

UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

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In re:	)	PACA Docket No. D-07-0205
	)	
Brian Sudano,	)	
	)	
	)	
	)	
Respondent	)	

Decision Without Hearing By Reason of Consent

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended, (7 U.S.C. §499a et seq.; hereinafter "PACA"), and the Regulations issued thereunder (7 C.F.R. Part 46; hereinafter "Regulations"). The proceeding was initiated by a Complaint filed against Brian Sudano (hereinafter "Respondent") on September 26, 2007, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, pursuant to the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R §1.130 et seq., hereinafter "Rules of Practice"). On October 9, 2007, Respondent filed an Answer denying the allegations listed in the Complaint.

The parties have now agreed to the entry of a Decision Without Hearing by Reason of Consent as set forth herein. Therefore, this Decision Without Hearing by Reason of Consent is entered without further procedure or hearing pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 et seq.; hereinafter "Rules of Practice") applicable to this proceeding (7 C.F.R. §1.138).

Findings Of Fact

- (1) Respondent Brian Sudano, is an individual. Respondent's mailing address is 5309 Palomino St., White Marsh, MD 21162.

- (2) On July 30, 2003, Chief Administrative Law Judge James W. Hunt (hereinafter "Chief ALJ") issued a Decision and Order finding Respondent to be responsibly connected to Lexington Produce Co., Inc., when the company committed willful, flagrant, and repeated violations of the PACA.
- (3) On September 2, 2003, Respondent appealed Chief Administrative Law Judge Hunt's Decision and Order to the Judicial Officer, and on May 21, 2004, the Judicial Officer found that Respondent was responsibly connected to Lexington Produce Co., Inc., during the period May 1999 through January 2000, when the company violated the PACA. The Judicial Officer ordered that Respondent was subject to the employment restrictions under Section 8(b) of the PACA (7 U.S.C. §§ 499h(b)).
- (4) Respondent appealed the Judicial Officer's Decision and Order to the United States Court of Appeals in the Fourth Circuit, and on May 13, 2005, the Court of Appeals ruled that the Secretary of Agriculture correctly found that Respondent was responsibly connected to Lexington Produce Co., Inc., when the company violated the PACA.
- (5) The Court of Appeals denied Respondent's petition for review of the Secretary's Decision and Order, and the Court of Appeal's judgment took effect upon its "Notice of Issuance of Mandate" on July 6, 2005. Therefore, Respondent's employment restrictions under Section 8(b) of the PACA began as of July 6, 2005.
- (6) Millennia Marketing, Inc., d/b/a MMI Foods and Millennia Foods, is a corporation whose business address is 7460 Conowingo Ave, Unit 111, Jessup, MD 20794, and whose mailing address is 1104 Grist Court, Fallston, MD 21047.

At all times material herein, Millennia was licensed under the provisions of the PACA. License number 20010988 was issued to Millennia on March 17, 2001, and this license is currently active.

- (7) Respondent failed to comply with the PACA employment sanction, which began on July 6, 2005, by being employed by Millennia Marketing, Inc., d/b/a MMI Foods and Millennia Foods, a PACA licensee, during the period in which employment restrictions of Respondent were in effect under Section 8(b) of the PACA.
- (8) Section 8b of the PACA (7 U.S.C. §§ 499h(b)) states that the Secretary may extend the period of employment sanction as to a responsibly connected person for an additional one-year period upon the determination that the person has been unlawfully employed.

#### Conclusions

Respondent failed to comply with the PACA employment sanction, which began on July 6, 2005, by being employed by Millennia Marketing, Inc., d/b/a MMI Foods and Millennia Foods, a PACA licensee, during the period in which employment restrictions of Respondent were in effect under Section 8(b) of the PACA. The failure of Respondent to comply with the employment and licensing restrictions under the PACA warrants the extension of an additional year of employment sanctions pursuant to Section 8(b) of the Act .

The parties have agreed that Respondent's employment and licensing restrictions shall be extended for one year pursuant to Section 8(b) of the PACA, beginning upon the effective date of this Consent Decision. After the one year period, the PACA Branch may approve Respondent's employment with a PACA licensee or entity operating subject to the PACA, if the

licensee or entity furnishes and maintains a surety bond in form and amount satisfactory to the PACA Branch as assurance that the licensee or entity will pay all reparation awards, subject to their right of appeal under 7(c) of the Act, which may be issued against them in connection with transactions occurring within four years following the approval.

Order

Respondent willfully violated Section 8(b) of the PACA (7 U.S.C. §499h(b)). Respondent's employment and licensing restrictions under Section 8(b) of the PACA (7 U.S.C. §499h(b)) are hereby extended for a period of one year. The Administrative Law Judge will retain jurisdiction over this case pending any final motions by the parties.

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

Done at Washington, D.C.

this 28th day of February, 2008

  
Victor W. Palmer  
Administrative Law Judge

2/27/08  
Date signed



Bruce Summers  
Associate Deputy Administrator  
Fruit and Vegetable Programs  
Agricultural Marketing Service

2/20/08  
Date signed



Christopher Young-Morales  
Attorney for Complainant

2/25/08  
Date signed



Brian Sudano  
Respondent