

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) HPA Docket No. 13-0365
) HPA Docket No. 13-0366
Howard Hamilton and)
Patrick W. Thomas,)
)
Respondents) **Remand Order**

On June 29, 2017, Chief Administrative Law Judge Bobbie J. McCartney issued a "Decision and Order on the Record" in the instant proceeding. On July 28, 2017, Howard Hamilton and Patrick W. Thomas filed an "Appeal Petition to Judicial Officer and Brief in Support Thereof;" on August 21, 2017, the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [Administrator], filed "Complainant's Response in Opposition to Respondents' Appeal Petition;" and on September 12, 2017, Mr. Hamilton and Mr. Thomas filed "Respondents' Reply." On December 21, 2017, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture, transmitted the record to the Office of the Judicial Officer for consideration and decision.

On November 29, 2017, the Solicitor General, on behalf of the United States, submitted a brief in *Lucia v. SEC*, (No. 17-130), in which the Solicitor General took the position that administrative law judges of the Securities and Exchange Commission are inferior officers for purposes of the Appointments Clause, U.S. Const. Art. II, § 2, cl. 2. On July 24, 2017, the Secretary of Agriculture ratified the United States Department of Agriculture's prior written appointment of Chief Administrative Law Judge Bobbie J.

McCartney, Administrative Law Judge Jill S. Clifton, and Administrative Law Judge Channing Strother and renewed their oaths of office.¹

To put to rest any Appointments Clause claim that may arise in this proceeding, I remand this proceeding to Chief Administrative Law Judge McCartney who shall:

Issue an order giving the Administrator, Mr. Hamilton, and Mr. Thomas an opportunity to submit new evidence;


Consider the record, including any newly submitted evidence and all her previous substantive and procedural actions;

Determine whether to ratify or revise in any respect all her prior actions; and

Issue an order stating that she has completed consideration of the record and setting forth her determination regarding ratification.

Done at Washington, DC

December 27, 2017



William G. Jenson
Judicial Officer

¹ Attach. 1.

I, Sonny Perdue, Secretary of Agriculture, conducted a thorough review of the qualifications of this Department's administrative law judges. I affirm that in a ceremony conducted on July 24, 2017, I ratified the agency's prior written appointments of Chief Administrative Law Judge Bobbie McCartney, and Administrative Law Judges Jill S. Clifton and Channing Strother before administering their oath of office by making the following statement:

"I hereby ratify the appointments of Bobbie McCartney, Jill Clifton, and Channing Strother as United States Administrative Law Judges for the United States Department of Agriculture and hereby renew their oaths of office."

Signed this 5th day of December, 2017, in Washington, D.C.


Sonny Perdue
Secretary
United States Department of Agriculture

Attachment 1