

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) PACA-APP Docket No. 02-0002
)
Joel Taback,)
) **Order Denying Petition**
) **for Reconsideration**
Petitioner)

PROCEDURAL HISTORY

On December 21, 2001, James R. Frazier, Chief, PACA Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Respondent], issued a determination that Joel Taback [hereinafter Petitioner] was responsibly connected with Post & Taback, Inc., during the period September 4, 2000, through October 10, 2000, when Post & Taback, Inc., violated the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a-499s) [hereinafter the PACA].¹ On January 18, 2002, Petitioner filed a Petition for Review pursuant to the PACA and the Rules of Practice Governing Formal Adjudicatory

¹During the period September 4, 2000, through October 10, 2000, Post & Taback, Inc., failed to make full payment promptly for perishable agricultural commodities, which Post & Taback, Inc., purchased, received, and accepted in interstate commerce, in violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)). *In re Post & Taback, Inc.*, 62 Agric. Dec. ____ (Dec. 16, 2003); *In re Post & Taback, Inc.*, 63 Agric. Dec. ____ (Feb. 13, 2004) (Order Denying Pet. to Reconsider).

Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice] seeking reversal of Respondent's determination that Petitioner was responsibly connected with Post & Taback, Inc., during the period September 4, 2000, through October 10, 2000.

On September 9, 2002, Respondent issued a determination that Petitioner was responsibly connected with Post & Taback, Inc., during the period March 29, 1999, through August 5, 1999, when Post & Taback, Inc., violated the PACA.² On October 17, 2002, Petitioner filed a Petition for Review pursuant to the PACA and the Rules of Practice seeking reversal of Respondent's determination that Petitioner was responsibly connected with Post & Taback, Inc., during the period March 29, 1999, through August 5, 1999.

On December 17-19, 2002, January 28-30, 2003, and April 8-9, 2003, Chief Administrative Law Judge James W. Hunt [hereinafter the Chief ALJ] conducted an oral hearing in New York, New York. The Chief ALJ consolidated the oral hearing in this proceeding with the oral hearing in *In re Post & Taback, Inc.*, PACA Docket No.

²During the period March 29, 1999, through August 5, 1999, Post & Taback, Inc., bribed a United States Department of Agriculture inspector in order to influence the outcome of United States Department of Agriculture inspections of perishable agricultural commodities that Post & Taback, Inc., purchased from produce sellers and Post & Taback, Inc., paid unlawful gratuities to a United States Department of Agriculture inspector in connection with United States Department of Agriculture inspections of perishable agricultural commodities that Post & Taback, Inc., purchased from produce sellers in violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)). *In re Post & Taback, Inc.*, 62 Agric. Dec. ____ (Dec. 16, 2003); *In re Post & Taback, Inc.*, 63 Agric. Dec. ____ (Feb. 13, 2004) (Order Denying Pet. to Reconsider).

D-01-0026.³ Andrew Y. Stanton and Charles E. Spicknall, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented Respondent in this proceeding and Eric M. Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture, in *In re Post & Taback, Inc.*, PACA Docket No. D-01-0026.⁴ Paul T. Gentile, Gentile & Dickler, New York, New York, represented Petitioner in this proceeding and Post & Taback, Inc., in *In re Post & Taback, Inc.*, PACA Docket No. D-01-0026.⁵

On July 29, 2003, after Petitioner and Respondent filed post-hearing briefs, the Chief ALJ issued a “Decision” [hereinafter Initial Decision and Order] concluding Petitioner was not responsibly connected with Post & Taback, Inc., during a period in which Post & Taback, Inc., violated the PACA (Initial Decision and Order at 3).

Respondent filed an appeal petition, and on February 27, 2004, I issued a Decision and Order affirming Respondent’s December 21, 2001, and September 9, 2002,

³*In re Post & Taback, Inc.*, PACA Docket No. D-01-0026, is an administrative disciplinary proceeding in which I concluded that Post & Taback, Inc., violated section 2(4) of the PACA (7 U.S.C. § 499b(4)). *In re Post & Taback, Inc.*, 62 Agric. Dec. ____ (Dec. 16, 2003); *In re Post & Taback, Inc.*, 63 Agric. Dec. ____ (Feb. 13, 2004) (Order Denying Pet. to Reconsider).

⁴See note 3.

⁵See note 3.

determinations that Petitioner was responsibly connected with Post & Taback, Inc., when Post & Taback, Inc., violated the PACA.⁶

On April 5, 2004, Petitioner filed a “Petition to Reconsider.” On April 21, 2004, Respondent filed “Respondent’s Response to Petitioner’s Petition to Reconsider.” On April 23, 2004, the Hearing Clerk transmitted the record to the Judicial Officer for reconsideration of the February 27, 2004, Decision and Order.

APPLICABLE STATUTORY AND REGULATORY PROVISIONS

7 U.S.C.:

TITLE 7—AGRICULTURE

. . . .

CHAPTER 20A—PERISHABLE AGRICULTURAL COMMODITIES

. . . .

§ 499a. Short title and definitions

. . . .

(b) Definitions

For purposes of this chapter:

. . . .

(9) The term “responsibly connected” means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association. A person shall not be deemed to be responsibly connected if the person demonstrates by a preponderance of the evidence that the person was not actively involved in

⁶*In re Joel Taback*, 63 Agric. Dec. ___, slip op. at 25 (Feb. 27, 2004).

the activities resulting in a violation of this chapter and that the person either was only nominally a partner, officer, director, or shareholder of a violating licensee or entity subject to license or was not an owner of a violating licensee or entity subject to license which was the alter ego of its owners.

....

§ 499b. Unfair conduct

It shall be unlawful in or in connection with any transaction in interstate or foreign commerce:

....

(4) For any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity which is received in interstate or foreign commerce by such commission merchant, or bought or sold, or contracted to be bought, sold, or consigned, in such commerce by such dealer, or the purchase or sale of which in such commerce is negotiated by such broker; or to fail or refuse truly and correctly to account and make full payment promptly in respect of any transaction in any such commodity to the person with whom such transaction is had; or to fail, without reasonable cause, to perform any specification or duty, express or implied, arising out of any undertaking in connection with any such transaction; or to fail to maintain the trust as required under section 499e(c) of this title. However, this paragraph shall not be considered to make the good faith offer, solicitation, payment, or receipt of collateral fees and expenses, in and of itself, unlawful under this chapter.

....

§ 499d. Issuance of license

(a) Authority to do business; termination; renewal

Whenever an applicant has paid the prescribed fee the Secretary, except as provided elsewhere in this chapter, shall issue to such applicant a license, which shall entitle the licensee to do business as a commission merchant and/or dealer and/or broker unless and until it is suspended or revoked by the Secretary in accordance with the provisions of this chapter, or is automatically suspended under section 499g(d) of this title, but said license shall automatically terminate on the anniversary date of the license

at the end of the annual or multiyear period covered by the license fee unless the licensee submits the required renewal application and pays the applicable renewal fee (if such fee is required)[.]

(b) Refusal of license; grounds

The Secretary shall refuse to issue a license to an applicant if he finds that the applicant, or any person responsibly connected with the applicant, is prohibited from employment with a licensee under section 499h(b) of this title or is a person who, or is or was responsibly connected with a person who—

(A) has had his license revoked under the provisions of section 499h of this title within two years prior to the date of the application or whose license is currently under suspension; [or]

(B) within two years prior to the date of application has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 499b of this title, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect[.]

....

(c) Issuance of license upon furnishing bond; issuance after three years without bond; effect of termination of bond; increase or decrease in amount; payment of increase

Any applicant ineligible for a license by reason of the provisions of subsection (b) of this section may, upon the expiration of the two-year period applicable to him, be issued a license by the Secretary if such applicant furnishes a surety bond in the form and amount satisfactory to the Secretary as assurance that his business will be conducted in accordance with this chapter and that he will pay all reparation orders which may be issued against him in connection with transactions occurring within four years following the issuance of the license, subject to his right of appeal under section 499g(c) of this title. In the event such applicant does not furnish such a surety bond, the Secretary shall not issue a license to him until three years have elapsed after the date of the applicable order of the Secretary or decision of the court on appeal. If the surety bond so furnished is terminated for any reason without the approval of the Secretary the license shall be automatically canceled as of the date of such termination and no new license shall be issued to such person during the four-year

period without a new surety bond covering the remainder of such period. The Secretary, based on changes in the nature and volume of business conducted by a bonded licensee, may require an increase or authorize a reduction in the amount of the bond. A bonded licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and upon failure of the licensee to provide such bond his license shall be automatically suspended until such bond is provided. The Secretary may not issue a license to an applicant under this subsection if the applicant or any person responsibly connected with the applicant is prohibited from employment with a licensee under section 499h(b) of this title.

§ 499h. Grounds for suspension or revocation of license

....

(b) Unlawful employment of certain persons; restrictions; bond assuring compliance; approval of employment without bond; change in amount of bond; payment of increased amount; penalties

Except with the approval of the Secretary, no licensee shall employ any person, or any person who is or has been responsibly connected with any person—

(1) whose license has been revoked or is currently suspended by order of the Secretary;

(2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 499b of this title, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or

(3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 499g(c) of this title.

The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 499b of this title, if the licensee furnishes and maintains a surety bond in form and

amount satisfactory to the Secretary as assurance that such licensee's business will be conducted in accordance with this chapter and that the licensee will pay all reparation awards, subject to its right of appeal under section 499g(c) of this title, which may be issued against it in connection with transactions occurring within four years following the approval. The Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary order. The Secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond. A licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and if the licensee fails to do so the approval of employment shall automatically terminate. The Secretary may, after thirty days['] notice and an opportunity for a hearing, suspend or revoke the license of any licensee who, after the date given in such notice, continues to employ any person in violation of this section. The Secretary may extend the period of employment sanction as to a responsibly connected person for an additional one-year period upon the determination that the person has been unlawfully employed as provided in this subsection.

§ 499p. Liability of licensees for acts and omissions of agents

In construing and enforcing the provisions of this chapter, the act, omission, or failure of any agent, officer, or other person acting for or employed by any commission merchant, dealer, or broker within the scope of his employment or office, shall in every case be deemed the act, omission, or failure of such commission merchant, dealer, or broker as that of such agent, officer, or other person.

7 U.S.C. §§ 499a(b)(9), 499b(4), 499d(a), (b)(A)-(B), (c), 499h(b), 499p.

7 C.F.R.:

TITLE 7—AGRICULTURE

....

**SUBTITLE B—REGULATIONS OF THE
DEPARTMENT OF AGRICULTURE:**

**CHAPTER I—AGRICULTURAL MARKETING SERVICE (STANDARDS,
INSPECTIONS, MARKETING PRACTICES), DEPARTMENT OF
AGRICULTURE**

....

**SUBCHAPTER B—MARKETING OF PERISHABLE
AGRICULTURAL COMMODITIES**

**PART 46—REGULATIONS (OTHER THAN RULES OF PRACTICE)
UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930**

DEFINITIONS

....

§ 46.2 Definitions.

The terms defined in the first section of the Act shall have the same meaning as stated therein. Unless otherwise defined, the following terms whether used in the regulations, in the Act, or in the trade shall be construed as follows:

....

(aa) *Full payment promptly* is the term used in the Act in specifying the period of time for making payment without committing a violation of the Act. “Full payment promptly,” for the purpose of determining violations of the Act, means:

....

(5) Payment for produce purchased by a buyer, within 10 days after the day on which the produce is accepted;

....

(11) Parties who elect to use different times of payment than those set forth in paragraphs (aa)(1) through (10) of this section must reduce their agreement to writing before entering into the transaction and maintain a copy of the agreement in their records. If they have so agreed, then payment within the agreed upon time shall constitute “full payment promptly”: *Provided*, That the party claiming the existence of such an agreement for time of payment shall have the burden of proving it.

7 C.F.R. § 46.2(aa)(5), (11).

CONCLUSIONS BY THE JUDICIAL OFFICER ON RECONSIDERATION

Petitioner raises five issues in his Petition to Reconsider. First, Petitioner contends I erroneously concluded that he was responsibly connected with Post & Taback, Inc., during the period that Mark Alfisi made unlawful payments in connection with inspections of perishable agricultural commodities that Post & Taback, Inc., purchased from produce sellers (Pet. to Reconsider at 1-2).

As fully discussed in the February 27, 2004, Decision and Order, the evidence establishes that, during the period March 29, 1999, through August 1999, when Petitioner was responsibly connected with Post & Taback, Inc., Mark Alfisi, an employee of Post & Taback, Inc., bribed a United States Department of Agriculture inspector in order to influence the outcome of inspections of perishable agricultural commodities that Post & Taback, Inc., purchased from produce sellers and gave unlawful gratuities to a United States Department of Agriculture inspector in connection with inspections of perishable agricultural commodities that Post & Taback, Inc., purchased from produce sellers.⁷

⁷*In re Joel Taback*, 63 Agric. Dec. ___, slip op. at 14-22 (Feb 27, 2004).

Therefore, I reject Petitioner's contention that I erroneously concluded that he was responsibly connected with Post & Taback, Inc., during the period that Mark Alfisi made unlawful payments in connection with inspections of perishable agricultural commodities that Post & Taback, Inc., purchased from produce sellers.

Second, Petitioner contends I incorrectly found that "because [s]ection 16 of the PACA (7 U.S.C. § 499[p]) provides identity of action between the licensees and its agents, the liability of the Petitioner in the matter extends to his status as 'responsibly connected'" (Pet. to Reconsider at 1).

I am not certain that I understand Petitioner's contention; however, I believe Petitioner contends I erroneously held that Petitioner was responsibly connected with Post & Taback, Inc., because section 16 of the PACA (7 U.S.C. § 499p) makes Petitioner responsible for Post & Taback, Inc.'s employee's PACA violations. I reject Petitioner's contention because I did not hold in the February 27, 2004, Decision and Order that section 16 of the PACA (7 U.S.C. § 499p) makes Petitioner responsible for Post & Taback, Inc.'s employee's PACA violations. Instead, I held that knowing and willful PACA violations by Mark Alfisi, an employee of Post & Taback, Inc., are, as a matter of law, deemed to be Post & Taback, Inc.'s knowing and willful violations of the PACA. My reasons for holding that Mark Alfisi's violations are deemed to be Post & Taback,

Inc.'s PACA violations are fully explained in the February 27, 2004, Decision and Order.⁸

I find no reason to repeat that explanation here.

Third, Petitioner contends, “[b]ased upon the determination by Administrative Law Judge Hunt, the law of the case is that the principals of the Petitioner had no knowledge of the actions of Mr. Alfesi [sic]” (Pet. to Reconsider at 1).

Petitioner provides no citation to the Chief ALJ’s purported determination that Petitioner’s principals had no knowledge that Mark Alfisi bribed and paid unlawful gratuities to a United States Department of Agriculture inspector in connection with inspections of perishable agricultural commodities that Post & Taback, Inc., purchased from produce sellers. Moreover, I have thoroughly reviewed the Chief ALJ’s Initial Decision and Order and other filings, and I cannot find any determination by the Chief ALJ which relates to “principals of the Petitioner.”

Fourth, Petitioner contends “[i]t is impermissible to hold a person who lacks knowledge and involvement in the company’s affairs responsible for the criminal acts of an employee” (emphasis in original) (Pet. to Reconsider at 1-2).

The issue in this proceeding is whether Petitioner was *responsibly connected*, as that term is defined in section 1(b)(9) of the PACA (7 U.S.C. § 499a(b)(9)), with Post & Taback, Inc., during a period when Post & Taback, Inc., violated section 2(4) of the PACA (7 U.S.C. § 499b(4)). The first sentence of the two-sentence definition of the term

⁸*In re Joel Taback*, 63 Agric. Dec. ___, slip op. at 17-22 (Feb. 27, 2004).

responsibly connected provides that a person is responsibly connected if he or she is affiliated or connected with a commission merchant, dealer, or broker as a partner in a partnership or as an officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association.⁹ The second sentence of the definition of the term *responsibly connected* provides that a petitioner shall not be deemed responsibly connected, even if the petitioner falls within the parameters of the first sentence, if the petitioner demonstrates by a preponderance of the evidence that he or she was not actively involved in the activities resulting in a violation of the PACA and that he or she either was only nominally a partner, officer, director, or shareholder of the violating PACA licensee or entity subject to a PACA license or was not an owner of the violating PACA licensee or entity subject to a PACA license which was the alter ego of its owners.¹⁰ The definition of the term *responsibly connected* does not provide that “[i]t is impermissible to hold a person who lacks knowledge and involvement in the company’s affairs” responsibly connected with a commission merchant, dealer, or broker, as Petitioner contends.

Fifth, Petitioner asserts the Chief ALJ found Respondent did not prove the dates Post & Taback, Inc., accepted the produce for which it failed to make full payment. Petitioner contends that I impermissibly substituted my “theory” for the Chief ALJ’s fact

⁹7 U.S.C. § 499a(b)(9).

¹⁰See note 9.

finding, that my “interpretation” of the evidence is based upon conjecture and surmise, and that, under the circumstances, I am bound to adopt the Chief ALJ’s finding that Respondent did not prove Post & Taback, Inc., failed to make full payment promptly for produce during the period that Petitioner was responsibly connected with Post & Taback, Inc. (Pet. to Reconsider at 2.)

Respondent determined Petitioner was responsibly connected with Post & Taback, Inc., during the period September 4, 2000, through October 10, 2000, when Post & Taback, Inc., failed to make full payment promptly for perishable agricultural commodities, which Post & Taback, Inc., purchased, received, and accepted in interstate commerce, in violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)). Section 46.2(aa)(5) of the regulations issued under the PACA (7 C.F.R. § 46.2(aa)(5)) defines the term *full payment promptly* as payment for produce purchased by a buyer within 10 days after the day on which the produce is *accepted*. The Chief ALJ found the record contains no reliable evidence establishing the dates Post & Taback, Inc., accepted produce for which it failed to make full payment. The Chief ALJ, therefore, concluded that Respondent did not establish that Post & Taback, Inc., failed to make full payment promptly for produce in violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)) during the period that Petitioner was responsibly connected with Post & Taback, Inc. (Initial Decision and Order at 2-3.)

I disagree with the Chief ALJ’s finding that the record contains no reliable evidence establishing the dates Post & Taback, Inc., accepted produce for which it failed

to make full payment promptly. Respondent introduced substantial evidence which establishes that during the period September 4, 2000, through October 10, 2000, Post & Taback, Inc., failed to make full payment promptly to five produce sellers in the total amount of \$31,932.95 for six lots of perishable agricultural commodities that Post & Taback, Inc., purchased, received, and accepted in interstate commerce. Petitioner cites no basis for, and I cannot find a basis for, Petitioner's contention that my finding that Post & Taback, Inc., failed to make full payment promptly in violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)) during the period September 4, 2000, through October 10, 2000, is based upon conjecture and surmise. Instead, the February 27, 2004, Decision and Order contains a discussion of and references to the evidence I relied upon as the basis for my finding that Post & Taback, Inc., failed to make full payment promptly in violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)) during the period September 4, 2000, through October 10, 2000.¹¹

I disagree with Petitioner's contention that I am bound to adopt the Chief ALJ's findings of fact. The Judicial Officer is not bound by an administrative law judge's initial decision and order and may reject the initial decision and order in whole or in part. 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:

¹¹*In re Joel Taback*, 63 Agric. Dec. ____, slip op. at 22-24 (Feb. 27, 2004).

§ 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 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).

Similarly, section 1.145(i) of the Rules of Practice provides that the Judicial Officer *may* adopt the administrative law judge's initial decision and order, as follows:

§ 1.145 Appeal to Judicial Officer.

....

(i) *Decision of the judicial officer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

7 C.F.R. § 1.145(i).

Therefore, I reject Petitioner's contention that my failure to adopt the Chief ALJ's findings of fact, is error.

For the foregoing reasons and the reasons set forth in *In re Joel Taback*, 63 Agric. Dec. ____ (Feb. 27, 2004), Petitioner'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 for reconsideration. Petitioner's Petition to Reconsider was timely filed and automatically stayed the February 27, 2004, Decision and Order. Therefore, since Petitioner's Petition to Reconsider is denied, I hereby lift the automatic stay, and the Order in *In re Joel Taback*, 63 Agric. Dec. ____ (Feb. 27, 2004), is reinstated; except that the effective date of the Order is the date indicated in the Order in this Order Denying Petition for Reconsideration.

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

ORDER

I affirm Respondent's December 21, 2001, and September 9, 2002, determinations that Petitioner was responsibly connected with Post & Taback, Inc., when Post & Taback, Inc., violated the PACA. Accordingly, Petitioner is subject to the licensing restrictions under section 4(b) of the PACA and the employment restrictions under section 8(b) of the PACA (7 U.S.C. §§ 499d(b), 499h(b)).

This Order shall become effective 60 days after service of this Order on Petitioner.

Done at Washington, DC

April 28, 2004

William G. Jenson
Judicial Officer