

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
MARIO J. GREGORI,)	PACA-APP Docket No. 02-0004
)	
Petitioner)	Decision and Order

Decision Summary

[1] I decide that Petitioner Mario J. Gregori, who was previously mistakenly identified as Mario J. Gregori, Jr.,¹ was responsibly connected as defined by 7 U.S.C. § 499a(b)(9) during 2001 and 2002, with Marky’s and Sons, Inc. My decision is based upon Petitioner Mario J. Gregori’s ownership, during 2001 and 2002, of 25% of the shares in Marky’s and Sons, Inc. Such ownership under the circumstances here cannot be considered “nominal.” I mention five reasons: (1) Mario J. Gregori truly owned and controlled his one-fourth interest; he was not holding that interest “in name only” for the benefit of another; (2) one-fourth ownership of a company is substantial; (3) no other shareholder owned a larger share; each shareholder owned the same portion, 25%; (4) the other shareholders were his brothers; they were family, not strangers, in this company that their father originated; and (5) he had been an “insider” who chose to quit being an officer and a director; he had until 1999 been the President and a Director.

¹ Mario J. Gregori, Jr. is Petitioner’s son, who, at the time of the hearing, was a 20-year old college student and is not alleged to have been responsibly connected with Marky’s and Sons, Inc.

Consequently, by being a 25% shareholder in Marky's and Sons, Inc., who was not a nominal shareholder, Petitioner Mario J. Gregori was responsibly connected to Marky's and Sons, Inc. when it violated section 2 of the Perishable Agricultural Commodities Act (the PACA), 7 U.S.C. § 499b, by failing to pay reparation awards.

Procedural History

[2] Petitioner Mario J. Gregori filed his petition for review on February 25, 2002. The agency record was "late filed" on March 21, 2002, over Petitioner's objection, as authorized by U. S. Administrative Law Judge Dorothea A. Baker by Order dated April 12, 2002.

[3] Confusion arose regarding Petitioner's true name, but clarity came from the hearing. Petitioner's true name is Mario J. Gregori, without the "Jr."² The case caption was amended during the hearing to "Mario J. Gregori, Petitioner." Tr. 17.

[4] Petitioner Mario J. Gregori (hereinafter frequently referred to as Mario J. Gregori) has been represented throughout the proceeding by Watson, Bennett, Colligan, Johnson & Schechter, LLP, of Buffalo, New York; by James W. Bennett, Esq., by Christopher B. Reich, Esq., and by Mark R. Walling, Esq.

² Petitioner's counsel (prior to Mr. Walling's involvement) filed the Petition using [Mario J. Gregori, Jr.] when referring to Petitioner Mario J. Gregori, because the PACA notification of the responsibly connected determination included [Jr.] The [Jr.] apparently crept into PACA's correspondence through the two affidavits (CARX 6) that Petitioner's counsel had submitted to PACA and which are also part of the Petition (Exhibit E). Petitioner Mario J. Gregory signed his own affidavit without correcting it, adding to the confusion. Petitioner Mario J. Gregori has a son who was born in or about 1982, whose name truly IS Mario J. Gregori, Jr. Petitioner Mario J. Gregori, full name Mario James Gregori, born in 1955 (Tr. 11), the son of the originator of the company, Mario Gregori (deceased), was called [Junior] at work, but he is Mario J. Gregori the first, as his father did not have the middle name James. Tr. 10-16.

[5] Respondent Chief, PACA Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA (hereinafter frequently referred to as “PACA”) has been represented throughout the proceeding by Andrew Y. Stanton, Esq., Office of the General Counsel, United States Department of Agriculture.

[6] Judge Baker scheduled a hearing for March 12, 2003, in Buffalo, New York. On October 16, 2002, the case was reassigned to me, in view of Judge Baker’s pending retirement. I held the hearing as scheduled. Witnesses testified and exhibits were admitted into evidence. Post-hearing, additional exhibits were admitted into evidence. The parties filed proposed transcript corrections, on June 4, 2003 and on June 18, 2003, which are hereby accepted.

[7] Mario J. Gregori’s exhibits admitted into evidence are PX A, B, C, D, E, F & G (all attached to his Petition); and PX 1- PX 7. Several of these exhibits are filed within the case file instead of a separate exhibit file.

[8] PACA’s exhibits admitted into evidence include the Certified Agency Record, which contains the determination by the Chief, PACA Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, dated January 17, 2002 (CARX); and CARX 1-9; and RX 10 through RX 13. Some of these exhibits are filed within the case file instead of a separate exhibit file.

[9] Mario J. Gregori’s Proposed Findings of Fact and Conclusions of Law with opening brief were timely filed on July 31, 2003; his reply brief was timely filed September 16, 2003.

[10] PACA’s Proposed Findings of Fact, Conclusions, and Order with supporting response brief were timely filed August 22, 2003.

Findings of Fact

[11] Mario J. Gregori is an individual who was born in 1955 and whose mailing address at the time of hearing was 1287 Tanglewood Drive, North Tonawanda, New York 14120. Tr. 11-12.

[12] Marky's and Sons, Inc. (hereinafter frequently referred to as Marky's) was incorporated in approximately 1991. Tr. 89.

[13] Mario J. Gregori was a 1/3 owner of the shares of Marky's, originally, as were two of his brothers, Dominic and Peter, each being a 1/3 owner of the shares. Tr. 89.

[14] Mario J. Gregori, and his brothers Dominic and Peter, each became an equal shareholder with their brother John in 1998, each being a 1/4 owner of the shares. Tr. 90.

[15] Marky's had paid, by the date of the hearing, the \$13,400 Reparation Award,³ plus interest and handling fee, that had been entered against Marky's by the Judicial Officer on March 13, 2001, in favor of Everkrisp Vegetables, Inc. CARX 2. Tr. 222.

[16] Marky's failed to pay the \$6,023.50 Reparation Award,⁴ plus interest and handling fee, that had been entered against Marky's by the Judicial Officer on March 13, 2001, in favor of Gold Ribbon Potato Co. CARX 2. Tr. 227.

[17] Marky's failed to pay the \$13,557 Reparation Award,⁵ plus interest and handling fee, that had been entered against Marky's, by the Judicial Officer on April 12, 2001, in favor of K.F. Thiel & Son's Produce. CARX 2. Tr. 228.

³ The award was [\$13,400, with interest thereon at the rate of 10 per centum per annum from July 1, 2000, until paid, plus the amount of \$300.] PACA Docket No. RD-01-134. CARX 2.

⁴ The award was [\$6,023.50, with interest thereon at the rate of 10 per centum per annum from July 1, 2000, until paid, plus the amount of \$300.] PACA Docket No. RD-01-135. CARX 2.

[18] In addition to the reparation awards identified in paragraphs [15], [16], and [17], which were identified in PACA's responsibly connected notification letter, four additional reparation awards were entered against Marky's during 2001 and 2002, as identified in paragraphs [19], [20], [21], and [22].

[19] Marky's failed to pay the \$4,775 Reparation Award,⁶ plus interest and handling fee, that had been entered against Marky's by the Judicial Officer on July 9, 2001, in favor of Tri Campbell Farms. RX 11. Tr. 228.

[20] Marky's failed to pay the \$11,106 Reparation Award,⁷ plus interest and handling fee, that had been entered against Marky's by the Judicial Officer on July 31, 2001, in favor of Sharyland L.P., d/b/a Plantation Produce Company. RX 11. Tr. 228.

[21] Marky's failed to pay the \$50,656.87 Reparation Award,⁸ plus interest and handling fee, that had been entered against Marky's, by the Judicial Officer on August 29, 2001, in favor of Agri-Empire. RX 11.

[22] Marky's failed to pay the \$17,537.50 Reparation Award,⁹ plus interest and handling fee, that had been entered against Marky's, by the Judicial Officer on January 2, 2002, in favor of Hatco Packing. RX 11. Tr. 228.

⁵ The award was \$13,557, with interest thereon at the rate of 10 per centum per annum from September 1, 2000, until paid, plus the amount of \$300. PACA Docket No. RD-01-140. CARX 2.

⁶ The award was \$4,775, with interest thereon at the rate of 10 per centum per annum from July 1, 2000, until paid, plus the amount of \$300. PACA Docket No. RD-01-204. RX 11.

⁷ The award was \$11,106, with interest thereon at the rate of 10 per centum per annum from September 1, 2000, until paid, plus the amount of \$300. PACA Docket No. RD-01-204. RX 11.

⁸ The award was \$50,656.87, with interest thereon at the rate of 10 per centum per annum from July 1, 2000, until paid, plus the amount of \$300. PACA Docket No. RD-01-251. RX 11.

[23] When the seven Reparation Awards identified in paragraphs [15], [16], [17], [19], [20], [21] and [22] were entered, Mario J. Gregori was a 25% shareholder in Marky's, and he remained a 25% shareholder through at least March 12, 2003, the date of the hearing.

[24] When the reparation awards were entered, Mario J. Gregori had not been an employee of Marky's for eight months or longer, and he had not been an officer or director of Marky's for nearly twenty months or longer.

[25] Until July 19, 1999, Mario J. Gregori was the President and a Director of Marky's. Tr. 91-94; 177. PX 1.

[26] Beginning about three weeks after July 19, 1999, and lasting for approximately one year, into July 2000, Mario J. Gregori continued to work as a buyer for Marky's, but as an employee only. Tr. 94-96; 177-80. PX 2.

[27] While employed by Marky's, Mario J. Gregori was the buyer of the potatoes from Everkrisp Vegetables, Inc. referenced in paragraph [15] and from Gold Ribbon Potato Co. referenced in paragraph [16]. Tr. 182-85, 238-39. CARX 3-4.

[28] Mario J. Gregori's last pay stub as an employee of Marky's was for the pay period ending July 2, 2000. Tr. 95-96; 179-80.

[29] As of March 10, 2003, two days before the hearing, six of the seven reparation awards remained unpaid, those identified at paragraphs [16], [17], [19], [20], [21] and [22]. Tr. 222, 227-28.

⁹ The award was \$17,537.50, with interest thereon at the rate of 10 per centum per annum from November 1, 2000, until paid, plus the amount of \$300. PACA Docket No. RD-02-044. RX 11.

[30] Mario J. Gregori was not served with copies of, and was unaware of (until notified in connection with PACA's consideration of his being responsibly connected), six of the seven reparation awards entered against Marky's. Tr. 155-57. He was aware, at least by May 2001 (Tr. 228-231, PX B), of the Everkrisp Vegetables, Inc. Reparation Award, which had been paid by the time of the hearing.

Discussion

[31] By being a 25% shareholder in Marky's and Sons, Inc., who was not a nominal shareholder, Mario J. Gregori was responsibly connected to Marky's and Sons, Inc. when it violated section 2 of the Perishable Agricultural Commodities Act (the PACA), 7 U.S.C. § 499b.

[32] This Discussion, paragraphs [31] through [44], focuses on (1) why I determine that Mario J. Gregori was not actively involved in Marky's failures to pay reparation awards; and (2) why I determine that Mario J. Gregori was not a nominal shareholder and thus must nevertheless be determined to be responsibly connected to Marky's during its PACA violations.

[33] The standard for determining whether a person is actively involved in the activities resulting in a violation of the PACA is set forth in *In re Michael Norinsberg*, 58 Agric. Dec. 604 (1999) (Decision and Order on Remand), as follows:

A petitioner who participates in activities resulting in a violation of the PACA is actively involved in those activities, unless the petitioner demonstrates by a preponderance of the evidence that his or her participation was limited to the performance of ministerial functions only. Thus, if a petitioner demonstrates by a preponderance of the evidence that he or she did not exercise judgment, discretion, or control with respect to the activities that resulted in a violation of the PACA, the petitioner would not be found to have been actively involved in the activities that resulted in a violation of the PACA and would meet the first prong of the responsibly connected test.

58 Agric. Dec. at 610-11.

[34] Mario J. Gregori meets the first prong of the responsibly connected test; he was *not actively involved*: he did not exercise judgment, discretion, or control *with respect to the activities that resulted in a violation of the PACA, that is, failure to pay reparation awards*.

[35] The time period involved here is the time period in which Marky's violated the PACA by failing to pay reparation awards. The reparation awards were entered beginning in 2001. Marky's failure to pay them began in 2001 and continued into 2002. Consequently, whether Mario J. Gregori was actively involved in Marky's activities prior to 2001 is irrelevant to my decision.

[36] Based on the credible testimony of Mario J. Gregori and of each witness he called, and supporting documentation, I find that Mario J. Gregori did not participate in the activities of or decisions made by Marky's and Sons, Inc. that led to its failures to pay the reparation awards. Such activities of and decisions made by Marky's would have occurred in 2001 or 2002. Mario J. Gregori had previously ceased being an officer and a director, in mid-1999; and he no longer worked for Marky's and Sons, Inc., having last been an employee in mid-2000.

[37] PACA argues that Mario J. Gregori was Marky's buyer who purchased some of the perishable agricultural commodities that Marky's failed to pay for, those purchased from Everkrisp Vegetables, Inc. and Gold Ribbon Potato Co. I determine that such occurrences would have been *prior* to the time during which the responsibly connected determination must be made here, 2001 and 2002. Mario J. Gregori last worked for Marky's in July 2000. Tr. 94-96. PX 2.

[38] PACA argues that Mario J. Gregori still worked for Marky's in 2001, based on the \$5,466 in wages from Marky's shown on his 2001 income tax return (PX 6). At the hearing it became clear that it was error to attribute that income to Marky's. I determine that the \$5,466 in 2001 income was paid by Big M Services, Inc., the new corporation which Mario J. Gregori formed on September 22, 2000. PX 5, PX 6, first page (Mario J. Gregori's 2001 W-2 form); PX 7 (2001 income tax return, Schedule E); PX F; Tr. 111-51.

[39] PACA argues that Mario J. Gregori was noted as a person to contact in the April 2000 Blue Book, the September 2000 Red Book, and the August 9, 2001 electronic Blue Book. I determine that the obsolete, inaccurate Blue Book and Red Book listings, which Marky's apparently had failed to update, do not render Mario J. Gregori actively involved beginning in 2001. Tr. 158-60; 164-69.

[40] PACA argues that Mario J. Gregori can be considered actively involved because of his failure to exercise the authority he held as a 25% shareholder to obviate the violations by Marky's, citing *Siegel v. Lyng*, 851 F.2d 412, 417 (D.C. Cir. 1988), and also the Judicial Officer's decision in *In re Anthony L. Thomas*, 59 Agric. Dec. 367, 386 (2000). Although those cases provide persuasive authority, the evidence here does not persuade me that Mario J. Gregori contributed to Marky's failure to pay the reparation orders; or that Mario J. Gregori could have, by virtue of his status as a 25% shareholder of Marky's, done anything to prevent Marky's from failing to pay the reparation orders. Consequently, I decline to find Mario J. Gregori to have been actively involved beginning in 2001 based upon his 25% ownership.

[41] Nevertheless, Mario J. Gregori was unable to establish both of the two prongs required to avoid being found responsibly connected. He did establish one of the two prongs: he proved by

a preponderance of the evidence that during 2001 and 2002, he was not actively involved in Marky's and Sons, Inc.'s failures to pay for the perishable agricultural commodities that are evidenced by the unpaid reparation awards. But he cannot prove that he is a nominal shareholder.

[42] Cross-examination on March 12, 2003, by Andrew Stanton (Tr. 193-96), solidly established Mario J. Gregori's ongoing status as a 25% shareholder in control of his shares:

By Mr. Stanton:

Q. Now, you still have 25 percent stock interest in Marky's and Sons, isn't that right?

By Mario J. Gregori:

A. Yes, sir.

By Mr. Stanton:

Q. And you never gave that up, you still have it today, correct? You never gave it up?

By Mario J. Gregori:

A. Right, I still have it today.

By Mr. Stanton:

Q. All right. Now there's no reason why you just couldn't have written a letter to John Gregori, the president, and say, I hereby give up my stock interest, isn't that true? You could have done that?

By Mario J. Gregori:

A. Well, in my mind, who would buy my stock from - - from a family business? I would
...

By Mr. Stanton:

Q. Well, you could have just given it up to Mr. - - to your brother. You could have just said, I hereby turn in my stock, and that's it, isn't that true?

By Mr. Walling:

Your Honor, I object.

By Mario J. Gregori:

A. But that never came to mind.

By Mr. Walling:

That . . .

By Administrative Law Judge:

Just a moment.

By Mario J. Gregori:

A. I mean the stock part . . .

By Administrative Law Judge:

Just a moment. Let me hear your lawyer's objection. Mr. Walling.

By Mr. Walling:

It's really - - it's really asking for a legal opinion, whether he could just give up his stock by writing a letter. It's really a legal issue. It's not a fact issue.

By Administrative Law Judge:

Objection is noted but overruled. The witness may answer. Now, do you remember his question?

By Mario J. Gregori:

A. Yeah, about the stock.

By Mr. Stanton:

Q. You could have written a letter to your brother, John Gregori, the President of Marky's and Sons, and just said, I hereby give up my stock. You could have done that, isn't that true?

By Mario J. Gregori:

A. Yeah.

By Mr. Stanton:

Q. But you chose not to do it?

By Mario J. Gregori:

A. Right. And I . . .

By Mr. Stanton:

Q. That would have meant - - that would have meant, of course, not getting money for your stock, right?

By Mario J. Gregori:

A. That's correct.

By Mr. Stanton:

Q. And you didn't want that?

By Mario J. Gregori:

A. Well, I'd like to get what I had coming to me. That's . . .

By Mr. Stanton:

Q. Right.

By Mario J. Gregori:

A. . . . I only had 25 percent of the company. I'd like to get my share.

By Mr. Stanton:

Q. So you were hoping to get something in return for your 25 percent?

By Mario J. Gregori:

A. Yes, sir.

By Mr. Stanton:

Q. And you're still hoping to get that now, right?

By Mario J. Gregori:

A. Whatever. If I do, I do. If I don't, I don't. I mean, yeah, still hoping to get it, yes, sir.

By Mr. Stanton:

Q. Isn't that the reason you just didn't abandon your stock, just didn't give it up?

By Mario J. Gregori:

A. Yes, sir, that is the reason why I didn't abandon it, yes.

Tr. 193 - 96.

[43] During April 12, 2001 through February 2, 2002, Mario J. Gregori owned 25% of Marky's, as he had since 1998. (Before that, he owned an even larger percentage, 33-1/3%.) An owner need not control a company to be found responsibly connected. Every holder of more than 10% of the outstanding stock of a corporation is held to be responsibly connected, unless he can prove that he should be excepted (under the two prong test). The prong that Mario J. Gregori cannot prove is being a nominal shareholder; for the reasons stated in paragraph [44], I hold that he was not.

[44] First, Mario J. Gregori truly owned and controlled his one-fourth interest; he was not holding that interest “in name only” for the benefit of another. Second, one-fourth ownership of a company is substantial. Third, no other shareholder owned a larger share; each shareholder owned the same portion, 25%. Fourth, the other shareholders were his brothers; they were family, not strangers, in this company that their father originated. And last, he had been an “insider” who chose to quit being an officer and a director; he had until 1999 been the President and a Director. Such a shareholder cannot be considered nominal. Thus, even though he was not actively involved during 2001 and 2002, Mario J. Gregori was responsibly connected. He cannot prove the second prong of the *Norinsberg* exception.

Conclusion

[45] By being more than a 10% shareholder, in fact a 25% shareholder, in Marky’s and Sons, Inc., Mario J. Gregori, who was not a nominal shareholder, was responsibly connected to Marky’s as defined by 7 U.S.C. § 499a(b)(9), during 2001 and 2002, when Marky’s violated section 2 of the Perishable Agricultural Commodities Act (the PACA) (7 U.S.C. § 499b) by failing to pay reparation orders.

Order

[46] This Decision affirms the determination by the Chief, PACA Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, contained in his letter dated January 17, 2002 (see CARX), that Mario J. Gregori was responsibly connected with Marky’s and Sons, Inc. during the time of Marky’s failure to pay reparation awards in violation of the PACA, which I find to have been during 2001 and 2002.

[47] Accordingly, Mario J. Gregori is subject to the licensing restrictions under section 4(b) of the PACA and the employment restrictions under section 8(b) of the PACA (7 U.S.C. §§ 499d(b), 499h(b)).

[48] This Decision and Order shall become final and effective thirty-five (35) days after service, unless an appeal to the Judicial Officer is filed within thirty (30) days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 8th day of April 2005

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue, SW
Room 1031, South Building
Washington, D.C. 20250-9203
202-720-4443
Fax: 202-720-9776

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145