UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	PACA-APP Docket No. 06-0008
	)	
Cheryl A. Taylor,	)	
	)	
Petitioner	)	
	)	
	and	
In re:	)	PACA-APP Docket No. 06-0009
	)	
Steven C. Finberg,	)	
	)	
Petitioner	)	**Decision and Order**

PROCEDURAL HISTORY

On January 19, 2007, Administrative Law Judge Peter M. Davenport [hereinafter ALJ Davenport] issued a Default Decision and Order in *In re Fresh America Corp.*, 66 Agric. Dec. 953 (2007). ALJ Davenport held Fresh America Corp. violated the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a-499s) [hereinafter the PACA], by failing to make full payment promptly for more than $1.2 million in produce purchases during the period February 2002 through February 2003.

On June 23, 2006, the Chief, PACA Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture [hereinafter AMS], issued a determination that Cheryl A. Taylor was responsibly connected with Fresh America Corp. during the period of time Fresh America Corp. is alleged to have violated the PACA, February 2002 through February 2003. Ms. Taylor filed a Petition for Review challenging that determination on July 27, 2006.

On August 11, 2006, AMS issued a determination that Steven C. Finberg was responsibly connected with Fresh America Corp. during the period of time Fresh America Corp. is alleged to have violated the PACA, February 2002 through February 2003. Mr. Finberg filed a Petition for Review challenging that determination on September 13, 2006.

By Order of ALJ Davenport, dated March 27, 2007, the two cases, *In re Cheryl A. Taylor*, PACA-APP Docket No. 06-0008, and *In re Steven C. Finberg*, PACA-APP Docket No. 06-0009, were joined for hearing. The hearing was held on January 29-30, 2008, in Dallas, Texas, before Administrative Law Judge Jill S. Clifton [hereinafter the ALJ]. Stephen P. McCarron, McCarron & Diess, Washington, DC, represents Ms. Taylor and Mr. Finberg. Charles E. Spicknall, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represents AMS.

The ALJ held that Ms. Taylor was actively involved in the activities resulting in Fresh America Corp.'s PACA violations during the period February 2002 through

February 2003, when Fresh America Corp. failed to pay for more than $1.2 million in produce purchases. According to the ALJ, Ms. Taylor's active involvement in such activities stems from her failure as Fresh America Corp.'s chief financial officer to ensure that full payment promptly was made to Fresh America Corp.'s produce sellers. Because Ms. Taylor was actively involved in the activities resulting in Fresh America Corp.'s violations of the PACA, the ALJ found Ms. Taylor was responsibly connected, as that term is defined in the PACA (7 U.S.C. § 499a(b)(9)), with Fresh America Corp. and subject to the licensing restrictions and employment restrictions in the PACA (7 U.S.C. §§ 499d(b), 499h(b)). The ALJ further decided that Ms. Taylor was an officer of Fresh America Corp. (executive vice president, chief financial officer, and secretary) during the time when Fresh America Corp. violated the PACA by failing to pay for more than $1.2 million in produce purchases. The ALJ found Ms. Taylor was not a nominal officer as that term is used in the PACA. Consequently, whether Ms. Taylor was actively involved or not, the ALJ found Ms. Taylor was responsibly connected with Fresh America Corp., as defined by the PACA (7 U.S.C. § 499a(b)(9)).

The ALJ held Mr. Finberg was not actively involved in the activities resulting in PACA; however, the ALJ held Mr. Finberg was an officer of Fresh America Corp. (at various times Mr. Finberg was vice president of sales and marketing, while at other times, he was executive vice president) during the time when Fresh America Corp. violated the PACA by failing to pay for more than $1.2 million in produce purchases. The ALJ found

Mr. Finberg was not a nominal officer as that term is used in the PACA. Consequently, whether Mr. Finberg was actively involved or not, the ALJ found he was responsibly connected with Fresh America Corp., as defined by the PACA (7 U.S.C. § 499a(b)(9)).

On April 22, 2009, Ms. Taylor and Mr. Finberg filed an appeal of the ALJ's decision. For the reasons discussed below, I affirm the ALJ's decision and dismiss the appeal petition.

DECISION

Statutory and Regulatory Background

In 1930, Congress enacted the PACA (7 U.S.C. §§ 499a-499s) in an attempt to prevent unfair and fraudulent practices in an industry peculiarly susceptible to such practices.[1] *See* H.R. Rep. No. 71-1041, at 1-2 (1930); *see also Tri-County Wholesale Produce Co. v. U.S. Dep't of Agric.*, 822 F.2d 162 (D.C. Cir. 1987) (per curiam), *reprinted in* 46 Agric. Dec. 1105 (1987). Congress noted, in connection with amendments to the PACA in 1956, that:

> The [PACA] . . . is admittedly and intentionally a "tough" law. It was enacted in 1930 for the purpose of providing a measure of control and regulation over a branch of industry which is engaged almost exclusively in interstate commerce, which is highly competitive, and in which the opportunities for sharp practices, irresponsible business conduct, and unfair methods are numerous. The law was designed primarily for the protection of the producers of perishable agricultural products–most of whom must

[1] A brief description of the abuses which led to the enactment of the PACA can be found in *George Steinberg & Son, Inc. v. Butz*, 491 F.2d 988 (2d Cir.), *cert. denied*, 419 U.S. 830 (1974).

> entrust their products to a buyer or commission merchant who may be thousands of miles away, and depend for their payment upon his business acumen and fair dealing–and for the protection of consumers who frequently have no more than the oral representation of the dealer that the product they buy is of the grade and quality they are paying for.
>
> The law has fostered an admirable degree of dependability and fairness in this industry chiefly through the method of requiring the registration [licensing] of all those who carry on an interstate business in perishable agricultural commodities and denying this registration [license] to those whose business tactics disqualify them.

S. Rep. No. 84-2507, at 3 (1956).

The PACA "is designed to protect the producers of perishable agricultural products" and "was enacted to provide a measure of control over a branch of industry which . . . is highly competitive, and presents many opportunities for sharp practice and irresponsible business conduct." *Zwick v. Freeman*, 373 F.2d 110, 116 (2d Cir. 1967); *Allred's Produce v. U.S. Dep't of Agric.*, 178 F.3d 743, 745 (5th Cir.), *cert. denied*, 528 U.S. 1021 (1999). The Second Circuit held "the 'goal of the [PACA is] that only financially responsible persons should be engaged in the businesses subject to the Act.'" *Zwick*, 373 F.2d at 117; *see also Marvin Tragash Co. v. U.S. Dep't of Agric.*, 524 F.2d 1255, 1257 (5th Cir. 1975). The Fifth Circuit also found the PACA was enacted "to protect producers of perishables, as well as consumers thereof" from "irresponsible business conduct and [the] delivery of deficient produce[.]" *Wayne Cusimano, Inc. v. Block*, 692 F.2d 1025, 1028 (5th Cir. 1982). The District of Columbia Circuit stated the PACA's purpose is "[t]o help instill confidence in parties dealing with each other on short

notice, across state lines and at long distances, it provides special sanctions against dishonest or unreliable dealing." *Veg-Mix, Inc. v. U.S. Dep't of Agric.*, 832 F.2d 601, 604 (D.C. Cir. 1987).

"Essentially, the Act provides a system of licensing and penalties for violations." *George Steinberg*, 491 F.2d at 990. Under the PACA, every commission merchant, dealer, or broker, as defined in the PACA (*see* 7 U.S.C. §§ 499a(b)(5)-(7)), is required to be licensed by the Secretary of Agriculture (7 U.S.C. § 499c(a)).

As originally enacted, the power of the Secretary of Agriculture to refuse to issue a PACA license was limited to situations in which the applicant or one closely connected with the applicant was responsible for any violation that had led to the prior revocation of a PACA license. (46 Stat. 531, 533 (1930).) However, over time, Congress found necessary the amendment of the PACA to prevent evasion of the PACA's penalties. (*See* 48 Stat. 585, 586-87 (1934); 49 Stat. at 1533-34 (1936); 50 Stat. 725, 726-28 (1950); 70 Stat. at 726-27 (1956).) These amendments increased the Secretary of Agriculture's authority to prevent a licensee who has violated the PACA from operating in the perishable agricultural commodities industry.

In 1962, Congress amended section 1 of the PACA (7 U.S.C. § 499a) to define "responsibly connected" persons as those who are "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." (76 Stat. 673 (1962).) In addition, Congress provided that a person who is or has been "responsibly connected" with a licensee that has had its PACA license revoked may not be employed by any perishable agricultural commodity licensee for at least 1 year (7 U.S.C. § 499h(b)(1)). Nor may any person responsibly connected with a person who has been found to have committed any flagrant or repeated violations of section 2 of the PACA be so employed.[2] (7 U.S.C. § 499h(b)(2).) A PACA licensee is subject to license suspension or revocation for employing a person under an employment ban. (7 U.S.C. § 499h(b).) After 1 year, if the prospective employer furnishes and maintains a surety bond in an amount set by the Secretary of Agriculture, the responsibly connected person may be employed by a PACA licensee. (7 U.S.C. § 499h(b).) The Secretary of Agriculture may approve employment of the responsibly connected person without a bond after 2 years. *Id.*

In the 1995 amendments to the PACA, Congress gave to the person who met the statutory definition of "responsibly connected" the opportunity to challenge the initial finding and, if successful, avoid licensing and employment restrictions.

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[2] "Employment" is defined as "any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment." (7 U.S.C. § 499a(b)(10).)

> **§ 499a Short title and definitions**
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> . . . .
>
> **(b) Definitions**
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> For purposes of this chapter:
> . . . .
> (9) . . . 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 the activities resulting in a violation of this chapter and the person either was only nominally a partner, officer, director, or shareholder of a violating licensee . . . or was not an owner of a violating licensee . . . which was the alter ego of its owners.

7 U.S.C. § 499a(b)(9). This definition governs the issues before me in this appeal.

Discussion

Ms. Taylor and Mr. Finberg raise six issues on appeal. First, Ms. Taylor challenges the ALJ's finding that being chief financial officer of Fresh America Corp. actively involved Ms. Taylor in the activities that resulted in the "failure to pay" violations. Next, Ms. Taylor and Mr. Finberg each dispute the findings that each failed to demonstrate that he/she was a nominal officer of Fresh America Corp. Together, Ms. Taylor and Mr. Finberg appealed the ALJ's holding that Fresh America Corp. was not the alter ego of Arthur Hollingsworth. Finally, Mr. Finberg challenges the ALJ's determination that he was a shareholder of Fresh America Corp., and then questions whether the ALJ erred when she found that shareholder status bars the raising of the alter-ego defense.

I will first discuss the concept of "nominal officer." Fresh America Corp. was a publicly traded corporation subject to the filing and other requirements of the Securities and Exchange Commission [hereinafter the SEC]. Primarily, I rely on two documents filed with the SEC, and entered into the record, to determine if Ms. Taylor and Mr. Finberg are officers of Fresh America Corp. These documents are Fresh America Corp.'s Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Fiscal Year Ended December 28, 2001 (FRX 21)[3] and the Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 for Fresh America Corp., dated June 26, 2002 (FRX 22).

"In order to prove that one was only a nominal officer or director, one must establish that one lacked any 'actual, significant nexus with the violating company'" and "therefore, neither 'knew [n]or should have known of the [c]ompany's misdeeds.'" *Hart v. Department of Agric.*, 112 F.3d 1228, 1231 (D.C. Cir. 1997), quoting *Minotto v. U.S. Dep't of Agric.*, 711 F.2d 406, 408-09 (D.C. Cir. 1983). Participants in responsibly connected proceedings frequently fail to comprehend a critical component of being nominal–that the individual becomes the officer, director, or shareholder for the convenience and benefit of the company or the owners of the company, not because of his or her own career ambition or entrepreneurial desires. Other factors I consider in

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[3] AMS offered numerous documents into evidence. By agreement of the parties, documents entered in the case against Mr. Finberg would be designated "FRX" even though it might be duplicated in the evidence against Ms. Taylor. (Tr. 10-13.)

determining if an individual is nominal include the disparate levels of power and authority between the nominal officer and the individual who appoints the officer, and the experience and educational levels of the person claiming to be nominal. If the information is in the record, I also look at the compensation paid to the individual to determine if the person is being compensated as an officer.

Previous "nominal officers" include: Lilly Minotto was a secretary who was made director of a PACA licensee to ensure that a quorum existed for board meetings (*Minotto*, 711 F.2d 406, 408 (D.C. Cir. 1983)); Jean-Pierre Bell was a former chef and produce salesman who was made president of a PACA licensee to mediate disputes between the two owners *(Bell v. Department of Agric.*, 39 F.3d 1199 (D.C. Cir. 1994)); Carl Quinn was a truck driver who was made vice president of a PACA licensee to satisfy the statutory requirement for specific numbers of officers *(Quinn v. Butz*, 510 F.2d 743 (D.C. Cir. 1975)); and Michael Norinsberg was the son of the president of a PACA licensee who was made secretary and treasurer of the corporation so somebody was always available to sign checks (*Norinsberg v. U.S. Dep't of Agric.*, 162 F.3d 1194, 1198 (D.C. Cir. 1998)). In each of these cases, the individual was an officer in name only to solve a corporate need. None of these individuals had the education, training, or experience to preform as the corporate officer or director.

Ms. Taylor's background does not fit into the concept of a nominal officer. She earned a degree in accounting from Texas A&M University. She worked at Coopers &

Lybrand, LLP, a national accounting firm, and qualified as a certified public accountant. Ms. Taylor then became controller at The Great Train Store where she helped take the company public. After The Great Train Store went public, she served as its chief financial officer and vice president of finance and administration. The partner at the KPMG, another national accounting firm, who handled The Great Train Store account, recommended Ms. Taylor for a position with the Intellisys Group at a time that company was having financial difficulties (Tr. 329-34). At Intellisys Group, Ms. Taylor "worked with the CEO, got them refinanced, and got a buyer to come in, MCSI, to purchase the company, and it saved all the employees and kept it going." (Tr. 334.) At MCSI's request, Ms. Taylor stayed to help the company through the transition (Tr. 334). The KPMG partner who helped Ms. Taylor with the Intellisys Group position then introduced her to Fresh America Corp. She started with Fresh America Corp. as a consultant, then became an employee and officer of the company. Ms. Taylor's compensation package included a base salary of $175,000, a bonus potential, stock options, and "other fringe benefits." (FRX 22 at 30.) Ms. Taylor is identified in both the annual report for the fiscal year ending December 28, 2001, and the proxy statement dated June 26, 2002, each filed with the SEC, as executive vice president, chief financial officer, and secretary (FRX 21 at 23, FRX 22 at 21). Based on this evidence, I hold Ms. Taylor was not a nominal officer of Fresh America Corp.

Mr. Finberg's work history belies his claim that he was only a nominal officer of Fresh America Corp. Mr. Finberg started with Gourmet Packing (Fresh America Corp.'s predecessor) over a summer break while attending Southwest Texas State University (Tr. 752). He eventually worked for Gourmet Packing full time becoming the "general manager of the two locations in Austin, Texas, while going to school." (Tr. 754). Mr. Finberg was then given additional responsibility for the location in San Antonio, Texas (Tr. 754-55). After finishing school, he was selected "out of about 400-plus employees" to become "the corporate liaison and to learn supply chain" at the headquarters of Sam's Club, Gourmet Packing's main customer (Tr. 756). While at Sam's Club, he was promoted to director of customer service. By the time Mr. Finberg returned to Fresh America Corp.'s home office, he received another promotion to director of national programs. During this time, Gourmet Packing issued stock to the public through an initial public offering changing its name to Fresh America Corp. (Tr. 757-58). Mr. Finberg was given a 2-year assignment as general manager of the Arlington, Texas, distribution center after which he returned to the home office continuing as director of national programs (Tr. 759-60). In 1999, Mr. Finberg received a promotion to vice president of sales and marketing eventually being elevated to executive vice president of business development (Tr. 764-65). Mr. Finberg's compensation package included a base salary of $145,000, a bonus potential, stock options, and "other fringe benefits." (FRX 22 at 29.) Mr. Finberg is identified in both the annual report for

the fiscal year ending December 28, 2001, and the proxy statement dated June 26, 2002, each filed with the SEC, as executive vice president-business development (FRX 21 at 23, FRX 22 at 21). Based on this evidence, I hold Mr. Finberg was not a nominal officer of Fresh America Corp.

Ms. Taylor and Mr. Finberg each had the experience, training, and education to serve in their positions as officers at Fresh America Corp. The record shows they were not nominal officers. Therefore, I find Ms. Taylor was executive vice president, chief financial officer, and secretary of Fresh America Corp. at a time Fresh America Corp. committed violations of the PACA by failing to make full payment to suppliers of produce. I also find Mr. Finberg was executive vice president-business development of Fresh America Corp. at a time Fresh America Corp. committed violations of the PACA by failing to make full payment to suppliers of produce. I hold Ms. Taylor and Mr. Finberg were responsibly connected with Fresh America Corp. when the company violated the PACA. Therefore, Ms. Taylor and Mr. Finberg are 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)).

Under the actual, significant nexus standard, responsibilities are placed upon corporate officers, even though they may not have been actively involved in the activities resulting in a violation of the PACA, because their status with the corporation requires that they knew, or should have known, about the violation being committed and failed to

counteract or obviate the fault of others. In this case, Ms. Taylor and Mr. Finberg knew of Fresh America Corp.'s financial difficulties. Although they told the board of directors of the prompt payment provisions of the PACA, they failed to convince the board of directors to comply with the provisions of the PACA. When the board of directors failed to heed their advice, Ms. Taylor's and Mr. Finberg's only option to avoid a responsibly connected determination was to resign as officers of Fresh America Corp. prior to Fresh America Corp.'s PACA violations.

While the evidence in the record regarding Ms. Taylor's position and Mr. Finberg's position is sufficient for me to conclude that each was not a nominal officer, the fact that each was identified in the SEC filings as an officer makes it difficult for me to conclude that they were only nominal officers. Therefore, I hold, absent very extraordinary circumstances, an individual who is an officer of a publicly traded company, and identified as an officer in the company's filings with the SEC, cannot be found to be a nominal officer as that term is used in the PACA.

Ms. Taylor challenges the ALJ's determination that she was actively involved in the activities resulting in Fresh America Corp.'s violations of the PACA. My finding that Ms. Taylor was not a nominal officer of Fresh America Corp. makes Ms. Taylor's challenge to the finding on active involvement futile. A person is not deemed to be "responsibly connected" if he or she demonstrates that he or she was not actively involved in the activities resulting in a violation of the PACA and that he or she was only a

nominal officer, director, or shareholder of the violating PACA licensee. The two prongs of the test are joined by the conjunctive "and." If Ms. Taylor fails to show that her position as a corporate officer is nominal, even if she could prove that she was not actively involved, she would fail the statutory test and be deemed responsibly connected. Because I find Ms. Taylor's corporate officer position was not nominal, even if she is not actively involved, she cannot meet her burden and will be found responsibly connected. Therefore, addressing the question of her active involvement would be no more than an advisory opinion on the issue. I need not address the issue and I decline to do so.

Ms. Taylor and Mr. Finberg challenge the ALJ's conclusion that Fresh America Corp. was not the alter ego of Arthur Hollingsworth, Fresh America Corp.'s chairman of the board of directors. Having reviewed the arguments presented by the parties, I affirm the ALJ's conclusion. The record makes clear that, while Mr. Hollingsworth was a dominant chairman, the decisions attributed to Mr. Hollingsworth were made by the board of directors. The concept of alter ego goes well beyond the evidence presented in the instant proceeding. Fresh America Corp. had regular board meetings at which non-board members were present and reported to the board. (*See, e.g.*, FRX 24 at 2, "The fifth order of business was a review by Ms. Taylor of the Company's 1st quarter 2002 performance as compared to the same period of 2001.".) The board of directors, with Mr. Hollingsworth as chairman, ran Fresh America Corp. While Mr. Hollingsworth and the board of directors made decisions usually reserved for individuals at a lower level of

authority, it is understandable, considering Fresh America Corp.'s financial position and the recent investment made by the North Texas Opportunity Fund, which was managed by Mr. Hollingsworth, that such decisions came before the board of directors.

The standard for alter ego under the PACA has origins in *Bell v. Department of Agric.*, 39 F.3d 1199, 1201 (D.C. Cir. 1994), in which the court indicated that a corporation was the alter ego of an individual when the corporation, although formally a corporation, was so dominated by that individual as to negate the corporation's separate personality. While Mr. Hollingsworth ran Fresh America Corp., the record contains no evidence that Mr. Hollingsworth and Fresh America Corp. were viewed as one and the same, nor do I find evidence that Fresh America Corp.'s corporate personality no longer existed because of Mr. Hollingsworth. As such, I find Fresh America Corp. was not the alter ego of Arthur Hollingsworth.

Because I find Fresh America Corp. was not the alter ego of Arthur Hollingsworth, I need not, and do not, address the questions relating to Mr. Finberg's ownership interest in Fresh America Corp. and whether that ownership interest deprives him of the use of the alter ego defense.

Findings of Fact

1. Fresh America Corp., a Texas corporation, was a PACA licensee and ceased operations January 22, 2003.

2. During the period February 2002 through February 2003, Fresh America Corp. failed to make full payment promptly in the amount of $1,223,284.48, to 82 sellers in 1,149 transactions, for the purchase of perishable agricultural commodities that Fresh America Corp. received and accepted in interstate and foreign commerce.

3. During the period of time in which Fresh America Corp. failed to pay produce sellers, Cheryl A. Taylor was an officer of Fresh America Corp. Cheryl A. Taylor was Fresh America Corp.'s executive vice president, chief financial officer, and secretary.

4. During the period of time in which Fresh America Corp. failed to pay produce sellers, Steven C. Finberg was an officer of Fresh America Corp. Steven C. Finberg was Fresh America Corp.'s vice president of sales and marketing and then he was promoted to executive vice president of business development.

5. Steven C. Finberg owned Fresh America Corp. stock, but less than 10 percent of the outstanding stock.

Conclusions of Law

1. Fresh America Corp.'s failures to make full payment promptly in the amount of $1,223,284.48, to 82 sellers in 1,149 transactions, for the purchase of perishable agricultural commodities that it received and accepted in interstate and foreign commerce during the period February 2002 through February 2003 are willful, repeated, and flagrant violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

2. Fresh America Corp. was not the alter ego of Arthur Hollingsworth.

3. Cheryl A. Taylor was responsibly connected with Fresh America Corp., as defined by 7 U.S.C. § 499a(b)(9), during the period February 2002 through February 2003, when Fresh America Corp. willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)).

4. Steven C. Finberg was responsibly connected with Fresh America Corp., as defined by 7 U.S.C. § 499a(b)(9)), during the period February 2002 through February 2003, when Fresh America Corp. willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)).

ORDER

1. I affirm the determination by AMS, contained in its letter dated June 23, 2006, that Cheryl A. Taylor was responsibly connected with Fresh America Corp., Arlington, Texas, during the period of time Fresh America Corp. violated the PACA. Accordingly, Cheryl A. Taylor 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)), effective 60 days after service of this Order on Cheryl A. Taylor.

2. I affirm the determination by AMS, contained in its letter dated August 11, 2006, that Steven C. Finberg was responsibly connected with Fresh America Corp., Arlington, Texas, during the period of time Fresh America Corp. violated the PACA. Accordingly, Steven C. Finberg 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)), effective 60 days after service of this Order on Steven C. Finberg.

RIGHT TO JUDICIAL REVIEW

Cheryl A. Taylor and Steven C. Finberg each has the right to seek judicial review of the Order in this Decision and Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. Judicial Review must be sought within 60 days after entry of the Order in this Decision and Order.[4] The date of entry of the Order in this Decision and Order is September 24, 2009.

Done at Washington, DC

September 24, 2009

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William G. Jenson
Judicial Officer

[4]28 U.S.C. § 2344.