

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	PACA Docket No. D-12-0443
	)	PACA Docket No. D-12-0444
Custom Cuts, Inc., and	)	
Custom Cuts Fresh, LLC,	)	
	)	
Respondents	)	<b>Order Denying Late Appeal</b>

**PROCEDURAL HISTORY**

Charles W. Parrott, Associate Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service, United States Department of Agriculture [hereinafter the Deputy Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on May 21, 2012. The Deputy Administrator 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) [hereinafter the Rules of Practice].

The Deputy Administrator alleges Custom Cuts, Inc., and Custom Cuts Fresh, LLC, willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4) by failing to make full payment promptly to produce sellers of the agreed purchase prices, or the balances of the agreed purchase prices, for perishable agricultural commodities which Custom Cuts, Inc., and Custom Cuts Fresh, LLC, purchased in the course of interstate and foreign commerce.<sup>1</sup> On June 8, 2012, Custom Cuts, Inc., and Custom Cuts Fresh, LLC, filed a response to the Complaint, in which Custom Cuts, Inc., and Custom Cuts Fresh, LLC, admitted a majority of the material allegations of the Complaint.

On June 28, 2012, in accordance with 7 C.F.R. § 1.139, the Deputy Administrator filed a Motion for Decision Without Hearing by Reason of Admissions and a proposed Decision Without Hearing Based on Admissions. On August 10, 2012, the Hearing Clerk served Custom Cuts, Inc., and Custom Cuts Fresh, LLC, with the Deputy Administrator's Motion for Decision Without Hearing by Reason of Admissions and proposed Decision Without Hearing Based on Admissions.<sup>2</sup> Custom Cuts, Inc., and Custom Cuts Fresh, LLC, failed to file objections to the Deputy Administrator's Motion for Decision Without Hearing

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<sup>1</sup>Compl. at ¶¶ III-IV and Appendices A-B.

<sup>2</sup>Memorandum to the File issued by Fe C. Angeles, Legal Technician, Office of the Hearing Clerk, on August 10, 2012.

by Reason of Admissions and proposed Decision Without Hearing Based on Admissions within 20 days after service, as required by 7 C.F.R. § 1.139.

On September 25, 2012, pursuant to 7 C.F.R. § 1.139, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] issued a Decision and Order concluding Custom Cuts, Inc., and Custom Cuts Fresh, LLC, willfully violated 7 U.S.C. § 499b(4) and ordering publication of the facts and circumstances of the PACA violations.<sup>3</sup> On November 14, 2012, the Hearing Clerk served Custom Cuts, Inc., and Custom Cuts Fresh, LLC, with the Chief ALJ's Decision and Order.<sup>4</sup>

On February 15, 2013, Custom Cuts, Inc., and Custom Cuts Fresh, LLC, filed an appeal petition. On February 19, 2013, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

### CONCLUSIONS BY THE JUDICIAL OFFICER

The Rules of Practice provide that an administrative law judge's written decision must be appealed to the Judicial Officer by filing an appeal petition with the Hearing Clerk within 30 days after service.<sup>5</sup> The Hearing Clerk served Custom Cuts, Inc., and

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<sup>3</sup>Chief ALJ's Decision and Order at 4.

<sup>4</sup>Memorandum to the File issued by Fe C. Angeles, Legal Technician, Office of the Hearing Clerk, on November 14, 2012.

<sup>5</sup>7 C.F.R. § 1.145(a).

Custom Cuts Fresh, LLC, with the Chief ALJ's Decision and Order on November 14, 2012;<sup>6</sup> therefore, Custom Cuts, Inc., and Custom Cuts Fresh, LLC, were required to file their appeal petition with the Hearing Clerk no later than December 14, 2012. Instead, Custom Cuts, Inc., and Custom Cuts Fresh, LLC, filed their appeal petition with the Hearing Clerk on February 15, 2013. Therefore, I find Custom Cuts, Inc., and Custom Cuts Fresh, LLC's appeal petition is late-filed.

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<sup>6</sup>See note 4.

Moreover, the Judicial Officer has continuously and consistently held under the Rules of Practice that the Judicial Officer has no jurisdiction to hear an appeal that is filed after an administrative law judge's decision becomes final.<sup>7</sup> The Chief ALJ's Decision and Order became final 35 days after the Hearing Clerk served Custom Cuts, Inc., and Custom Cuts Fresh, LLC, with the Decision and Order,<sup>8</sup> namely, December 19, 2012. Custom Cuts, Inc., and Custom Cuts Fresh, LLC, filed their appeal petition on February 15, 2013, 1 month

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<sup>7</sup>See, e.g., *In re Robert M. Self* (Order Denying Late Appeal), \_\_\_ Agric. Dec. \_\_\_ (Sept. 24, 2012) (dismissing the respondent's appeal petition filed 18 days after the chief administrative law judge's decision became final); *In re Timothy Mays* (Order Denying Late Appeal), 69 Agric. Dec. 631 (2010) (dismissing the respondent's appeal petition filed 1 week after the administrative law judge's decision became final); *In re David L. Noble* (Order Denying Late Appeal), 68 Agric. Dec. 1060 (2009) (dismissing the respondent's appeal petition filed 1 day after the administrative law judge's decision became final); *In re Michael Claude Edwards* (Order Denying Late Appeal), 66 Agric. Dec. 1362 (2007) (dismissing the respondent's appeal petition filed 6 days after the administrative law judge's decision became final); *In re Tung Wan Co.* (Order Denying Late Appeal), 66 Agric. Dec. 939 (2007) (dismissing the respondent's appeal petition filed 41 days after the chief administrative law judge's decision became final); *In re Tim Gray* (Order Denying Late Appeal), 64 Agric. Dec. 1699 (2005) (dismissing the respondent's appeal petition filed 1 day after the chief administrative law judge's decision became final); *In re Jozset Mokos* (Order Denying Late Appeal), 64 Agric. Dec. 1647 (2005) (dismissing the respondent's appeal petition filed 6 days after the chief administrative law judge's decision became final); *In re Ross Blackstock* (Order Denying Late Appeal), 63 Agric. Dec. 818 (2004) (dismissing the respondent's appeal petition filed 2 days after the administrative law judge's decision became final); *In re David Gilbert* (Order Denying Late Appeal), 63 Agric. Dec. 807 (2004) (dismissing the respondent's appeal petition filed 1 day after the administrative law judge's decision became final); *In re Vega Nunez* (Order Denying Late Appeal), 63 Agric. Dec. 766 (2004) (dismissing the respondent's appeal petition filed on the day the administrative law judge's decision became final).

<sup>8</sup>See 7 C.F.R. § 1.139; Chief ALJ's Decision and Order at 4-5.

27 days after the Chief ALJ's Decision and Order became final. Therefore, I have no jurisdiction to hear Custom Cuts, Inc., and Custom Cuts Fresh, LLC's appeal petition.

The Rules of Practice do not provide for an extension of time (for good cause or excusable neglect) for filing an appeal petition after an administrative law judge's decision has become final. The absence of such a provision in the Rules of Practice emphasizes that jurisdiction has not been granted to the Judicial Officer to extend the time for filing an appeal after an administrative law judge's decision has become final. Therefore, under the Rules of Practice, I cannot extend the time for Custom Cuts, Inc., and Custom Cuts Fresh, LLC's filing an appeal petition after the Chief ALJ's Decision and Order became final.

Accordingly, Custom Cuts, Inc., and Custom Cuts Fresh, LLC's appeal petition must be denied. For the foregoing reasons, the following Order is issued.

**ORDER**

1. Custom Cuts, Inc., and Custom Cuts Fresh, LLC's appeal petition, filed February 15, 2013, is denied.
2. The Chief ALJ's Decision and Order, filed September 25, 2012, is the final decision in this proceeding.

Done at Washington, DC

February 20, 2013

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William G. Jenson  
Judicial Officer