the Act from employing any person who was responsibly connected with any person whose license "has been revoked or is currently suspended" for as long as two years, and then only upon approval of the Secretary. Id.

> (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 chapter 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.

7 U.S.C. § 499a(b)(9).

Even if an individual has not been found to be responsibly connected as defined above, the Secretary may withhold a license to an applicant for a period not to exceed thirty days "pending an investigation for the purpose of determining . . . whether the applicant is unfit to engage in the business of a commission merchant, dealer, or broker" if the applicant was an officer, director or owner of more than 10% of the stock in a company that "engaged in any practice of the character prohibited by this chapter." 7 U.S.C. § 499d. If the Secretary believes that an applicant should be denied a license, that individual has the right to a hearing, within 60 days of the date of the application, to show cause why the license should not be refused.

I. The disciplinary investigations

Following the filing of five PACA reparation complaints against Respondent Genova & Associates and six reparation complaints against Respondent Tuscany Farms by suppliers of perishable agricultural commodities, the PACA Branch commenced an investigation to determine whether the payment provisions of the Act had been violated. Senior marketing specialist David Studer, an investigator with extensive experience, was assigned to investigate the complaints involving both companies. On April 21, 2003, Mr. Studer arrived at 987 North Enterprise Street, Orange, California to commence his onsite investigation, rather than at the listed address of record of 333 North Euclid Way, Anaheim, California because he had already talked with Douglas Kerr, the attorney for both companies, and knew that the companies were no longer doing business and that any records they had were at the facility in Orange. Tr. 21. Mr. Studer served Mr. Kerr with investigative notice letters for each company within five minutes of each other (CX3, CX4), and then requested a variety of records. Mr. Kerr handed him CX7, which Studer referred to as "the attorney prepared accounts payable document." Tr. 24. This document, which Kerr stated was not fully accurate, was used as a guideline by Studer in the conduct of his investigation. Tr. 28. Studer was later told by Mr. Roper, an attorney who the two companies hired as a reorganization specialist, that the document (CX 7) was a list of the payables for both companies, but that the amounts listed were not accurate. Tr. 26. Studer was also given computerized aging reports[1] for Joe Genova & Associates (CX 8) and Tuscany Farms (CX 9).

Studer spent the better part of two weeks working out of a storage room at 987 North Enterprise, where he found a variety of documents in a not very well-organized

[1] Lists of accounts payable and the age of the debt for each account.

state. Tr. 32, 537-539. There were no updated computer printouts available because the computer was no longer available with the respondent companies being shut down. Using CX 7, 8 and 9 as guides, he gathered records from the storage room. When he returned to his office in Tucson, he or Toby Haught of his office attempted to contact each of the creditors that were listed in CX7. Except for one alleged creditor that was out of business, he or Haught asked each of the listed companies to provide them their accounts receivable for the two respondent companies. Tr. 66-70. Most of the companies complied by sending in invoices and other documents.

Based on CX7, the numerous documents he discovered at 987 North Enterprise, and documents he and Haught received from the companies listed as creditors in CX7, and conversations he had with representatives of those creditor companies, Studer calculated that the numbers of violations and amounts owed that were stated in the two complaints. In making such calculations, Studer discounted transactions that appeared to be in intrastate commerce, amounts that were paid in partial resolution of claims, and other apparent offsets that he was made aware of. In preparing the "no pay" tables used in the complaints, he relied more heavily on what the records of the creditor companies showed and what he was told by those companies' officials than on the information contained in the reports handed to him by Mr. Kerr. Tr. 278-280..

Salvatore Mangano and Paul Roper testified that, due to a failure in the software program that was supposed to track the finances of the two Respondents, including the payables and receivable, huge numbers of exception reports[2] were generated that indicated that Respondents owed far less money than alleged. However, no such documents were turned over to Studer, nor were there any written documents disclosed or

[2] Documents that would list purported adjustments to invoices.

offered into evidence by the Respondents at the hearing that demonstrated that the amounts owed by the Respondents should have been mitigated due to poor quality of produce, errors in the quantity of produce delivered, or other factors. The more than adequate investigation by Studer, corroborated in most respects by the testimony of many of the creditors of the two Respondents, starkly contrasts with the fuzzy, non-specific, undocumented testimony of the Respondents' two principal witnesses on the payment issue. The evidence overwhelmingly supports findings that the two companies failed to make full payment promptly as alleged in the complaint.

The Tuscany Farms allegations

Complainant has easily met its burden of proving, by a preponderance of the evidence, its contention that Tuscany Farms failed to make full payment promptly to three sellers for 65 lots of agricultural commodities in the amount of over $336,200.

G & R--Exhibit CX7 indicates that G & R was a creditor of Tuscany Farms. Studer testified that he located numerous invoices from G & R in the storeroom. CX 14. The aging report for Tuscany Farms, one of the documents presented to Studer during his investigation, indicated that the debt to G & R was nearly $320.000. Jose Garcia, who at the time of the hearing had been the sole owner of G & R for five years, sold limes to both Respondents for a period of about three years. Tr. 311-312. He testified that since he sold the limes under a price after sale agreement, that final prices for a given load of limes were generally agreed upon 25-30 days after delivery. Tr. 315. Mr. Garcia would routinely pay the freight after he received the bill of lading indicating that delivery had been made, which was the case with all the transactions here. Tr. 314. He testified that he used the Genova name on invoices at first, but was told to start billing Tuscany Farms

instead. Tr. 320. Things went relatively smoothly until payments suddenly stopped in 2002. Id. When the amount owed to G & R reached $398,000 they stopped selling to them. Id. In November he received a check for $150,000 and in March, 2003 he received an additional $10,000.[3] Tr. 321. He stated that since the transactions were all priced after sale, then the amount on the invoices would be the price that was settled upon. According to his calculations, he was owed $238,000 by Tuscany Farms as of the date of his testimony. Tr. 335.

The invoices included in CX 14 establish that there were 41 transactions for which full payment was not promptly made. While the amounts alleged by Complainant are slightly less than the amount currently claimed by Mr. Garcia, the differential is immaterial for the purposes of this decision, particularly where, as Mr. Studer stated, he always went with the lesser amount where there was any indication of discrepancy.

DLJ Produce—Mr. Studer followed a similar methodology with respect to 23 lots of perishable agricultural commodities sold to Tuscany Farms by DLJ Produce in 2002. All but one of the invoices at issue were discovered by Studer in the storeroom, while the invoice at p. 21 of CX 21 was attached to a PACA reparation complaint (CX 22). While the reparation complaint sought payment of approximately $231,000, Studer testified that after deducting invoices that he determined were not involved in interstate commerce, the figure was reduced to approximately $189,000. Studer then deducted the $77,385 paid by Tuscany Farms pursuant to a settlement agreement with DLJ to arrive at a balance due of $111,743. Tr. 391.

[3] He was also told, when he found out that the companies were going out of business and he had sent a truck to pick up his boxes, that he should take an unused conveyor belt, presumably as partial payment. He took the belt back to Texas but never used it. The belt is depicted in CX 27.

Mr. Studer was unable to directly contact DLJ, due to the existence of a confidentiality agreement between DLJ and Tuscany Farms, but Lawrence Heideker, part-owner and president of DLJ, testified at the hearing after being served a subpoena. Heideker's testimony was totally consistent with the findings of Studer. He stated that he first filed an informal reparation complaint in November, 2002 and believed at that time that DLJ was owed approximately $277,000 by Tuscany Farms. Tr. 466-467. He stated that the invoices in question would only have been issued if the product was received, and that the bulk of the product was delivered to a Safeway facility in Santa Fe Springs, California. Tr. 468-469. He stated that Safeway either receives and signs for the product or rejects it, and that the invoices would only be issued after product was accepted. Id. He stated that he did not receive any indication that the amount owed was in dispute, nor were there any issues as to the quality of the product. Id.

Heidecker signed a document settling DLJ's claims against Tuscany Farms in February, 2003[4]. The letter of acknowledgement he signed, CX 21, p. 29, stated that the $77,385 was to resolve a disputed claim, but Heidecker testified that he just signed the document because there were rumors that Tuscany Farms was going out of business, including an article in Produce News[5], that there were people "standing in line" to get whatever they could, and that Joe Genova, Jr. had represented to him that thirty cents on the dollar was the most they would be able to pay under the circumstances.[6] Tr. 473-476. There was no testimony or exhibit that would demonstrate that there was any dispute over the amounts owed, or that there was any issue as to the quality of the

[4] Douglas B. Kerr signed on behalf of the Respondent companies.
[5] A trade periodical.
[6] The Letter of Acknowledgement refers to "Asbury Ranch, Inc." but this is clearly a typographical error as the document was signed by Heidecker on behalf of DLJ and the Letter otherwise refers to the Respondent companies.

products delivered by DLJ. The final amount paid was clearly a compromise based solely on the inability of Tuscany Farm to promptly pay DLJ the full amount owed to it. As such, it demonstrates that the monies owed to DLJ by Tuscany Farms were not paid in either a timely basis or in full, and that there remains a balance of approximately $111,000 that was never paid to DLJ by Tuscany Farms.

Horizon Marketing—Studer also testified that he discovered one invoice from Horizon Marketing that was unpaid in the amount of $2,304. He contacted June Anderson, an officer of the company, who indicated that Joe Genova and Tuscany Farms owed Horizon over $173,000 as of June 4, 2003. CX 19, p. 2. For reasons that are not fully explicated in the testimony, it appears that Studer found that only the one invoice was unpaid. No evidence was elicited indicating that would indicate that this invoice was paid, so it is established that, with respect to this invoice, Horizon Marketing did not receive full payment promptly.

The Joe Genova & Associates, Inc. allegations

Complainant has also easily met its burden of proving, by a preponderance of the evidence, that Joe Genova & Associates (JGA) failed to make full payment promptly to nine sellers for 123 lots of agricultural commodities, in the amount of $315, 806.

Golden Eagle—Golden Eagle provided invoices indicating that JGA had purchased 18 lots of vegetables (potatoes, with one lot of onions) in September and October, 2002. CX 17, pp. 2-21, Tr. 513. Randy Dunham, a produce broker for Golden Eagle, testified that business with Genova was fine until a point when "they just quit paying us." Tr. 507. He agreed that the invoices in CX 17 were documents generated by his company, and stated they typically would not have invoiced JGA until they had

received the product. Tr. 510-511, 518. He stated that no disputes as to the condition of the produce were indicated on any of these invoices, and that there were $66,185 in uncollected funds relating to those invoices. Tr. 516-517. He stated that if there was any dispute as to the amount of the invoice he would have made the adjustment directly on the invoice. Tr. 524-525.

The only evidence JGA presented to contravene this claim was the testimony of Paul Roper, who became a business consultant for JGA and Tuscany Farms in 2002. He stated that he was never able to speak to anyone at Golden Eagle because they did not return his phone calls, and that he was unable to match the invoices sent to JGA to any shipments to any of JGA's customers. Tr. 767-768. Given that Golden Eagle was listed as a creditor on JGA's own records, CX 7, and given that Dunham specifically testified that he compiled the invoices and that they were unpaid, I have given Roper's testimony very little weight. Complainant has clearly demonstrated that lower figure of $62,285, which is based on the cumulative amount outstanding on the 18 vouchers, was never fully paid by JGA, let alone paid in a timely manner.

DNE World Fruit Sales/DNE California—Both Richard Carnell, Jr., the general counsel for DNE, a subsidiary of Bernard Egan, and Jeff Smith, a salesperson for DNE California, testified with regard to invoices unpaid by JGA (and Tuscany Farms). Carnell described several efforts to settle the matter, including a payment schedule that was not complied with. Eventually, with over $63,000 claimed to be owed DNE by JGA, Carnell was told by Kerr that the majority of the creditors of JGA were settling for 25 to 30 cents on the dollar. Tr. 171. Carnell testified that "there was no dispute about the debt" and that the only issue was how much JGA could afford to pay. Tr. 172. The quality or

condition of the fruit delivered was never mentioned by anyone as an issue. Id. He calculated the combined debt of Tuscany Farms and JGA to be approximately $73,000. Tr. 166. After filing informal reparation complaints against both Tuscany Farms and JGA, and being told by another attorney that the debts owed by JGA were uncollectible, and reading the article in Produce News which indicated that the Respondent companies were failing and settling claims at 25 to 30 cents on the dollar, Carnell referred the matter to Vericore, a collection agency. Tr. 164-165. When Vericore was able to settle the matter for $17,000 he figured that was the best they could get and the company wrote off the remainder of the debt.

Jeff Smith confirmed much of what Carnell testified to. He described his attempt to work out a payment schedule with Joe Anthony Genova. Tr. 710-712. His information appeared to indicate that the $10,000 Tuscany Farms debt was eventually paid, and that the settlement for $17,000 was based on a debt of $63,000. CX 34. The settlement agreement that was signed by Carnell, CX 10, p. 26, indicated that the compromised amount was $67,626. While the settlement refers to a disputed claim, Carnell testified, and was never contradicted that this was an accord and satisfaction, and that the only issue was JGA's inability to pay. While the exact amount owed by JGA is difficult to pinpoint, Complainant's contention that the unpaid amount was over $40,000 at the time of the hearing was supported by a preponderance of the evidence.

Metro America d/b/a West Coast Distributing—Studer obtained numerous West Coast Distributing invoices in the storeroom. CX 11. Several invoices had handwritten amounts that were lower than the printed amounts that were invoiced, and he utilized the lower amount in calculating the no-pay table. Tr. 93. Thus, he utilized $968.32 rather

than $8,100 for the amount due according to the invoice at page 4 of CX 11. Brian Bell, the president of West Coast Distributing, testified concerning the complicated payment situation between his company and JGA. With respect to the 46 lots of fruit purchased for a total price of $278,212 by JGA from West Coast Distributing between February and April 2002, Bell stated that invoices were not issued until after delivery to the JGA facility in Anaheim, and that he was not aware of any issues relating to the quality of the produce. He stated that Joe Genova never indicated to him that the company didn't owe West Coast the money, but just stated that he did not have the money to pay because other customers were "stringing him out." Tr. 247-248.

In an attempt to deal with this large debt, West Coast executed a loan agreement on June 11, 2002 with JGA, personally guaranteed by Joe Genova, Jr., for $139,509 with a $10,000 fee added in. CX 26, pp. 9-10. The following day, an additional promissory note for $15,000 was executed by Tuscany Farms, even though no produce debt existed between the two companies. CX 26, pp. 11-12. Some specific invoices were paid for periodically until about October 31, 2002. In March 2003, West Coast intervened in a PACA Trust Action filed several months earlier by another company against JGA, alleging that JGA owed it over $278,000, listing in its intervenor complaint the same invoices contained in CX 11. This action was settled for $161,005 constituting just over 57% of the amount claimed. Mr. Bell testified that with the amount due from the above-described loan, the company would end up being fully compensated. Tr. 235. However, in 2006, having received no payment on the loan, West Coast filed an action to collect on

the loan (and was countersued for fraud). Tr. 227, 246. Thus, it appears that $117, 206[7] of the debt owed by JGA to West Coast has yet to be paid.

Gold Valley Produce, Spalding Produce, Pacific Sun, Stark Packing and Horizon Marketing, G & R—Studer found a series of invoices from Gold Valley Produce d/b/a Pacific West in the storeroom. CX 12, pp. 2, 4-8 demonstrating that 6 lots of mixed fruit were sold to JGA by Pacific West for a total of over $62,000. The accounts payable list provided to Studer by Kerr indicated that Pacific West was owed a total of $139, 234 by JGA and Tuscany Farms, and a letter of acknowledgement signed by Pacific West and by Kerr (on behalf of both Tuscany Farms and JGA) indicates that the combined amount was the basis for a "disputed claim" that was settled for a payment of $41,771 via an agreement signed in February 2003. CX 12, pp. 9-10. Complainant alleged, in essence, that the settlement amount paid should be subtracted from the $62,000 shown in the unpaid invoices at CX 12 to yield an unpaid debt of $20,270.[8] Other than the general attacks on Complainant's methodology which will be discussed below, and the generic anecdotal evidence that exception reports existed for a number of invoices, no evidence in refutation of this claim has been offered.

Studer also found invoices for Spalding Produce in the storeroom. CX 13. The complaint alleges that these four invoices, totaling over $14,100, were unpaid by JGA. Toby Haught, Studer's co-investigator, received a facsimile purporting to be from Spalding Produce which indicated that these four invoices were still open as of May 21,

[7] $278,000 minus $161,005.

[8] The methodology by which Complainant chooses the amount alleged to be unpaid by Tuscany Farms and JGA has certain elements of mystery that are not fully understood by me. It appears that with respect to this creditor they could have used the approximately $98, 000 that was unpaid as a result of the settlement of the claims against JGA and Tuscany Farms. However, since the lower amount was alleged in the Complaint, and only the six JGA invoices are alleged to be unpaid for the purpose of this action, I will find that Complainant has proved the lower amount.

2003. CX 13. Studer testified that he and Haught made it a practice of asking whether there were any settlements or assignment agreements and they had no such document from Spalding. Tr. 115. The amount Spalding alleged to be owed is over $5,000 less than that in the accounts payable document supplied by Mr. Kerr at the start of the investigation, CX 7, and is identical to the amount indicated in the JGA accounts payable aging report, CX 8, p. 17, also supplied by Mr. Kerr. Once again, no specific evidence has been introduced to refute this claim.

The Pacific Sun, Stark Packing and Horizon Marketing allegations involve similar scenarios. Thus, invoices showed that JGA had purchased 18 lots of fruits and vegetables from Pacific Sun for $28,994 for overseas shipment and that Pacific Sun's records indicated that after adjustments and receipt of $11,497 from JGA, nearly $17,500 was still owed by the time of the hearing. CX 16. Similarly, Studer located invoices from Stark Packing Company in the storeroom, CX 18, which indicated that JGA had purchased 14 lots of oranges from Stark for shipment outside the state, in the amount of over $26, 829. These invoices also appeared, along with others, on the accounts payable aging report handed to Studer, CX 9; CX 18, pp. 17-18. And documents included in CX 19 establish two similar transactions with Horizon Marketing, with an alleged unpaid amount of $16,482. No specific evidence has been introduced to refute these claims.

Finally, there was one invoice from G & R, most of whose transactions were billed to Tuscany Farms, for limes shipped to Mesa Produce, where $1096.50 remains unpaid. CX 15.

Discussion

Respondents did not put on any specific evidence which demonstrated that in fact the allegations of the complaints were incorrect. Rather, they attacked the methodology of the government investigation, challenging its thoroughness, the government's motivation, and the conclusions that could be drawn from the evidence at hand. They contended that the government needed to provide more evidence that the shipments were in fact received by Tuscany Farms and JGA, and that the figures the government used in determining non-payment were inherently unreliable. I reject Respondents' arguments.

The government investigation in this case followed the same general methodology employed in numerous other non-payment cases, and has been approved at the Agency level in Judicial Officer decisions as well as by the courts. Receipt by the PACA Branch of a number of reparation filings is frequently a trigger for the commencement of an investigation. Inspector Studer and Haught appeared to conduct a diligent investigation, seeking from Respondents all pertinent documents. Studer took the documents offered by Mr. Kerr in response to his requests, and pored through the files in the storeroom, which were apparently not in the most well-organized condition. Although Respondents' witnesses testified that there were large collections of exceptions reports, which would indicate that many of the accounts listed as payable on the reports handed to Studer by Kerr were actually owed a far lesser amount of money, or in some instances actually owed money to the Respondents, not a single piece of paper that might constitute an exception was offered in evidence. Moreover, after gathering as much information as he could from Kerr and the storeroom, Studer also interviewed Respondents' witnesses Mangano and Roper, and with the assistance of Haught, attempted to contact each

creditor listed in the documents obtained from Respondents in an attempt to determine the accuracy of the documents. This methodology is consistent with both past practice and a logical and thorough investigation. Of course, it would have been more than helpful if the exception reports, if they really existed, were provided, as it would have been helpful if Respondents could supply other documentation concerning who they owed and in what amount.[9] I find that the PACA Branch personnel involved in this investigation, particularly Mr. Studer, conducted as complete an investigation as possible under the circumstances, and that no credible testimony or evidence contradicted the testimony of Mr. Studer or the six other fact witnesses Complainant called in this case.

As Complainant has pointed out in its brief, the case law supports its position on the sufficiency of the evidence. In Havana Potatoes of New York v. United States, 136 F. 3d 89 (1997), the Second Circuit upheld a decision of the Judicial Officer on less factual evidence than provided in the instant case, and where the creditor account ended up fully paid. The court held it was appropriate to rely on invoices for unpaid deliveries found in Havana Potatoes files. Here, where Studer took great pains to match invoices listed in the accounts payable and aging documents with invoices he found in the storeroom, and took the extra step in matching those invoices with invoices that the creditor companies had listed on their records as unpaid, and where Complainant secured the testimony of six creditor company officials to confirm the accuracy of the amounts owed, the evidence is far stronger than it was in Havana Potatoes. In that case, also like this one, no documentary evidence, just surmise, was offered as a challenge to the evidence Complainant had proffered.

[9] The failure to keep accurate records is in itself a major violation of the PACA with penalties of up to 90 days license suspension. Both Respondents have fallen grievously short of their statutory duties in this regard.

The testimony of Salvatore Mangano and Paul Roper was of no help in convincing me that Respondents did not owe the amounts claimed by Complainant. Neither appeared to have any first-hand knowledge of a single instance where there was an exception that would indicate payment was not owed on a given invoice. Neither of them participated in the process where exceptions were handled. Respondents obviously knew of the problems with their computer system, and Mangano and Roper said they had a paper system to back it up, yet even though they knew Studer was looking to gather all pertinent information on unpaid invoices, and even though they were among the people Studer interviewed, neither of them mentioned the existence of the exception reports to Studer, let alone turn over copies of these reports to him. Respondents had ample opportunity during the course of this four day hearing to introduce exception reports, but they did not do so. Certainly, if evidence of payment or mitigation existed and was solely in the hands of Respondents, one would think they would have been introduced into evidence.

At best, Respondents raise the possibility that some of the accounts payable might have been overstated. This helps their cause not at all, as it does not change the fact that they owed considerable sums of money to their creditors. If the amount actually due and payable was off by a few dollars or even a few thousand dollars, or perhaps one of the creditors was not owed money, they would still be in serious violation of the full payment promptly requirement of the Act.

Nor does the settlement of several of the outstanding claims by their creditors via "settlement agreements" ameliorate matters for Respondents. Each party who testified who entered into an agreement with either Tuscany Farms or JGA or both combined,

made it clear that the settlement was not to resolve disputed claims, in the sense that there was a dispute over whether product had been delivered or was damaged, but because it was made clear to them by Respondents or their representatives that they were unable to pay the full amount owed and that this was all they could pay. The inability to pay in this matter is totally consistent with Complainant's claim that Respondents did not promptly pay for the produce in question in either a full or timely manner. Settlement of a PACA produce debt for a reduced amount based on financial difficulties, while it may resolve the dispute between the parties, does not constitute full payment under the Act. See, e.g., In re: Kanowitz Fruit and Produce Co., 56 Agric. Dec. 917 (1997).

Further, the violations committed by both Tuscany Farms and JGA were willful, flagrant and repeated. In PACA cases, a violation need not be accompanied by evil motive to be regarded as willful. Rather, if a person "intentionally does an act prohibited by a statute or if a person carelessly disregards the requirements of a statute," his acts are regarded as willful. In re. Frank Tambone, Inc., 53 Agric. Dec. 703, 714-15 (1994). Here, where both Respondents continued to order and receive, and not pay for, produce for months, until they closed their doors for good, putting numerous growers and sellers at risk, they were "clearly operat[ing] in disregard of the payment requirements of the PACA," Id., and have committed willful violations.

In determining whether a violation is flagrant, the Judicial Officer and other judges have factored in the number of violations, the amount of money involved, and the length of time during which the violations occurred. In re. N. Pugatch, Inc., 55 Agric. Dec. 581 (1995), In re Scamcorp, 57 Agric. Dec. 527 (1998). The flagrant nature of the violations is demonstrated by the four-month period of time over which the violations

occurred with respect to Tuscany Farms and the ten-month period of time for JGA. And the repeated nature of the violation is established by the large number of occurrences (65 for Tuscany Farms and 123 for JGA).

II. The Responsibly Connected Cases

Joe Anthony Genova is Responsibly Connected To Tuscany Farms

Joe Anthony Genova, a 24% stockholder in Tuscany Farms, has failed to meet his burden of proving by a preponderance of the evidence that he was not responsibly connected to Tuscany Farms. Petitioner has not met his two-step burden of showing by a preponderance of the evidence that he (1) was not actively involved in the activities resulting in a violation of this chapter, and (2) was only nominally a director, officer and 24% shareholder of a violating licensee or entity subject to license.

Joe Anthony Genova was listed in pertinent documents as being the secretary-treasurer, director and 24 % owner of Tuscany Farms. The heart of his contention that he was only a nominal officer, director and shareholder is that he was only a worker at Tuscany Farms .

Joe Anthony Genova testified in his own behalf. In addition, Salvatore Mangano, who worked as comptroller for JGA and did some work for Tuscany Farms as well, testified as to some aspects of Joe Anthony Genova's role in the company, as did Paul Roper, the business consultant hired to help the companies weather their difficulties. The two individuals who likely knew the most about the management of Tuscany Farms, Joe Genova, Jr. and Nicole Wesner, did not testify.

Joe Anthony Genova testified that he was essentially ignorant of all financial and managerial decisions that took place at Tuscany Farms. He stated that he worked the

same job for both JGA and Tuscany Farms, and that his main jobs were looking out for the quality control of produce, repacking and the general handling of produce. Tr. 818. He said he had no involvement in establishing Tuscany Farms, and that he received the same paycheck from the same person and so could not state when Tuscany Farms was even begun. Tr. 817-819. He was made aware he was an officer, but was surprised that he was listed as vice-president, rather than as secretary-treasurer. Tr. 819. He said he rarely ventured "upstairs" where his sister, Nicole Wesner, basically ran the business. Tr. 820. He received a combined income of $60, 253 from the two companies in 2002. PX 1. He stated that he only signed checks when told to do so by his father or sister, or Sal Mangano, that he never attended any shareholder or officer meetings of Tuscany Farms, and that he was not aware of accounts payable or accounts receivable. Tr. 827-829, 834-836. When he was called by a creditor about an invoice or a status of payment he would have the caller talk to someone upstairs. Tr. 829. Even though he signed a proposed payment schedule with DNE, he claimed he had no recollection of it and stated that it must have been drafted by someone else for his signature. Tr. 830-834. He stated he had no participation in the payment of vendors, and no involvement in discussion about the financial conditions of Tuscany Farms. Tr. 834. When asked if he was aware of the budget or accounting practices of Tuscany Farms he replied "We had a budget?" Tr. 835. He stated he was terminated before Tuscany Farms shut down. He said he did not become aware that there were possible problems in payments to produce vendors until "I got a subpoena telling me I needed to be here, and I called and asked what was going on."[10] Tr. 839.

[10] As the Petitioner in PACA-APP 06-0005, Mr. Genova is a party and was not subpoenaed in this case.

Joe Anthony Genova is a college graduate with a degree in agricultural business from California Polytechnic Institute. Tr. 844-845. He has been involved in the family produce business since he was a teenager. Tr. 856. His testimony as to his profound ignorance of many of the significant events encompassing this proceeding is not fully credible, particularly when viewed in the context of his education and experience. I find that he has not met his burden of proof with regard to either of the two-step showing necessary to prevail on his petition.

I find that Joe Anthony Genova was actively involved in matters resulting in a violation of the Act. While he clearly was not the most significant shareholder at Tuscany Farms, he signed many checks, and participated in drafting a payment plan with DNE which he signed on behalf of Tuscany Farms. Further, it is uncontroverted that he bought and sold produce for Tuscany Farms at a time when the company was not fully paying its bills, which has been held to constitute involvement in matters resulting in a violation of the Act. In re: Janet S. Orloff, et al., 62 Agric. Dec. 281 (2003) An individual can be actively involved in matters resulting in a violation of the Act even if he does not purchase produce, but is involved in other functions within the company, such as check writing. In re Lawrence D. Salins, 57 Agric. Dec. 1474, 1489 (1998). Even a "passive investor" with little or no day-to-day role in the company can be actively involved. In re. Ray Justice , 65 Agric. Dec. (slip op. Aug. 11, 2006). Here, the record is replete with documents signed by Joe Anthony Genova on behalf of Tuscany Farms. His signature is on the PACA license application, RX 1, p. 3, he is listed as being elected vice president at a Board of Directors meeting, RX 2, p. 3; he signed off on "Unanimous Written Consent in Lieu of First Meeting of the Board of Directors" on February 15,

2002, RX 2, p. 16, his name is on the bank signature card, RX 4, and application to the IRS for an Employer Tax Identification Number, RX 5, and numerous other documents. He signed many checks, including during the period when Tuscany Farms was not paying many of its bills (See Donald R. Beucke 65 Agric. Dec. (slip op. Nov.8, 2006)), although he testified that basically anything he signed was on the orders of his father or sister, or Sal Mangano or his brother in law Jason Wesner.

I also agree with Complainant that the timing and amount of the "commission" Joe Anthony Genova received is consistent with a finding that he was actively involved. His getting paid a check of over $13,000 on November 5, 2002 is inherently suspect given who he was—an officer, shareholder and director of a failing company—and given the timing—when Tuscany Farms was in a financial crisis and not paying its bills. That this was the only commission payment he received that year is a strong indication, given the circumstances of the company, that he was at the least being given preferential treatment by virtue of his status. In In re. Ray Justice, 65 Agric. Dec. (slip op. Aug. 11, 2006) I held that the decision of Mr. Justice to pay himself back a loan he made to the company at a time the company was in debt constituted active involvement under the statute, even though it was his intention to be a "passive investor" in the company with no role in day-to-day operations.

In sum, Joe Anthony Genova's day-to-day involvement with the company, including buying of produce, participating in the negotiation of debt payment, frequent writing of checks, receipt of a relatively large commission check at a time when Tuscany Farms was not paying for produce in a timely manner, and his status as 24% shareholder,

director and officer lead me to conclude that he did not meet his burden of establishing that he was not actively involved in the activities leading to the disciplinary violations.

Even he professed he was not actively involved, Joe Anthony Genova was more than a nominal officer, director and shareholder of Tuscany Farms. The showing required to prove nominality is not an easy one. While it has been found to cover someone who is listed as an owner because their spouse or parent put them on corporate records, and had no involvement in the corporation or experience in the produce business, Minotto v. USDA, 711 F. 2d 406, 409 (D.C. Cir. 1983), this petitioner had worked in the produce business since high school (transactional work experience),, had a college degree in agricultural business (advanced education), and was involved in the business on a daily basis (on-site activity) including the writing of checks (trusted position) and negotiation of payments (customer interaction). The fact that Congress utilized 10% ownership as sufficient in and of itself to trigger the presumption regarding responsibly connected is a strong indication that a 20% owner must make a particularly compelling case to meet the burden of proof required under 7 U.S.C. §499a(b)(9). The Judicial Officer and the courts have indicated that ownership of approximately 20% of the stock of a company is strong evidence that a person was not serving in a nominal capacity. In re Joseph T. Kocot, 57 Agric. Dec. 1544, 1545 and cases cited thereunder (1998). Here, Petitioner knew he was a 24% stockholder in Tuscany Farms. That he chose not to exercise the authority inherent in his three positions does not relieve him of the duty to do so, and does not make him nominal.

Nicole Wesner is Responsibly Connected to Tuscany Farms

As per the stipulation of counsel during the hearing, there is no dispute that Nicole Wesner is responsibly connected to Tuscany Farms. Tr. 689.

III. Gencon Consulting Has Not Met its Burden to Show Cause why the PACA Branch Should Issue it a License

Shortly after the disciplinary and responsibly connected cases discussed above were scheduled for hearing, the Secretary received an application for a PACA license from Gencon Consulting. Joe Genova, Jr. is the 100 percent owner of Gencon. Tr. 983. Because the PACA Branch believed that Joe Genova & Associates and Tuscany Farms had each committed serious violations of the Act by their failure to fully pay for produce in a timely manner as discussed above, and because Joe Genova, Jr. was admittedly responsibly connected to both Respondent companies[11], the Secretary refused to issue a license to Gencon, Instead, the Secretary issued a Notice order for Gencon to show cause why the Secretary should issue it a PACA license pursuant to 7 U.S.C. §499(d)(d). While a show cause notice in a licensing case must normally be heard within 60 days from the date of the license application, which would have been several weeks before the date the disciplinary and responsibly connected cases would have been heard, counsel for Gencon agreed to waive the 60-day rule and to consolidate the hearing on the license application with the other four scheduled cases.

At the hearing, there was no specific testimony adduced as to why the Secretary should issue Gencon a license. At the conclusion of testimony for all issues in the consolidated cases, counsel for Gencon moved that the Gencon Consulting issue be dismissed as "both premature and prejudicial." Tr. 1001-1002. Opposing counsel

[11] Joe Genova, Jr. did not contest the Agency's initial determinations that he was responsibly connected to JGA and Tuscany Farms.

naturally opposed and I established an accelerated briefing schedule for just the Gencon Consulting licensing issue. Tr. 1003-1111. Subsequent to the hearing, both parties briefed this issue, but then Gencon Consulting moved that I defer ruling on its Motion to Dismiss until I received full briefing on all of the consolidated cases. I granted that request.

Practically speaking, my ruling that both Joe Genova & Associates and Tuscany Farms committed willful, flagrant and repeated violations of the PACA renders moots the license denial issue, since Joe Genova, Jr. is admittedly a responsibly connected shareholder, officer and director of both companies and is thus barred for the statutory period from receiving a PACA license under section 8(b) of the Act. However, Gencon raises several issues in its Motion to Dismiss License Application Denial concerning the validity of the Secretary's approach that need to be addressed. As Gencon puts it in its Motion, "The seminal question is whether the Secretary can deny a license application on the basis of an allegation not yet proven." Motion to Dismiss, p. 3. The short answer to this question is "yes."

The issuance of a PACA license is not an entitlement, but is a privilege subject to the established rules and regulations of the Secretary. Gencon contends, in essence, that absent a specific finding that Joe Genova, Jr. met one of the four conditions spelled out in section 4(b) of the PACA, the license cannot be refused by the Secretary. However, section 4(d) of the Act allows the Secretary to withhold a license pending investigation for the purpose of determining whether prior to the date of the application "any officer or holder of more than 10 per centum of the stock" of a company which "engaged in any practice of the character prohibited by this Act." If the Secretary believes that an

applicant has engaged in prohibited practices and should be denied a license, he must give the applicant an opportunity within 60 days of the date the license was applied for to show cause why the license should not be refused. Thus section 4(d) deals with a situation where there has not been a final determination of wrongdoing under the statute, but where the Secretary believes there would be a risk to those in the produce industry in granting a license even absent a final determination of wrongdoing. The Secretary's duty is not to merely issue a license to anyone who has not been formally found to have committed wrongdoing under the Act, but rather the Secretary has an affirmative duty to protect participants in the produce industry against fraudulent and unfair practices—part of the very purpose of the PACA. Thus, the Secretary has broad discretionary powers to withhold a license under 4(d) which go beyond the specific areas where the withholding of the license is mandatory. See In re: Boss Fruit and Vegetable, 53 Agric. Dec. 761 (1994).

Indeed, if the Secretary believed that disciplinary enforcement action was warranted which would result in a particular individual being barred from holding a PACA license, it would be rather ironic if the Secretary were forced to issue such a person a license on behalf of another company, particularly in light of the fragile and unsecured nature of the perishable produce business. If the Secretary licensed someone who he knew had frequently failed to make full payments promptly and whose transactional records were essentially in a shambles, he would arguably be derelict in exercising his statutory duties. This is precisely the type of situation Congress had in mind when they created section 4(d) of the Act.

There is no shortage of due process here. Joe Genova, Jr. had the right to a prompt hearing, which was generally accommodated by consolidation of this action with the other four actions I am deciding today. No evidence was adduced to demonstrate how Mr. Genova would meet his burden of showing that he would be conducting Gencom's produce business in a manner consistent with the dictates of the Act. The evidence at the hearing overwhelmingly indicated that two companies with which Joe Genova was admittedly responsibly connected had repeated, flagrant and willful violations of the Act, including numerous failures to make full payment promptly, and an accounting system apparently not comprehensible to anyone, including themselves. While at the hearing Gencon initially requested that I consider their Motion on an expedited bases, they modified that request and asked me to decide that Motion along with the rest of the consolidated cases. The opportunity for a hearing, which has been exercised by Gencon, obviates any due process claims.

Thus, I find that the Secretary acted properly in denying Gencon a license under the Act.

Findings of Fact

1. Respondent Tuscany Farms, a Nevada corporation which conducted its business in California, held PACA license 2002-1249. Between August and November, 2002, Tuscany Farms failed to make full payment promptly the sum of $336,200 to three sellers for 65 lots of perishable agricultural goods. In particular:

a. Tuscany Farms failed to make full payment promptly to G & R Produce for 41 lots of limes purchased between August 2 and October 11, 2002. Tuscany Farms made two partial payments, but at the time of the hearing over $222,000 was unpaid.

b. Tuscany Farms failed to make full payment promptly to DLJ Produce, Inc. for 23 lots or potatoes and onions purchased between July 28 and October 24, 2002. DLJ accepted a settlement of $77,385 after being informed by Tuscany Farms that was all they could afford to pay on the claim. At the time of the hearing, at least $111,000 was still owed DLJ by Tuscany Farms.

c. Tuscany Farms failed to make full payment promptly to Horizon Marketing for one lot of grapefruit purchased on September 23, 2002, in the amount of $2,304.

2. Respondent Joe Genova & Associates (JGA), a California corporation, held PACA license 1984-0041. Between February and November, 2002, JGA failed to make full payment promptly the sum of $315, 807 to nine sellers for 123 lots of perishable agricultural goods. In particular:

a. JGA failed to make full payment promptly to Golden Eagle Produce Distributors for 18 lots of vegetables purchased September 6 and October 18, 2002. At the time of the hearing, Golden Eagle was owed $62,285 by JGA.

b. JGA failed to make full payment promptly to DNE Fruit Sales/DNE California for 14 lots of fruit purchased between February 2 and 28, 2002. DNE accepted partial payment after the matter was referred to a collection agency, agreeing to settle for $17,000 when they were informed by Douglas Kerr that the majority of JGA's creditors were settling for 25 to 30 cents on the dollar. At the time of the hearing, DNE was owed over $40,000 by JGA.

c. JGA failed to make full payment promptly to West Coast Distributing, Inc. for 48 lots of mixed fruit purchased between February 17 and April, 24, 2002. While partial

payment has been made, as a result of West Coast's intervention in a reparations case, at the time of the hearing, $117, 206 was owed West Coast by JGA.

d. JGA failed to make full payment promptly to Gold Valley Produce d/b/a Pacific West for 6 lots of fruit purchased between July 23 and August 8, 2002. While partial payment was received as the result of a combined settlement with Tuscany Farms and JGA, $20,270 remained unpaid at the time of the hearing.

e. JGA failed to make full payment promptly to Spalding Produce Company for 4 shipments of oranges and grapefruit between July 26 and September 10, 2002. At the time of the hearing, Spalding Produce was owed $14,118.41 by JGA.

f. JGA failed to make full payment promptly to Pacific Sun Distributing, Inc., for 18 lots of fruit and vegetables purchased between July 23 and September 19, 2002. At the time of the hearing, Pacific Sun was owed $17,496.15 by JGA.

g. JGA failed to make full payment promptly to Stark Packing Corporation for 14 lots of oranges purchased between October 2 and 15, 2002. At the time of the hearing, Stark Packing was owed $26,829.60 by JGA.

h. JGA failed to make full payment promptly to Horizon Marketing for two lots of fruit purchased on November 13-14, 2002. At the time of the hearing, Horizon Marketing was owed $16,482.95 by JGA.

i. JGA failed to make full payment promptly to G & R Produce for one order of limes. At the time of the hearing, G & R was owed $1096.50 by JGA.

3. Joe Anthony Genova was a 24% shareholder in Tuscany Farms from the time it received its PACA license until it ceased purchasing produce, and was also an officer and director during that time. Joe Anthony Genova has been working in the produce

industry from the time he was 16 through the date of the hearing. He is a college graduate with a degree in agricultural business.

4. Joe Anthony Genova was integrally involved in many of the day-to-day operations of Tuscany Farms, signed numerous corporate documents, including checks. He was involved in payment negotiations with DNE. He received and cashed a substantial commission check less than two weeks before Tuscany Farms ceased operations.

5. Joe Genova, Jr. was the president and sole owner of Gencon Consulting at the time it applied for a PACA license. Joe Genova, Jr. was the president and sole owner of JGA and was a 24% shareholder, officer and director of Tuscany Farms at the time the violative actions discussed in Findings 1 and 2 occurred. As such, Joe Genova, Jr. engaged in practices of the character prohibited by the PACA,

Conclusions of Law

1. Respondent Tuscany Farms has violated the PACA willfully, flagrantly and repeatedly by failing to make full payment promptly to three sellers of 65 lots of perishable agricultural commodities in the amount of over $336,000 between July and October 2002.

2. The appropriate sanction for Tuscany Farms, since it is no longer in business, is publication of the facts and circumstances of its violations.

3. Respondent Joe Genova & Associates has violated the PACA willfully, flagrantly and repeatedly by failing to make full payment promptly to nine sellers of 123 lots of perishable agricultural commodities in the amount of over $315,000 between February and November 2002.

4. The appropriate sanction for Joe Genova & Associates, since it is no longer in business, is publication of the facts and circumstances of its violations.

5. Petitioner Joe Anthony Genova was responsibly connected to Tuscany Farms during the time Tuscany Farms committed violations of the PACA. As such, he is subject to the licensing and employment restrictions of the PACA,

6. Petitioner Nicole Wesner was responsibly connected to Tuscany Farms during the time Tuscany Farms committed violations of the PACA. As such, she is subject to the licensing and employment restrictions of the PACA.

7. Gencon Consulting did not show cause why the Secretary should issue it a license. Joe Genova, Jr., the sole owner of Gencon, was responsibly connected to both Tuscany Farms and Joe Genova & Associates while they committed violations of the PACA, engaged in practices of the character prohibited by the PACA, and is subject to the licensing and employment restrictions of the PACA.

Order

The facts and circumstances of the violations committed by Tuscany Farms and Genova & Associates shall be published. Joe Anthony Genova and Nicole Wesner are each found to be responsibly connected to Tuscany Farms and are subject to the employment restrictions imposed by the Act. The Secretary's denial of Gencon Consulting's PACA license is affirmed.

The provisions of this order shall become effective on the first day after this decision becomes final. Unless appealed pursuant to the Rules of Practice at 7 C.F.R. § 1.145(a), this decision becomes final without further proceedings 35 days after service as provided in the Rules of Practice, 7 C.F.R. 1.142(c)(4).

Copies of this decision shall be served upon the parties.

Done at Washington, D.C.
this day of August, 2007

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MARC R. HILLSON
Chief Administrative Law Judge