

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) PACA Docket No. D-01-0032
)
KOAM Produce, Inc.,)
)
Respondent) **Order Lifting Stay Order**

On June 2, 2006, I issued a Decision and Order concluding KOAM Produce, Inc., violated the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a-499s) [hereinafter the PACA], and ordering publication of the facts and circumstances of KOAM Produce, Inc.'s violations.¹ On July 17, 2006, KOAM Produce, Inc., filed a "Petition to Reconsider," which I denied.²

On October 19, 2006, KOAM Produce, Inc., filed a petition for review of *In re KOAM Produce, Inc.*, 65 Agric. Dec. 589 (2006), and *In re KOAM Produce, Inc.* (Order Denying Pet. to Reconsider), 65 Agric. Dec. 1470 (2006), with the United States Court of Appeals for the Second Circuit. On November 14, 2006, James R. Frazier, Acting Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing

¹*In re KOAM Produce, Inc.*, 65 Agric. Dec. 589 (2006).

²*In re KOAM Produce, Inc.* (Order Denying Pet. to Reconsider), 65 Agric. Dec. 1470 (2006).

Service, United States Department of Agriculture [hereinafter Complainant], filed a “Motion for a Stay Order as to Respondent Koam Produce, Inc.,” requesting a stay of *In re KOAM Produce, Inc.*, 65 Agric. Dec. 589 (2006), and *In re KOAM Produce, Inc.* (Order Denying Pet. to Reconsider), 65 Agric. Dec. 1470 (2006), pending the outcome of proceedings for judicial review, which I granted.³

On March 12, 2008, the United States Court of Appeals for the Second Circuit issued a summary order affirming the Secretary of Agriculture’s decision,⁴ and on May 8, 2008, the Court entered final judgment of its summary order. KOAM Produce, Inc., did not file a petition for a writ of certiorari.

On October 27, 2008, Complainant filed a “Motion to Lift Stay Order as to Respondent KOAM Produce, Inc.” KOAM Produce, Inc., failed to file a timely response to the Complainant’s motion to lift stay, and on November 21, 2008, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Complainant’s motion to lift stay.

Proceedings for judicial review are concluded. Therefore, the November 14, 2006, Stay Order is lifted; and the orders issued in *In re KOAM Produce, Inc.*, 65 Agric. Dec. 589 (2006), and *In re KOAM Produce, Inc.* (Order Denying Pet. to Reconsider), 65 Agric. Dec. 1470 (2006), are effective, as follows.

³*In re KOAM Produce, Inc.* (Stay Order), ___ Agric. Dec. ___ (Nov. 14, 2006).

⁴*KOAM Produce, Inc. v. United States*, 269 F. App’x 35 (2d Cir. 2008).

ORDER

KOAM Produce, Inc., 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 KOAM Produce, Inc.'s violations shall be published. The publication of the facts and circumstances of KOAM Produce, Inc.'s violations shall be effective 60 days after service of this Order on KOAM Produce, Inc.

Done at Washington, DC

November 24, 2008

William G. Jenson
Judicial Officer