

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-02-0021
)	
Kleiman & Hochberg, Inc.,)	
)	
Respondent)	
)	
	and	
)	
Michael H. Hirsch,)	PACA Docket No. APP-03-0005
)	
Petitioner)	
)	
	and	
)	
Barry J. Hirsch,)	PACA Docket No. APP-03-0006
)	Order Lifting Stay as to
Petitioner)	Michael H. Hirsch

On April 5, 2006, I issued a Decision and Order: (1) concluding that Michael H. Hirsch was responsibly connected with Kleiman & Hochberg, Inc., when Kleiman & Hochberg, Inc., violated the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a-499s) [hereinafter the PACA]; and (2) subjecting Mr. Hirsch to licensing and employment restrictions under the PACA (7 U.S.C. §§ 499d(b), 499h(b)).¹

¹*In re Kleiman & Hochberg, Inc.*, 65 Agric. Dec. 482 (2006).

On April 24, 2006, Mr. Hirsch filed a petition to reconsider *In re Kleiman & Hochberg, Inc.*, 65 Agric. Dec. 482 (2006), which I denied.²

Mr. Hirsch filed a petition for review of *In re Kleiman & Hochberg, Inc.*, 65 Agric. Dec. 482 (2006), and *In re Kleiman & Hochberg, Inc.* (Order Denying Pet. to Reconsider), 65 Agric. Dec. 720 (2006), with the United States Court of Appeals for the District of Columbia Circuit. On August 2, 2006, Mr. Hirsch filed a motion for a stay of the orders in *In re Kleiman & Hochberg, Inc.*, 65 Agric. Dec. 482 (2006), and *In re Kleiman & Hochberg, Inc.* (Order Denying Pet. to Reconsider), 65 Agric. Dec. 720 (2006), pending the outcome of proceedings for judicial review. On September 22, 2006, I granted Mr. Hirsch's motion for a stay.³

On August 14, 2007, the United States Court of Appeals for the District of Columbia Circuit issued a decision denying Mr. Hirsch's petition for review.⁴ Mr. Hirsch filed a petition for a writ of certiorari with the Supreme Court of the United States which was denied on March 31, 2008.⁵

²*In re Kleiman & Hochberg, Inc.* (Order Denying Pet. to Reconsider), 65 Agric. Dec. 720 (2006).

³*In re Kleiman & Hochberg, Inc.* (Stay Order), ___ Agric. Dec. ___ (Sept. 22, 2006).

⁴*Kleiman & Hochberg, Inc. v. U.S. Dep't of Agric.*, 497 F.3d 681 (DC Cir. 2007).

⁵*Hirsch v. Department of Agriculture*, ___ U.S. ___, 128 S. Ct. 1748 (2008).

On April 16, 2008, the Chief, PACA Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture [hereinafter the Chief], filed a Motion to Lift Stay Order as to Petitioner Michael H. Hirsch. On June 2, 2008, Mr. Hirsch filed Petitioner's Opposition to Respondent's Motion to Lift Stay. On June 10, 2008, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on the Chief's request to lift the stay as to Mr. Hirsch.

The September 22, 2006, Stay Order stays the orders in *In re Kleiman & Hochberg, Inc.*, 65 Agric. Dec. 482 (2006), and *In re Kleiman & Hochberg, Inc.* (Order Denying Pet. to Reconsider), 65 Agric. Dec. 720 (2006), pending the outcome of proceedings for judicial review. Proceedings for judicial review as to Mr. Hirsch are concluded. Mr. Hirsch raises no meritorious basis for my denial of the Chief's Motion to Lift Stay Order as to Petitioner Michael H. Hirsch. Therefore, as to Mr. Hirsch, the September 22, 2006, Stay Order is lifted; and the orders issued in *In re Kleiman & Hochberg, Inc.*, 65 Agric. Dec. 482 (2006), and *In re Kleiman & Hochberg, Inc.* (Order Denying Pet. to Reconsider), 65 Agric. Dec. 720 (2006), as they relate to Mr. Hirsch, are effective as follows.

ORDER

I affirm the Chief's February 12, 2003, determination that Michael H. Hirsch was responsibly connected with Kleiman & Hochberg, Inc., when Kleiman & Hochberg, Inc., willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. §

499b(4)). Accordingly, Michael H. Hirsch is subject to the licensing restrictions under section 4(b) of the PACA and the employment restrictions under section 8(b) of the PACA (7 U.S.C. §§ 499d(b), 499h(b)), effective 60 days after service of this Order on Michael H. Hirsch.

Done at Washington, DC

June 11, 2008

William G. Jenson
Judicial Officer