

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) PACA Docket No. D-03-0014  
 )  
Hunts Point Tomato Co., Inc., )  
 )  
Respondent ) **Order Lifting Stay Order**

On November 2, 2005, I issued a Decision and Order concluding Hunts Point Tomato Co., Inc., violated the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a-499s), and ordering publication of the facts and circumstances of Hunts Point Tomato Co., Inc.'s violations.<sup>1</sup> On December 13, 2005, Hunts Point Tomato Co., Inc., filed a petition to reconsider, which I denied.<sup>2</sup>

Hunts Point Tomato Co., Inc., filed a petition for review of *In re Hunts Point Tomato Co.*, 64 Agric. Dec. 1914 (2005), and *In re Hunts Point Tomato Co.* (Order Denying Pet. to Reconsider), \_\_ Agric. Dec. \_\_\_\_ (Jan. 9, 2006), with the United States Court of Appeals for the Second Circuit. On May 31, 2006, Eric M. Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service,

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<sup>1</sup>*In re Hunts Point Tomato Co.*, 64 Agric. Dec. 1914 (2005).

<sup>2</sup>*In re Hunts Point Tomato Co.* (Order Denying Pet. to Reconsider), \_\_ Agric. Dec. \_\_\_\_ (Jan. 9, 2006).

United States Department of Agriculture [hereinafter the Associate Deputy Administrator], requested a stay of the Orders in *In re Hunts Point Tomato Co.*, 64 Agric. Dec. 1914 (2005), and *In re Hunts Point Tomato Co.* (Order Denying Pet. to Reconsider), \_\_\_ Agric. Dec. \_\_\_ (Jan. 9, 2006), pending the outcome of proceedings for judicial review. Hunts Point Tomato Co., Inc., informed the Office of the Judicial Officer that it had no objection to the Associate Deputy Administrator's motion for stay, and on June 2, 2006, I granted the Associate Deputy Administrator's motion.<sup>3</sup>

On November 13, 2006, the United States Court of Appeals for the Second Circuit denied Hunts Point Tomato Co., Inc.'s petition for review.<sup>4</sup> On April 25, 2007, the Associate Deputy Administrator requested that I lift the June 2, 2006, Stay Order and reinstate the November 2, 2005, and January 9, 2006, Orders. Hunts Point Tomato Co., Inc., failed to file a response to the Associate Deputy Administrator's motion to lift stay, and on May 30, 2007, the Hearing Clerk transmitted the record of the proceeding to the Judicial Officer for a ruling on the Associate Deputy Administrator's motion.

Proceedings for judicial review are concluded, and Hunts Point Tomato Co., Inc., has filed no objection to the Associate Deputy Administrator's motion to lift stay. Therefore, the Associate Deputy Administrator's motion to lift stay is granted; the June 2, 2006, Stay Order is lifted; and the Orders in *In re Hunts Point Tomato Co.*, 64 Agric.

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<sup>3</sup>*In re Hunts Point Tomato, Co.* (Stay Order), \_\_\_ Agric. Dec. \_\_\_ (June 2, 2006).

<sup>4</sup>*Hunts Point Tomato Co. v. U.S. Dep't of Agric.*, 204 F. App'x 981 (2d Cir. 2006).

Dec. 1914 (2005), and *In re Hunts Point Tomato Co.* (Order Denying Pet. to Reconsider), \_\_\_ Agric. Dec. \_\_\_ (Jan. 9, 2006), are effective, as follows:

**ORDER**

Hunts Point Tomato Co., Inc., has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)). The facts and circumstances of Hunts Point Tomato Co., Inc.'s violations shall be published. The publication of the facts and circumstances of Hunts Point Tomato Co., Inc.'s violations shall be effective 7 days after service of this Order on Hunts Point Tomato Co., Inc.

Done at Washington, DC

June 1, 2007

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William G. Jenson  
Judicial Officer