SUMMARY OF MAJOR DECISIONS BY THE JUDICIAL OFFICER

Fiscal Year 2003

In *In re Heartland Kennels, Inc.*, AWA Docket No. 02-0004, decided by the Judicial Officer on October 8, 2002, the Judicial Officer affirmed the Default Decision issued by Chief Administrative Law Judge James W. Hunt (Chief ALJ), revoking Respondent Skaarhaug's Animal Welfare Act license, assessing Respondents, jointly and severally, a $54,642.50 civil penalty, and ordering Respondents to cease and desist from violating the Animal Welfare Act and the Regulations and Standards issued under the Animal Welfare Act. The Judicial Officer deemed Respondents' failure to file a timely answer an admission of the allegations in the complaint and a waiver of hearing (7 C.F.R. §§ 1.136(c), .139). Respondents argued that their failure to file a timely answer was due to excusable neglect and under Rule 6(b) of the Federal Rules of Civil Procedure, the time for filing their answer should be enlarged. The Judicial Officer denied Respondents' request for enlargement stating that the Federal Rules of Civil Procedure are not applicable to administrative proceedings conducted before the Secretary of Agriculture under the Animal Welfare Act and the Rules of Practice. Relying on *Houston v. Lack*, 487 U.S. 266 (1988), Respondents argued that documents filed by Terry Wharff McGloghlon, a prisoner and a pro se respondent in this proceeding, must be deemed to be filed with the Hearing Clerk on the day the documents were delivered to prison authorities for forwarding to the Hearing Clerk. The Judicial Officer rejected Respondents' argument stating that Mr. McGloghlon was not a respondent in the proceeding and that *Houston v. Lack* was inapposite because it construed the Federal Rules of Appellate Procedure which are not applicable to administrative proceedings conducted before the Secretary of Agriculture under the Animal Welfare Act. Moreover, under the Rules of Practice applicable to the proceeding, a document required or authorized to be filed under the Rules of Practice is deemed to be filed at the time the document reaches the Hearing Clerk (7 C.F.R. § 1.147(g)). The Judicial Officer also rejected Respondents' argument that the proceeding should be remanded to the Chief ALJ for a hearing because a remand would not prejudice Complainant's ability to present his case. Finally, the Judicial Officer stated that, based on the limited record before him, he could not conclude that Respondents' maintenance of expired and ineffective drugs by itself was a failure to provide adequate veterinary care in violation of 9 C.F.R. § 2.40(b)(1), (b)(2), as alleged in the complaint.

In *In re David Finch, d/b/a Wild Iowa*, AWA Docket No. 02-0014, decided by the Judicial Officer on October 23, 2002, the Judicial Officer affirmed the Default Decision issued by Chief Administrative Law Judge James W. Hunt (Chief ALJ), finding that the Respondent violated the Animal Welfare Act and the Regulations and Standards issued under the Animal Welfare Act as alleged in the Complaint, disqualifying the Respondent from obtaining an Animal Welfare Act license, assessing the Respondent a $4,000 civil penalty, and ordering the Respondent to cease and desist from violating the Animal Welfare Act and the Regulations and Standards issued under the Animal Welfare Act. The Judicial Officer deemed the Respondent's failure to file a timely answer an admission of the allegations in the Complaint and a waiver of hearing (7 C.F.R. §§ 1.136(c), .139).

In *In re Heartland Kennels, Inc.*, AWA Docket No. 02-0004, decided by the Judicial Officer on November 13, 2002, the Judicial Officer denied Respondents' Petition for Reconsideration. The Judicial Officer rejected Respondents' late-filed request for an opportunity to defend against the allegations in the Complaint stating, by their failure to file a timely answer, Respondents had waived their right to a hearing and were deemed to have admitted the allegations in the Complaint (7 C.F.R. §§ 1.136(c), .139).

In *In re David Finch, d/b/a Wild Iowa*, AWA Docket No. 02-0014, decided by the Judicial Officer on December 16, 2002, the Judicial Officer denied Respondent's Petition for Reconsideration because it was not filed within 10 days after the date the Hearing Clerk served Respondent with the Decision and Order, as required by 7 C.F.R. § 1.146(a)(3).

In *In re Heartland Kennels, Inc.*, AWA Docket No. 02-0004, decided by the Judicial Officer on December 17, 2002, the Judicial Officer denied Respondents' Second Petition for Reconsideration because it was not filed within 10 days after the date the Hearing Clerk served Respondents with the Decision and Order, as required by 7 C.F.R. § 1.146(a)(3), and because, under the Rules of Practice, a party may not file more than one petition for reconsideration of a decision of the Judicial Officer.

In *In re Janet S. Orloff* (Decision as to Merna K. Jacobson), PACA-APP Docket No. 01-0002, decided by the Judicial Officer on January 7, 2003, the Judicial Officer affirmed Administrative Law Judge Clifton's decision affirming the Chief of the PACA Branch's determination that Petitioner was *responsibly connected* with Jacobson Produce, Inc., at the time Jacobson Produce, Inc., violated the PACA. The Judicial Officer found that Petitioner held more than 10% of the stock of Jacobson Produce, Inc., during the period that Jacobson Produce, Inc., violated the PACA. Thus, Petitioner met the first sentence of the definition of the term *responsibly connected* in 7 U.S.C. § 499a(b)(9), and the burden was on Petitioner to demonstrate by a preponderance of the evidence that she was not responsibly connected with Jacobson Produce, Inc. The Judicial Officer stated that 7 U.S.C. § 499a(b)(9) provides a two-pronged test which Petitioner had to meet to demonstrate that she was not responsibly connected. First, Petitioner had to demonstrate by a preponderance of the evidence that she was not actively involved in the activities resulting in a violation of the PACA. Since the statutory test is in the conjunctive ("and"), Petitioner's failure to meet the first prong of the statutory test resulted in the Petitioner's failure to demonstrate that she was not responsibly connected, without recourse to the second prong. 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. *See In re Michael Norinsberg*, 58 Agric. Dec. 604, 610-11 (1999) (Decision and Order on Remand). Petitioner was the buyer of, or was responsible for buying, produce from produce suppliers which Jacobson Produce, Inc., did not pay in accordance with the PACA. The

Judicial Officer found Petitioner's purchase of, or responsibility for the purchase of, this produce was active involvement in activities that resulted in Jacobson Produce, Inc.'s violations of the PACA. Moreover, the Judicial Officer found Petitioner did not demonstrate by a preponderance of the evidence that her participation in the purchase of produce was limited to the performance of ministerial functions only. Petitioner, as a buyer for and manager of Jacobson Produce, Inc.'s frozen foods department, decided whether to make produce purchases on behalf of Jacobson Produce, Inc., and chose to do so even though she knew or should have known that Jacobson Produce, Inc., was not paying produce suppliers for perishable agricultural commodities in accordance with the PACA. The Judicial Officer rejected Petitioner's argument that in order to be actively involved in the activities resulting in a PACA licensee's violation of the PACA, a petitioner must actually commit the PACA violation stating a petitioner's failure to make full payment promptly is not the only activity that can result in a PACA licensee's failure to make full payment promptly in accordance with the PACA.

In *In re Excel Corporation*, P. & S. Docket No. D-99-0010, decided by the Judicial Officer on January 30, 2003, the Judicial Officer affirmed the decision of Chief Administrative Law Judge James W. Hunt: (1) concluding Respondent failed to make known to hog producers the change in the formula to estimate lean percent prior to purchase of hogs on a carcass merit basis from those producers in violation of 7 U.S.C. § 192(a) and 9 C.F.R. § 201.99(a); and (2) ordering Respondent to cease and desist from failing to comply with 7 C.F.R. § 201.99(a). The Judicial Officer rejected Respondent's contention that the Packers and Stockyards Act must be narrowly construed stating the Packers and Stockyards Act is remedial legislation that should be liberally construed to effectuate its purposes. The Judicial Officer stated two of the primary purposes of the Packers and Stockyards Act are to prevent economic harm to livestock producers and to maintain open and free competition. Respondent impeded competition by failing to make known to producers the change in the formula it used to estimate lean percent of hogs, a factor that affected the amount Respondent paid for hogs. The Judicial Officer also rejected Respondent's contention that 7 C.F.R. § 201.99 was an advisory regulation that did not have the force and effect of law. Further, the Judicial Officer rejected Respondent's contention that 7 C.F.R. § 201.99(a) was vague, stating the regulation put Respondent on notice that it is required to make known to hog producers a change in the formula to estimate lean percent. The Judicial Officer stated the formula to estimate lean percent is part of the grading process and the regulation explicitly requires packers to notify producers of "the grading to be used." The Judicial Officer agreed with Complainant's contention that, under the Rules of Practice (7 C.F.R. § 1.140(a)(1)(iv)), Complainant was not required to provide Respondent the names of anticipated witnesses. The Judicial Officer found the Chief ALJ's cease and desist order did not bear a reasonable relation to the unlawful practice the Chief ALJ found to exist and the Chief ALJ's order that Respondent agree to submit the matter to arbitration with hog producers was not a sanction authorized by the Packers and Stockyards Act. However, the Judicial Officer rejected Complainant's contention that the Chief ALJ's failure to assess a severe civil penalty was error. The Judicial Officer rejected Respondent's request that he reverse the Chief ALJ's credibility determination with respect to one of the witnesses, stating the Judicial Officer gives great weight to the credibility determinations of administrative law judges and there was no basis to reverse the Chief ALJ's credibility determination. Finally, the Judicial Officer refused to consider the

new issues raised in Respondent's response to Complainant's appeal petition stating, under the Rules of Practice (7 C.F.R. § 1.145(b)), a party who has previously filed an appeal petition must limit the response to supporting or opposing the other party's appeal petition.

In *In re Robert A. Roberti, Jr.*, PACA Docket No. D-03-0006, decided by the Judicial Officer on February 14, 2003, the Judicial Officer ruled in response to a question certified by Chief Judge James W. Hunt: Is Respondent entitled to a PACA license, pursuant to 7 U.S.C. § 499d(d), because the Secretary of Agriculture did not conclude her investigation of Respondent's fitness for a PACA license within 30 days of the date Respondent filed his PACA license application? The Judicial Officer concluded the Secretary of Agriculture completed the investigation of Respondent's fitness for a PACA license no later than December 4, 2002, 29 days after Respondent filed a valid PACA license application, as required by 7 C.F.R. § 46.4. The Judicial Officer concluded the term "full or complete answers to all the questions," as used in 7 C.F.R. § 46.4(d), indicates that Respondent's answers to questions must not be lacking in any essential and must have all the necessary parts, elements, or steps. The Judicial Officer found Respondent's October 10, 2002, and October 29, 2002, PACA license applications were not complete. Further, the Judicial Officer concluded the Respondent's October 10, 2002, and October 29, 2002, PACA license applications were not inaccurate, but rather were incomplete; therefore, 7 C.F.R. § 46.4(f) was not applicable to the proceeding.

In *In re Fresh Valley Produce, Inc.*, PACA-APP Docket No. 01-0001, decided by the Judicial Officer on March 20, 2003, the Judicial Officer affirmed Judge Baker's (ALJ) decision that Fresh Valley Produce, Inc. (Petitioner), was responsibly connected with Fresh Valley Food Service, LLC, when Fresh Valley Food Service, LLC, failed to pay a reparation award in violation of the PACA. The Judicial Officer found Petitioner was the holder of 40 percent of the outstanding stock of Fresh Valley Food Service, LLC. The Judicial Officer rejected the Petitioner's contention that Petitioner's president did not have authority to establish Fresh Valley Food Service, LLC, and to make the Petitioner a member of Fresh Valley Food Service, LLC. The Judicial Officer also rejected the Petitioner's argument that it was not actively involved in the activities that resulted in the violation of the PACA. The Judicial Officer held that the violation of the PACA occurred when Fresh Valley Food Service, LLC, failed to pay the reparation award by June 16, 2000, and not when Fresh Valley Food Service, LLC, initially failed to make prompt payment for produce. Finally, the Judicial Officer rejected the Petitioner's contention that the ALJ erred when she considered testimony that was not part of the record when the Chief of the PACA Branch made his determination that the Petitioner was responsibly connected with Fresh Valley Food Service, LLC. The Judicial Officer stated, under 7 C.F.R. § 1.136(a), the record upon which the Chief of the PACA Branch bases his responsibly connected determination is only part of the record in the proceeding to review that determination.

In *In re Darrall S. McCulloch* (Decision and Order as to Phillip Trimble), HPA Docket No. 02-0002, decided by the Judicial Officer on March 27, 2003, the Judicial Officer affirmed the Default Decision by Chief Administrative Law Judge James W. Hunt assessing Respondent a $2,200 civil penalty and disqualifying Respondent for 1 year because Respondent entered, for the purpose of showing or exhibiting in a horse show, a horse which was sore, as defined in 9 C.F.R.

§ 11.3(a), in violation of 15 U.S.C. § 1824(2)(B). The Judicial Officer rejected Respondent's contention that he did not have notice of the complaint until February 3, 2003. The Judicial Officer stated the Hearing Clerk properly served Respondent with the complaint on February 10, 2002, in accordance with 7 C.F.R. § 1.147(c)(1), by mailing the complaint by certified mail to Respondent's last known principal place of business where someone signed for the complaint. The Judicial Officer stated, under these circumstances, Respondent is deemed to have had notice of the complaint on February 10, 2002. The Judicial Officer also rejected Respondent's contention that he was denied due process. The Judicial Officer stated the Rules of Practice are reasonably calculated to apprise parties of the pendency of an action and afford them an opportunity to be heard. Therefore, the Rules of Practice, which were followed in the proceeding, meets the requirements of due process.

In *In re Herman Camara*, BPRA Docket No. 02-0002, decided by the Judicial Officer on April 3, 2003, the Judicial Officer affirmed the Default Decision by Administrative Law Judge Jill S. Clifton: (1) concluding Respondent violated the Beef Promotion Order and the Beef Promotion Regulations (7 C.F.R. §§ 1260.172, .175, .310, .312); (2) assessing Respondent an $11,000 civil penalty; (3) ordering Respondent to pay past-due assessments and late-payment charges to the Cattlemen's Beef Board; and (4) ordering Respondent to cease and desist from violating the Beef Promotion Act, the Beef Promotion Order, and the Beef Promotion Regulations. The Judicial Officer rejected Respondent's contention that he was not properly served with documents filed in the proceeding. The Judicial Officer also rejected Respondent's contention that there were "other valid reasons" for setting aside the Initial Decision and Order and providing Respondent with opportunity for hearing. The Judicial Officer stated the Rules of Practice require that each issue in an appeal petition must be plainly stated (7 C.F.R. § 1.145(a)). The Judicial Officer dismissed Respondent's unadorned "other valid reasons" as a basis for setting aside the Default Decision and providing opportunity for hearing on the ground that Respondent failed to plainly state the issue.

In *In re Foster Enterprises*, 2002 AMA Docket No. F&V 1250-1, decided by the Judicial Officer on April 8, 2003, the Judicial Officer affirmed Chief Administrative Law Judge James W. Hunt's Order Dismissing Petition. Neither Respondent nor Petitioners asserted Petitioners were persons subject to the Egg Research and Promotion Order (7 C.F.R. §§ 1250.301-363) (Egg Order). Petitioners, therefore, lacked standing to file a petition for modification of, or to be exempted from, the Egg Order under 7 U.S.C. § 2713(a). The Judicial Officer rejected Petitioners' argument that the Secretary of Agriculture's requests for Petitioners' documents pertaining to transactions during a period prior to Petitioners' filing the Petition made Petitioners persons subject to the Egg Order with standing to file a petition in accordance with 7 U.S.C. § 2713(a). The Judicial Officer also rejected Petitioners' argument that *Midway Farms v. United States Dep't of Agric.*, 188 F.3d 1136 (9th Cir. 1999), was apposite.

In *In re J.R. Simplot Company*, PVPA Docket No. 02-0001, decided by the Judicial Officer on April 14, 2003, the Judicial Officer dismissed with prejudice Petitioner's appeal of the Commissioner of the Plant Variety Protection Office's refusal to record the assignment of Lofts L-93 from AgriBioTech, Inc., to Petitioner, and refusal to disavow a statement attributed to a

Plant Variety Protection Office employee. The Judicial Officer stated that, under the Plant Variety Protection Act, he had only been delegated authority to perform the functions of the Secretary of Agriculture under 7 U.S.C. § 2443 to hear appeals by applicants of the Commissioner's refusal to grant their applications for plant variety protection.

In *In re Janet S. Orloff* (Decision as to Merna K. Jacobson), PACA-APP Docket No. 01-0002, decided by the Judicial Officer on April 24, 2003, the Judicial Officer denied Petitioner's petition for reconsideration. The Judicial Officer held Petitioner's contention that she was only nominally a partner was irrelevant because there was no finding that she was a partner in the violating PACA licensee. Instead, the evidence established that Petitioner was a holder of more than 10 per centum of the outstanding stock of the violating PACA licensee. The Judicial Officer also held Petitioner's contention that she was only nominally a manager was irrelevant because the second prong of the two-pronged statutory test to show she was not responsibly connected does not require that she show she was only nominally a manager of the violating PACA licensee. The Judicial Officer rejected Petitioner's contention that the finding that Petitioner knew or should have known that the violating PACA licensee was not paying its bills, was error. The Judicial Officer also rejected Petitioner's contention that she was not actively involved in the activities resulting in the PACA violations.

In *In re Lion Raisins, Inc.*, 2002 AMA Docket No. F&V 989-1, decided by the Judicial Officer on May 12, 2003, the Judicial Officer remanded the proceeding to Administrative Law Judge Jill S. Clifton to issue an order in accordance with the Rules of Practice. The Judicial Officer found the ALJ's Order Denying Respondent's Motion to Dismiss But Requiring Petitioner to File Verification of Petitioner's Date of Incorporation did not conform to the Rules of Practice (7 C.F.R. §§ 900.52(c)(2), .52a(a)). The Judicial Officer stated the Rules of Practice are binding on administrative law judges. A conclusion by the ALJ that a petition does not conform to 7 C.F.R. § 900.52(b) requires that the ALJ dismiss the petition or a portion of the petition and permit the Petitioner to file an amended petition within 20 days following service on the Petitioner of the ALJ's dismissal, as provided in 7 C.F.R. § 900.52(c)(2). The Respondent must be permitted to file an answer to any amended petition in accordance with 7 C.F.R. § 900.52a(a).

In *In re Boghosian Raisin Packing Co., Inc.*, 2002 AMA Docket No. F&V 989-6, decided by the Judicial Officer on May 13, 2003, the Judicial Officer remanded the proceeding to Administrative Law Judge Jill S. Clifton to issue an order in accordance with the Rules of Practice. The Judicial Officer found the ALJ's Order Granting in Part and Denying in Part Respondent's Motion to Dismiss Petition did not conform to the Rules of Practice (7 C.F.R. §§ 900.52(c)(2), .52a(a)). The Judicial Officer stated the Rules of Practice are binding on administrative law judges. A conclusion by the ALJ that a petition does not conform to 7 C.F.R. § 900.52(b) requires that the ALJ dismiss the petition or a portion of the petition and permit the Petitioner to file an amended petition within 20 days following service on the Petitioner of the ALJ's dismissal as provided in 7 C.F.R. § 900.52(c)(2). The Respondent must be permitted to file an answer to any amended petition in accordance with 7 C.F.R. § 900.52a(a).

In *In re Lion Raisins, Inc.*, 2002 AMA Docket No. F&V 989-5, decided by the Judicial Officer on May 13, 2003, the Judicial Officer remanded the proceeding to Administrative Law Judge Jill S. Clifton to issue an order in accordance with the Rules of Practice. The Judicial Officer found the ALJ's Order Granting in Part and Denying in Part Respondent's Motion to Dismiss Petition did not conform to the Rules of Practice (7 C.F.R. §§ 900.52(c)(2), .52a(a)). The Judicial Officer stated the Rules of Practice are binding on administrative law judges. A conclusion by the ALJ that a petition does not conform to 7 C.F.R. § 900.52(b) requires that the ALJ dismiss the petition or a portion of the petition and permit the Petitioner to file an amended petition within 20 days following service on the Petitioner of the ALJ's dismissal as provided in 7 C.F.R. § 900.52(c)(2). The Respondent must be permitted to file an answer to any amended petition in accordance with 7 C.F.R. § 900.52a(a).

In *In re J.R. Simplot Company*, PVPA Docket No. 02-0002, decided by the Judicial Officer on June 2, 2003, the Judicial Officer affirmed Commissioner Paul M. Zankowski's denial of Petitioner's request for revival of an abandoned application for plant variety protection for a variety of creeping bentgrass known as "Lofts L-93." The Judicial Officer agreed with the Commissioner that Petitioner's request for revival of the abandoned application was not filed within 3 months of abandonment as required by 7 C.F.R. § 97.22. The Judicial Officer rejected Petitioner's contentions that: (1) equity and justice required waiver of the 3-month deadline in 7 C.F.R. § 97.22; (2) the 3-month deadline in 7 C.F.R. § 97.22 was contrary to the Plant Variety Protection Act; (3) the Secretary of Agriculture had no authority to issue 7 C.F.R. § 97.22; (4) the United States Department of Agriculture did not explain the basis for or reference the legal authority for 7 C.F.R. § 97.22 in the relevant rulemaking documents; (5) 7 C.F.R. § 97.22 is so unclear that it cannot be enforced; and (6) Dr. Virginia Lehman, a member of the Plant Variety Protection Board and a person involved with the development of Lofts L-93, did not recuse herself from the Plant Variety Protection Board hearing conducted to provide advice to the Judicial Officer regarding Petitioner's Petition.

In *In re Bowtie Stables, LLC*, HPA Docket No. 00-0017, decided by the Judicial Officer on July 11, 2003, the Judicial Officer affirmed the decision by Administrative Law Judge Jill S. Clifton concluding that James L. Corlew, Sr., and B.A. Dorsey entered Ebony's Bad Bubba in a horse show while the horse was sore in violation of 15 U.S.C. § 1824(2)(B) and Bowtie Stables, LLC, and Betty Corlew allowed the entry of Ebony's Bad Bubba in a horse show while the horse was sore in violation of 15 U.S.C. § 1824(2)(D). The Judicial Officer assessed each Respondent a $2,200 civil penalty and disqualified each Respondent from participating in horse shows, horse exhibitions, horse sales, and horse auctions for 1 year. The Judicial Officer found substantial evidence supported the finding that the horse was sore. The Judicial Officer also found the horse manifested abnormal sensitivity in both of his forelimbs raising the presumption that he was sore and Respondents failed to rebut the presumption. The Judicial Officer held palpation is a highly reliable method for determining whether a horse is sore. The Judicial Officer also held that Ebony's Bad Bubba was entered in the 32nd Annual National Walking Horse Trainers Show even though two Designated Qualified Persons disqualified the horse from competing in the show after concluding their pre-show inspection of the horse. The Judicial Officer found that Betty Corlew could be found to have allowed the entry of Ebony's Bad Bubba in violation of

15 U.S.C. § 1824(2)(D) based on her ownership of Ebony's Bad Bubba and her control of Bowtie Stables, LLC, which was also an owner of Ebony's Bad Bubba.

In *In re Kreider Dairy Farms, Inc.*, 98 AMA Docket No. M 4-1, decided by the Judicial Officer on August 5, 2003, the Judicial Officer affirmed Administrative Law Judge Jill S. Clifton's decision denying Petitioner's amended petition instituted under 7 U.S.C. § 608c(15)(A). In the amended petition, Petitioner challenges the Market Administrator's failure to designate Petitioner a producer-handler for the period December 1995 through December 1999, under former Milk Marketing Order No. 2 (7 C.F.R. pt. 1002 (1999)). The Judicial Officer stated that Petitioner previously litigated the issue of its status as a producer-handler during the period January 1991 through April 1997, in *In re Kreider Dairy Farms, Inc.*, 94 AMA Docket No. M 1-2 (*Kreider I*). The Judicial Officer concluded that issue preclusion bars Petitioner from relitigating its status under former Milk Marketing Order No. 2 for the period December 1995 through April 1997. The Judicial Officer found Petitioner's January 1991 application for designation as a producer-handler, which was the subject of *Kreider I*, was not an application for designation as a producer-handler during the period December 1995 through December 1999; therefore, Petitioner was not eligible for designation as a producer-handler under former Milk Marketing Order No. 2 for the period December 1995 through December 1999. Further, the Judicial Officer concluded that each month during the period May 1997 through December 1999, Petitioner distributed milk to subdealers. Therefore, Petitioner did not have complete and exclusive control over the distribution of its milk, a requirement for designation as a producer-handler under former Milk Marketing Order No. 2. Finally, the Judicial Officer, treating the United States District Court for the Eastern District of Pennsylvania's remand order in *Kreider I* as the law of the case with respect to *In re Kreider Dairy Farms, Inc.*, 98 AMA Docket No. M 4-1, found it was feasible for Petitioner's subdealer customers to obtain milk from other handlers during periods of short production; thus, Petitioner was "riding the pool" and was not eligible for designation as a producer-handler under former Milk Marketing Order No. 2.

In *In re Robert A. Roberti, Jr.*, PACA Docket No. D-03-0006, decided by the Judicial Officer on August 12, 2003, the Judicial Officer affirmed the decision by Chief Administrative Law Judge James W. Hunt concluding, pursuant to 7 U.S.C. § 499d(d), Respondent was unfit to receive a PACA license because of his practices of a character prohibited by the PACA. The Judicial Officer also concluded Respondent is a person who is or was responsibly connected with a person whose PACA license is currently under suspension and pursuant to 7 U.S.C. § 499d(b)(A), the Secretary of Agriculture must refuse a PACA license to Respondent. The Judicial Officer rejected Respondent's contention that the Chief ALJ erroneously relied upon 7 U.S.C. § 499d(b) and Respondent's contention that Respondent's connection with violations of 7 U.S.C. § 499b(4) was a legally insufficient basis for finding Respondent unfit to engage in the business of a commission merchant, dealer, or broker.