SUMMARY OF MAJOR DECISIONS BY THE JUDICIAL OFFICER

Fiscal Year 2002

In *In re Hartford Packing Co., Inc.*, PACA Docket No. D-01-0010, decided by the Judicial Officer on October 5, 2001, the Judicial Officer granted Respondent's motion to withdraw its appeal petition. The Judicial Officer stated that, while a party's motion to withdraw its own appeal petition is generally granted, a withdrawal of an appeal petition is not a matter of right. The Judicial Officer stated that, based on the limited record before him, he found no basis for denying Respondent's motion to withdraw its appeal petition. Based on his granting Respondent's motion to withdraw its appeal petition, the Judicial Officer concluded that Chief Administrative Law Judge James W. Hunt's Decision Without Hearing by Reason of Default filed in the proceeding on September 5, 2001, was the final decision in the proceeding.

In *In re H.C. MacClaren, Inc.*, PACA Docket D-99-0012, decided by the Judicial Officer on November 8, 2001, the Judicial Officer revoked Respondent's PACA license for making false and misleading statements, for a fraudulent purpose, in connection with transactions involving perishable agricultural commodities in willful violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)). The Judicial Officer found that Respondent's employees altered 53 United States Department of Agriculture (USDA) inspection certificates and made eight false accounts of sales resulting in Respondent's underpayment to its produce suppliers and/or brokers of $137,502.15. The Judicial Officer found that Respondent's employees acted within the scope of their employment when they altered the USDA inspection certificates and made the false accounts of sales; therefore, the Judicial Officer concluded, as a matter of law, that Respondent was responsible for its employees' violations (7 U.S.C. § 499p). The Judicial Officer rejected Respondent's request for the assessment of a civil penalty and reversed the Chief ALJ's assessment of a $50,000 civil penalty stating that Respondent's violations were egregious and egregious violations warranted either suspension or revocation of the violator's PACA license. The Judicial Officer held the Chief ALJ erroneously failed to find that Respondent's violations were willful. The Judicial Officer found Complainant failed to prove by a preponderance of the evidence that Respondent's principals knew of the violations but found that Respondent's principals should have known of the violations. The Judicial Officer rejected Complainant's contention that the Chief ALJ's failure to discuss more of the violative transactions and the testimony of each of Complainant's witnesses were error. The Judicial Officer rejected Respondent's contention that the assessment of civil penalties in similar cases which were settled by the entry of consent decisions should determine the sanction in the proceeding. The Judicial Officer stated that consent orders are given no weight in determining the sanction in a litigated case.

In *In re Deora Sewnanan*, P.Q. Docket No. 00-0018, decided by the Judicial Officer on November 9, 2001, the Judicial Officer vacated Administrative Law Judge Dorothea A. Baker's (ALJ) Default Decision and Order. The Judicial Officer found the ALJ's Default Decision and Order was based on the ALJ's finding that Respondent failed to file an answer within 20 days after Respondent had been served with the Complaint, as required by 7 C.F.R. § 1.136(a). The

Judicial Officer found the record contained no proof that Respondent had been served with the Complaint.

In *In re PMD Brokerage Corp.*, PACA Docket No. D-99-0004 (Decision and Order on Remand), decided by the Judicial Officer on November 26, 2001, the Judicial Officer affirmed the Initial Decision and Order on Remand issued by Chief Administrative Law Judge James W. Hunt concluding Respondent committed repeated, flagrant, and willful violations of the Perishable Agricultural Commodities Act, 1930 (PACA), by failing to make full payment promptly for produce. The Judicial Officer rejected Respondent's contention that the administrative law judge failed to consider the evidence before issuing a decision. The Judicial Officer stated that in the absence of clear evidence to the contrary, public officers are presumed to have properly discharged their official duties. Administrative law judges must consider the record in a proceeding prior to the issuance of a decision in that proceeding and an administrative law judge is presumed to have considered the record prior to the issuance of his or her decision. The Judicial Officer refused to draw an inference from a similarity between a party's filing and an administrative law judge's decision that the administrative law judge failed to properly discharge his or her duty to consider the record prior to the issuance of a decision. The Judicial Officer also rejected Respondent's contention that the administrative law judge's findings of fact were unreliable. The Judicial Officer concluded, after reviewing the record, that the administrative law judge's findings of fact were supported by reliable, probative, and substantial evidence. Moreover, the Judicial Officer stated Complainant proved by a preponderance of the evidence that Respondent violated 7 U.S.C. § 499b(4), as alleged in the Complaint. The Judicial Officer further rejected Respondent's contention that it was denied due process. Finally, the Judicial Officer denied Respondent's petition to reopen the hearing. As Respondent no longer had a PACA license, the Judicial Officer ordered the publication of the facts and circumstances set forth in the Decision and Order on Remand.

In *In re Kirby Produce Company, Inc.*, PACA Docket No. D-98-0002 (Order Denying Complainant's Request for Reconsideration of Remand Order), decided by the Judicial Officer on November 27, 2001, the Judicial Officer denied Complainant's request for reconsideration of *In re Kirby Produce Co.*, 60 Agric. Dec. ___ (Aug. 27, 2001) (Remand Order). The Judicial Officer rejected Complainant's contention that the Court in *Kirby Produce Co. v. United States Dep't of Agric.*, 256 F.3d 830 (D.C. Cir. 2001), remanded *Kirby* with a mandate that the United States Department of Agriculture adopt a new "slow-pay"/"no-pay" policy for the *Kirby* proceeding. The Judicial Officer concluded the Court in *Kirby Produce Co. v. United States Dep't of Agric.* remanded the proceeding to the United States Department of Agriculture to determine whether the case is a "no-pay" or a "slow-pay" case using the United States Department of Agriculture's "slow-pay"/"no-pay" policy adopted in *In re Gilardi Truck & Transp., Inc.*, 43 Agric. Dec. 118 (1984).

In *In re Rufina Acevedo Perez*, P.Q. Docket No. 01-0017, decided by the Judicial Officer on November 28, 2001, the Judicial Officer affirmed the Default Decision issued by Administrative Law Judge Dorothea A. Baker (ALJ): (1) concluding that Respondent imported approximately 36 fresh mangoes from Mexico into the United States in violation of 7 C.F.R. §§

319.56(c), .56-2i, .56-2x, and .56-3; (2) concluding that Respondent imported approximately 2 pounds of cherries from Mexico into the United States in violation of 7 C.F.R. §§ 319.56(c) and .56-3; (3) concluding that Respondent imported one fresh sweet lime from Mexico into the United States in violation of 7 C.F.R. § 319.56(c); and (4) assessing Respondent a $500 civil penalty. At Respondent's request, the Judicial Officer provided for the payment of the civil penalty in installments of $50 per month.

In *In re Dale Goodale*, AWA Docket No. 01-0006 (Remand Order), issued by the Judicial Officer on December 11, 2001, the Judicial Officer vacated Chief Administrative Law Judge James W. Hunt's (Chief ALJ) default decision and remanded the proceeding to the Chief ALJ to give Respondent a hearing.

In *In re Paul Eugenio, d/b/a Repxotics, Inc.*, AWA Docket No. 00-0027, decided by the Judicial Officer on December 21, 2001, the Judicial Officer denied Respondent's late-filed appeal. The Judicial Officer stated that he has no jurisdiction to consider Respondent's appeal filed after Administrative Law Judge Dorothea A. Baker's Decision and Order Upon Admission of Facts By Reason of Default became final.

In *In re Steven Bourk* (Decision and Order as to Steven Bourk and Carmella Bourk), AWA Docket No. 01-0004, decided by the Judicial Officer on January 4, 2002, the Judicial Officer reversed the Default Decision issued by Chief Administrative Law Judge James W. Hunt. The Judicial Officer deemed Respondents' failure to file a timely answer to the complaint an admission of the allegations in the complaint (7 C.F.R. § 1.136(c)) and a waiver of hearing (7 C.F.R. § 1.139). The Judicial Officer concluded Respondents operated as dealers as defined in the Animal Welfare Act (7 U.S.C. § 2132(f)) and the Regulations (9 C.F.R. § 1.1) without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. § 2.1. The Judicial Officer ordered Respondents to cease and desist from violating the Animal Welfare Act and the Regulations; assessed Respondents, jointly and severally, a $5,000 civil penalty; and disqualified Respondents from obtaining an Animal Welfare Act license for 30 days. The Judicial Officer held the Chief ALJ erroneously concluded Donya Bourk violated the Animal Welfare Act and the Regulations because Complainant had previously withdrawn the Complaint as to Donya Bourk and, at the time the Chief ALJ issued the Default Decision, Donya Bourk was not a party to the proceeding. The Judicial Officer rejected Respondent Carmella Bourk's contention that the Chief ALJ had not read her objections to the Complainant's motion for a default decision and proposed default decision, stating, in the absence of evidence to the contrary, public officers are presumed to have properly discharged their duties. The Judicial Officer further stated that, under the Rules of Practice (7 C.F.R. § 1.139), the Chief ALJ had the duty to read and consider Respondent Carmella Bourk's timely-filed objections and the record contained no indication that the Chief ALJ failed to properly perform his duty. The Judicial Officer rejected Respondent Steven Bourk's request that he be provided with counsel stating that a respondent who is unable to obtain counsel has no right under the Constitution, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in disciplinary administrative proceedings conducted under the Animal Welfare Act.

In *In re Norea Ivelisse Abreu*, P.Q. Docket No. 99-0045, decided by the Judicial Officer on January 24, 2002, the Judicial Officer affirmed the Default Decision issued by Administrative Law Judge Dorothea A. Baker (ALJ): (1) finding that on or about July 9, 1998, Respondent imported one jar of fresh, peeled mangoes from the Dominican Republic into the United States at Jamaica, New York, in violation of 7 C.F.R. § 319.56 because the importation of mangoes from the Dominican Republic into the United States is prohibited; (2) concluding that Respondent violated 7 C.F.R. § 319.56; and (3) assessing Respondent a $500 civil penalty. The Judicial Officer held Respondent's contention that she did not intentionally violate 7 C.F.R. § 319-56 was not relevant to an administrative proceeding for the assessment of a civil penalty under section 10 of the Plant Quarantine Act (7 U.S.C. § 163). At Respondent's request, the Judicial Officer provided for the payment of the $500 civil penalty in installments of $50 per month for 10 months. The Judicial Officer rejected Complainant's contentions that Respondent did not offer an appropriate basis for an appeal and that Respondent's appeal petition was so deficient that it should be denied.

In *In re PMD Produce Brokerage Corp.*, PACA Docket No. D-99-0004 (Order Denying Petition for Reconsideration and Petition for New Hearing on Remand), decided by the Judicial Officer on February 14, 2002, the Judicial Officer denied Respondent's petition for a new hearing because it was filed after the date the Judicial Officer issued the Decision and Order on Remand. The Rules of Practice (7 C.F.R. § 1.146(a)(2)) require that a petition to reopen the hearing must be filed prior to the issuance of the Judicial Officer's decision. The Judicial Officer also denied Respondent's petition for reconsideration. The Judicial Officer rejected Respondent's contention that Administrative Law Judge Edwin S. Bernstein (ALJ) did not consider the record before issuing the November 17, 1999, oral decision. The Judicial Officer stated in the absence of clear evidence to the contrary, public officers are presumed to have properly discharged their official duties. An administrative law judge must consider the record in a proceeding prior to the issuance of a decision in that proceeding and an administrative law judge is presumed to have considered the record prior to the issuance of his or her decision. The Judicial Officer rejected Respondent's contention that, because of the similarity between one of Complainant's filings and the ALJ's decision, the ALJ should not be presumed to have properly discharged his duty to consider the record. The Judicial Officer also rejected Respondent's contention that Complainant had the burden of proving the non-existence of an agreement between Respondent and its creditors. The Judicial Officer found that Respondent, as the party with the better knowledge of the purported agreement and the party which affirmatively asserts the existence of the agreement, has the burden of proving the existence of the agreement. The Judicial Officer stated the record does not establish that Respondent entered into written agreements with its creditors electing to use different times of payment than those set forth in 7 C.F.R. § 46.2(aa)(1)-(10) before entering into the perishable agricultural commodities transactions that are the subject of the proceeding. The Judicial Officer stated he could find no basis and Respondent cited no basis for Respondent's contention that the agreement Respondent entered into with its creditors after the transactions that are the subject of the Complaint precludes Complainant from a statutory interest in the transactions that are the subject of the Complaint.

In *In re The International Siberian Tiger Foundation* (Decision as to The International Siberian Tiger Foundation, an Ohio corporation; Diana Cziraky, an individual; The Siberian Tiger Foundation, an unincorporated association; and Tiger Lady, a/k/a Tiger Lady LLC, an unincorporated association), AWA Docket No. 01-0017, decided by the Judicial Officer on February 15, 2002, the Judicial Officer reversed the Initial Decision issued by Chief Administrative Law Judge James W. Hunt. The Judicial Officer concluded that Respondents failed to handle lions and tigers during public exhibition so there was minimal risk of harm to the animals and the public and failed to have sufficient distance or barriers or distance and barriers between the animals and the general viewing public so as to assure the safety of the animals and the public, in willful violation of 9 C.F.R. § 2.131(b)(1). The Judicial Officer also concluded that Respondent Diana Cziraky exhibited animals during a period when her Animal Welfare Act license was suspended, in willful violation of 9 C.F.R. § 2.10(c). The Judicial Officer stated Complainant proved Respondent Diana Cziraky's violation of 9 C.F.R. § 2.10(c) and Respondents' violations of 9 C.F.R. § 2.131(b)(1) by a preponderance of the evidence, which is the standard of proof applicable in administrative proceedings under the Animal Welfare Act. The Judicial Officer rejected Respondents' contention that 9 C.F.R. § 2.131(b)(1) does not provide Respondents with adequate notice of the conduct which is required of Respondents. The Judicial Officer rejected Complainant's contention that Respondents' trainees were members of "the public" or "the general viewing public" as those terms are used in 9 C.F.R. § 2.131(b)(1), but agreed with Complainant's contention that exhibitors exhibiting animals are not members of "the public" or members of "the general viewing public" as those terms are used in 9 C.F.R. § 2.131(b)(1). The Judicial Officer also held that assumption of the risk of harm by members of the public is not relevant to whether Respondents violated 9 C.F.R. § 2.131(b)(1). The Judicial Officer rejected Respondents' contentions that 9 C.F.R. § 2.131(b)(1) exceeds the authority granted to the Secretary of Agriculture under the Animal Welfare Act and that 9 C.F.R. § 2.131(b)(1) interferes with state and local regulations designed to control animals to protect human beings. The Judicial Officer also stated the Animal Welfare Act does not explicitly or implicitly preempt state or local regulation of animal or public welfare. The Judicial Officer ordered Respondents to cease and desist violations of the Animal Welfare Act and the regulations issued under the Animal Welfare Act and revoked Respondent Diana Cziraky's Animal Welfare Act license.

In *In re Robert B. McCloy, Jr.*, HPA Docket No. 99-0020, decided by the Judicial Officer on March 22, 2002, the Judicial Officer affirmed the decision by Administrative Law Judge Dorothea A. Baker (ALJ) concluding that Respondent allowed the entry of a horse in a horse show while the horse was sore in violation of 15 U.S.C. § 1824(2)(D) and assessing Respondent a $2,200 civil penalty. In addition, the Judicial Officer disqualified Respondent for 1 year from exhibiting, showing, or entering any horse and from managing, judging, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction. The Judicial Officer found that Respondent's residence and place of business are in Oklahoma and concluded that, under 15 U.S.C. § 1825(b)(2), (c), Respondent may obtain judicial review in the United States Court of Appeals for the Tenth Circuit and the United States Court of Appeals for the District of Columbia Circuit. Therefore, the Judicial Officer rejected Respondent's request that the Judicial Officer apply the tests adopted in *Lewis v. Secretary of Agric.*, 73 F.3d 312 (11th Cir.

1996); *Baird v. United States Dep't of Agric.*, 39 F.3d 131 (6th Cir. 1994); and *Burton v. United States Dep't of Agric.*, 683 F.2d 280 (8th Cir. 1982), to determine whether Respondent violated 15 U.S.C. § 1824(2)(D). The Judicial Officer rejected Complainant's contention that the ALJ's credibility determinations were error, stating the Judicial Officer gives great weight to the ALJ's credibility determinations because of her opportunity to see and hear the witnesses testify. The Judicial Officer also rejected Complainant's contention that the ALJ erred by receiving and finding credible self-serving testimony. The Judicial Officer stated that neither the Administrative Procedure Act nor the Rules of Practice prohibits the reception of self-serving testimony and self-serving testimony is not as a matter of law unworthy of belief. The Judicial Officer rejected Complainant's argument that Respondent's Exhibit C was irrelevant stating that it had a tendency to make the existence of a fact of consequence to the determination of the proceeding more likely than it would be without the exhibit. The Judicial Officer agreed with Complainant's contention that the ALJ erroneously referred to two written statements as "affidavits." The Judicial Officer stated that one of the statements was clearly not a writing made on oath or affirmation before a person having authority to administer the oath or affirmation. The Judicial Officer found that the other written statement lacked a notary seal. Therefore, there was not sufficient proof that the person who administered the oath had authority to administer the oath.

In *In re Samuel K. Angel* (Order Denying Late Appeal as to Samuel K. Angel), AWA Docket No. 01-0025, decided by the Judicial Officer on April 24, 2002, the Judicial Officer denied Respondent's late-filed appeal. The Judicial Officer stated that he had no jurisdiction to hear Respondent's appeal filed after Administrative Law Judge Dorothea A. Baker's Decision and Order Upon Admission of Facts By Reason of Default became final.

In *In re Captain Jack's Tomatoes, Inc.* (Decision as to The Fresh Group, Ltd., d/b/a Maglio and Co.), PACA Docket No. D-00-0008, decided by the Judicial Officer on April 30, 2002, the Judicial Officer affirmed the Decision and Order issued by Chief Administrative Law Judge James W. Hunt: (1) concluding The Fresh Group, Ltd., d/b/a Maglio and Co. (Respondent), willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4) by failing to make full payment promptly for produce; (2) assessing Respondent a $150,000 civil penalty; and (3) providing for a 60-day suspension of Respondent's PACA license if the civil penalty is not paid within 90 days after service of the Order on Respondent. The Judicial Officer found that Captain Jack's Tomatoes, Inc. (CJTI), violated 7 U.S.C. § 499b(4) and Respondent was liable for these violations because Respondent exercised complete domination and control over CJTI's day-to-day operations during the time the violations occurred. Respondent was therefore a dealer and bore responsibility for CJTI's unlawful actions. The Judicial Officer rejected Respondent's contention that Complainant must establish Respondent was responsibly connected with CJTI in order to prove that Respondent violated 7 U.S.C. § 499b(4) stating that administrative proceedings to determine whether a person is "responsibly connected," as defined in 7 U.S.C. § 499a(b)(9), are instituted under 7 U.S.C. § 499h(b). The issue in these "responsibly connected" cases is whether one person is or has been responsibly connected with another person: (1) whose PACA license has been revoked or is currently suspended; (2) who has been found to have committed any flagrant or repeated violation of 7 U.S.C. § 499b; or (3) against whom there is an

unpaid reparation award issued within 2 years. A person found to be responsibly connected is barred from employment by PACA licensees, except as provided in 7 U.S.C. § 499h(b). The Judicial Officer stated the proceeding before him was not a proceeding instituted under 7 U.S.C. § 499h(b) to determine whether Respondent is responsibly connected with CJTI and barred from employment by PACA licensees. Instead, the proceeding was an administrative disciplinary proceeding instituted under the PACA to determine whether willful, flagrant, and repeated violations of 7 U.S.C. § 499b(4) had been committed and, if they had been committed, the identity of the entity or entities that committed the violations. The Judicial Officer also rejected Respondent's contention that evidence supporting a civil penalty in excess of $22,000 was inadmissible. The Judicial Officer stated that oral and documentary evidence supporting Complainant's proposed sanction was relevant and under 7 U.S.C. § 499h(e) the Secretary of Agriculture had authority to assess Respondent a civil penalty in excess of $22,000. Finally, the Judicial Officer rejected Respondent's argument that Complainant's sanction witness could not testify about information in documents Respondent provided to Complainant's counsel during settlement negotiations. The Judicial Officer found that Respondent filed these same documents with the Hearing Clerk as proposed exhibits and Complainant had no reason to treat Respondent's filing of proposed exhibits as confidential.

In *In re JSG Trading Corp.* (Rulings as to JSG Trading Corp. Denying: (1) Motion to Vacate; (2) Motion to Reopen; (3) Motion for Stay; and (4) Request for Pardon or Lesser Sanction), PACA Docket Nos. D-94-0508 and D-94-0526, decided by the Judicial Officer on May 1, 2002, the Judicial Officer denied each of JSG Trading Corp.'s (Respondent) motions and requests. The Judicial Officer rejected Respondent's contention that *Finer Foods, Inc. v. United States Dep't of Agric.*, 274 F.3d 1137 (7th Cir. 2001), compelled vacating *In re JSG Trading Corp.* (Decision and Order on Remand as to JSG Trading Corp.), 58 Agric. Dec. 1041 (1999), because the Court in *Finer Foods* found that a factual inquiry was necessary to determine whether Joan Colson committed perjury in a declaration filed in *Finer Foods*. The Judicial Officer stated the accuracy of Joan Colson's declaration filed in *Finer Foods*, a case which has no connection with *In re JSG Trading Corp.* (Decision and Order on Remand as to JSG Trading Corp.), 58 Agric. Dec. 1041 (1999), is not relevant to Joan Colson's credibility in *In re JSG Trading Corp.* (Decision and Order on Remand as to JSG Trading Corp.), 58 Agric. Dec. 1041 (1999). The Judicial Officer denied Respondent's motion to reopen the hearing because it was not filed before the Judicial Officer issued the Decision and Order on Remand as to JSG Trading Corp., as required by 7 C.F.R. § 1.146(a)(2). The Judicial Officer denied Respondent's motion for a stay pending further proceedings against Ms. Colson pursuant to *Finer Foods* stating the Court in *Finer Foods* did not order further proceedings against Ms. Colson. The Judicial Officer denied Respondent's request for a pardon or a lesser sanction stating Respondent's request was a petition for reconsideration of the sanction in *In re JSG Trading Corp.* (Decision and Order on Remand as to JSG Trading Corp.), 58 Agric. Dec. 1041 (1999), which was not filed within 10 days after Respondent was served with *In re JSG Trading Corp.* (Decision and Order on Remand as to JSG Trading Corp.), 58 Agric. Dec. 1041 (1999), as required by 7 C.F.R. § 1.146(a)(3). The Judicial Officer stated that even if the petition for reconsideration had not been late-filed, he would have rejected Respondent's request for a pardon. The Judicial Officer, citing *United States v. Wilson*, 32 U.S. 150, 160 (Jan. Term 1833), stated a pardon is an act which exempts the

individual on whom it is bestowed from the punishment the law inflicts for a crime he or she has committed. The Judicial Officer stated Respondent has not been convicted of a crime. Further, the Judicial Officer stated Respondent raised no meritorious basis for its request for a reduction of the sanction imposed in *In re JSG Trading Corp.* (Decision and Order on Remand as to JSG Trading Corp.), 58 Agric. Dec. 1041 (1999).

In *In re Salvador Sanchez-Gomez*, A.Q. Docket No. 01-0010, decided by the Judicial Officer on May 28, 2002, the Judicial Officer affirmed the Default Decision issued by Administrative Law Judge Dorothea A. Baker (ALJ): (1) concluding that Respondent imported a pet canary into the United States in violation of 9 C.F.R. §§ 101(a), .104(a), and .105(b); and (2) assessing Respondent a $1,000 civil penalty. The Judicial Officer rejected Respondent's assertion that he did not import a pet canary, but rather imported a cheap pet parakeet. The Judicial Officer stated that the complaint alleged Respondent imported a pet canary and Respondent is deemed by his failure to file a timely answer to the complaint to have admitted the allegations in the complaint (7 C.F.R. § 1.136(c)). Moreover the Judicial Officer stated that 9 C.F.R. §§ 93.101(a), .104(a), and .105(b) apply equally to pet canaries and pet parakeets; thus, the disposition of the proceeding would not be altered even if the Judicial Officer found that respondent imported a pet parakeet. The Judicial Officer also rejected Respondent's contention that his confusion regarding the instructions he received concerning the return of his pet bird to Mexico was a meritorious basis for Respondent's failure to file a timely answer to the complaint and timely objections to Complainant's motion for adoption of a proposed decision and order and Complainant's proposed decision and order. Finally, the Judicial Officer rejected Respondent's offer to pay a civil penalty equal to the price of the pet parakeet Respondent asserted he imported into the United States. The Judicial Officer stated that a $1,000 civil penalty was warranted in law, justified by the facts, and consistent with the United States Department of Agriculture's sanction policy.

In *In re Wayne W. Coblentz*, P. & S. Docket No. D-01-0013, decided by the Judicial Officer on May 30, 2002, the Judicial Officer affirmed the Default Decision issued by Administrative Law Judge Jill S. Clifton (ALJ): (1) finding Respondent issued checks in payment for livestock purchases which checks were returned unpaid by the bank upon which they were drawn because Respondent did not have and maintain sufficient funds on deposit and available in the accounts upon which the checks were drawn to pay the checks when presented; (2) finding Respondent purchased livestock and failed to pay, when due, the full purchase price of the livestock; (3) finding $281,970.90 of the $477,591.30 Respondent failed to pay when due remained unpaid at the time the Complaint was issued; (4) concluding Respondent willfully violated 7 U.S.C. §§ 213(a) and 228b; (5) ordering Respondent to cease and desist from violating 7 U.S.C. §§ 213(a) and 228b; and (6) suspending Respondent as a registrant under the Packers and Stockyards Act for a period of 5 years. The Judicial Officer rejected Respondent's contentions that the Default Decision should be set aside based on Respondent's late payment of livestock sellers, Respondent's agreement with one livestock seller to effect payment in a manner other than required by 7 U.S.C. § 228b(a), and Respondent's belief that an answer to the complaint was not required.

In *In re Robert B. McCloy, Jr.* (Order Denying Petition for Reconsideration), HPA Docket No. 99-0020, decided by the Judicial Officer on June 20, 2002, the Judicial Officer denied Respondent's petition for reconsideration. The Judicial Officer rejected Respondent's contention that based on *Fleming v. United States Dep't of Agric.*, 713 F.2d 179 (6th Cir. 1983), the United States Court of Appeals for the Sixth Circuit had jurisdiction to review *In re Robert B. McCloy, Jr.*, 61 Agric. Dec. ___ (Mar. 22, 2002). The Judicial Officer also rejected Respondent's contention that the Department's long-standing position that a horse owner is a guarantor that his or her horse will not be sore when entered in a horse show or horse exhibition is an unexplained extension of *In re Keith Becknell*, 54 Agric. Dec. 335 (1995). The Judicial Officer further rejected Respondent's contention that the Judicial Officer improperly changed the administrative law judge's initial decision, stating that, under the Administrative Procedure Act (5 U.S.C. § 557(b)) and the Rules of Practice (7 C.F.R. § 1.145(i)), the Judicial Officer may adopt or reject an administrative law judge's initial decision. The Judicial Officer rejected Respondent's contention that *Crawford v. United States Dep't of Agric.*, 50 F.3d 46 (D.C. Cir.), *cert. denied*, 516 U.S. 824 (1995), is inapposite. Finally, the Judicial Officer rejected respondent's request that the Judicial Officer consider the proceeding in light of *Lewis v. Secretary of Agric.*, 73 F.3d 312 (11th Cir. 1996); *Baird v. United States Dep't of Agric.*, 39 F.3d 131 (6th Cir. 1994); and *Burton v. United States Dep't of Agric.*, 683 F.2d 280 (8th Cir. 1982).