

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	PACA Docket No. D-03-0006
	)	
Robert A. Roberti, Jr.,	)	
d/b/a Phoenix Fruit Co.,	)	
	)	
Respondent	)	<b>Ruling on Certified Question</b>

On January 14, 2003, Chief Administrative Law Judge James W. Hunt [hereinafter the Chief ALJ] certified a question to the Judicial Officer pursuant to section 1.143(e) of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.143(e)). On January 31, 2003, Eric M. Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Complainant], filed a “Brief Regarding Question Certified to the Judicial Officer” [hereinafter Complainant’s Brief] addressing the issue raised in the Chief ALJ’s January 14, 2003, certified question. On February 6, 2003, Robert A. Roberti, Jr., d/b/a Phoenix Fruit Co. [hereinafter Respondent], filed “Responding Brief Regarding Question Certified to the Judicial Officer” [hereinafter Respondent’s Brief]. On February 7, 2003, the Hearing

Clerk transmitted the record to the Judicial Officer for a ruling on the Chief ALJ's January 14, 2003, certified question.

The Chief ALJ poses the following certified question:

**Query:** Is Respondent entitled to a license because Complainant did not conclude its investigation within thirty days of the application?

Certification of Question to the Judicial Officer at 3.

The Perishable Agricultural Commodities Act, as amended (7 U.S.C. §§ 499a-499s) [hereinafter the PACA], provides the Secretary of Agriculture may withhold the issuance of a PACA license to an applicant, pending an investigation of the applicant's fitness for a PACA license or the accuracy and completeness of the PACA license application, for a period not exceeding 30 days, as follows:

**§ 499d. Issuance of license**

. . . .

**(d) Withholding license pending investigation**

The Secretary may withhold the issuance of a license to an applicant, for a period not to exceed thirty days pending an investigation, for the purpose of determining (a) whether the applicant is unfit to engage in the business of a commission merchant, dealer, or broker because the applicant . . . , prior to the date of the filing of the application engaged in any practice of the character prohibited by this chapter or was convicted of a felony in any State or Federal court, or (b) whether the application contains any materially false or misleading statement or involves any misrepresentation, concealment, or withholding of facts respecting any violation of the chapter by any officer, agent, or employee of the applicant. If after investigation the Secretary believes that the applicant should be refused a license, the applicant shall be given an opportunity for hearing within sixty days from the date of the application to show cause why the license should not be refused. If after the hearing the Secretary finds that the applicant is unfit to

engage in the business of a commission merchant, dealer, or broker because the applicant . . . , prior to the date of the filing of the application engaged in any practice of the character prohibited by this chapter or was convicted of a felony in any State or Federal court, or because the application contains any materially false or misleading statement made by the applicant or by its representative on its behalf, or involves any misrepresentation, concealment, or withholding of facts respecting any violation of the chapter by any officer, agent, or employee, the Secretary may refuse to issue a license to the applicant.

7 U.S.C. § 499d(d).

Based on the limited record before me, I find Respondent did not file a complete PACA license application until November 5, 2002.<sup>1</sup> I also find Complainant completed the investigation of Respondent's fitness for a PACA license no later than December 4, 2002, 29 days after Respondent filed a complete PACA license application.<sup>2</sup> I, therefore, conclude the Secretary of Agriculture is not required to issue Respondent a PACA license based on the time limitation for withholding the issuance of a PACA license in section 4(d) of the PACA (7 U.S.C. § 499d(d)).

Respondent asserts he filed a complete PACA license application on October 10, 2002.<sup>3</sup> I disagree with Respondent's assertion.

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<sup>1</sup>See letter dated November 4, 2002, from Charles Hultstrand to John A. Koller and Affidavit of Jane E. Servais ¶ 6 (Reply to Matter Concerning Date of Respondent's Application for PACA License (Attach. 1 and Attach. 6)).

<sup>2</sup>See Notice to Show Cause filed December 4, 2002.

<sup>3</sup>See Response to Notice to Show Cause ¶¶ I, II(b), V, VIIIa; Response to Motion for Expedited Hearing; Reply Re: Date of Application for PACA License; Respondent's Brief.

Section 46.4(b)(1)-(7) of the regulations issued under the PACA (7 C.F.R. § 46.4(b)(1)-(7)) specifies the information an applicant for a PACA license must furnish to obtain a PACA license. Section 46.4(b)(8) of the regulations issued under the PACA (7 C.F.R. § 46.4(b)(8)) provides, in addition to the information specified in 7 C.F.R. § 46.4(b)(1)-(7), the applicant must furnish “[a]ny other information the Director<sup>[4]</sup> deems necessary to establish the identity and eligibility of the applicant to obtain a license.”

The record establishes that Respondent’s October 10, 2002, PACA license application was not complete. Specifically, Respondent failed to submit a copy of the bankruptcy petition, schedules, disclosure statements, and other documents relevant to Respondent’s bankruptcy petition, as required by Respondent’s affirmative response to question 9 on the PACA license application form.<sup>5</sup> Moreover, on September 26, 2002, David N. Studer, an employee of the PACA Branch, Agricultural Marketing Service, United States Department of Agriculture, informed Respondent’s counsel that, due to Respondent’s involvement in bankruptcy proceedings within the last 3 years, Respondent would be required to submit additional information when applying for a PACA license.<sup>6</sup> Respondent’s October 10, 2002, PACA license application did not include the

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<sup>4</sup>“Director” means the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture. 7 C.F.R. § 46.2(d), (f)-(g).

<sup>5</sup>See Reply to Matter Concerning Date of Respondent’s Application for PACA License (Attach. 2 at 2).

<sup>6</sup>See Reply to Matter Concerning Date of Respondent’s Application for PACA License (Attach. 3).

information which David N. Studer stated would be required to be submitted as part of Respondent's PACA license application.

Section 46.4(d) of the regulations issued under the PACA (7 C.F.R. § 46.4(d)) provides that an incomplete PACA license application is not a valid license application and the 30-day period in section 4(d) of the PACA (7 U.S.C. § 499d(d)) for the Secretary of Agriculture's completion of an investigation does not commence until a valid PACA license application is received, as follows:

**§ 46.4 Application for license.**

....

(d) The application and fees shall be forwarded to the Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, or to his representative. *An application which does not contain full or complete answers to all the questions . . . shall not be considered a valid application for license. The "period not to exceed 30 days" as prescribed in section 4(d) of the Act shall commence on the day a valid application for license is received by the Director or his representative.*

7 C.F.R. § 46.4(d) (emphasis added).

Respondent asserts his October 10, 2002, PACA license application contains full and complete answers to all of the questions on the PACA license application form.<sup>7</sup> The term *full or complete answers to all the questions*, as used in section 46.4(d) of the regulations issued under the PACA (7 C.F.R. § 46.4(d)), indicates that answers to

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<sup>7</sup>See Reply Re: Date of Application for PACA License at 2; Respondent's Brief at 2.

questions must not be “lacking in any essential” and must have “all necessary parts, elements, or steps.”<sup>8</sup> I find Respondent’s failure to provide the documents required by Respondent’s affirmative response to question 9 on the PACA license application form is a failure to provide a “full or complete” answer to question 9 on the PACA license application form. Moreover, Respondent’s failure to provide the information which David N. Studer informed Respondent’s counsel would be required to be submitted with Respondent’s PACA license application is a failure to provide “full or complete answers to all the questions.” As Respondent’s PACA license application was not complete on October 10, 2002, I conclude Respondent did not file a valid PACA license application on October 10, 2002, as Respondent asserts.

The Chief ALJ tentatively decided Respondent submitted a complete PACA license application on October 29, 2002; Complainant did not show he concluded his

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<sup>8</sup>See definitions of *complete* and *full* in Merriam-Webster’s Collegiate Dictionary 235, 471(10th ed. 1997). See also *Hoyt v. Daily Mirror, Inc.*, 31 F. Supp. 89, 90 (S.D.N.Y. 1939) (stating the adjective *complete* is defined in Funk & Wagnalls Standard Dictionary as “having all needed or normal parts, elements, or details; lacking nothing; entire, perfect; full”); *Town of Checotah v. Town of Eufaula*, 119 P. 1014, 1017 (Okla. 1911) (citing with approval the definition of *complete* in Webster’s New International Dictionary: filled up, with no part, item, or element lacking; free from deficiency; entire; perfect; consummate); *Quinn v. Donovan*, 85 Ill. 194, 195 (Ill. Jan. Term 1877) (stating one of Webster’s definitions of the word *full* is “complete, entire, without abatement, -- mature, perfect”); *Wood v. Los Angeles City School Dist.*, 44 P.2d 644, 646 (Cal. Dist. Ct. App. 1935) (citing with approval the definition of *complete* in Webster’s New International Dictionary: filled up, with no part, item, or element lacking; free from deficiency; entire; perfect; consummate; and citing with approval the definition of *complete* in Webster’s Dictionary: free from deficiency, entire, absolutely finished).

investigation within 30 days of October 29, 2002; and the Secretary of Agriculture must issue Respondent a PACA license pursuant to section 4(d) of the PACA (7 U.S.C. § 499d(d)).<sup>9</sup> I disagree with the Chief ALJ's tentative decision.

The Chief ALJ bases his tentative determination that Respondent's application was complete on October 29, 2002, on section 46.4(f) of the regulations issued under the PACA, which provides, as follows:

**§ 46.4 Application for license.**

. . . .

(f) If the Director has reason to believe that the application contains inaccurate information, he may afford the applicant an opportunity to submit a corrected application or verify or explain information contained in the application. If the applicant submits a corrected application, the original application shall be considered withdrawn. If the applicant, in response to the Director's request, submits additional or corrected information for consideration in connection with his original application, the original application plus such information shall be considered as constituting a new application.

7 C.F.R. § 46.4(f).

Specifically, the Chief ALJ tentatively found Respondent's October 29, 2002, submission, together with Respondent's original PACA license application of October 10, 2002, constitutes a new and complete application, as provided in section 46.4(f) of the regulations issued under the PACA (7 C.F.R. § 46.4(f)).<sup>10</sup>

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<sup>9</sup>See Certification of Question to the Judicial Officer at 2-3.

<sup>10</sup>See Certification of Question to the Judicial Officer at 2.

Section 46.4(f) of the regulations issued under the PACA (7 C.F.R. § 46.4(f)) applies to circumstances in which the Director has reason to believe a PACA license application contains inaccurate information. Based on the limited record before me, I do not find that the Director had reason to believe Respondent's October 10, 2002, PACA license application contained inaccurate information. Therefore, section 46.4(f) of the regulations issued under the PACA (7 C.F.R. § 46.4(f)) is not applicable to this proceeding, and Respondent's October 10, 2002, PACA license application plus the information Respondent provided on October 29, 2002, cannot "be considered as constituting a new application" filed on October 29, 2002, in accordance with section 46.4(f) of the regulations issued under the PACA (7 C.F.R. § 46.4(f)).<sup>11</sup>

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<sup>11</sup>Complainant contends Respondent's PACA license "application was incomplete and inaccurate in that it did not contain the required information relative to previous bankruptcy filings by one of the principals" and section 46.4(f) of the regulations issued under the PACA (7 C.F.R. § 46.4(f)) is applicable to this proceeding (Complainant's Brief at 3). I reject Complainant's contention that Respondent's PACA license application was "inaccurate" because the PACA license application "did not contain the required information relative to previous bankruptcy filings by one of the principals" and that section 46.4(f) of the regulations issued under the PACA (7 C.F.R. § 46.4(f)) is applicable to this proceeding. An inaccurate application is an application that contains erroneous information. See *Huntington Securities Corp. v. Busey*, 112 F.2d 368, 370 (6th Cir. 1940) (stating in its ordinary use *accurately* means precisely, exactly, correctly, without error or defect); *Globe Indemnity Co. v. Cohen*, 106 F.2d 687, 690 (3d Cir. 1939) (stating the word *accuracy* signifies merely the state or quality of being accurate, freedom from mistake or error), *cert. denied*, 309 U.S. 660 (1940); *Cedar Rapids Engineering Co. v. United States*, 86 F. Supp. 577, 582 (N.D. Iowa 1949) (stating in its ordinary use *accurately* means precisely, exactly, correctly, without error or defect); *Marshall v. City of Cambridge*, 38 N.E.2d 59 (Mass. 1941) (distinguishing between an omission and an inaccuracy). Based on the limited record before me, I find Respondent's October 10,

(continued...)



Instead, the record indicates John A. Koller, an employee of the PACA Branch, Agricultural Marketing Service, United States Department of Agriculture, returned Respondent's October 10, 2002, PACA license application to Respondent because it was incomplete.<sup>12</sup> On October 18, 2002, John A. Koller returned Respondent's incomplete application to Respondent's counsel requesting that Respondent provide the bankruptcy petition, schedules, disclosure statements, and other documents relevant to Respondent's bankruptcy petition, as required by Respondent's affirmative response to question 9 on the PACA license application, and the information identified in David N. Studer's September 26, 2002, letter.<sup>13</sup> I conclude Mr. Koller returned Respondent's PACA license application pursuant to section 46.4(e) of the Regulations (7 C.F.R. § 46.4(e)), which provides, if a PACA license application is incomplete, it may be returned to the applicant with a request that the applicant complete the application.

On October 29, 2002, Respondent submitted the additional information requested in John A. Koller's October 18, 2002, letter.<sup>14</sup> However, Respondent failed to resubmit

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<sup>11</sup>(...continued)  
2002, and October 29, 2002, PACA license applications were incomplete, not inaccurate.

<sup>12</sup>See Reply to Matter Concerning Date of Respondent's Application for PACA License (Attach. 4 and Attach. 6 ¶ 3).

<sup>13</sup>See Reply to Matter Concerning Date of Respondent's Application for PACA License (Attach. 4).

<sup>14</sup>See Reply to Matter Concerning Date of Respondent's Application for PACA License (Attach. 5).

the PACA license application form with his October 29, 2002, submission. Instead, the United States Department of Agriculture did not receive Respondent's resubmitted PACA license application form until November 5, 2002.<sup>15</sup> I conclude Respondent did not file a complete PACA license application until November 5, 2002, when the United States Department of Agriculture had in its possession: (1) Respondent's completed PACA license application form; (2) the bankruptcy petition, schedules, disclosure statements, and other documents relevant to Respondent's bankruptcy petition, as required by Respondent's affirmative response to question 9 on the PACA license application; and (3) the information identified in David N. Studer's September 26, 2002, letter.

Done at Washington, DC

February 14, 2003

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William G. Jenson  
Judicial Officer

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<sup>15</sup>See Reply to Matter Concerning Date of Respondent's Application for PACA License (Attach. 6 ¶ 6).