

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) PACA Docket No. D-03-0026
)
G & T Terminal Packaging)
Co., Inc., and Tray-Wrap, Inc.,)
)
Respondents) **Decision and Order**

PROCEDURAL HISTORY

Eric Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Complainant], instituted this administrative proceeding by filing a Complaint on June 4, 2003. Complainant 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).

Complainant alleges: (1) during the period July 1999 through August 1999, G & T Terminal Packaging Co., Inc. [hereinafter Respondent G & T], through its president, director, and 100 percent stockholder, Anthony Spinale, made illegal payments to a United States Department of Agriculture inspector in connection with four federal

inspections of perishable agricultural commodities which Respondent G & T purchased from one seller in interstate or foreign commerce; (2) during the period March 1999 through June 1999, Tray-Wrap, Inc. [hereinafter Respondent Tray-Wrap], through its employee or agent, Anthony Spinale, made illegal payments to a United States Department of Agriculture inspector in connection with six federal inspections of perishable agricultural commodities which Respondent Tray-Wrap purchased from four sellers in interstate or foreign commerce; (3) on October 21, 1999, the United States Attorney for the Southern District of New York issued an indictment charging Anthony Spinale with making cash payments to a United States Department of Agriculture inspector in order to influence the outcome of inspections of fresh fruits and vegetables at Respondents' place of business; (4) on August 21, 2001, the United States District Court for the Southern District of New York entered a judgment in which Anthony Spinale pled guilty to one count of bribery of a public official in violation of 18 U.S.C. § 201(b); (5) Anthony Spinale made illegal payments to a United States Department of Agriculture inspector on numerous occasions prior to the period March 1999 through August 1999; and (6) Respondent G & T and Respondent Tray-Wrap [hereinafter Respondents] willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing, without reasonable cause, to perform a specification or duty, express or implied, arising out of an undertaking in connection with transactions involving perishable agricultural commodities purchased, received, and accepted in interstate or foreign commerce (Compl. ¶¶ III, V-VI).

On June 25, 2003, Respondents filed an Answer: (1) admitting that on or about October 21, 1999, the United States Attorney for the Southern District of New York issued an indictment charging that Anthony Spinale gave money to a United States Department of Agriculture produce inspector; (2) admitting that Anthony Spinale pled guilty to count nine of the October 21, 1999, indictment; and (3) denying the remaining material allegations of the Complaint.

On October 25-29, 2004, and November 1, 2004, Administrative Law Judge William B. Moran [hereinafter the ALJ] conducted an oral hearing in New York, New York. Clara A. Kim and Ruben D. Rudolph, Jr., Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented Complainant. Linda Strumpf, New Canaan, Connecticut, represented Respondents.

On January 10, 2005, Complainant filed Complainant's Proposed Findings of Fact, Conclusions and Order, and on January 11, 2005, Respondents filed Post-Hearing Brief of Respondents. On February 22, 2005, Complainant filed Complainant's Reply to Respondents' Proposed Findings of Fact and Conclusions of Law and Respondents filed Post-Hearing Reply Brief of Respondents.

On March 29, 2005, the ALJ issued Decision of the Administrative Law Judge [hereinafter Initial Decision and Order] finding Complainant failed to establish Respondents violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) and dismissing the case (Initial Decision and Order at 1, 91).

On April 27, 2005, Complainant appealed to the Judicial Officer, and on May 23, 2005, Respondents filed Respondents' Response to Complainant's Appeal Petition. On May 31, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

Based upon a careful consideration of the record, I disagree with the ALJ's conclusion that Complainant failed to establish Respondents violated section 2(4) of the PACA (7 U.S.C. § 499b(4)); therefore, I do not adopt the ALJ's Initial Decision and Order as the final Decision and Order.

Complainant's exhibits are designated by "CX." Respondents' exhibits are designated by "RX." The transcript is divided into six volumes, one volume for each day of the 6-day hearing. Each volume begins with page 1 and is sequentially numbered. References to "Tr. I" are to the volume of the transcript that relates to the October 25, 2004, segment of the hearing; references to "Tr. II" are to the volume of the transcript that relates to the October 26, 2004, segment of the hearing; references to "Tr. III" are to the volume of the transcript that relates to the October 27, 2004, segment of the hearing; references to "Tr. IV" are to the volume of the transcript that relates to the October 28, 2004, segment of the hearing; references to "Tr. V" are to the volume of the transcript that relates to the October 29, 2004, segment of the hearing; and references to "Tr. VI" are to the volume of the transcript that relates to the November 1, 2004, segment of the hearing.

APPLICABLE STATUTORY PROVISIONS

7 U.S.C.:

TITLE 7—AGRICULTURE

. . . .

CHAPTER 20A—PERISHABLE AGRICULTURAL COMMODITIES

. . . .

§ 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.

. . . .

§ 499h. Grounds for suspension or revocation of license

(a) Authority of Secretary

Whenever (1) the Secretary determines, as provided in section 499f of this title, that any commission merchant, dealer, or broker has violated any of the provisions of section 499b of this title, or (2) any commission merchant, dealer, or broker has been found guilty in a Federal court of having violated section 499n(b) of this title, the Secretary may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, except that, if the violation is flagrant or repeated, the Secretary may, by order, revoke the license of the offender.

....

§ 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. §§ 499b(4), 499h(a), 499p.

18 U.S.C.:

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

PART I—CRIMES

....

CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

§ 201. Bribery of public officials and witnesses

- (a) For the purpose of this section—
- (1) the term “public official” means Member of Congress, Delegate, or Resident Commissioner, either before or after such

official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror; [and]

....

(3) the term “official act” means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official’s official capacity, or in such official’s place of trust or profit.

(b) Whoever—

(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

(A) to influence any official act[.]

....

(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

(A) being influenced in the performance of any official act;

(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud on the United States; or

(C) being induced to do or omit to do any act in violation of the official duty of such official or person;

....

shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

18 U.S.C. §§ 201(a)(1), (3), (b)(1)(A), (2).

DECISION

Facts and Discussion

Respondents are New York corporations that share the same business and mailing address, B266 New York City Terminal Market, Bronx, New York 10474 (Answer ¶ II). At all times material to this proceeding, Respondents were licensed under the PACA. PACA license number 204079 was issued to Respondent G & T on April 3, 1964, when Respondent G & T began operating, and PACA license number 701550 was issued to Respondent Tray-Wrap on May 13, 1970, when Respondent Tray-Wrap began operating. (Answer ¶ II; CX 10, CX 10A, CX 11, CX 11A.)

At all times material to this proceeding, Anthony Spinale was a director, the president, and the 100 percent owner of Respondent G & T and managed the business operations of Respondent Tray-Wrap (Tr. II at 205-07; Tr. III at 110-11, 119-24, 126-27, 135-37, 145-46; CX 10, CX 10A).

William Cashin was employed, during the period July 1979 through August 1999, by the United States Department of Agriculture, Agricultural Marketing Service, Fresh Products Branch, as a produce inspector at the Hunts Point Terminal Market, New York (Tr. I at 66). From 1979 until August 1999, when William Cashin inspected Respondents' produce, he dealt with Anthony Spinale. Beginning about 1983 or 1984, until William Cashin left United States Department of Agriculture employment in August 1999, Anthony Spinale paid William Cashin in connection with inspections of perishable agricultural commodities conducted at Respondents' place of business. These payments

were not made to the Agricultural Marketing Service as payment for normal inspection services, but rather were cash payments made to William Cashin personally. (Tr. I at 72-81.)

During the period July 1999 through August 1999, Respondent G & T, through Anthony Spinale, paid William Cashin in connection with four inspections of perishable agricultural commodities that Respondent G & T purchased from one produce seller in interstate or foreign commerce. During the period March 1999 through June 1999, Respondent Tray-Wrap, through Anthony Spinale, paid William Cashin in connection with six inspections of perishable agricultural commodities that Respondent Tray-Wrap purchased from four produce sellers in interstate or foreign commerce. (Tr. V at 188-97, 204-05, 209-19, 221, 227-41; Tr. VI at 82-84, 97-99, 108-14.)

During the period 1990 through 1999, Anthony Spinale paid United States Department of Agriculture produce inspector Edmund Esposito in connection with inspections of perishable agricultural commodities at Respondents' place of business. These payments were not made to the Agricultural Marketing Service as payment for normal inspection services, but rather were cash payments made to Edmund Esposito personally. (Tr. IV at 183-84, 248-52.)

William Cashin was arrested by agents of the Federal Bureau of Investigation and charged with bribery and conspiracy to commit bribery. After his arrest, William Cashin entered into a cooperation agreement with the Federal Bureau of Investigation, whereby William Cashin agreed to assist the Federal Bureau of Investigation with an investigation

of bribery by produce purchasers at the Hunts Point Terminal Market. During the investigation, William Cashin carried an audio, audio-video, or video recording device and surreptitiously recorded his interactions with various individuals at produce houses at the Hunts Point Terminal Market, including interactions with Anthony Spinale at Respondents' place of business. At the end of each day, William Cashin gave the tapes and any payments received to Federal Bureau of Investigation agents and recounted to Federal Bureau of Investigation agents what had occurred that day. Federal Bureau of Investigation agents completed FD-302 forms which reflect what William Cashin told them each day. All of Respondents' payments to a United States Department of Agriculture inspector alleged in paragraph III of the Complaint relate to the investigation conducted by the Federal Bureau of Investigation with William Cashin's assistance. (Tr. I at 86-98.)

On October 21, 1999, the United States Attorney for the Southern District of New York issued an indictment charging Anthony Spinale with nine counts of bribery of a public official in violation of 18 U.S.C. § 201(b) (Answer ¶ IV(a)). The indictment alleged that Anthony Spinale:

[U]nlawfully, wilfully, knowingly, directly and indirectly, did corruptly give, offer and promise things of value to a public official, with intent to influence official acts, to wit, ANTHONY SPINALE, the defendant, made cash payments to a United States Department of Agriculture produce inspector in order to influence the outcome of inspections of fresh fruit[s] and vegetables conducted at Tray-Wrap, Inc. and G & T Terminal

Packaging Corp., both located at Hunts Point Terminal Market, Bronx, New York[.]

CX 17 at 1. The alleged bribes covered payments made to William Cashin in connection with 10 inspections of perishable agricultural commodities. (CX 1-CX 9, CX 17.) On August 21, 2001, the United States District Court for the Southern District of New York entered a judgment in which Anthony Spinale pled guilty to one count of bribery of a public official in violation of 18 U.S.C. § 201(b)(1) and was sentenced to 5 years' probation, 12 months' home confinement, and a \$30,000 fine. (Answer ¶ IV(b); CX 18, CX 20.)

The PACA does not specifically provide that a payment to a United States Department of Agriculture inspector in connection with the inspection of perishable agricultural commodities is a violation of the PACA. However, the PACA provides that it is unlawful for any commission merchant, dealer, or broker: (1) to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity; (2) to fail or refuse truly and correctly to account and to make full payment promptly with respect to any transaction involving any perishable agricultural commodity; and (3) to fail, without reasonable cause, to perform any specification or duty, express or implied, arising out of any undertaking in connection with any transaction involving any perishable agricultural commodity.¹

¹7 U.S.C. § 499b(4).

Anthony Spinale testified he made payments to United States Department of Agriculture inspectors as alleged in the Complaint, but contends he made the payments as a result of “soft extortion” by United States Department of Agriculture inspectors and only to obtain prompt inspections of Respondents’ perishable agricultural commodities and accurate United States Department of Agriculture inspection certificates (Tr. V at 186-97, 199-205, 208-21, 229-41; Tr. VI at 97-99, 108-14). While the record contains evidence that, at least some of Anthony Spinale’s payments to United States Department of Agriculture inspectors were bribes to obtain false United States Department of Agriculture inspection certificates (CX 18, CX 19, CX 20), I find, even if United States Department of Agriculture inspectors extorted each payment from Anthony Spinale and, in exchange for the payments, provided prompt inspections and issued accurate United States Department of Agriculture inspection certificates, Respondents violated section 2(4) of the PACA (7 U.S.C. § 499b(4)).

A payment to a United States Department of Agriculture inspector to obtain a prompt inspection of perishable agricultural commodities and an accurate United States Department of Agriculture inspection certificate negates, or gives the appearance of negating, the impartiality of the United States Department of Agriculture inspector and undermines the confidence that produce industry members and consumers place in quality and condition determinations rendered by the United States Department of Agriculture inspector. Commission merchants, dealers, and brokers have a duty to refrain from making payments to United States Department of Agriculture inspectors in connection

with the inspection of perishable agricultural commodities which will or could undermine the trust produce sellers place in the accuracy of the United States Department of Agriculture inspection certificates and the integrity of United States Department of Agriculture inspectors. A PACA licensee's payment to a United States Department of Agriculture inspector, whether it is to obtain an accurate United States Department of Agriculture inspection certificate or an inaccurate United States Department of Agriculture inspection certificate, undermines the trust produce sellers place in the accuracy of the United States Department of Agriculture inspection certificate and the integrity of the United States Department of Agriculture inspector.

Respondents called a former United States Department of Agriculture produce inspector, Edmund Esposito, who testified that Anthony Spinale paid him to obtain prompt inspections of perishable agricultural commodities and accurate United States Department of Agriculture inspection certificates. However, Edmund Esposito's testimony also reveals one way by which such payments can affect an inspector's objectivity and integrity and can result in the issuance of inaccurate United States Department of Agriculture inspection certificates, as follows:

[BY MS. STRUMPF:]

Q. Okay. And did Mr. Spinale ever ask you to alter an inspection?

[BY MR. ESPOSITO:]

A. No.

Q. Did he ever ask you to falsify an inspection?

A. No.

Q. Did you ever downgrade an inspection for Mr. Spinale?

A. Downgrade –

Q. I can rephrase the question if you don't understand it.

A. No, I understand the question, I'm just trying to think. He's never asked me to. I gave him a benefit of doubt on inspections.

Q. And what do you mean by that?

A. Well, if he's on the line I would throw up and make sure he's out.

Q. And did he ever ask you to do that?

A. No.

Q. Did you ever have any conversations with him –

A. Not with him, no.

Q. – where he asked you to do that?

A. Not with him, no.

....

Q. Why did you do it?

....

A. Because I got paid and he's a nice guy, after he quit appealing me.

The relationship between a PACA licensee and its employees acting within the scope of their employment is governed by section 16 of the PACA (7 U.S.C. § 499p) which provides, in construing and enforcing the PACA, the act of any agent, officer, or other person acting for or employed by any commission merchant, dealer, or broker, within the scope of his or her employment or office, shall in every case be deemed the act of the commission merchant, dealer, or broker as that of the agent, officer, or other person. Essentially, section 16 of the PACA (7 U.S.C. § 499p) provides an identity of action between a PACA licensee and the PACA licensee's agents and employees. Anthony Spinale was acting within the scope of his employment when he knowingly and willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)). Thus, as a matter of law, the knowing and willful violations by Anthony Spinale are deemed to be knowing and willful violations by Respondents.²

Complainant's Appeal Petition

Complainant raises six issues in Complainant's Appeal to Judicial Officer [hereinafter Appeal Petition]. First, Complainant contends the ALJ erroneously stated the

²*Post & Taback, Inc. v. Department of Agriculture*, 123 Fed. Appx. 406, 408 (D.C. Cir. 2005); *H.C. MacClaren, Inc. v. United States Dep't of Agric.*, 342 F.3d 584, 591 (6th Cir. 2003); *In re Geo. A. Heimos Produce Co.*, 62 Agric. Dec. 763, 782-83 (2003), *appeal dismissed*, No. 03-4008 (8th Cir. Aug. 31, 2004); *In re The Produce Place*, 53 Agric. Dec. 1715, 1761-63 (1994), *aff'd*, 91 F.3d 173 (D.C. Cir. 1996), *cert. denied*, 519 U.S. 1116 (1997); *In re Jacobson Produce, Inc.* (Decision as to Jacobson Produce, Inc.), 53 Agric. Dec. 728, 754 (1994), *appeal dismissed*, No. 94-4118 (2d Cir. Apr. 16, 1996).

ALJ's credibility findings should not be reviewed by the Judicial Officer (Complainant's Appeal Pet. at 5).

I have carefully reviewed the ALJ's Initial Decision and Order, and I cannot locate any statement by the ALJ indicating that his credibility determinations should not be reviewed by the Judicial Officer. To the contrary, the ALJ specifically states his credibility determinations are reviewable, but those credibility determinations are entitled to deference (Initial Decision and Order at 81 n.115). I agree with the ALJ. The Judicial Officer's consistent practice is to give great weight to credibility determinations of administrative law judges, since they have the opportunity to see and hear witnesses testify.³

³*In re Southern Minnesota Beet Sugar Cooperative*, 64 Agric. Dec. ____, slip op. at 33-37 (May 9, 2005); *In re Excel Corp.*, 62 Agric. Dec. 196, 244-46 (2003), *enforced as modified*, 397 F.3d 1285 (10th Cir. 2005); *In re Robert B. McCloy, Jr.*, 61 Agric. Dec. 173, 210 (2002), *aff'd*, 351 F.3d 447 (10th Cir. 2003), *cert. denied*, 125 S. Ct. 38 (2004); *In re Wallace Brandon* (Decision as to Jerry W. Graves and Kathy Graves), 60 Agric. Dec. 527, 561-62 (2001), *appeal dismissed sub nom. Graves v. United States Dep't of Agric.*, No. 01-3956 (6th Cir. Nov. 28, 2001); *In re Sunland Packing House Co.*, 58 Agric. Dec. 543, 602 (1999); *In re David M. Zimmerman*, 57 Agric. Dec. 1038, 1055-56 (1998); *In re Jerry Goetz*, 56 Agric. Dec. 1470, 1510 (1997), *aff'd*, 99 F. Supp. 2d 1308 (D. Kan. 1998), *aff'd*, 12 Fed. Appx. 718, 2001 WL 401594 (10th Cir.), *cert. denied*, 534 U.S. 1440 (2001); *In re Saulsbury Enterprises*, 56 Agric. Dec. 82, 89 (1997) (Order Denying Pet. for Recons.); *In re Andershock's Fruitland, Inc.*, 55 Agric. Dec. 1204, 1229 (1996), *aff'd*, 151 F.3d 735 (7th Cir. 1998); *In re Floyd Stanley White*, 47 Agric. Dec. 229, 279 (1988), *aff'd per curiam*, 865 F.2d 262, 1988 WL 133292 (6th Cir. 1988); *In re King Meat Packing Co.*, 40 Agric. Dec. 552, 553 (1981); *In re Mr. & Mrs. Richard L. Thornton*, 38 Agric. Dec. 1425, 1426 (1979) (Remand Order); *In re Steve Beech*, 37 Agric. Dec. 869, 871-72 (1978); *In re Unionville Sales Co.*, 38 Agric. Dec. 1207, 1208-09 (1979) (Remand Order); *In re National Beef Packing Co.*, 36 Agric. Dec. 1722, 1736 (1977), *aff'd*, 605 F.2d 1167 (10th Cir. 1979); *In re Edward Whaley*, 35 Agric. Dec. 1519, (continued...)

Second, Complainant contends the ALJ erroneously failed to follow *In re Post & Taback, Inc.*, 62 Agric. Dec. 802 (2003), *aff'd*, 123 Fed. Appx. 406 (D.C. Cir. 2005) (Complainant's Appeal Pet. at 5-9).

In *In re Post & Taback, Inc.*, 62 Agric. Dec. 802 (2003), I concluded a PACA licensee's payment of bribes and unlawful gratuities to a United States Department of Agriculture inspector in connection with the inspection of perishable agricultural commodities violates section 2(4) of the PACA (7 U.S.C. § 499b(4)). The ALJ found Respondents, through Anthony Spinale, made payments to United States Department of Agriculture inspectors in connection with the inspection of perishable agricultural commodities, as alleged in the Complaint. The ALJ states such payments, under any circumstances, are "wrong." (Initial Decision and Order at 84, 90.) Despite these findings, the ALJ concluded Complainant failed to establish the alleged violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) and dismissed the Complaint. (Initial Decision and Order at 1, 84, 90-91.)

In light of the ALJ's finding that Anthony Spinale made payments as alleged in the Complaint, it would appear the ALJ erroneously failed to follow *In re Post & Taback, Inc.*, 62 Agric. Dec. 802 (2003), when he dismissed the Complaint. However, the ALJ

³(...continued)
1521 (1976); *In re Dr. Joe Davis*, 35 Agric. Dec. 538, 539 (1976); *In re American Commodity Brokers, Inc.*, 32 Agric. Dec. 1765, 1772 (1973); *In re Cardwell Dishmon*, 31 Agric. Dec. 1002, 1004 (1972); *In re Sy B. Gaiber & Co.*, 31 Agric. Dec. 474, 497-98 (1972); *In re Louis Romoff*, 31 Agric. Dec. 158, 172 (1972).

distinguishes the instant proceeding from *Post & Taback, Inc.* The ALJ found United States Department of Agriculture inspectors extorted payments from Anthony Spinale and Anthony Spinale made payments to United States Department of Agriculture inspectors to obtain prompt produce inspections and accurate United States Department of Agriculture inspection certificates (Initial Decision and Order at 83, 90). In *Post & Taback, Inc.*, I specifically found no evidence of extortion and found the PACA licensee's payments were made to a United States Department of Agriculture inspector to obtain inaccurate United States Department of Agriculture inspection certificates, which were then used to make false and misleading statements to produce sellers.⁴

I disagree with the ALJ's conclusion that *Post & Taback, Inc.*, can be distinguished from the instant proceeding. As discussed in this Decision and Order, *supra*, commission merchants, dealers, and brokers have a duty to refrain from making payments to United States Department of Agriculture inspectors in connection with the inspection of perishable agricultural commodities which will or could undermine the trust produce sellers place in the accuracy of the United States Department of Agriculture inspection certificates and the integrity of United States Department of Agriculture inspectors. Even if I were to find Anthony Spinale made all of the payments to United States Department of Agriculture inspectors to obtain prompt inspections of perishable agricultural commodities and accurate United States Department of Agriculture

⁴*In re Post & Taback, Inc.*, 62 Agric. Dec. 802, 819-20 (2003).

inspection certificates and Anthony Spinale made all of the payments as a result of extortion by United States Department of Agriculture inspectors, I would follow *Post & Taback, Inc.* The extortion evidenced in this proceeding is not a “reasonable cause,” under section 2(4) of the PACA (7 U.S.C. § 499b(4)), for a commission merchant, dealer, or broker to fail to perform the implied duty to refrain from paying United States Department of Agriculture inspectors in connection with the inspection of perishable agricultural commodities. Moreover, avoidance of inspection delays and avoidance of the issuance of inaccurate United States Department of Agriculture inspection certificates are not “reasonable causes,” under section 2(4) of the PACA (7 U.S.C. § 499b(4)), for a commission merchant, dealer, or broker to fail to perform the implied duty to refrain from paying United States Department of Agriculture inspectors in connection with the inspection of perishable agricultural commodities.

A PACA licensee’s payment to a United States Department of Agriculture inspector, whether caused by bribery or extortion and whether to obtain an accurate United States Department of Agriculture inspection certificate or an inaccurate United States Department of Agriculture inspection certificate, undermines the trust a produce seller places in the accuracy of the United States Department of Agriculture inspection certificate and the integrity of the United States Department of Agriculture inspector.

Third, Complainant contends the ALJ erroneously gave the FD-302 forms (CX 1-CX 9) no weight (Complainant’s Appeal Pet. at 9-10).

The ALJ gave the FD-302 forms no probative weight (Initial Decision and Order at 7-8). I disagree with the ALJ and give the FD-302 forms probative weight.

Anthony Spinale, who the ALJ found credible, admitted the material facts on the FD-302 forms. Anthony Spinale testified he paid William Cashin \$100 in connection with an inspection of tomatoes reflected on United States Department of Agriculture Inspection Certificate Number K-678086-0 (Tr. V at 189-90; RX 1A). United States Department of Agriculture Inspection Certificate Number K-678086-0, signed by William Cashin, establishes that William Cashin conducted an inspection of tomatoes at Respondent Tray-Wrap on March 24, 1999, at 1:30 p.m. (RX 1A; CX 1 at 5). The corresponding FD-302 form states an unnamed source reported that, on March 24, 1999, while at Respondent Tray-Wrap, the source performed one inspection and Anthony Spinale paid him \$100 for the inspection (CX 1 at 3-4).

Anthony Spinale testified he paid William Cashin \$100 in connection with an inspection of tomatoes reflected on United States Department of Agriculture Inspection Certificate Number K-678091-0 (Tr. V at 190-94; RX 2A). United States Department of Agriculture Inspection Certificate Number K-678091-0, signed by William Cashin, establishes that William Cashin conducted an inspection of tomatoes at Respondent Tray-Wrap on March 26, 1999, at 11:20 a.m. (RX 2A; CX 2 at 5). The corresponding FD-302 form states an unnamed source reported that, on March 26, 1999, at approximately 11:30 a.m., while at Respondent Tray-Wrap, the source inspected tomatoes and Anthony Spinale paid him \$100 for the inspection (CX 2 at 3-4).

Anthony Spinale testified he paid William Cashin \$100 in connection with an inspection of one load of tomatoes reflected on United States Department of Agriculture Inspection Certificate Number K-679811-0 (Tr. V at 186-88, 194-96; RX 3A). United States Department of Agriculture Inspection Certificate Number K-679811-0, signed by William Cashin, establishes that William Cashin conducted an inspection of tomatoes at Respondent Tray-Wrap on April 23, 1999, at 11:35 a.m. (RX 3A; CX 3 at 5). The corresponding FD-302 form states an unnamed source reported that, on April 23, 1999, at approximately 11:30 a.m., while at Respondent Tray-Wrap, the source inspected one load of tomatoes and Anthony Spinale paid him \$100 for the inspection (CX 3 at 3-4).

Anthony Spinale testified he paid William Cashin \$100 in connection with an inspection of one load of tomatoes reflected on United States Department of Agriculture Inspection Certificate Number K-765769-5 (Tr. V at 196-97, 199-205; RX 4A). United States Department of Agriculture Inspection Certificate Number K-765769-5, signed by William Cashin, establishes that William Cashin conducted an inspection of tomatoes at Respondent Tray-Wrap on May 20, 1999, at 12:20 p.m. (RX 4A; CX 4 at 5). The corresponding FD-302 form states an unnamed source reported that, on May 20, 1999, at approximately 12:30 p.m., while at Respondent Tray-Wrap, the source performed one inspection of tomatoes and Anthony Spinale paid him \$100 for the inspection (CX 4 at 3-4).

Anthony Spinale testified he paid William Cashin \$100 in connection with an inspection of tomatoes reflected on United States Department of Agriculture Inspection

Certificate Number K-767032-6 (Tr. V at 208-21; RX 5A). United States Department of Agriculture Inspection Certificate Number K-767032-6, signed by William Cashin, establishes that William Cashin conducted an inspection of tomatoes at Respondent Tray-Wrap on June 16, 1999, at 11:25 a.m. (RX 5A; CX 5 at 6). The corresponding FD-302 form states an unnamed source reported that, on June 16, 1999, at approximately 11:15 a.m., while at Respondent Tray-Wrap, the source performed one inspection of tomatoes and Anthony Spinale paid him \$100 for the inspection (CX 5 at 4-5).

Anthony Spinale testified he paid William Cashin \$100 in connection with an inspection of tomatoes reflected on United States Department of Agriculture Inspection Certificate Number K-767363-5 (Tr. V at 229-40; RX 6A). United States Department of Agriculture Inspection Certificate Number K-767363-5, signed by William Cashin, establishes that William Cashin conducted an inspection of tomatoes at Respondent Tray-Wrap on June 23, 1999, at 11:10 a.m. (RX 6A; CX 6 at 5). The corresponding FD-302 form states an unnamed source reported that, on June 23, 1999, while at Respondent Tray-Wrap, the source performed an inspection of tomatoes and Anthony Spinale paid him \$100 for the inspection (CX 6 at 3-4).

Anthony Spinale testified he paid William Cashin \$100 in connection with an inspection reflected on United States Department of Agriculture Inspection Certificate Number K-768741-1 (Tr. VI at 97-99; RX 10B). United States Department of Agriculture Inspection Certificate Number K-768741-1, signed by William Cashin, establishes that William Cashin conducted an inspection of potatoes at Respondent G & T

on July 15, 1999, at 12:00 p.m. (RX 10B; CX 7 at 5). The corresponding FD-302 form states an unnamed source reported that, on July 15, 1999, at approximately 12:00 noon, he went to Respondent G & T and performed an inspection of a railroad car of potatoes and Anthony Spinale paid him \$100 for the inspection (CX 7 at 3-4).

Anthony Spinale testified he paid William Cashin \$200 in connection with inspections of two loads of potatoes reflected on United States Department of Agriculture Inspection Certificate Numbers K-769382-3 and K-769381-5 (Tr. VI at 108-14; RX 11B, RX 12B). United States Department of Agriculture Inspection Certificate Number K-769382-3, signed by William Cashin, establishes that William Cashin conducted an inspection of potatoes for Respondent G & T on July 26, 1999, at 1:30 p.m. (RX 11B; CX 8 at 7). United States Department of Agriculture Inspection Certificate Number K-769381-5, signed by William Cashin, establishes that William Cashin conducted an inspection of potatoes for Respondent G & T on July 26, 1999, at 12:30 p.m. (RX 12B; CX 8 at 6). The corresponding FD-302 form states an unnamed source reported that, on July 26, 1999, he performed inspections of two loads of potatoes and Anthony Spinale paid him \$200 for the two inspections (CX 8 at 3-5).

Finally, in *United States of America v. Spinale*, Case Number 1:99 Cr. 01093-(01) (RCC) (S.D.N.Y. 2001), the United States Attorney for the Southern District of New York issued an indictment charging Anthony Spinale with nine counts of bribery of a public official in violation of 18 U.S.C. § 201(b). The nine counts relate to payments made to William Cashin that are reflected in the FD-302 forms (CX 17). Anthony

Spinale admitted under oath that he paid William Cashin as alleged in the indictment, as follows:

THE COURT: Mr. Spinale, you are charged in a nine-count Indictment. Count Nine of the Indictment charges you with bribing a public official, in violation of Title 18, United States Code, Section 201(b)(1)(A). . . .

. . . .

Have you seen a copy of the Indictment in which the government makes this charge against you?

THE DEFENDANT: Yes, your Honor.

THE COURT: Have you discussed it with your attorney?

THE DEFENDANT: Yes, your Honor.

THE COURT: Are you prepared to enter a plea today?

THE DEFENDANT: Yes.

THE COURT: Anthony Spinale, how do you plead?

THE DEFENDANT: Guilty.

THE COURT: Mr. Spinale, before a guilty plea can be accepted, I must determine that you understand the plea and its consequences, that the plea is voluntary and that there is a factual basis for the plea. For that purpose, I must ask you a number of questions and your answers must be under oath.

Do you understand, Mr. Spinale, that the answers you give under oath may subject you to prosecution for perjury if you do not tell the truth?

THE DEFENDANT: Yes, your Honor.

THE COURT:

Mr. Spinale, did you commit the offense which you had been charged with?

THE DEFENDANT: Yes, your Honor.

THE COURT: Tell me in your own words what you did.

THE DEFENDANT: On August 13, 1999, I paid money to Bill Cashin for the purpose of influencing the outcome of his inspection report on a load of potatoes. I told him the specific amount I wanted him to put in the inspection report.

On the other dates in the indictment, I paid Mr. Cashin \$100 per inspection to influence the outcome of the report.

Your Honor, I would like to state I never intended to defraud the shippers who had sent me the produce.

THE COURT: Who is Bill Cashin?

THE DEFENDANT: Bill Cashin is a USDA inspector, produce inspector.

THE COURT:

He was inspecting the produce, is that correct?

THE DEFENDANT: I was paying him to dictate what he was putting into his report.

THE COURT: So it was his job to make reports about the produce that he was inspecting, and you were trying to influence him to write things in the report?

THE DEFENDANT: Yes.

THE COURT: And did you know what you were doing was wrong?

THE DEFENDANT: Yes.

THE COURT: Where did this take place?

THE DEFENDANT: In the Hunts Point Terminal Market, produce market.

Based on Anthony Spinale's testimony in this proceeding and admissions in *United States of America v. Spinale*, I find the FD-302 forms accurately reflect payments Anthony Spinale made to William Cashin in connection with the inspection of perishable agricultural commodities, and I find the ALJ erroneously failed to give the FD-302 forms probative weight.

Fourth, Complainant contends the ALJ's determination that William Cashin was not credible, is error (Complainant's Appeal Pet. at 10-12).

The ALJ found "in all aspects where [William Cashin's] testimony conflicted with Mr. Spinale's testimony, Mr. Spinale's testimony was credible and Cashin's was not." (Initial Decision and Order at 81.)

As an initial matter, William Cashin's testimony conflicts with Anthony Spinale's testimony only regarding the purpose and reasons for Anthony Spinale's payments to William Cashin. Both William Cashin and Anthony Spinale testified that Anthony Spinale made payments to William Cashin in connection with William Cashin's inspections of perishable agricultural commodities for Respondents. William Cashin and Anthony Spinale also agreed on the amount of the payments and the dates of the payments. The only conflict is that Anthony Spinale testified William Cashin engaged in "soft extortion" and he (Anthony Spinale) made the payments to obtain prompt inspections and accurate United States Department of Agriculture inspection certificates, whereas William Cashin testified Anthony Spinale engaged in bribery and made payments to obtain inaccurate United States Department of Agriculture inspection

certificates (Tr. I at 81-88, 129-30). As discussed in this Decision and Order, *supra*, the purpose and reasons for Anthony Spinale's payments to William Cashin are not relevant to this proceeding. A payment to a United States Department of Agriculture inspector in connection with the inspection of perishable agricultural commodities, whether the result of extortion evidenced in this proceeding or bribery and whether to obtain accurate or inaccurate United States Department of Agriculture inspection certificates, is a violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

The Judicial Officer's consistent practice is to give great weight to credibility determinations of administrative law judges, since they have the opportunity to see and hear witnesses testify.⁵ The ALJ detailed his reasons for finding William Cashin's testimony was not credible. While there is some evidence that William Cashin's testimony regarding the purpose and reasons for Anthony Spinale's payments to William Cashin is credible, I do not find the record sufficiently strong to reverse the ALJ's credibility determination.

Fifth, Complainant contends the ALJ erroneously concluded that, to prove a violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)), Complainant must prove Anthony Spinale's payments to United States Department of Agriculture inspectors resulted in the issuance of false United States Department of Agriculture inspection certificates and financially benefitted Respondents (Complainant's Appeal Pet. at 12-15).

⁵See note 3.

The ALJ states Anthony Spinale paid William Cashin to obtain accurate United States Department of Agriculture inspection certificates and Respondents did not benefit financially from the transactions, as follows:

. . . [T]he Court finds that as to the specific dates alleged in the Complaint, the produce really was as poor as the inspection certificate reflected and, in any event, Mr. Spinale did not improperly benefit financially from those transactions.

. . . .

Thus, regarding Cashin, the Court finds that he was extracting a personal “fee” for every *visit* to Mr. Spinale’s place of business and that in no instance was Mr. Spinale benefitting from those visits in the critical ways that USDA asserts. That is to say, in no instance among the dates cited in the Complaint did Mr. Spinale seek or obtain from Cashin an inspection report which downgraded a load of produce from its actual condition. Mr. Spinale, like at least some other merchants at Hunts Point, was paying Cashin in order to receive a prompt and accurate inspection. As USDA recognized, both through witnesses and in its statements through counsel, these inspections involve produce and as such, if they are to be useful, it is critical that inspections be carried out promptly. Because of that fact, Cashin and his cabal of corrupt cronies knew they had merchants like Mr. Spinale over a barrel. The merchants could pay them or risk either a delayed inspection or an inspection which rated produce as acceptable when an honest assessment would determine otherwise.

Initial Decision and Order at 78, 82-83 (emphasis in original) (footnotes omitted).

Complainant does not allege that Respondents made false statements for a fraudulent purpose in violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)) or that Respondents benefitted financially from Anthony Spinale’s payments to United States Department of Agriculture inspectors. Instead, Complainant alleges Respondents violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to perform a specification or duty, express or implied, arising out of an undertaking in connection with

transactions involving perishable agricultural commodities purchased, received, and accepted in interstate or foreign commerce (Compl. ¶ VI).

As stated in this Decision and Order, *supra*, I find commission merchants, dealers, and brokers have a duty to refrain from activities that negate, or give the appearance of negating, the impartiality of United States Department of Agriculture inspectors and activities that undermine the confidence that produce industry members and consumers place in quality and condition determinations rendered by United States Department of Agriculture inspectors. A PACA licensee's payment to a United States Department of Agriculture inspector in connection with an inspection of produce, whether the payment is designed to obtain an accurate United States Department of Agriculture inspection certificate or designed to obtain an inaccurate United States Department of Agriculture inspection certificate and whether the payment benefits the PACA licensee or does not benefit the PACA licensee, undermines the trust produce sellers place in the accuracy of the United States Department of Agriculture inspection certificate and the integrity of the United States Department of Agriculture inspector.

Therefore, I disagree with the ALJ's conclusion that, to prove a violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)), Complainant must prove United States Department of Agriculture inspection certificates issued in connection with Anthony Spinale's payments to United States Department of Agriculture inspectors were false and Respondents benefitted financially from the payments.

Sixth, Complainant contends the ALJ erroneously found United States Department of Agriculture produce inspectors extorted money from Anthony Spinale, erroneously found extortion was relevant to this proceeding, and erroneously found extortion mitigates or exonerates Respondents' illegal payments (Complainant's Appeal Pet. at 16-26).

As stated in this Decision and Order, *supra*, I do not find the reason for Anthony Spinale's payments to United States Department of Agriculture inspectors in connection with the inspection of perishable agricultural commodities relevant to this proceeding. Anthony Spinale's payment to United States Department of Agriculture inspectors in connection with the inspection of perishable agricultural commodities, whether the result of extortion evidenced in this proceeding or bribery, violates section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Findings of Fact

1. Respondent G & T is a New York corporation whose business and mailing address is B266 New York City Terminal Market, Bronx, New York 10474 (Answer ¶ II).
2. Respondent Tray-Wrap is a New York corporation whose business and mailing address is B266 New York City Terminal Market, Bronx, New York 10474 (Answer ¶ II).
3. At all times material to this proceeding, Respondent G & T was licensed under the PACA. PACA license number 204079 was issued to Respondent G & T on

April 3, 1964, when Respondent G & T began operating. Respondent G & T's PACA license has been renewed annually and is next subject to renewal on April 3, 2006.

(Answer ¶ II; CX 10, CX 10A.)

4. At all times material to this proceeding, Respondent Tray-Wrap was licensed under the PACA. PACA license number 701550 was issued to Respondent Tray-Wrap on May 13, 1970, when Respondent Tray-Wrap began operating. Respondent Tray-Wrap's PACA license has been renewed annually and is next subject to renewal on May 13, 2006. (Answer ¶ II; CX 11, CX 11A.)

5. At all times material to this proceeding, Anthony Spinale was a director, the president, and the 100 percent owner of Respondent G & T (Tr. II at 205-07; Tr. III at 126-27; CX 10, CX 10A).

6. Anthony Spinale is the founder of Respondent Tray-Wrap and has managed the day-to-day operations of Respondent Tray-Wrap since the inception of Respondent Tray-Wrap. At all times material to this proceeding, Anthony Spinale managed the business operations of Respondent Tray-Wrap. (Tr. III at 110-11, 119-24, 135-37, 145-46.)

7. William Cashin was employed, during the period July 1979 through August 1999, by the United States Department of Agriculture, Agricultural Marketing Service, Fresh Products Branch, as a produce inspector at the Hunts Point Terminal Market, New York (Tr. I at 66).

8. From 1979 until August 1999, when William Cashin inspected Respondents' perishable agricultural commodities, he dealt with Anthony Spinale. Beginning about 1983 or 1984 until August 1999, Anthony Spinale paid William Cashin in connection with inspections of perishable agricultural commodities at Respondents' place of business. These payments were not made to the Agricultural Marketing Service as payment for normal inspection services, but rather were cash payments made to William Cashin personally. (Tr. I at 72-81.)

9. During the period July 1999 through August 1999, Respondent G & T, through its president, director, and 100 percent stockholder, Anthony Spinale, made the following payments to a United States Department of Agriculture inspector in connection with four inspections of perishable agricultural commodities that Respondent G & T purchased from one produce seller in interstate or foreign commerce:

a. On July 15, 1999, Respondent G & T paid \$100 to a United States Department of Agriculture inspector in connection with the inspection of perishable agricultural commodities reflected on United States Department of Agriculture Inspection Certificate Number K-768741-1.

b. On July 26, 1999, Respondent G & T paid \$100 to a United States Department of Agriculture inspector in connection with the inspection of perishable agricultural commodities reflected on United States Department of Agriculture Inspection Certificate Number K-769381-5.

c. On July 26, 1999, Respondent G & T paid \$100 to a United States Department of Agriculture inspector in connection with the inspection of perishable agricultural commodities reflected on United States Department of Agriculture Inspection Certificate Number K-769382-3.

d. On August 13, 1999, Respondent G & T paid \$100 to a United States Department of Agriculture inspector in connection with the inspection of perishable agricultural commodities reflected on United States Department of Agriculture Inspection Certificate Number K-770380-4.

(Tr. V at 188-97, 204-05, 209-19, 221, 227-41; Tr. VI at 82-84, 97-99, 108-14; CX 7, CX 8, CX 19 at 3-4, 10-11; RX 10B, RX 11B, RX 12B.)

10. During the period March 1999 through June 1999, Respondent Tray-Wrap, through its employee or agent, Anthony Spinale, made the following payments to a United States Department of Agriculture inspector in connection with six inspections of perishable agricultural commodities that Respondent Tray-Wrap purchased from four produce sellers in interstate or foreign commerce:

a. On March 24, 1999, Respondent Tray-Wrap paid \$100 to a United States Department of Agriculture inspector in connection with the inspection of perishable agricultural commodities reflected on United States Department of Agriculture Inspection Certificate Number K-678086-0.

b. On March 26, 1999, Respondent Tray-Wrap paid \$100 to a United States Department of Agriculture inspector in connection with the

inspection of perishable agricultural commodities reflected on United States Department of Agriculture Inspection Certificate Number K-678091-0.

c. On April 23, 1999, Respondent Tray-Wrap paid \$100 to a United States Department of Agriculture inspector in connection with the inspection of perishable agricultural commodities reflected on United States Department of Agriculture Inspection Certificate Number K-679811-0.

d. On May 20, 1999, Respondent Tray-Wrap paid \$100 to a United States Department of Agriculture inspector in connection with the inspection of perishable agricultural commodities reflected on United States Department of Agriculture Inspection Certificate Number K-765769-5.

e. On June 16, 1999, Respondent Tray-Wrap paid \$100 to a United States Department of Agriculture inspector in connection with the inspection of perishable agricultural commodities reflected on United States Department of Agriculture Inspection Certificate Number K-767032-6.

f. On June 23, 1999, Respondent Tray-Wrap paid \$100 to a United States Department of Agriculture inspector in connection with the inspection of perishable agricultural commodities reflected on United States Department of Agriculture Inspection Certificate Number K-767363-5.

(Tr. V at 188-97, 204-05, 209-19, 221, 227-41; Tr. VI at 82-84, 97-99, 108-14; CX 1-CX 6, CX 19 at 3-4, 10-11; RX 1A, RX 2A, RX 3A, RX 4A, RX 5A, RX 6A.)

11. During the period 1990 through 1999, Anthony Spinale paid United States Department of Agriculture produce inspector Edmund Esposito in connection with inspections of perishable agricultural commodities that Edmund Espoused conducted at Respondents' place of business. These payments were not made to the Agricultural Marketing Service as payment for normal inspection services, but rather were cash payments made to Edmund Esposito personally. (Tr. IV at 183-84, 248-52.)

12. On March 23, 1999, William Cashin was arrested by agents of the Federal Bureau of Investigation and charged with bribery and conspiracy to commit bribery. After his arrest, William Cashin entered into a cooperation agreement with the Federal Bureau of Investigation, whereby William Cashin agreed to assist the Federal Bureau of Investigation with an investigation of bribery by produce purchasers at the Hunts Point Terminal Market (Tr. I at 89).

13. During the investigation identified in Finding of Fact 12, William Cashin carried an audio, audio-video, or video recording device and surreptitiously recorded his interactions with various individuals at produce houses at the Hunts Point Terminal Market, including interactions with Anthony Spinale at Respondents' place of business. At the end of each day, William Cashin gave the tapes and any payments received to Federal Bureau of Investigation agents and recounted to Federal Bureau of Investigation agents what had occurred that day. The Federal Bureau of Investigation agents completed FD-302 forms which reflect what William Cashin told them each day. All of the payments alleged in paragraph III of the Complaint and identified in Finding of Fact 9 and Finding

of Fact 10 relate to the investigation conducted by the Federal Bureau of Investigation with William Cashin's assistance. (Tr. I at 86-98.)

14. In October 1999, Edmund Esposito was arrested and charged with racketeering. Edmund Esposito pled guilty to bribery in March 2000. (Tr. IV at 184-85.)

15. On October 21, 1999, the United States Attorney for the Southern District of New York issued an indictment charging Anthony Spinale with nine counts of bribery of a public official in violation of 18 U.S.C. § 201(b). The indictment alleged that Anthony Spinale:

[U]nlawfully, wilfully, knowingly, directly and indirectly, did corruptly give, offer and promise things of value to a public official, with intent to influence official acts, to wit, ANTHONY SPINALE, the defendant, made cash payments to a United States Department of Agriculture produce inspector in order to influence the outcome of inspections of fresh fruit[s] and vegetables conducted at Tray-Wrap, Inc. and G & T Terminal Packaging Corp., both located at Hunts Point Terminal Market, Bronx, New York[.]

CX 17 at 1.

The bribes alleged in the indictment, covered payments made to William Cashin in connection with 10 inspections of perishable agricultural commodities identified in Finding of Fact 9 and Finding of Fact 10. (CX 1-CX 9, CX 17.)

16. On August 21, 2001, Anthony Spinale pled guilty to count nine of the criminal indictment (bribery of a public official (18 U.S.C. § 201(b)(1)(A)) and was sentenced to 5 years' probation, 12 months' home confinement, and a \$30,000 fine. (Answer ¶ IV(b); CX 18, CX 20.)

Conclusion of Law

Respondents engaged in willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing, without reasonable cause, to perform an implied duty arising out of an undertaking in connection with transactions involving perishable agricultural commodities purchased, received, and accepted in interstate or foreign commerce.

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

ORDER

1. Respondent G & T's PACA license is revoked. The revocation of Respondent G & T's PACA license shall become effective 60 days after service of this Order on Respondent G & T.
2. Respondent Tray-Wrap's PACA license is revoked. The revocation of Respondent Tray-Wrap's PACA license shall become effective 60 days after service of this Order on Respondent Tray-Wrap.

Done at Washington, DC

September 8, 2005

William G. Jenson
Judicial Officer