

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AMAA Docket No. 10-0384
)	
Baker Walnut, Inc.,)	
)	Decision and Order
Respondent)	by Reason of Default

1. The Complaint, filed on August 17, 2010, alleged violations of the Marketing Order for Walnuts Grown in California. *See* the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. § 601 *et seq.* (“the Act”); the Marketing Order for Walnuts Grown in California, 7 C.F.R. §§ 984.1 - 984.347 (“the Order”); and the Rules and Regulations, 7 C.F.R. §§ 984.437 - 984.480 (“the Rules and Regulations”).

Parties and Counsel

2. The Complainant is the Administrator of the Agricultural Marketing Service, United States Department of Agriculture (herein frequently “AMS” or “Complainant”). AMS is represented by Frank Martin, Jr., Esq. with the Office of the General Counsel (Marketing Division), United States Department of Agriculture, 1400 Independence Ave. SW, Washington, D.C. 20250-1417.

3. The Respondent is Baker Walnut, Inc. (herein frequently “Baker Walnut” or “Respondent”), a California corporation. The Respondent’s business address is in Modesto, California.

Procedural History

4. AMS's Motion for Adoption of Proposed Decision and Order, filed October 25, 2010, is before me. Respondent Baker Walnut was served on November 1, 2010 with a copy of that Motion and a copy of the proposed Decision and has failed to respond.

5. Regarding service of the Complaint, on August 23, 2010, Respondent Baker Walnut was served with a copy of the Complaint by certified mail, together with a copy of the Hearing Clerk's notice letter and a copy of the Rules of Practice. *See* 7 C.F.R. §1.130 *et seq.* The Respondent's answer was due to be filed within 20 days after service, according to section 1.136(a) of the Rules of Practice. 7 C.F.R. § 1.136(a). The time for filing an answer to the Complaint expired on September 13, 2010. The Respondent failed to file an answer, so the Respondent is in default, pursuant to section 1.136(c) of the Rules of Practice. 7 C.F.R. § 1.136(c).

6. Failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. §1.136(c). Failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. Accordingly, the material facts alleged in the Complaint, which are admitted by the Respondent's default, are adopted and set forth herein as Findings of Fact. This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice. 7 C.F.R. § 1.139.

Findings of Fact

7. Respondent Baker Walnut, Inc. is a California corporation. Baker Walnut's business address is in Modesto, California. At all times mentioned herein, Baker Walnut was

engaged in the business as a “handler” of California walnuts as that term is defined in the Act and the Order.

8. During crop year 2008-2009, Baker Walnut violated section 984.69 of the Order (7 C.F.R. § 984.69), by failing to pay assessments on demand to the California Walnut Board in the amount of \$7,244.48.

9. During crop year 2009-2010, Baker Walnut violated section 984.69 of the Order (7 C.F.R. § 984.69), by failing to pay assessments on demand to the California Walnut Board in the amount of \$9,698.97.

Conclusions

10. The Secretary of Agriculture has jurisdiction over Respondent Baker Walnut, Inc. and the subject matter involved herein.

11. Respondent Baker Walnut, Inc. has failed to comply with the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. § 601 *et seq.* (“the Act”); the Marketing Order for Walnuts Grown in California, 7 C.F.R. §§ 984.1 - 984.347 (“the Order”); and the Rules and Regulations, 7 C.F.R. §§ 984.437 - 984.480 (“the Rules and Regulations”).

Order

12. The provisions of this Order shall become effective on the first day after this Decision becomes final. [*See* paragraph 17 for when this Decision becomes final.]

13. Respondent Baker Walnut, Inc., its agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the

Act, the Order and the Rules and Regulations, and in particular, shall cease and desist from failing to pay assessments to the California Walnut Board for walnuts handled, as required.

14. Baker Walnut shall pay all past due **assessments** to the California Walnut Board for walnuts handled during crop years 2008-2009 and 2009-2010, in the amount of **\$16,943.45**.

15. Baker Walnut is assessed **civil penalties** totaling **\$2,200.00**, which shall be paid by certified check(s), cashier's check(s), or money order(s) made payable to the order of "**Treasurer of the United States**," within 90 days after this Decision becomes final.

Section 608c(14)(B) of the Act, 7 U.S.C. § 608c. [*See also* the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note; 7 C.F.R. § 3.91(b)(vii)].

16. Baker Walnut shall reference **AMAA 10-0384** on the certified check(s), cashier's check(s), or money order(s). Payments of the civil penalties **shall be sent by a commercial delivery service, such as FedEx or UPS** (to avoid diversion for irradiation), to, and received by, Frank Martin, Jr., Esq., at the following address:

United States Department of Agriculture
Office of the General Counsel, Marketing Division
Attn.: Frank Martin, Jr., Esq.
South Building, Room 2343, Stop 1417
1400 Independence Avenue, S.W.
Washington, D.C. 20250-1417

Finality

17. This Decision and Order shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see enclosed Appendix A).

Copies of this Decision and Order, including Appendix A, shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 26th day of November 2010

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Bldg Room 1031
1400 Independence Ave SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in

§ 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition,

and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

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

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145