

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) PACA Docket No. D-01-0032
)
KOAM Produce, Inc.,)
)
Respondent) **Order Denying Petition to Reconsider**

PROCEDURAL HISTORY

James R. Frazier, Acting Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture, instituted this administrative proceeding by filing a Complaint on September 17, 2001. Complainant instituted the proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a-499s) [hereinafter the PACA]; the regulations promulgated pursuant to the PACA (7 C.F.R. pt. 46); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151). On May 3, 2002, Eric Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Complainant], filed an Amended Complaint.

Complainant alleges: (1) during the period April 1999 through July 1999, KOAM Produce, Inc. [hereinafter Respondent], through its employee, Marvin Friedman, made illegal payments to a United States Department of Agriculture produce inspector in connection with 42 federal inspections of perishable agricultural commodities which Respondent purchased from 11 sellers in interstate or foreign commerce; (2) on September 20, 2000, the United States District Court for the Southern District of New York entered a judgment in which Marvin Friedman pled guilty to 10 counts of bribery of a public official, relating to the illegal payments to a United States Department of Agriculture produce inspector in connection with 42 federal inspections of perishable agricultural commodities; (3) Respondent made illegal payments to a United States Department of Agriculture produce inspector on numerous occasions prior to April 1999; and (4) Respondent willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing, without reasonable cause, to perform a specification or duty, express or implied, arising out of an undertaking in connection with transactions involving perishable agricultural commodities purchased, received, and accepted in interstate or foreign commerce (Amended Compl. ¶¶ III-VI). On July 29, 2002, Respondent filed an “Answer to Amended Complaint” denying the material allegations of the Amended Complaint.

On March 25, 2003, and November 17 and 18, 2003, Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] conducted an oral hearing in New York, New York.

Ann K. Parnes, Andrew Y. Stanton, and Christopher P. Young-Morales, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented Complainant. Paul T. Gentile, Gentile & Dickler, LLP, New York, New York, represented Respondent.

On April 18, 2005, after Complainant and Respondent filed post-hearing briefs, the ALJ issued a decision. On June 1, 2005, Respondent filed a “Petition to Rehear and Reargue,” and on July 1, 2005, Complainant filed “Complainant’s Response to Respondent’s Petition to Rehear and Reargue.” On January 6, 2006, the ALJ issued a Decision and Order Following Reargument [hereinafter Initial Decision] which supercedes the ALJ’s April 18, 2005, decision. The ALJ: (1) concluded, during the period April 1999 through July 1999, Respondent, through its employee and agent, Marvin Friedman, paid unlawful bribes and gratuities to a United States Department of Agriculture produce inspector in connection with 42 federal inspections of perishable agricultural commodities which Respondent received or accepted from 11 sellers in interstate or foreign commerce; (2) concluded Respondent willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing, without reasonable cause, to perform a specification or duty, express or implied, arising out of an undertaking in connection with transactions involving perishable agricultural commodities received or accepted in interstate or foreign commerce; and (3) revoked Respondent’s PACA license (Initial Decision at 25-27).

On March 30, 2006, Respondent appealed to the Judicial Officer, and on April 18, 2006, Complainant filed a response to Respondent's appeal petition. On April 19, 2006, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision. On June 2, 2006, I issued a Decision and Order: (1) concluding Respondent, through its employee and agent, Marvin Friedman, paid bribes to a United States Department of Agriculture produce inspector, during the period April 1999 through July 1999, in connection with 42 federal inspections of perishable agricultural commodities which Respondent received or accepted from 11 sellers in interstate or foreign commerce; (2) concluding Respondent willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing, without reasonable cause, to perform a specification or duty, express or implied, arising out of an undertaking in connection with transactions involving perishable agricultural commodities received or accepted in interstate or foreign commerce; and (3) ordering the publication of the facts and circumstances of Respondent's violations of the PACA.¹

On July 17, 2006, Respondent filed a Petition to Reconsider. On August 9, 2006, Complainant filed a response to Respondent's Petition to Reconsider. On August 11, 2006, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Respondent's Petition to Reconsider. References to Complainant's exhibits are

¹*In re KOAM Produce, Inc.*, ___ Agric. Dec. ___, slip op. at 31-32, 39 (June 2, 2006).

designated in this Order Denying Petition to Reconsider by “CX.” References to the transcript are designated in this Order Denying Petition to Reconsider by “Tr.”

CONCLUSIONS BY THE JUDICIAL OFFICER ON RECONSIDERATION

Respondent raises four issues in its Petition to Reconsider. First, Respondent contends my conclusion that Respondent violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) is exclusively based on Marvin Friedman’s plea of guilty to bribing a United States Department of Agriculture produce inspector to influence the outcome of inspections of perishable agricultural commodities conducted for Respondent (Respondent’s Pet. to Reconsider at 2-3).

Respondent fails to cite any portion of *In re KOAM Produce, Inc.*, ___ Agric. Dec. ___ (June 2, 2006), in which I indicate my conclusion that Respondent violated the PACA is exclusively based on Marvin Friedman’s guilty plea. While I reference Marvin Friedman’s guilty plea in *In re KOAM Produce, Inc.*, I also make clear that my conclusion that Respondent violated the PACA is not exclusively based on Marvin Friedman’s guilty plea:

I disagree with Respondent’s contention that Complainant did not prove Marvin Friedman bribed William Cashin. The only testimony as to the reason for Marvin Friedman’s payments to William Cashin is the testimony of William Cashin that he was being paid bribes to provide Respondent “help” with respect to the inspections. William Cashin identified the ways in which he would falsify United States Department of Agriculture inspection certificates to help Respondent with respect to 75 percent to 80 percent of the inspections he conducted for Respondent (Tr. 125-32). Marvin Friedman, the person who actually made the payments, did not testify to contradict William Cashin. Moreover, Marvin

Friedman pled guilty to 10 counts of bribery in connection with his payments to William Cashin for inspections of Respondent's produce (CX 4, CX 18).

In re KOAM Produce, Inc., __ Agric. Dec. ____, slip op. at 35-36 (June 2, 2006).

Therefore, I reject Respondent's contention that my conclusion that Respondent violated the PACA is exclusively based on Marvin Friedman's guilty plea.

Second, Respondent asserts William Cashin testified untruthfully because he did not state "Respondent had no choice but to pay him or otherwise the inspections would have been very slow and never in the Respondent's favor." (Respondent's Pet. to Reconsider at 4.)

The only testimony as to the reason for Marvin Friedman's payments to William Cashin is the testimony of William Cashin that he was being paid bribes to provide Respondent "help" with respect to the inspections. William Cashin identified the ways in which he would falsify United States Department of Agriculture inspection certificates to help Respondent with respect to 75 percent to 80 percent of the inspections he conducted for Respondent (Tr. 125-32). Marvin Friedman, the person who actually made the payments, did not testify to contradict William Cashin. Moreover, Marvin Friedman pled guilty to a 10-count indictment for bribery which charges that Marvin Friedman made cash payments to a United States Department of Agriculture produce inspector in order to influence the outcome of inspections of fresh fruit and vegetables conducted at Respondent's place of business (CX 3, CX 4, CX 18).

The ALJ found William Cashin credible (Initial Decision at 3). The Judicial Officer is not bound by an administrative law judge's credibility determinations and may make separate determinations of witnesses' credibility, subject only to court review for substantial evidence. *Mattes v. United States*, 721 F.2d 1125, 1128-29 (7th Cir. 1983).²

²See also *In re Southern Minnesota Beet Sugar Cooperative*, ___ Agric. Dec. ___, slip op. at 33-34 (May 9, 2005); *In re Excel Corp.*, 62 Agric. Dec. 196, 244-46 (2003), enforced as modified, 397 F.3d 1285 (10th Cir. 2005); *In re Robert B. McCloy, Jr.*, 61 Agric. Dec. 173, 210 (2002), *aff'd*, 351 F.3d 447 (10th Cir. 2003), *cert. denied*, 543 U.S. 810 (2004); *In re Wallace Brandon* (Decision as to Jerry W. Graves and Kathy Graves), 60 Agric. Dec. 527, 560 (2001), *appeal dismissed sub nom. Graves v. United States Dep't of Agric.*, No. 01-3956 (6th Cir. Nov. 28, 2001); *In re David M. Zimmerman*, 57 Agric. Dec. 1038, 1053-54 (1998); *In re Saulsbury Enterprises*, 56 Agric. Dec. 82, 90 (1997) (Order Denying Pet. for Recons.); *In re Garelick Farms, Inc.*, 56 Agric. Dec. 37, 78-79 (1997); *In re Volpe Vito, Inc.*, 56 Agric. Dec. 166, 245 (1997), *aff'd*, 172 F.3d 51 (Table), 1999 WL 16562 (6th Cir. 1999) (not to be cited as precedent under 6th Circuit Rule 206), *printed in* 58 Agric. Dec. 85 (1999); *In re John T. Gray* (Decision as to Glen Edward Cole), 55 Agric. Dec. 853, 860-61 (1996); *In re Jim Singleton*, 55 Agric. Dec. 848, 852 (1996); *In re William Joseph Vergis*, 55 Agric. Dec. 148, 159 (1996); *In re Midland Banana & Tomato Co.*, 54 Agric. Dec. 1239, 1271-72 (1995), *aff'd*, 104 F.3d 139 (8th Cir. 1997), *cert. denied sub nom. Heimann v. Department of Agric.*, 522 U.S. 951 (1997); *In re Kim Bennett*, 52 Agric. Dec. 1205, 1206 (1993); *In re Christian King*, 52 Agric. Dec. 1333, 1342 (1993); *In re Tipco, Inc.*, 50 Agric. Dec. 871, 890-93 (1991), *aff'd per curiam*, 953 F.2d 639 (4th Cir.), 1992 WL 14586, *printed in* 51 Agric. Dec. 720 (1992), *cert. denied*, 506 U.S. 826 (1992); *In re Rosia Lee Ennes*, 45 Agric. Dec. 540, 548 (1986); *In re Gerald F. Upton*, 44 Agric. Dec. 1936, 1942 (1985); *In re Dane O. Petty*, 43 Agric. Dec. 1406, 1421 (1984), *aff'd*, No. 3-84-2200-R (N.D. Tex. June 5, 1986); *In re Aldovin Dairy, Inc.*, 42 Agric. Dec. 1791, 1797-98 (1983), *aff'd*, No. 84-0088 (M.D. Pa. Nov. 20, 1984); *In re Eldon Stamper*, 42 Agric. Dec. 20, 30 (1983), *aff'd*, 722 F.2d 1483 (9th Cir. 1984), *reprinted in* 51 Agric. Dec. 302 (1992); *In re King Meat Co.*, 40 Agric. Dec. 1468, 1500-01 (1981), *aff'd*, No. CV 81-6485 (C.D. Cal. Oct. 20, 1982), *remanded*, No. CV 81-6485 (C.D. Cal. Mar. 25, 1983) (to consider newly discovered evidence), *order on remand*, 42 Agric. Dec. 726 (1983), *aff'd*, No. CV 81-6485 (C.D. Cal. Aug. 11, 1983) (original order of Oct. 20, 1982, reinstated *nunc pro tunc*), *aff'd*, 742 F.2d 1462 (9th Cir. 1984) (unpublished) (not to be cited as precedent under 9th Circuit Rule 21).

(continued...)

The Administrative Procedure Act provides that, on appeal from an administrative law judge's initial decision, the agency has all the powers it would have in making an initial decision, as follows:

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

....

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial

²(...continued)

See generally Universal Camera Corp. v. NLRB, 340 U.S. 474, 496 (1951) (stating the substantial evidence standard is not modified in any way when the Board and the hearing examiner disagree); *JCC, Inc. v. Commodity Futures Trading Comm'n*, 63 F.3d 1557, 1566 (11th Cir. 1995) (stating agencies have authority to make independent credibility determinations without the opportunity to view witnesses firsthand and are not bound by an administrative law judge's credibility findings); *Dupuis v. Secretary of Health and Human Services*, 869 F.2d 622, 623 (1st Cir. 1989) (per curiam) (stating while considerable deference is owed to credibility findings by an administrative law judge, the Appeals Council has authority to reject such credibility findings); *Pennzoil v. Federal Energy Regulatory Comm'n*, 789 F.2d 1128, 1135 (5th Cir. 1986) (stating the Commission is not strictly bound by the credibility determinations of an administrative law judge); *Retail, Wholesale & Dep't Store Union v. NLRB*, 466 F.2d 380, 387 (D.C. Cir. 1972) (stating the Board has the authority to make credibility determinations in the first instance and may even disagree with a trial examiner's finding on credibility); 3 Kenneth C. Davis, *Administrative Law Treatise* § 17:16 (1980 & Supp. 1989) (stating the agency is entirely free to substitute its judgment for that of the hearing officer on all questions, even including questions that depend upon demeanor of the witnesses).

decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.

5 U.S.C. § 557(b).

Moreover, the Attorney General's Manual on the Administrative Procedure Act describes the authority of the agency on review of an initial or recommended decision, as follows:

Appeals and review. . . .

In making its decision, whether following an initial or recommended decision, the agency is in no way bound by the decision of its subordinate officer; it retains complete freedom of decision—as though it had heard the evidence itself. This follows from the fact that a recommended decision is advisory in nature. See *National Labor Relations Board v. Elkland Leather Co.*, 114 F.2d 221, 225 (C.C.A. 3, 1940), certiorari denied, 311 U.S. 705.

Attorney General's Manual on the Administrative Procedure Act 83 (1947).

However, the consistent practice of the Judicial Officer is to give great weight to the findings by, and particularly the credibility determinations of, administrative law judges, since they have the opportunity to see and hear witnesses testify.³

³*In re Southern Minnesota Beet Sugar Cooperative*, __ Agric. Dec. __, slip op. at 36 (May 9, 2005); *In re Excel Corp.*, 62 Agric. Dec. 196, 244-46 (2003), *enforced as modified*, 397 F.3d 1285 (10th Cir. 2005); *In re Robert B. McCloy, Jr.*, 61 Agric. Dec. 173, 210 (2002), *aff'd*, 351 F.3d 447 (10th Cir. 2003), *cert. denied*, 543 U.S. 810 (2004); *In re Wallace Brandon* (Decision as to Jerry W. Graves and Kathy Graves), 60 Agric. Dec. 527, 561-62 (2001), *appeal dismissed sub nom. Graves v. United States Dep't of Agric.*, No. 01-3956 (6th Cir. Nov. 28, 2001); *In re Sunland Packing House Co.*, 58 Agric. Dec. 543, 602 (1999); *In re David M. Zimmerman*, 57 Agric. Dec. 1038, 1055-56 (1998); *In re Jerry Goetz*, 56 Agric. Dec. 1470, 1510 (1997), *aff'd*, 99 F. Supp. 2d 1308 (D. Kan. 1998), *aff'd*, 12 F. App'x 718 (10th Cir.), *cert. denied*, 534 U.S. 1440 (2001);

(continued...)

I have examined the record and find no basis to reverse the ALJ's credibility determination with respect to William Cashin. Therefore, I reject Respondent's contention that William Cashin testified untruthfully with respect to the reasons for Respondent's payments.

Even if I were to find Marvin Friedman made payments to William Cashin to obtain prompt inspection of Respondent's produce and to avoid receipt of false, unfavorable United States Department of Agriculture inspection certificates, I would conclude Respondent violated section 2(4) of the PACA (7 U.S.C. § 499b(4)). A commission merchant's, dealer's, or broker's payment of bribes to a United States Department of Agriculture produce inspector, whatever the motive, in and of itself negates, or gives the appearance of negating, the impartiality of the United States Department of Agriculture produce inspector and undermines the confidence produce

³(...continued)

In re Saulsbury Enterprises, 56 Agric. Dec. 82, 89 (1997) (Order Denying Pet. for Recons.); *In re Andershock's Fruitland, Inc.*, 55 Agric. Dec. 1204, 1229 (1996), *aff'd*, 151 F.3d 735 (7th Cir. 1998); *In re Floyd Stanley White*, 47 Agric. Dec. 229, 279 (1988), *aff'd per curiam*, 865 F.2d 262, 1988 WL 133292 (6th Cir. 1988); *In re King Meat Packing Co.*, 40 Agric. Dec. 552, 553 (1981); *In re Mr. & Mrs. Richard L. Thornton*, 38 Agric. Dec. 1425, 1426 (1979) (Remand Order); *In re Steve Beech*, 37 Agric. Dec. 869, 871-72 (1978); *In re Unionville Sales Co.*, 38 Agric. Dec. 1207, 1208-09 (1979) (Remand Order); *In re National Beef Packing Co.*, 36 Agric. Dec. 1722, 1736 (1977), *aff'd*, 605 F.2d 1167 (10th Cir. 1979); *In re Edward Whaley*, 35 Agric. Dec. 1519, 1521 (1976); *In re Dr. Joe Davis*, 35 Agric. Dec. 538, 539 (1976); *In re American Commodity Brokers, Inc.*, 32 Agric. Dec. 1765, 1772 (1973); *In re Cardwell Dishmon*, 31 Agric. Dec. 1002, 1004 (1972); *In re Sy B. Gaiber & Co.*, 31 Agric. Dec. 474, 497-98 (1972); *In re Louis Romoff*, 31 Agric. Dec. 158, 172 (1972).

industry members and consumers place in quality and condition determinations rendered by the United States Department of Agriculture produce inspector. Commission merchants, dealers, and brokers have a duty to refrain from making payments to United States Department of Agriculture produce inspectors in connection with the inspection of perishable agricultural commodities which will or could undermine the trust produce sellers place in the accuracy of United States Department of Agriculture inspection certificates and the integrity of United States Department of Agriculture produce inspectors. A PACA licensee's payment to a United States Department of Agriculture produce inspector, even if it is only to obtain prompt inspection of perishable agricultural commodities and an accurate United States Department of Agriculture inspection certificate, undermines the trust produce sellers place in the accuracy of the United States Department of Agriculture inspection certificate and the integrity of the United States Department of Agriculture produce inspector. I have consistently interpreted section 2(4) of the PACA (7 U.S.C. § 499b(4)) to prohibit payment of bribes and gratuities to United States Department of Agriculture produce inspectors.⁴

⁴*In re Kleiman & Hochberg, Inc.*, __ Agric. Dec. __ (Apr. 5, 2006); *In re M. Trombetta & Sons, Inc.*, __ Agric. Dec. __ (Sept. 27, 2005); *In re G & T Terminal Packaging Co.*, __ Agric. Dec. __ (Sept. 8, 2005), *appeal docketed*, No. 05-5634 (2d Cir. Oct. 18, 2005); *In re Post & Taback, Inc.*, 62 Agric. Dec. 802 (2003), *aff'd*, 123 F. App'x 406 (D.C. Cir. 2005).

Third, Respondent contends I erroneously omitted findings of fact previously proposed by Respondent that are material and relevant (Respondent's Pet. to Reconsider at 5).

I infer the omitted proposed findings of fact to which Respondent refers are the same proposed findings of fact which Respondent asserts in Respondent's Appeal Petition the ALJ erroneously omitted, namely: (1) William Cashin was unable to identify which United States Department of Agriculture inspection certificates he falsified for Respondent; (2) when William Cashin inspected produce at Respondent's premises, Marvin Friedman made payments to William Cashin even on occasions in which Marvin Friedman had not requested inspection; (3) William Cashin received gifts from wholesalers for his birthday, for Christmas, and upon leaving the Hunts Point Terminal Market; (4) William Cashin spent large sums of money on a car, care for his 19 cats, payments to his supervisor, and gifts for his girlfriend and sister; (5) William Cashin accepted money from wholesalers during his entire 20-year career as a United States Department of Agriculture produce inspector; (6) the United States Department of Agriculture permitted William Cashin to retire with a pension; and (7) William Cashin is a felon.⁵

Respondent fails to cite the portions of the record that support the above-listed proposed findings of fact, and I cannot locate evidence that supports findings that:

⁵Respondent's Appeal Pet. at 3-4.

(1) William Cashin received gifts from wholesalers for his birthday, for Christmas, and upon leaving the Hunts Point Terminal Market and (2) William Cashin spent large sums of money on a car, care for his 19 cats, payments to his supervisor, and gifts for his girlfriend and sister. Moreover, I do not find any of the above-listed proposed findings of fact relevant to the issue of whether Respondent violated the PACA.

Respondent also contends I erroneously failed to note that Complainant conceded Respondent's proposed findings of fact by not disputing them (Respondent's Pet. to Reconsider at 5). However, the record reveals Complainant has continually and consistently disputed Respondent's proposed findings of fact.⁶

Fourth, Respondent contends the publication of the facts and circumstances of Respondent's violations of the PACA is not an appropriate sanction because: (1) Marvin Friedman's principal was not aware that Marvin Friedman was making payments to William Cashin; (2) Marvin Friedman's motive for making payments to William Cashin may have been to benefit himself; (3) Marvin Friedman's payments to William Cashin may have been mere gratuities and not bribes; and (4) none of the United States Department of Agriculture inspection certificates that are the subject of the instant proceeding was false (Respondent's Pet. to Reconsider at 6).

⁶See Complainant's Reply Brief at 4-10; Complainant's Response to Appeal Pet. at 2-8; and Complainant's Response to Respondent's Petition to Rehear and Reargue at 4.

Publication of the facts and circumstances of Respondent's PACA violations is commensurate with the seriousness of Respondent's violations of the PACA.

Respondent's violations were so egregious as to warrant publication of the facts and circumstances of Respondent's PACA violations whether Marvin Friedman's unlawful cash payments (a) were bribes or gratuities; (b) were associated with United States Department of Agriculture inspection certificates that were falsified or with United States Department of Agriculture inspection certificates that were accurate; (c) were paid to benefit Marvin Friedman or Respondent; and (d) were or were not known to Jung Yong "C.J." Park, Kimberly S. Park, or anyone else at Respondent.

For the foregoing reasons and the reasons set forth in *In re KOAM Produce, Inc.*, ___ Agric. Dec. ___ (June 2, 2006), Respondent's Petition to Reconsider is denied.

Section 1.146(b) of the Rules of Practice (7 C.F.R. § 1.146(b)) provides that the decision of the Judicial Officer shall automatically be stayed pending the determination to grant or deny a timely-filed petition to reconsider. Respondent's Petition to Reconsider was timely filed and automatically stayed *In re KOAM Produce, Inc.*, ___ Agric. Dec. ___ (June 2, 2006). Therefore, since Respondent's Petition to Reconsider is denied, I hereby lift the automatic stay, and the Order in *In re KOAM Produce, Inc.*, ___ Agric. Dec. ___ (June 2, 2006), is reinstated; except that the effective date of the Order is the date indicated in the Order in this Order Denying Petition to Reconsider.

For the foregoing reasons, the following Order should be issued.

ORDER

Respondent has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)). The facts and circumstances of Respondent's violations shall be published. The publication of the facts and circumstances of Respondent's violations shall be effective 60 days after service of this Order on Respondent.

RIGHT TO JUDICIAL REVIEW

Respondent has the right to seek judicial review of the Order issued in this Order Denying Petition to Reconsider in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. Respondent must seek judicial review within 60 days after entry of the Order issued in this Order Denying Petition to Reconsider.⁷ The date of entry of the Order in this Order Denying Petition to Reconsider is August 21, 2006.

Done at Washington, DC

August 21, 2006

William G. Jenson
Judicial Officer

⁷See 28 U.S.C. § 2344.