SUMMARY OF MAJOR DECISIONS BY THE JUDICIAL OFFICER

Fiscal Year 2009

In *In re Tuscany Farms, Inc.*(Decision as to Tuscany Farms, Inc.; Joe Genova & Associates, Inc.; and Joe A. Genova), PACA Docket Nos. D-04-0015, D-04-0016, D-06-0017, 06-0005, 06-0006, decided by the Judicial Officer on October 15, 2008, the Judicial Officer affirmed the Chief Administrative Law Judge's decision concluding that (1) Tuscany Farms and Joe Genova & Associates willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4) by failing to make full payment promptly for produce they purchased; and (2) Joe A. Genova was responsibly connected with Tuscany Farms during the time Tuscany Farms violated the PACA. The Judicial Officer found the Associate Deputy Administrator proved by a preponderance of the evidence that Tuscany Farms and Joe Genova & Associates violated the PACA. The Judicial Officer held the cessation of the operation of Tuscany Farms and Joe Genova & Associates, before USDA's investigation of their PACA violations, is not relevant to whether the companies violated the PACA. The Judicial Officer also found irrelevant Tuscany Farms and Joe Genova & Associates' contention that, prior to shutting down, they had reached accord and satisfaction on each debt. The Judicial Officer, citing *In re Kanowitz Fruit and Produce Co.*, 56 Agric. Dec. 917, 928 n.7 (1997), *aff'd*, 166 F.3d 1200 (Table), 1998 WL 863340 (2d Cir. 1998), *cert. denied*, 526 U.S. 1098 (1999), held that, even though a creditor is willing to accept less than owed from a debtor, such an agreement does not meet the requirements of full payment promptly under the PACA.

In *In re Timothy R. Baumert,* P&S Docket No. D-07-0190, decided by the Judicial Officer on October 22, 2008, the Judicial Officer affirmed the Administrative Law Judge's decision concluding Timothy R. Baumert failed to pay the full purchase price for livestock within the time period required by 7 U.S.C. § 228b(a) and engaged in business as a dealer without maintaining an adequate bond or bond equivalent, in willful violation of 7 U.S.C. § 213(a) and 9 C.F.R. § 201.30(b). The Judicial Officer found Mr. Baumert failed to file a timely answer to the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), Mr. Baumert was deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. At the Deputy Administrator's request, the Judicial Officer modified the ALJ's decision in a manner that benefitted Mr. Baumert without providing Mr. Baumert a prior opportunity to respond to the request, but stated, in the unlikely event that Mr. Baumert objects to the modification, he may raise the objection in any petition to reconsider.

In *In re Hein Hettinga and Ellen Hettinga,* Docket No. AMA M-08-0069, decided by the Judicial Officer on October 30, 2008, the Judicial Officer affirmed the Administrative Law Judge's decision concluding the Hettinga petition, filed pursuant to 7 U.S.C. § 608c(15)(A), fails to state a claim upon which relief can be granted in this form. The Judicial Officer found the petition raises only a facial constitutional challenge to the Milk Regulatory Equity Act of 2005, which amended and supplemented the Agricultural Marketing Agreement Act of 1937, and concluded the facial constitutional challenge cannot be raised administratively.

In *In re Leroy H. Baker, Jr.* (Decision as to Leroy H. Baker Jr.), A.Q. Docket No. 08-0074, decided by the Judicial Officer on November 17, 2008, the Judicial Officer found Mr. Baker failed to file a timely answer to the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), Mr. Baker was deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. The Judicial Officer affirmed the Administrative Law Judge's decision concluding Leroy H. Baker, Jr., violated the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note) and the Regulations (9 C.F.R. pt. 88) and assessing Mr. Baker a $162,800 civil penalty. The Judicial Officer did not adopt the ALJ's order that Mr. Baker cease and desist from violating the Commercial Transportation of Equine for Slaughter Act and the Regulations. The Judicial Officer stated the Commercial Transportation of Equine for Slaughter Act provides that the Secretary of Agriculture may establish and enforce effective and appropriate civil penalties, but the Secretary of Agriculture had made no provision for the imposition of a cease and desist order for violations of the Commercial Transportation of Equine for Slaughter Act.

In *In re Loreon Vigne*, AWA Docket No. 07-0174, decided by the Judicial Officer on November 18, 2008, the Judicial Officer found that Ms. Vigne controlled, managed, and directed the business activities of the Isis Society for Inspirational Studies, Inc., which had been adjudicated guilty of conspiring to violate the Endangered Species Act (18 U.S.C. § 371) and violating the Endangered Species Act (16 U.S.C. §§ 1538(a)(1)(F) and 1540(b)(1)). Based on these findings, the Judicial Officer concluded that Ms. Vigne was unfit to be licensed under the Animal Welfare Act, ordered the termination of Ms. Vigne's Animal Welfare Act license, and disqualified Ms. Vigne from becoming licensed under the Animal Welfare Act for a period of 2 years. The Judicial Officer rejected Ms. Vigne's contention that the statute of limitations barred the Administrator from instituting the proceeding to terminate her Animal Welfare Act license, stating 28 U.S.C. § 2462 is not applicable to an action to terminate an existing Animal Welfare Act license. The Judicial Officer held termination of an Animal Welfare Act license pursuant to 9 C.F.R. § 2.12 is remedial in nature and outside the scope of the statute of limitations in 28 U.S.C. § 2462.

In *In re Wyoming Department of Parks and Cultural Resources*, AWA Docket No. 07-0022, decided by the Judicial Officer on November 24, 2008, the Judicial Officer concluded that, while the Wyoming Department of Parks was not a "person," as defined in 7 U.S.C. § 2132(a), it was an "exhibitor," as defined in 7 U.S.C. § 2132(h), and was required to have an Animal Welfare Act license and to comply with the Animal Welfare Act and the Regulations and Standards. The Judicial Officer, citing *United States v. Mississippi*, 380 U.S. 128, 140 (1965), rejected Wyoming's contention that the proceeding should be dismissed because the Secretary of Agriculture lacks jurisdiction over state agencies and state employees acting on a state's behalf. The Judicial Officer stated, under the Eleventh Amendment, a state may not be sued by private persons without its consent, but nothing in the Eleventh Amendment or any other provision of the Constitution prevents a State's being sued by the United States. The Judicial Officer, citing *In re Lloyd A. Good, Jr.*, 49 Agric. Dec. 156, 163-64 (1990), and *In re Daniel J. Hill*, 67 Agric. Dec. 196, 204 (2008), rejected Wyoming's contention that, because the public view the bison and elk without charge, Wyoming is outside the ambit of that part of

the "exhibitor" definition which limits its application to exhibiting animals to the public "for compensation." The Judicial Officer also held that, even if the Wyoming Department of Parks did not exhibit animals to the public for *compensation*, the Wyoming Department of Parks would be an "exhibitor," because Hot Springs State Park and Bear River State Park are "zoos," as defined in 9 C.F.R. § 1.1. The Judicial Officer dismissed the case against the park superintendents, stating the record does not establish that they, by virtue of their employment by the Wyoming Department of Parks, are also exhibitors. Further, the Judicial Officer stated, even if they were exhibitors, he would not find that they, in addition to their employer, the Wyoming Department of Parks, must obtain Animal Welfare Act licenses. In numerous Animal Welfare Act cases, persons who have been employed by an Animal Welfare Act licensee have not also been required to be licensed, even though these employees actually participate in the exhibition of animals. While the Animal Welfare Act authorizes the Secretary of Agriculture to require all employees of a licensed exhibitor, who themselves fall within the definition of "exhibitor," to also obtain Animal Welfare Act licenses, such a requirement would be a departure from current policy.

In *In re Leroy H. Baker, Jr.* (Order Denying Pet. to Reconsider as to Leroy H. Baker Jr.), A.Q. Docket No. 08-0074, decided by the Judicial Officer on December 15, 2008, the Judicial Officer held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), Mr. Baker was deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. The Judicial Officer also held that USDA was not required to inform Mr. Baker of his violations of the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note) and the Regulations (9 C.F.R. pt. 88) immediately after they occurred and that the inability to pay a civil penalty is not a factor that must be considered when determining the amount of the civil penalty to be assessed for violations of the Commercial Transportation of Equine for Slaughter Act and the Regulations.

In *In re Mark McDowell,* AMA PPRCIA Docket No. 05-0001, decided by the Judicial Officer on December 18, 2008, the Judicial Officer dismissed the Petition brought under the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. §§ 4801-4819) and the Regulations (7 C.F.R. pt. 1230) concluding the Petitioners lacked standing, the Petitioners failed to state a legally cognizable claim, and the National Pork Board's payment of a per-farm-fee associated with the Environmental Protection Agency's Air Emissions Study is in accord with the Pork Act and the Pork Order. The Judicial Officer found that the Air Emissions Study is "research" as that term is defined in the Pork Act and Pork Order. The Judicial Officer, citing *Washer v. Bullitt County*, 110 U.S. 558, 562 (1884), held that, unless the applicable rules of practice indicate otherwise, an amended pleading supercedes the original pleading and renders the original pleading of no legal effect; therefore, Petitioners' Amended Petition was superceded by Petitioners' Second Amended Petition and the Amended Petition had no legal effect.

In *In re Amarillo Wildlife Refuge, Inc.*, AWA Docket No. 07-0077, decided by the Judicial Officer on January 6, 2009, the Judicial Officer found that Carmel Azzopardi controlled, managed, and directed Amarillo Wildlife Refuge's business activities and that he had been adjudicated guilty of violating the Endangered Species Act. Based on these findings, the Judicial

Officer concluded Amarillo Wildlife Refuge was unfit to be licensed under the Animal Welfare Act, ordered the termination of Amarillo Wildlife Refuge's Animal Welfare Act license, and disqualified Amarillo Wildlife Refuge from becoming licensed under the Animal Welfare Act for a period of 2 years. The Judicial Officer rejected Amarillo Wildlife Refuge's contention that the mailbox rule applies to proceedings under the Rules of Practice (7 C.F.R. §§ 1.130-.151). The Judicial Officer found irrelevant Mr. Azzopardi's resignation from Amarillo Wildlife Refuge after he violated the Endangered Species Act and after his conviction. The Judicial Officer also found irrelevant the change of the name of Amarillo Wildlife Refuge to Texas Wildlife Center, Inc. The Judicial Officer rejected Amarillo Wildlife Refuge's request to modify the order to limit the disqualification from obtaining an Animal Welfare Act license to Amarillo Wildlife Refuge and Mr. Azzopardi only. The Judicial Officer stated that Amarillo Wildlife Refuge's other directors, officers, and agents also were disqualified so that the disqualification of Amarillo Wildlife Refuge would not be circumvented. The Judicial Officer rejected Amarillo Wildlife Refuge's request that the penalty imposed on Mr. Azzopardi for his violations of the Endangered Species Act and the attorney's fees that he paid in connection with his violations of the Endangered Species Act should be taken into account when determining the sanction to be imposed on Amarillo Wildlife Refuge.

In *In re Hein Hettinga and Ellen Hettinga,* AMA Docket No. M-08-0071, decided by the Judicial Officer on January 15, 2009, the Judicial Officer rejected the Hettingas' argument that the Market Administrator misapplied the federal order regulating the handling of Milk in the Arizona-Las Vegas Marketing Area (7 C.F.R. pt. 1131) by imposing minimum pricing and pooling requirements on the Hettingas for the month of April 2006. The Judicial Officer found that on February 24, 2006, the Administrator issued a final rule, which became effective April 1, 2006, that subjected producer-handlers operating in the Arizona-Las Vegas and Pacific Northwest milk marketing areas to the pricing and pooling provisions of their respective milk marketing orders if they had in-area route distributions of class I milk in excess of 3,000,000 pounds per month (71 Fed. Reg. 9430 (Feb. 24, 2006)) and that the Hettingas were, therefore, no longer exempt from minimum pricing and pooling provisions. The Judicial Officer rejected the Hettingas argument that the Market Administrator could not impose minimum pricing and pooling regulations on them until he cancelled their designation as producer-handler. The Judicial Officer stated, as the Hettingas were never designated as a producer-handler under the April 1, 2006, definition of "producer-handler," the Market Administrator could not cancel the producer-handler designation of the Hettingas.

In *In re Loreon Vigne* (Order Denying Pet. to Reconsider), AWA Docket No. 07-0174, decided by the Judicial Officer on February 11, 2009, the Judicial Officer rejected Ms. Vigne's contention that she was deprived of due process. The Judicial Officer stated that, under the Rules of Practice (7 C.F.R. §§ 1.130-.151), her failure to file a timely answer constituted an admission of the allegations of the complaint and a waiver of the right to a hearing. The Judicial Officer also rejected Ms. Vigne's contention that her waiver of hearing should be set aside because she appeared pro se and she was an elderly woman. The Judicial Officer stated that the Rules of Practice do not distinguish between those appearing pro se and those represented by counsel and do not distinguish between elderly women and other persons. The Judicial Officer found correct,

but irrelevant, Ms. Vigne's assertion that complainant's motion for summary judgment did not bear on its face the moving attorney's telephone number, fax number, and bar number or any other information which would assist Ms. Vigne in contacting the moving party. The Judicial Officer found no support in the record for Ms. Vigne's assertion that termination of her Animal Welfare Act license breaches the terms of the plea agreement Ms. Vigne and the United States entered in *United States v. Isis Society for Inspirational Studies, Inc.*, CR-06-313-01-MO (D. Or. Jan. 5, 2007). The Judicial Officer also rejected Ms. Vigne's request for permission to withdraw her guilty plea in *United States v. Isis Society for Inspirational Studies, Inc*., stating this forum is not the forum in which to lodge a request to withdraw a guilty plea entered in the United States District Court for the District of Oregon and the Judicial Officer stated he had no jurisdiction to entertain Ms. Vigne's request for permission to withdraw the guilty plea entered in the United States District Court for the District of Oregon.

In *In re Animals of Montana, Inc.*, AWA Docket No. D-05-0005, decided by the Judicial Officer on March 10, 2009, the Judicial Officer found that Troy Hyde was the owner, operator, and president of Animals of Montana when he was found to have violated the Lacey Act and the Endangered Species Act. Based on these findings, the Judicial Officer concluded Animals of Montana was unfit to be licensed under the Animal Welfare Act, ordered the termination of Animals of Montana's Animal Welfare Act license, and disqualified Animals of Montana from becoming licensed under the Animal Welfare Act for a period of 2 years. The Judicial Officer rejected Animals of Montana's argument that the Administrator's motion for summary judgment was time-barred by 7 C.F.R. § 1.143(b)(2) stating the time bar in 7 C.F.R. § 1.143(b)(2) relates to motions concerning the complaint and the Administrator's motion for summary judgment seeks a judgment based on the filings in the record. The Judicial Officer also rejected Animals of Montana's argument that the Administrator's motion for summary judgment is inappropriate because suspension or revocation of Animal of Montana's Animal Welfare Act license is discretionary. The Judicial Officer stated the Administrator seeks termination of Animals of Montana's Animal Welfare Act license and a 2-year disqualification from obtaining an Animal Welfare Act license based upon 9 C.F.R. §§ 2.11 and 2.12; the Administrator does not seek suspension or revocation of Animals of Montana's license pursuant to 7 U.S.C. § 2149(a) for violations of the Animal Welfare Act. The Judicial Officer held, even if he were to find that Mr. Hyde's violations of the Lacey Act and the Endangered Species Act only disrupted the administrative mechanism designed to carry out the Lacey Act and the Endangered Species Act and that Mr. Hyde did not harm endangered wildlife, he would not dismiss the instant proceeding. An Animal Welfare Act license may be terminated if a person acting for a licensee has been found to have violated any federal laws pertaining to the transportation, ownership, neglect, or welfare of animals. The Judicial Officer also rejected Animal of Montana's contention that the criminal penalty imposed on Mr. Hyde in *United States v. Hyde*, Case No. 03-315(6) (D. Minn. Sept. 8, 2005), is relevant to the sanction to be imposed on Animals of Montana and held that collateral effects of the termination of an Animal Welfare Act license and disqualification from holding an Animal Welfare Act license are not relevant to the determination of whether Animals of Montana is unfit to be licensed. The Judicial Officer also rejected Animals of Montana's argument that 9 C.F.R. § 2.12, which was effective after Mr. Hyde violated the Lacey Act and the Endangered Species Act, cannot be applied in the

proceeding stating Mr. Hyde's conviction of having violated the Lacey Act and the Endangered Species Act triggered the Secretary of Agriculture's ability to terminate Animals of Montana's Animal Welfare Act license; not the date of the underlying criminal activities.

In *In re Billy Mike Gentry* (Order Dismissing Purported Appeal Petition), P&S Docket No. D-07-0152, decided by the Judicial Officer on March 18, 2009, the Judicial Officer dismissed the purported appeal petition filed by Mr. Gentry, stating that Mr. Gentry's filing did not remotely conform to the requirements for an appeal petition in 7 C.F.R. § 1.145(a).

In *In re Lion Raisins, Inc.* (Decision as to Lion Raisins, Inc.; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion), I & G Docket No. 04-0001, decided by the Judicial Officer on April 17, 2009, the Judicial Officer concluded that the respondents willfully violated the Agricultural Marketing Act (7 U.S.C. §§ 1621-1632) by engaging in misrepresentation or deceptive or fraudulent practices in connection with the use of inspection certificates and inspection results. The Judicial Officer debarred the respondents from receiving inspection services under the Agricultural Marketing Act for 5 years. The Judicial Officer rejected the Administrator's argument that the respondents' appeal petition was late-filed stating the most reliable evidence of the date a document reaches the Hearing Clerk is the date stamped by the Office of the Hearing Clerk on that document and the Hearing Clerk's date stamp establishes that the respondents' appeal petition was timely filed. The Judicial Officer also stated an appeal petition is timely filed if a facsimile of the appeal petition is received by the Hearing Clerk within the time for filing the appeal petition and an original of the appeal petition is promptly filed after the filing of the facsimile, even if the original is not filed within the time for filing the appeal petition. The Judicial Officer rejected the respondents' contention that the Secretary of Agriculture lacks authority to debar the respondents from raisin inspections. The Judicial Officer stated the Secretary of Agriculture's debarment regulations (7 C.F.R. § 52.54) establish a means to maintain public confidence in the integrity and reliability of the processed products inspection service the Secretary is directed and authorized by the Agricultural Marketing Act to administer and the Secretary of Agriculture's debarment authority has been upheld in *American Raisin Packers, Inc. v. U.S. Dep't of Agric.*, 66 F. App'x 706 (9th Cir. 2003), and *West v. Bergland*, 611 F.2d 710 (8th Cir. 1979), *cert. denied*, 449 U.S. 821 (1980). The Judicial Officer also rejected the respondents' contention that debarment from inspection services under the Agricultural Marketing Act constitutes withdrawal of a license and the Administrative Procedure Act (5 U.S.C. § 558(c)) requires the Administrator to provide the respondents with notice of the conduct which may warrant withdrawal of the license and an opportunity to demonstrate or achieve compliance. The Judicial Officer stated inspection and grading services are not "licenses" as defined in the Administrative Procedure Act (5 U.S.C. § 551(8)), but rather services performed by the United States Department of Agriculture. The Judicial Officer also rejected the respondents' contention that their violations of the Agricultural Marketing Act were not willful stating the respondents' long-standing pattern of misrepresentation or deceptive or fraudulent practices constitutes careless disregard of the Agricultural Marketing Act which meets the definition of "willful." The Judicial Officer further rejected the respondents' contention that debarment from the benefits of the Agricultural Marketing Act is punitive stating debarment is remedial. The Judicial Officer agreed with the respondents that the Administrative Law Judge

erroneously debarred Lion Raisins, Inc.'s employees, successors, and assigns stating the regulations provide that only "agents, officers, subsidiaries, or affiliates" of the person who actually committed a violation described in 7 C.F.R. § 52.54(a)(1)-(3) may be debarred from the benefits of the Agricultural Marketing Act. The Judicial Officer also concluded that the ALJ erred in dismissing some of the alleged violations as time-barred by 28 U.S.C. § 2462 stating that 28 U.S.C. § 2462 applies only to proceedings for "civil fines, penalties, and forfeitures," and debarment is not a fine, penalty, or forfeiture.

In *In re Perfectly Fresh Farms, Inc.* (Decision as to Perfectly Fresh Farms, Inc.; Perfectly Fresh Consolidation, Inc.; Perfectly Fresh Specialties, Inc.; Jeffrey Lon Duncan; and Thomas Bennett), PACA Docket Nos. D-05-0001-D-05-0003, 05-0010-05-0015, decided by the Judicial Officer on June 12, 2009, the Judicial Officer concluded that Perfectly Fresh Farms, Inc., Perfectly Fresh Consolidation, Inc., and Perfectly Fresh Specialties, Inc., willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4) by failing to make full payment promptly to sellers of perishable agricultural commodities. The Judicial Officer also concluded that Mr. Duncan and Mr. Bennett were responsibly connected with the corporate violators at the time of the violations of 7 U.S.C. § 499b(4). The Judicial Officer applied judicial estoppel to prevent Perfectly Fresh Farms, Inc., Perfectly Fresh Consolidation, Inc., and Perfectly Fresh Specialties, Inc., from claiming that their own records, and particularly their own bankruptcy filings, have a meaning other than that indicated on the face of their records and bankruptcy filings. The Judicial Officer rejected the respondents' contention that the PACA Branch investigation was not properly conducted stating the PACA Branch investigation in this case followed the same general methodology employed in numerous other non-payment cases, which methodology has been approved in previous decisions.

In *In re Wayne Edwards* (Order Denying Appeal Petition), AWA Docket No. D-08-0149, decided by the Judicial Officer on June 22, 2009, the Judicial Officer denied an appeal petition filed by Richard Fischer on the ground that Mr. Fischer was not a party in the proceeding. The Rules of Practice provide that only a party in a proceeding may appeal the administrative law judge's decision (7 C.F.R. § 1.145(a)).

In *In re Lorenza Pearson*, AWA Docket No. 02-0020 and AWA Docket No. D-06-0002, decided by the Judicial Officer on July 13, 2009, the Judicial Officer found that Mr. Pearson repeatedly violated the Animal Welfare Act and the regulations during the period May 12, 1999, through February 22, 2006. The Judicial Officer issued a cease and desist order against Mr. Pearson, revoked Mr. Pearson's Animal Welfare Act license, and assessed Mr. Pearson a $93,975 civil penalty. The Judicial Officer, citing the elements of selective enforcement set forth in *In re Marilyn Shepard*, 57 Agric. Dec. 242, 287-80 (1998), rejected Mr. Pearson's selective enforcement defense. The Judicial Officer, citing *In re John D. Davenport*, 57 Agric. Dec. 189, 209 (1998), also rejected Mr. Pearson's argument that APHIS' failure to cite Mr. Pearson for violations of the Animal Welfare Act prior to 1999, absolved him of the violations that were the subject of the proceeding. The Judicial Officer held the standard of proof in the proceeding was preponderance of the evidence, not substantial evidence, as Mr. Pearson contended. The Judicial Officer also held that the Administrative Law Judge could rely on testimony taken in the

proceeding before another administrative law judge stating, absent an order to the contrary by the Chief Administrative Law Judge, a case proceeds from the point at which the first administrative law judge became unavailable (7 C.F.R. § 1.144(d)).

In *In re Martine Colette* (Decision as to Martine Colette and Robert H. Lorsch), AWA Docket No. 03-0034, decided by the Judicial Officer on August 21, 2009, the Judicial Officer dismissed the case against Mr. Lorsch. The Judicial Officer held that the Administrator's reliance on 7 U.S.C. § 2139 to impute the actions of an organization to a person affiliated with that organization was misplaced. The Judicial Officer found that 7 U.S.C. § 2139 imputes actions of an individual to an organization not the other way around. The Judicial Officer also held that the Administrator failed to prove that Mr. Lorsch interfered with, threatened, or abused APHIS officials, in violation of 7 C.F.R. § 2.4. The Judicial Officer concluded that Ms. Colette exhibited animals without an Animal Welfare Act license, in violation of the Animal Welfare Act. The Judicial Officer issued a cease and desist order against Ms. Colette and assessed Ms. Colette a $2,000 civil penalty.

In *In re Terry Livestock, Inc.,* P&S Docket No. D-09-0034, decided by the Judicial Officer on August 25, 2009, the Judicial Officer affirmed the Administrative Law Judge's decision concluding the respondent, during the period September 29, 2007, through December 15, 2007, purchased livestock as a dealer without maintaining an adequate bond or bond equivalent, in willful violation of 7 U.S.C. § 213(a) and 9 C.F.R. §§ 201.29-.30. The Judicial Officer found the respondent failed to file a timely answer to the Complaint and held, under the Rules of Practice (7 C.F.R. §§ 1.136(c), .139), the respondent was deemed to have admitted the allegations in the Complaint and waived the opportunity for hearing. The Judicial Officer stated that the respondent's denial of the allegations in its appeal petition, filed 6 months 22 days after the answer was due, came far too late to be considered. The Judicial Officer, citing 7 C.F.R. § 1.147(c)(3), informed the respondent that the hand-delivery of the ALJ's decision was in accordance with the Rules of Practice.

In re Cheryl A. Taylor, PACA-APP Docket No. 06-0008 and PACA-APP Docket No. 06-0009, decided by the Judicial Officer on September 24, 2009, the Judicial Officer affirmed the Administrative Law Judge's decision concluding that Cheryl A. Taylor and Steven C. Finberg were responsibly connected with Fresh America Corp. during the time Fresh America Corp. violated the PACA. The Judicial Officer held that the respondents failed to prove by a preponderance of the evidence that they were only nominal officers of Fresh America Corp.