

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. 12-0475
)
West Coast Commodities, LLC,)
d/b/a M. Partlow Co.; and)
Michael Paul Partlow,)
)
Respondents) **Order Denying Late Appeal**

PROCEDURAL HISTORY

Alan R. Christian, Deputy Administrator, Packers and Stockyard Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on June 15, 2012. The Deputy Administrator instituted the proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act]; the regulations issued pursuant to the Packers and Stockyards Act (9 C.F.R. pt. 201) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Deputy Administrator alleges, during the period August 9, 2010, through August 4, 2011, West Coast Commodities, LLC, and Michael Paul Partlow willfully violated the Packers

and Stockyards Act and the Regulations.¹ On June 22, 2012, the Hearing Clerk served West Coast Commodities, LLC, and Mr. Partlow with the Complaint at their business address, 1720 SW 4th Avenue, Portland, Oregon 97201.² On July 16, 2012, West Coast Commodities, LLC, and Mr. Partlow filed an Answer in which they denied the material allegations of the Complaint.

On December 21, 2012, Mr. Partlow sent an e-mail to Marilyn Kennedy, a legal secretary in the Office of Administrative Law Judges, United States Department of Agriculture, stating all correspondence regarding this proceeding should be sent to:

West Coast Commodities, LLC
Mike Partlow
8150 SW Barnes Rd., E308
Portland, OR 97225

At no time thereafter has Mr. Partlow supplied a different address for either West Coast Commodities, LLC, or himself.

Mr. Partlow's December 21, 2012, e-mail to Ms. Kennedy was filed with the Hearing Clerk on January 24, 2013, and on January 25, 2013, Administrative Law Judge Janice K. Bullard [hereinafter the ALJ] issued an Order Setting Time and Place of Hearing stating, as follows:

In addition, the record is hereby corrected to note Respondent's [sic] correct address:

West Coast Commodities, LLC
Mike Partlow
8150 SW Barnes Rd., E308

¹Compl. ¶¶ III-VII at 3-4.

²(West Coast Commodities, LLC) United States Postal Service Domestic Return Receipt for Article Number 7005 1160 0002 7836 8187; (Mr. Partlow) United States Postal Service Domestic Return Receipt for Article Number 7005 1160 0002 7836 6909.

Portland, OR 97225

On June 13, 2013, the ALJ conducted a hearing by audiovisual connection between Washington, DC, Portland, Oregon, and Denver, Colorado. Mr. Partlow represented himself and West Coast Commodities, LLC. Darlene M. Bolinger, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Deputy Administrator.

On November 4, 2013, after the parties filed post hearing briefs, the ALJ issued a Decision and Order: (1) concluding West Coast Commodities, LLC, and Mr. Partlow violated the Packers and Stockyards Act and the Regulations; (2) ordering West Coast Commodities, LLC, and Mr. Partlow to cease and desist from violating the Packers and Stockyards Act and the Regulations; (3) assessing West Coast Commodities, LLC, and Mr. Partlow, jointly and severally, a \$14,000 civil penalty; and (4) prohibiting West Coast Commodities, LLC, and Mr. Partlow from being registered and from engaging in any activity for which registration is required under the Packers and Stockyards Act for a period of 30 days.³

On November 6, 2013, the Hearing Clerk sent the ALJ's Decision and Order by certified mail to West Coast Commodities, LLC, 8150 SW Barnes Road, E308, Portland, Oregon 97201. While the Hearing Clerk used the incorrect zip code in West Coast Commodities, LLC's address, the United States Postal Service product and tracking information states the United States Postal Service delivered the mailing to Portland, OR 97225. J. Wannamaker signed the certified return receipt as agent for West Coast Commodities, LLC, on November 8, 2013, at the address

³ALJ's Decision and Order at 22-25.

supplied by Mr. Partlow.⁴ I find, under these circumstances, that the Hearing Clerk served the ALJ's Decision and Order on West Coast Commodities, LLC, on November 8, 2013.

⁴United States Postal Service Domestic Return Receipt for Article Number 7005 1160 0002 7837 4355.

The Hearing Clerk also attempted to serve Mr. Partlow on November 6, 2013, by sending the ALJ's Decision and Order by certified mail to Mr. Partlow at the first address on record, 1720 SW 4th Avenue, Portland, Oregon 97201. The United States Postal Service reported the November 6, 2013, mailing to Mr. Partlow containing the ALJ's Decision and Order was "Undeliverable as Addressed" and returned the mailing to the Hearing Clerk.⁵

On January 30, 2014, the Hearing Clerk sent the ALJ's Decision and Order to Mr. Partlow by certified mail to 8150 SW Barnes Road, E308, Portland, Oregon, 97201.⁶ An unidentified person, who I infer was an employee of the United States Postal Service, corrected the zip code on the envelope containing the January 30, 2014, mailing to read "97225"⁷ and the United States Postal Service delivered the January 30, 2014, mailing to the address supplied by Mr. Partlow. On March 12, 2014, the United States Postal Service returned the January 30, 2014, mailing containing the ALJ's Decision and Order to the Hearing Clerk marked "unclaimed."⁸ On March 25, 2014, the Hearing Clerk served the ALJ's Decision and Order on Mr. Partlow by regular mail in accordance with 7 C.F.R. § 1.147(c)(1).⁹

⁵United States Postal Service information regarding United States Postal Service Domestic Return Receipt for Article Number 7005 1160 0002 7837 4317.

⁶Office of Administrative Law Judges, Hearing Clerk's Office, Document Distribution Form for United States Postal Service Domestic Return Receipt for Article Number 7012 1010 0002 0093 7159.

⁷See the envelope relating to United States Postal Service Domestic Return Receipt for Article Number 7012 1010 0002 0093 7159.

⁸Memorandum to the File issued by Shawn Williams, Hearing Clerk, on May 6, 2014.

⁹Memorandum to the File issued by Carla M. Andrews, Assistant Hearing Clerk, on March 26, 2014.

Counsel for the Deputy Administrator was made aware of a different address for Mr. Partlow in May 2014.¹⁰ On May 19, 2014, the Hearing Clerk served the ALJ's Decision and Order on Mr. Partlow at 1717 Southwest Park Avenue, Number 624, Portland, Oregon 97201.¹¹ However, I find that this mailing by the Hearing Clerk was unnecessary as the Hearing Clerk served West Coast Commodities, LLC, with the ALJ's Decision and Order on November 8, 2013,¹² and served Mr. Partlow with the ALJ's Decision and Order on March 25, 2014.¹³

On June 18, 2014, West Coast Commodities, LLC, and Mr. Partlow appealed the ALJ's Decision and Order to the Judicial Officer. On July 3, 2014, the Deputy Administrator filed Complainants Response in Opposition to Respondents' Appeal Petition and/or Motion for Reconsideration. On July 8, 2014, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

CONCLUSIONS BY THE JUDICIAL OFFICER

¹⁰E-mails from Amy Blechinger, Grain Inspection, Packers and Stockyards Administration, to Darlene Bolinger, Office of the General Counsel, dated May 12, 2014, and May 13, 2014.

¹¹United States Postal Service Domestic Return Receipt for Article Number 7003 1010 0001 7366 7109.

¹²See note 4.

¹³See note 9.

The Rules of Practice provide that an administrative law judge's written decision must be appealed to the Judicial Officer by filing an appeal petition with the Hearing Clerk within 30 days after service.¹⁴ The Hearing Clerk served West Coast Commodities, LLC, with the ALJ's Decision and Order on November 8, 2013,¹⁵ and served Mr. Partlow with the ALJ's Decision and Order on March 25, 2014;¹⁶ therefore, West Coast Commodities, LLC, was required to file an appeal petition with the Hearing Clerk no later than December 9, 2013,¹⁷ and Mr. Partlow was required to file an appeal petition with the Hearing Clerk no later than April 24, 2014. Instead, West Coast Commodities, LLC, and Mr. Partlow filed their appeal petition with the Hearing Clerk on June 18, 2014. Therefore, I find West Coast Commodities, LLC, and Mr. Partlow's appeal petition is late-filed.

¹⁴7 C.F.R. § 1.145(a).

¹⁵See note 4.

¹⁶See note 9.

¹⁷Thirty days after November 8, 2013, was December 8, 2013. However, December 8, 2013, was a Sunday. The Rules of Practice provide that when the time for filing a document or paper expires on a Sunday, the time for filing shall be extended to the next business day, as follows:

§ 1.147 Filing; service; extensions of time; and computation of time.

....

(h) *Computation of time.* Saturdays, Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided*, That, when such time expires on a Saturday, Sunday, or Federal holiday, such period shall be extended to include the next following business day.

7 C.F.R. § 1.147(h). The next business day after Sunday, December 8, 2013, was Monday, December 9, 2013. Therefore, West Coast Commodities, LLC, was required to file its appeal petition no later than December 9, 2013.

Moreover, the Judicial Officer has continuously and consistently held under the Rules of Practice that the Judicial Officer has no jurisdiction to hear an appeal that is filed after an administrative law judge's decision becomes final.¹⁸ The ALJ's Decision and Order became final 35 days after the Hearing Clerk served West Coast Commodities, LLC, and Mr. Partlow with the ALJ's Decision and Order.¹⁹ Thus, the ALJ's Decision and Order became final as to West Coast Commodities, LLC, on December 13, 2013, and became final as to Mr. Partlow on

¹⁸See, e.g., *In re Piedmont Livestock, Inc.* (Order Denying Late Appeal), ___ Agric. Dec. ___ (Apr. 29, 2013) (dismissing Piedmont Livestock, Inc.'s appeal petition filed 3 days after the chief administrative law judge's decision became final and dismissing Joseph Ray Jones's appeal petition filed 1 day after the chief administrative law judge's decision became final); *In re Custom Cuts, Inc.* (Order Denying Late Appeal), ___ Agric. Dec. ___ (Feb. 20, 2013) (dismissing the respondents' appeal petition filed 1 month 27 days after the chief administrative law judge's decision became final); *In re Robert M. Self* (Order Denying Late Appeal), ___ Agric. Dec. ___ (Sept. 24, 2012) (dismissing the respondent's appeal petition filed 18 days after the chief administrative law judge's decision became final); *In re Timothy Mays* (Order Denying Late Appeal), 69 Agric. Dec. 631 (2010) (dismissing the respondent's appeal petition filed 1 week after the administrative law judge's decision became final); *In re David L. Noble* (Order Denying Late Appeal), 68 Agric. Dec. 1060 (2009) (dismissing the respondent's appeal petition filed 1 day after the administrative law judge's decision became final); *In re Michael Claude Edwards* (Order Denying Late Appeal), 66 Agric. Dec. 1362 (2007) (dismissing the respondent's appeal petition filed 6 days after the administrative law judge's decision became final); *In re Tung Wan Co.* (Order Denying Late Appeal), 66 Agric. Dec. 939 (2007) (dismissing the respondent's appeal petition filed 41 days after the chief administrative law judge's decision became final); *In re Tim Gray* (Order Denying Late Appeal), 64 Agric. Dec. 1699 (2005) (dismissing the respondent's appeal petition filed 1 day after the chief administrative law judge's decision became final); *In re Jozset Mokos* (Order Denying Late Appeal), 64 Agric. Dec. 1647 (2005) (dismissing the respondent's appeal petition filed 6 days after the chief administrative law judge's decision became final); *In re Ross Blackstock* (Order Denying Late Appeal), 63 Agric. Dec. 818 (2004) (dismissing the respondent's appeal petition filed 2 days after the administrative law judge's decision became final); *In re David Gilbert* (Order Denying Late Appeal), 63 Agric. Dec. 807 (2004) (dismissing the respondent's appeal petition filed 1 day after the administrative law judge's decision became final); *In re Vega Nunez* (Order Denying Late Appeal), 63 Agric. Dec. 766 (2004) (dismissing the respondent's appeal petition filed on the day the administrative law judge's decision became final).

¹⁹See 7 C.F.R. § 1.142(c)(4); ALJ's Decision and Order at 25.

April 29, 2014. West Coast Commodities, LLC, and Mr. Partlow filed their appeal petition on June 18, 2014. Therefore, I have no jurisdiction to hear West Coast Commodities, LLC, and Mr. Partlow's appeal petition.

The Rules of Practice do not provide for an extension of time (for good cause or excusable neglect) for filing an appeal petition after an administrative law judge's decision has become final. The absence of such a provision in the Rules of Practice emphasizes that jurisdiction has not been granted to the Judicial Officer to extend the time for filing an appeal after an administrative law judge's decision has become final. Therefore, under the Rules of Practice, I cannot extend the time for West Coast Commodities, LLC, and Mr. Partlow's filing an appeal petition after the ALJ's Decision and Order became final. Accordingly, West Coast Commodities, LLC, and Mr. Partlow's appeal petition must be denied.

For the foregoing reasons, the following Order is issued.

ORDER

1. West Coast Commodities, LLC, and Mr. Partlow's appeal petition, filed June 18, 2014, is denied.
2. The ALJ's Decision and Order, filed November 4, 2013, is the final decision in this proceeding.

Done at Washington, DC

September 18, 2014

William G. Jenson
Judicial Officer