

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	PACA-APP Docket No. 09-0161
	)	
Samuel S. Petro,	)	
	)	
Petitioner	)	
	)	
	and	
	)	
In re:	)	PACA-APP Docket No. 09-0162
	)	
Bryan Herr,	)	
	)	
Petitioner	)	<b>Decision and Order as to Bryan Herr</b>

**PROCEDURAL HISTORY**

On July 2, 2009, Karla D. Whalen, Chief, PACA Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture [hereinafter the Branch Chief], issued determinations that Samuel S. Petro and Bryan C. Herr were responsibly connected with Kalil Fresh Marketing, Inc., d/b/a Houston's Finest Produce Co. [hereinafter Houston's Finest], during the period of time that Houston's Finest violated the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C.

§§ 499a-499s) [hereinafter the PACA].<sup>1</sup> Pursuant to the rules of practice applicable to this proceeding,<sup>2</sup> Mr. Petro and Mr. Herr each filed a petition for review of the Branch Chief's "responsibly connected" determination.

On June 15, 2010, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] consolidated the two "responsibly connected" proceedings, *In re Samuel S. Petro*, PACA-APP Docket No. 09-0161, and *In re Bryan Herr*, PACA-APP Docket No. 09-0162 (Summary of Teleconference and Order). On January 20-21, 2011, the Chief ALJ conducted an oral hearing in Washington, DC. Richard M. Kaplan and Tanya N. Garrison, Weycer, Kaplan, Pulaski & Zuber, PC, Houston, Texas, represented Mr. Petro and Mr. Herr. Ciarra A. Toomey and Christopher Young, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Branch Chief. Mr. Petro, Mr. Herr, and three other witnesses testified on Mr. Petro and Mr. Herr's behalf. The Branch Chief called two witnesses.<sup>3</sup> Mr. Petro and

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<sup>1</sup>Houston's Finest willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4) by failing to make full payment promptly to 55 sellers of the agreed purchase prices in the amount of \$1,617,014.93 for 645 lots of perishable agricultural commodities, which Houston's Finest purchased, received, and accepted in the course of, or in contemplation of, interstate and foreign commerce, during the period October 11, 2007, through February 17, 2008. *In re Kalil Fresh Mktg., Inc.*, \_\_\_ Agric. Dec. \_\_\_ (Mar. 23, 2010).

<sup>2</sup>The rules of practice applicable to this proceeding are the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151).

<sup>3</sup>The transcript of the hearing is contained in two volumes. References to the transcript are indicated as "Tr." and the page number.

Mr. Herr introduced 14 exhibits. The Branch Chief introduced two certified agency records: one containing 14 exhibits applicable to Mr. Petro and the other containing 14 exhibits applicable to Mr. Herr.<sup>4</sup> The Branch Chief also introduced 32 additional exhibits.

On April 7, 2011, after the parties filed post-hearing briefs, the Chief ALJ issued a Decision and Order in which he concluded: (1) Mr. Petro was responsibly connected with Houston's Finest by virtue of his active participation in Houston's Finest's operations, his ownership of 25 percent of the shares of Houston's Finest, and his status as a director of Houston's Finest; and (2) Mr. Herr was not responsibly connected with Houston's Finest because, although ostensibly an owner of 25 percent of the shares of Houston's Finest, Mr. Herr did not actively participate in any activity resulting in Houston's Finest's violations of the PACA and had no actual, significant nexus to Houston's Finest (Chief ALJ's Decision and Order at 20 ¶ 2, 21 ¶ 4). On May 9, 2011, the Branch Chief appealed the Chief ALJ's Decision and Order as it relates to Mr. Herr. On May 27, 2011, Mr. Herr filed a response to the Branch Chief's appeal petition. Mr. Petro did not appeal the Chief ALJ's April 7, 2011, Decision and Order, which became final as to Mr. Petro. On June 1, 2011, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and a decision as to Mr. Herr. Based upon a careful consideration of the record, I affirm the Chief ALJ's Decision and Order as it relates to Mr. Herr.

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<sup>4</sup>References to the exhibits in the Branch Chief's certified agency record applicable to Mr. Herr are indicated as "BHRX 1-BHRX 14."

## DECISION AS TO MR. HERR

### Statutory Background

The PACA was enacted to suppress unfair and fraudulent practices in the marketing of perishable agricultural commodities in interstate and foreign commerce<sup>5</sup> and to provide a measure of control over a branch of industry which is engaged almost exclusively in interstate commerce, which is highly competitive, and in which the opportunities for sharp practices, irresponsible business conduct, and unfair methods are numerous.<sup>6</sup> *Kleiman & Hochberg, Inc. v. U.S. Dep't of Agric.*, 497 F.3d 681, 693 (D.C. Cir. 2007).

Under the PACA, persons who buy or sell specified quantities of perishable agricultural commodities at wholesale in interstate or foreign commerce are required to have a license issued by the Secretary of Agriculture. 7 U.S.C. §§ 499a(b)(5)-(7), 499c(a), 499d(a). Regulated commission merchants, dealers, and brokers are required to “truly and correctly . . . account and make full payment promptly in respect of any transaction in any such commodity to the person with whom such transaction is had[.]” 7 U.S.C. § 499b(4). An order suspending or revoking a PACA license or a finding that an entity has committed a flagrant violation, or repeated violations, of 7 U.S.C. § 499b(4) has significant collateral consequences in the form of licensing and employment

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<sup>5</sup>H.R. Rep. No. 71-1041 at 1 (1930).

<sup>6</sup>S. Rep. No. 84-2507 at 3-4 (1956), *reprinted in* 1956 U.S.C.C.A.N. 3699, 3701; H.R. Rep. No. 84-1196 at 2 (1955).

restrictions for persons found to be responsibly connected with the violator.<sup>7</sup> The term “responsibly connected” is defined as follows:

**§ 499a. Short title and definitions**

....

**(b) Definitions**

For purposes of this chapter:

....

(9) The term “responsibly connected” means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association. A person shall not be deemed to be responsibly connected if the person demonstrates by a preponderance of the evidence that the person was not actively involved in the activities resulting in a violation of this chapter and that the person either was only nominally a partner, officer, director, or shareholder of a violating licensee or entity subject to license or was not an owner of a violating licensee or entity subject to license which was the alter ego of its owners.

7 U.S.C. § 499a(b)(9).

The second sentence of the definition of the term “responsibly connected” affords those who would otherwise fall within the statutory definition of “responsibly connected” an opportunity to demonstrate that they were not responsible for the violation; it creates a two-prong test for rebutting the statutory presumption of the first sentence:

the first prong is that a petitioner must demonstrate by a preponderance of the evidence that petitioner was not actively involved in the activities resulting in a violation of the PACA. Since the statutory test is in the conjunctive (“and”), a failure to meet the first prong of the statutory test ends the test without recourse to the second prong. However, if a petitioner satisfies the first prong, then a petitioner for the second prong must meet at

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<sup>7</sup>U.S.C. §§ 499d(b), 499h(b).

least one of two alternatives: that petitioner was only nominally a partner, officer, director, or shareholder of a violating licensee or entity subject to a license; or that petitioner was not an owner of a violating licensee or entity subject to a license which was the alter ego of its owners[.]

*In re Lawrence D. Salins*, 57 Agric. Dec. 1474, 1488 (1998). A standard for the first prong of the test has been adopted as follows:

The standard is 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.

*In re Michael Norinsberg* (Decision on Remand), 58 Agric. Dec. 604, 610-11 (1999).

### **Decision Summary**

The record establishes that Mr. Herr owned 25 percent of the outstanding stock of Houston's Finest during the period of time that Houston's Finest violated the PACA (Tr. 347-49, 355-56, 448, 451; BHRX 1, BHRX 8). The disposition of this proceeding turns upon whether Mr. Herr met his burden of proof and rebutted the statutory presumption that he was responsibly connected with Houston's Finest. The Chief ALJ concluded Mr. Herr demonstrated by a preponderance of the evidence that he was not actively involved in the activities resulting in Houston's Finest's PACA violations and that he was only nominally a shareholder of Houston's Finest. The Branch Chief argues

on appeal that Mr. Herr failed to demonstrate by a preponderance of the evidence that he was not actively involved in the activities resulting in Houston's Finest's PACA violations and that Mr. Herr failed to demonstrate by a preponderance of the evidence that he was only nominally a shareholder of Houston's Finest. Based upon a careful consideration of the record, I agree with the Chief ALJ's Decision and Order regarding Mr. Herr and, therefore, conclude Mr. Herr was not responsibly connected with Houston's Finest during the period of time when Houston's Finest violated the PACA.

### **Discussion**

*Mr. Herr Demonstrated by a Preponderance of the Evidence  
He Was Not Actively Involved in the Activities Resulting  
in Houston's Finest's PACA Violations*

Mr. Herr argues he was not actively involved in the activities resulting in Houston's Finest's failure to pay for produce in accordance with the PACA. Mr. Herr contends he was only a passive investor in Houston's Finest, asserting that, even after his stock purchase, Houston's Finest was dominated by John Kalil, who then owned 50 percent of the corporate stock, served as the chief executive officer of Houston's Finest, and ran Houston's Finest's day-to-day operations. Mr. Herr's position that Mr. Kalil ran the day-to-day operations of Houston's Finest is confirmed by Mr. Kalil's testimony that he ran Houston's Finest after the stock purchase by Mr. Herr and supervised the individuals responsible for sales, purchasing, warehouse operations, and

bookkeeping functions, which included the payments made to suppliers (Tr. 349-50, 382-86).

The Chief ALJ correctly holds direct involvement in the particular transactions that were not paid in accordance with the PACA is not required and participation in corporate decision making is enough to find active involvement in the activities resulting in a PACA violation (Chief ALJ's Decision and Order at 12-13).<sup>8</sup> The Branch Chief asserts Mr. Herr's corporate decision making supports a finding that Mr. Herr was actively involved in the activities resulting in Houston's Finest's violations of the PACA (Appeal Pet. at 10) and cites the following as Mr. Herr's corporate decision making:

(1) Mr. Herr's involvement in obtaining a line of credit for Houston's Finest;  
(2) Mr. Herr's providing Mr. Kalil with the name of the person who Mr. Herr used to install refrigeration equipment; (3) Mr. Herr's suggestion that Houston's Finest fire one of its employees, Ray Salazar; (4) Mr. Herr's request for a meeting to determine what was "going on" at Houston's Finest; (5) Mr. Herr's request to Henri Morris, an independent contractor working for Houston's Finest, for information regarding Houston's Finest's financial condition; (6) Mr. Herr's failure to discuss options for saving Houston's Finest with Mr. Morris; (7) Mr. Herr's failure to discuss correcting "anything" at Houston's

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<sup>8</sup>See *In re Lawrence D. Salins*, 57 Agric. Dec. 1474, 1488-89 (1998) (stating there are many functions within a company (corporate finance, corporate decision making, check writing, and choosing which debts to pay) which can cause an individual to be actively involved in the failure to pay promptly for produce, even though the individual does not ever actually purchase produce).



Finest with Mr. Morris; (8) Mr. Herr's suggestion that Houston's Finest file for bankruptcy; (9) Mr. Herr's failure to stop Houston's Finest from making additional produce purchases after Mr. Herr learned that Houston's Finest failed to pay for produce in accordance with PACA; (10) Mr. Herr's failure to supervise Houston's Finest after Mr. Herr learned that Houston's Finest failed to pay for produce in accordance with the PACA; (11) Mr. Herr's failure to infuse Houston's Finest with capital; and (12) Mr. Herr's ownership of 25 percent of the outstanding stock of Houston's Finest (Appeal Pet. at 10-20). The Branch Chief does not explain how each of Mr. Herr's actions, suggestions, requests, and failures to act resulted in Houston's Finest's failure to pay for produce in accordance with the PACA.

I do not find Mr. Herr's July 2002 ministerial involvement in obtaining a line of credit that Mr. Petro arranged for Houston's Finest, Mr. Herr's providing Mr. Kalil with the name of the person who Mr. Herr used to install refrigeration equipment, Mr. Herr's request for a meeting to determine what was "going on" at Houston's Finest, Mr. Herr's request that Mr. Morris provide information regarding the financial condition of Houston's Finest, Mr. Herr's failure to discuss options for saving Houston's Finest with Mr. Morris, or Mr. Herr's failure to discuss correcting "anything" at Houston's Finest with Mr. Morris are activities which resulted in Houston's Finest's failure to pay for produce in accordance the PACA during the period October 11, 2007, through February 17, 2008.

While Mr. Kalil testified that Mr. Herr recommended that Houston's Finest fire Mr. Salazar (Tr. 359), Mr. Herr testified he did not know Mr. Salazar and never suggested that anyone fire Mr. Salazar (Tr. 181). The Chief ALJ did not find that Mr. Herr suggested that Houston's Finest fire Mr. Salazar, and, in light of the conflicting evidence, I decline to find that Mr. Herr recommended that Houston's Finest fire Mr. Salazar. Mr. Herr also testified that he was not involved with Houston's Finest's decision to file for bankruptcy (Tr. 176-77). While Mr. Kalil testified that Mr. Herr recommended that Houston's Finest file for bankruptcy, Mr. Kalil also testified that his attorneys, not Mr. Herr, convinced him that Houston's Finest should file for bankruptcy (Tr. 372-73). The Chief ALJ did not find that Mr. Herr recommended that Houston's Finest file for bankruptcy, and, in light of the conflicting evidence, I decline to find that Mr. Herr recommended that Houston's Finest file for bankruptcy.

I agree with the Branch Chief that Mr. Herr could have infused Houston's Finest with capital after he learned of Houston's Finest's failure to pay for produce in accordance with PACA. However, generally, a failure to infuse a company with capital does not constitute active involvement in activities resulting in that company's failure to pay for produce in accordance with the PACA. I do not find, under the circumstances of this proceeding, that Mr. Herr's failure to infuse Houston's Finest with capital constitutes active involvement in the activities that resulted in Houston's Finest's PACA violations.

Finally, the Branch Chief contends Mr. Herr was actively involved in the activities resulting in Houston's Finest's PACA violations by virtue of Mr. Herr's ownership of 25 percent of the outstanding stock of Houston's Finest. The Branch Chief essentially urges that I hold that an individual who holds more than 10 percent of the outstanding stock of a corporation is *per se* responsibly connected with that corporation. However, Congress rejected the *per se* approach urged by the Branch Chief and amended the definition of the term "responsibly connected" to specifically afford those who would otherwise fall within the statutory definition of "responsibly connected" an opportunity to rebut the statutory presumption that they are "responsibly connected."

I agree with the Chief ALJ's conclusion that Mr. Herr demonstrated by a preponderance of the evidence that he was not actively involved in the activities that resulted in Houston's Finest's failure to pay for produce in accordance with the PACA during the period October 11, 2007, through February 17, 2008. The Branch Chief has not offered anything in the Appeal Petition that convinces me that the Chief ALJ's conclusion is error.

*Mr. Herr Demonstrated by a Preponderance of the Evidence  
He Was Only Nominally a Shareholder of Houston's Finest*

For the second prong of the "responsibly connected" test, Mr. Herr must demonstrate by a preponderance of the evidence one of two alternatives: (1) he was only nominally a shareholder of Houston's Finest or (2) he was not an owner of Houston's

Finest, which was the alter ego of its owners. As Mr. Herr was an owner of Houston's Finest, the second alternative is not applicable.<sup>9</sup>

On appeal, the Branch Chief contends the Chief ALJ failed to consider whether Mr. Herr met his burden as to the second prong of the "responsibly connected" test as follows:

Since the Chief ALJ found that Herr was not actively involved in the violations committed by Houston's Finest and was therefore not responsibly connected, he did not consider whether Herr met his burden as to the second prong of the responsibly connected test.

Appeal Pet. at 21. Based upon my reading of the Chief ALJ's Decision and Order, I find the Chief ALJ properly applied the two-prong test and found not only that Mr. Herr demonstrated that he was not actively involved in the activities resulting in Houston's Finest's violations of the PACA, but also, that Mr. Herr demonstrated that he was only nominally a shareholder of Houston's Finest (Chief ALJ's Decision and Order at 20 ¶ 13, 21 ¶ 4). Therefore, I find no reason to remand this proceeding to the Chief ALJ for application of the two-prong test.

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<sup>9</sup>*In re B.T. Produce, Co.* 66 Agric. Dec. 774, 832 (2007), *aff'd*, 296 F. App'x 78 (D.C. Cir. 2008), *cert. denied*, 129 S. Ct. 2075 (2009); *In re Donald R. Beucke*, 65 Agric. Dec. 1341, 1351 (2006), *aff'd*, 314 F. App'x 10 (9th Cir. 2008), *cert. denied*, 555 U.S. 1213 (2009); *In re Edward S. Martindale*, 65 Agric. Dec. 1301, 1308 (2006); *In re James E. Thames, Jr.* (Decision as to James E. Thames, Jr.), 65 Agric. Dec. 429, 439 (2006), *aff'd per curiam*, 195 F. App'x 850 (11th Cir. 2006); *In re Benjamin Sudano*, 63 Agric. Dec. 388, 411 (2004), *aff'd per curiam*, 131 F. App'x 404 (4th Cir. 2005); *In re Anthony L. Thomas*, 59 Agric. Dec. 367, 390 (2000), *aff'd*, No. 00-1157 (D.C. Cir. Jan. 30, 2001); *In re Steven J. Rodgers*, 56 Agric. Dec. 1919, 1956 (1997), *aff'd per curiam*, 172 F.3d 920, 1998 WL 794851 (D.C. Cir. 1998) (Table), printed in 57 Agric. Dec. 1464 (1998).

The Branch Chief correctly states the authority that a person actually has as an officer, director, or shareholder to counteract the fault of others determines whether that person is merely a nominal officer, director, or shareholder of a violating company (Appeal Pet. at 24, 26). The Branch Chief's position that Mr. Herr had authority to alter the course of Houston's Finest's operations, and, therefore, was not nominal, is based in large part on the July 10, 2002, Stock Purchase Agreement executed by Messrs. Kalil, Petro, and Herr (BHRX 8) (Appeal Pet. at 28-31).<sup>10</sup> On its face, the Stock Purchase Agreement gives Mr. Herr authority to curb Houston's Finest's PACA violations (BHRX 8). However, Mr. Herr introduced ample evidence to demonstrate that the Stock Purchase Agreement did not reflect Mr. Herr's actual authority within Houston's Finest. Instead, the record establishes that Mr. Herr, based upon his relationship with his partner, Mr. Petro, merely infused Houston's Finest with capital. In exchange, Messrs. Kalil, Petro, and Herr executed the July 10, 2002, Stock Purchase Agreement, which Mr. Herr did not negotiate or draft (Tr. 159). Mr. Herr never performed any duties or exercised any authority under the Stock Purchase Agreement (Tr. 160-67), and Mr. Herr demonstrated by a preponderance of the evidence that, despite the terms of the Stock Purchase Agreement, he lacked the actual authority to curb Houston's Finest's violations of the PACA.

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<sup>10</sup>Dean Klint Johnson, the Acting Assistant Regional Director for the Agricultural Marketing Service and a witness for the Branch Chief, testified the sole indicator that Mr. Herr had authority within Houston's Finest is the Stock Purchase Agreement.

I agree with the Chief ALJ's conclusion that Mr. Herr demonstrated by a preponderance of the evidence that he was only nominally a shareholder of Houston's Finest, during the period October 11, 2007, through February 17, 2008, when Houston's Finest violated the PACA. The Branch Chief has not offered anything in the Appeal Petition that convinces me that the Chief ALJ's conclusion is error.

Accordingly, on the basis of the record before me, the following Findings of Fact and Conclusions of Law are entered.

### **Findings of Fact**

1. Bryan Herr is an individual residing in Conroe, Texas. During the period October 11, 2007, through February 17, 2008, when Houston's Finest violated the PACA, Mr. Herr owned 50 percent of Country Fresh, a fresh fruit and vegetable company and PACA licensee. Mr. Herr became the sole owner of Country Fresh in September of 2008 when he purchased the interest of his former partner, Samuel S. Petro. Mr. Herr has been in the produce business in excess of 25 years. (Tr. 150-52.)

2. In existence since 1999, Country Fresh is a large, successful fruit and vegetable business employing 800-1,000 employees in September of 2008 (Tr. 29-30, 152). Country Fresh is highly regarded, with an excellent reputation and high Blue Book rating (Tr. 30, 150-54).

3. Mr. Herr is well aware of the PACA's requirements concerning prompt payment for produce. Mr. Herr has never been previously associated with any entity which has violated the PACA. (Tr. 66, 88-90, 153-54.)

4. Kalil Fresh Marketing, Inc., is a Texas corporation, incorporated on August 11, 2000. Prior to July 10, 2002, John Kalil owned all outstanding shares of stock of Kalil Fresh Marketing, Inc. (BHRX 3.)

5. John Kalil is Samuel S. Petro's cousin (Tr. 31). Mr. Petro had worked in the produce industry for many years with John Kalil's father, Charles Kalil, who was considered by Mr. Petro to have been like a second father to him (Tr. 32).

6. Sometime around May or June of 2002, Mr. Kalil discussed with Mr. Petro Kalil Fresh Marketing, Inc.'s need for additional capital (Tr. 32-33). Mr. Petro, in turn, discussed the possibility of acquiring an ownership interest in Kalil Fresh Marketing, Inc., with Mr. Herr and persuaded Mr. Herr to join him in the eventual purchase of half of the corporation.

7. Although Mr. Petro and Mr. Herr were heavily involved with the activities of Country Fresh, Mr. Petro viewed the Kalil Fresh Marketing, Inc., acquisition as a family obligation to help his cousin, as well as an opportunity for his son, Michael Petro, to work with Mr. Kalil (Tr. 34). At Mr. Petro's suggestion and urging, Mr. Herr agreed to participate.

8. On July 10, 2002, Mr. Kalil, Mr. Petro, and Mr. Herr executed a Stock Purchase Agreement which had been prepared by Mr. Petro's accountant, Jerry Paul (Tr. 42-43, 103, 159; BHRX 8).

9. Mr. Herr had little contact with Houston's Finest. The evidence establishes Mr. Herr's ministerial involvement with the line of credit which Mr. Petro had arranged for the benefit of Houston's Finest in 2002 and Mr. Herr's refrigeration repair advice provided to Mr. Kalil years prior to Houston's Finest's PACA violations (Tr. 161-62, 170, 357-58).

10. Mr. Herr's responsibilities with Country Fresh required as many as 120 hours per week, leaving insufficient time for him to have had any significant involvement with Houston's Finest's operations (Tr. 169-70).

11. Mr. Herr was not involved in negotiating or drafting the Stock Purchase Agreement, had no intention of performing any duties for Houston's Finest, and, although the Stock Purchase Agreement named him as a director, Mr. Herr never functioned as a director, never attended any board meetings, never received a stock certificate, never signed any document as a corporate officer or director of Houston's Finest, and never received a salary, dividend, K-1, or reimbursement from Houston's Finest (Tr. 160-67). More specifically, Mr. Herr was neither consulted about, nor exercised any power or authority concerning, Houston's Finest's payments to suppliers.



### **Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Mr. Herr demonstrated by a preponderance of the evidence that he was not actively involved in any activity resulting in Houston's Finest's violations of the PACA during the period October 11, 2007, through February 17, 2008.
3. Mr. Herr demonstrated by a preponderance of the evidence that he was only nominally a shareholder of Houston's Finest during the period October 11, 2007, through February 17, 2008, when Houston's Finest violated the PACA.
4. Mr. Herr was not responsibly connected with Houston's Finest during the period October 11, 2007, through February 17, 2008, when Houston's Finest violated the PACA.

For the foregoing reasons, the following Order is issued.

**ORDER**

1. The Chief ALJ's April 7, 2011, Decision and Order as it relates to Mr. Herr, is affirmed.

2. The Branch Chief's July 2, 2009, determination that Mr. Herr was responsibly connected with Houston's Finest, during the period October 11, 2007, through February 17, 2008, when Houston's Finest violated 7 U.S.C. § 499b(4), is reversed.

Done at Washington, DC

January 18, 2012

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William G. Jenson  
Judicial Officer