

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0131

In re: Shannon P. Casey,
Petitioner

Decision and Order

Appearances: Charles E. Spicknall, Esquire, Office of the General Counsel, United States Department of Agriculture, Washington, DC for the Respondent
Petitioner failed to appear at the scheduled hearing

Preliminary Statement

This proceeding was initiated under the Perishable Agricultural Commodities Act, 1930, as amended, (7 U.S.C. §499a, *et seq.*) (PACA or the Act) by the petition for review filed by the Petitioner Shannon P. Casey of the determination made by Karla D. Whalen, Chief of the PACA Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (Respondent) that he was “responsibly connected” (as that term is defined in Section 1(b)(9) of the Act (7 U.S.C. §499a(b)(9)) to Tan-O-On Marketing Incorporated (TMI), during the period of time that TMI violated Section 2 of the Act (7 U.S.C. §499b).

TMI, a PACA licensee, was the subject of an order from a reparation formal complaint issued against it in favor of McNeil Fruit & Vegetable, LLC, Idaho Falls, Idaho requiring TMI to pay \$74,594.24, plus \$500.00 and 0.44% interest from and after

January 10, 2010.¹ Subsequently, five additional reparation complaints became final under PACA, totaling \$355,638.21.²

This matter was set for hearing to commence In Washington, DC on May 17, 2011. Prior to the hearing, Petitioner Casey sent the Hearing Clerk an email indicating that he would not attend due to his inability to obtain an attorney to represent him, his financial condition, and his unwillingness to subject himself to the position of being asked questions by government attorneys³.

At the hearing, although authorized by the Rules of Practice to request a default decision and order by reason of the Petitioner's failure to appear, the Respondent elected to introduce evidence without the Petitioner's participation. Three witnesses were called by the Respondent⁴ and 45 exhibits were introduced and admitted on behalf of the Respondent.⁵ The Respondent has filed a brief on behalf of the Agency and although none has been received from the Petitioner, the matter is now ripe for disposition.

Statutory Background

The Perishable Agricultural Commodities Act, 1930,⁶ was enacted to suppress unfair and fraudulent practices in the marketing of perishable agricultural commodities in interstate or foreign commerce.⁷ When enacted, the legislation had the approval of the entire organized fruit and vegetable trade, including commission merchants, dealers and

¹ RX-1

² RX-2 to RX-6

³ Document # 8

⁴ The transcript of the proceedings is contained in one volume. References to the Transcript will be indicated as Tr. and the page number.

⁵ The Agency exhibits are designated RX 1-45.

⁶ 7 U.S.C. §499a-499s.

⁷ HR Rep No 1041, 71st Cong, 2d Session 1 (1930)

brokers, all of whom benefit from the Act's protections.⁸ The Act was intentionally a "tough" law enacted for the purpose of providing a measure of control 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.⁹ *Kleiman & Hochberg, Inc. v. U.S. Dep't of Agric.*, 497 F.3d 681, 693 (D.C. Cir. 2007).

Under the Act, persons who buy or sell specified quantities of perishable agricultural commodities at wholesale in interstate commerce are required to have a license issued by the Secretary of Agriculture. 7 U.S.C. §499a(b)(5)-(7), 499c(a), and 499d(a). The Act makes it unlawful for a licensee to engage in certain types of unfair conduct and requires regulated merchants, dealers, and brokers to "truly and correctly...account and make full payment promptly in respect of any transaction in any such commodity to the person with whom such transaction is had." 7 U.S.C §499b(4).

Orders suspending or revoking a license, or a finding that an entity has committed a flagrant or repeated violation of Section 2 of the Act have significant collateral consequences in the form of employment restrictions for persons found to be "responsibly connected" with the violator.¹⁰ Prior to 1962, the employment restrictions found in the Act were imposed on individuals connected with the violator "in any

⁸ *Id.* 2,4. In 1949, both the House and Senate found that the PACA regulatory program had "become an integral part of the marketing of fruit and vegetables and it has the unanimous support of both producers and handlers in the fruit and vegetable industry." HR Rep No 1194, 81st Cong, 1st Session 1 (1949); *accord*, S Rep No 1122, 1st Session 2 (1949).

⁹ S Rep No 2507, 84th Cong, 2d Session 3-4 (1956), *reprinted in* 1956 U.S.C.C.A.N. 3699, 3701; HR Rep No 1196, 84th Cong, 1st Session 2 (1955).

¹⁰ 7 U.S.C. §499h(b). Under the Act, PACA licensees may not employ, for at least one year, any person found "responsibly connected to any person whose license has been revoked or suspended, or who has been found to have committed any flagrant or repeated violation of 7 U.S.C. §499b.

responsible position.¹¹ 1962 amendments replaced the “in any responsible position” language with a “responsibly connected” provision. The term “responsibly connected” is currently defined as follows:

(9) The term “responsibly connected” means 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 percentum of the outstanding stock of a corporation or association. 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 that the person either was only nominally a partner, officer, director, or shareholder of a violating licensee or entity subject to license or was not an owner of a violating licensee or entity subject to license which was the alter ego of its owners. 7 U.S.C. §499a(9).

A second sentence was added to the provision by a 1995 amendment¹² and affords those who would otherwise fall within the statutory definition of “responsibly connected” an opportunity to demonstrate that they were not responsible for the violation. Extensive analysis of and comment upon the amendment has been made in a number of decisions, including *Michael Norinsberg v. United States Department of Agriculture and United States of America*, 162 F.3d 1194, 1196-1197 (D.C. Cir. 1998), 57 Agric. Dec. 1465, 1465-1467 (1998); *In re Lawrence D. Salin*, 57 Agric. Dec. 1474, 1482-1487 (1998); and *In re Michael J. Mendenhall*, 57 Agric. Dec. 1607, 1615-1619 (1998).

¹¹ 7 U.S.C. §499h(b) (1958).

¹² Prior to the 1995 amendments to the PACA, the circuits were divided as to whether the presumption of §499a(b)(9) was irrebutable. Most adopted a per se rule. *See, e.g., Faour v. United States Dep't of Agric.*, 985 F.2d 217, 220 (5th Cir. 1993); *Pupillo v. United States*, 755 F.2d 638, 643-44 (8th Cir. 1985); *Birkenfield v. United States*, 369 F.2d 491, 494 (3rd Cir. 1966); *Zwick v. Freeman*, 373 F.2d 110, 119 (2d Cir. 1967), *cert. denied*, 389 U.S. 835 (1967). The DC Circuit however had adopted a rebuttable presumption test. *See Quinn v. Butz*, 510 F.2d 743 (D.C. Cir. 1975), 34 Agric. Dec. 7 (1975); *Minotto v. United States Dep't of Agric.*, 711 F.2d 406, 408 (DC Cir. 1983); *Martino v. United States Dep't of Agric.*, 801 F.2d 1410, 1413 (DC Cir. 1986); *Veg-Mix, Inc. v. United States Dep't of Agric.*, 832 F.2d 601, 611 (DC Cir. 1987); *Siegel v. Lyng*, 851 F.2d 412, 417 (DC Cir. 1988); *Bell v. Dep't of Agric.*, 39 F.2d 1199, 1201 (DC Cir. 1994).

The amendment created a two-prong test for rebutting the statutory presumption of the first sentence:

...the first prong is that a petitioner must demonstrate by a preponderance of the evidence that petitioner was not actively involved in the activities resulting in a violation of the PACA. Since the statutory test is in the conjunctive (“and”), a failure to meet the first prong of the statutory test ends the test without recourse to the second prong. However, if a petitioner satisfies the first prong, then a petitioner must meet at least one of two alternatives: that a petitioner was only nominally a partner, officer or director, or shareholder of a violating licensee or entity subject to license which was the alter ego of its owners. *Salins*, 57 Agric. Dec. 1474, 1487-1488.

Norinsberg articulated the standard for the first prong as follows:

The standard is as follows: A petitioner who participates in activities resulting in a violation of the PACA is actively involved in those activities, unless the petitioner demonstrates by a preponderance of the evidence that his or her participation was limited to performance of ministerial functions only. Thus, if a petitioner demonstrates that he or she did not exercise judgment, discretion, or control with respect to the activities that resulted in a violation of PACA, the petitioner would not be found to have been actively involved in the activities that resulted in a violation of the PACA and would meet the first prong of the responsibly connected test. *Norinsberg*, 58 Agric. Dec. at 610-611.

This case accordingly turns upon whether the Petitioner met his burden of proof and rebutted the statutory presumption.

Discussion

The Respondent argues that Shannon P. Casey is responsibly connected to TMI as the evidence established that the Petitioner was an officer and a share owner of more than 10 percent of the outstanding stock, thereby meeting the definition found in the first sentence of 7 U.S.C. §499a(9) and although he challenged the PACA Branch’s

determination that he was responsibly connected to TMI's violations of the PACA¹³, the evidence demonstrates that he cannot satisfy either prong of the statutory exception.¹⁴

If Casey had an actual, significant nexus to TMI, he cannot be regarded as a nominal officer or shareholder. *See In re Anthony L. Thomas*, 59 Agric. Dec. 367, 386 (2000) (discussing the "actual, significant nexus" standard under the nominal element of the test for responsible connection). Significantly, Casey's decision to pay some of TMI's vendors, but not others, before shutting the company down makes him actively involved in the activities that resulted in TMI's violations of the PACA. *See, Norinsberg*, 58 Agric. Dec. at 616 ("a petitioner who decides not to pay a produce seller in accordance with the PACA [is] actively involved in an actively resulting in a violation of the PACA.")

It is also clear that Casey may not be considered an outsider who was enticed or coerced by an employer into a position that later rendered him responsibly connected. *See Martino*, 801 F.2d at 1414. Rather, he was an ambitious employee of TMI who contracted to incrementally purchase the company in 2006. *See RX-10*.¹⁵ Upon entering the purchase agreement, Casey became an officer and 20 percent shareholder. *See RX-8*.

¹³ Petitioner's May 10, 2011 e-mail filed with OALJ Hearing clerk as Document 8.

¹⁴ To avoid responsible connection under the PACA, an officer, director or greater than 10 percent shareholder of a violating company must demonstrate by a preponderance of the evidence that they were not actively involved in the activities resulting in the violation of the PACA and that they were only nominally an officer, director, or shareholder of the violating company or that the company was the alter ego of its owners. The alter ego defense in the statute is inapplicable to this case because Casey was a stockholder of the violating entity. *See, e.g., In re Michael Norinsberg*, 58 Agric. Dec. 604, 609, n. 4 (1999) (finding that the *alter ego* defense was unavailable where the petitioner held a mere 2.97914 percent of the outstanding stock in the violating corporation); *In re Joseph T. Kocot*, 57 Agric. Dec. 1517, 1545 – 1546 (1998) (finding the *alter ego* defense unavailable to stockholder in a violating entity).

¹⁵ Casey's prior experience at TMI supports the conclusion that his affiliation with the company was not nominal, as does his personal investment in TMI. *See Kocot*, 57 Agric. Dec. at 1543 - 1546.

In doing so, he “assumed the burdens imposed by the Act,” including the burden of being found responsibly. *See Martino*, 801 F.2d at 1414.

By the time that payments to produce suppliers were being delayed in violation of the PACA in late 2009, Casey owned 55 percent of TMI’s stock as a result of his payments under the purchase agreement. *See RX-36* at 3 (Casey bankruptcy schedules); *see also* Tr. at 102 (Wright). “Majority ownership obviously suffices [for a finding of responsible connection].” *See Veg-Mix*, 832 F.2d at 611. Individuals who own more than 20 percent of a violating company have not been considered nominal shareholders under the terms of the PACA. *See Bell*, 39 F.3d at 1202 (noting that in the case of such substantial shareholders “the likelihood of their being found ‘nominal’ was remote”).¹⁶

Although Casey’s voting rights were restricted under the purchase agreement that he entered with TMI’s former owners, the restriction was designed and intended to prevent him from abrogating the purchase and employment agreements that he entered with TMI’s former owners once he gained a majority stake in the company. There is no indication the restriction diminished his power and authority in any other way. The purchase agreement specified that Casey was to be treated as the owner of such stock for all other purposes and that he would have full voting rights once the full purchase price had been paid. *See RX-10* at 5. By 2009, the company’s former owners had ceased to have any involvement in TMI’s day-to-day affairs. *See RX-13* at 2.

¹⁶ *See also, e.g., Martino*, 801 F.2d at 1414 (finding that ownership of 22.2 per centum of the stock in the violating company, along with the fact that no one coerced the petitioner into their position of power, was enough to support a finding of responsible connection); *Seigel*, 851 F.2d at 417 (noting that “approximately twenty per cent stock ownership would suffice to make a person accountable for not controlling delinquent management”); *Kocot*, 57 Agric. Dec. at 1544 (“ownership of approximately 20 per centum or more of the stock of a corporation is enough to support a finding of responsible connection”).

“Responsibility [for corporate PACA violations] is placed upon corporate officers, directors, and holders of more than 10 per centum of the outstanding stock because their status with the company requires that they know, or should have known, about the violations being committed and that they be held responsible for their failure to ‘counteract or obviate the fault of others.’” *See Thomas*, 59 Agric. Dec. at 386 (quoting *Bell*, 39 F.3d at 1201). In this case, Casey managed TMI’s day-to-day operations as the *de facto* chief executive officer of the corporation. *See RX-9* at 3.¹⁷ Consistent with his position, he received the highest salary of any employee at TMI. *See RX-30 – 32*.¹⁸ He hired and fired employees and signed agreements on behalf of TMI. *See Tr.* at 72 – 73, 79 – 80, 83 (Wright); *RX-18*; *RX-9* at 2; *RX-22* (credit agreement); *RX-23* (lease).¹⁹ Casey knew that payments to produce sellers were being delayed in violation of the PACA because he controlled TMI’s bank accounts and signed the company’s checks. *See RX-30 – 32*; *Tr.* at 72, 111 (Wright) (“all the checks were always written by Shannon, okayed by Shannon”). As has been noted in past cases, “the fact that a person signs corporate checks is considered one of the strongest indications of that person’s close involvement in the financial affairs of the corporation.” *See Kocot*, 57 Agric. Dec. at 1542; *Salins*, 57 Agric. Dec. at 1491.

¹⁷ As noted in the proposed findings of fact above, Casey represented that he was the president of TMI and the company’s internet site at <http://www.tnipotatoes.com> showed him to be the president of the company despite the fact that the purchase agreement that he entered with TMI’s former owners restricted him to the title of vice president. *See RX-19* at 1; *RX-22* at 2; *RX-28* at 3; *RX-17*. Gerald Anderson, who actually held the title of president of TMI pursuant to the terms of the purchase agreement with Casey, “did very little for the business in 2007, less in 2008 and nothing in 2009.” *See RX-13* at 2.

¹⁸ The fact that Casey’s base salary was the highest in the company indicates that he was not a nominal officer of TMI. *See In re Lawrence D. Salins*, 57 Agric. Dec. 1474, 1495 (1998); *Kocot*, 57 Agric. Dec. at 1543; *In re Charles R. Brackett, et al.*, 64 Agric. Dec. 942, 960 (2005).

¹⁹ The fact that Casey hired and fired employees and signed agreements as an officer of the company also weighs against any argument that his affiliation with TMI was merely nominal. *See Salins*, 57 Agric. Dec. at 1495; *Kocot*, 57 Agric. Dec. at 1542 - 1543; *Brackett*, 64 Agric. Dec. at 960.

Starting in September of 2009, Casey intentionally delayed payments to TMI's suppliers in the Northwest and in a brief period of time had deposited more than one million dollars into an account other than TMI's operating account. *See* RX-37 – RX-39; Tr. at 104 (Wright); 54 – 55 (Blake). In late December of 2009, Casey closed TMI's office in Albuquerque and terminated TMI's sales agent in the Northwest. *See* RX-18; RX-23; Tr. at 83 (Wright). Although Casey and his wife represented that TMI's unpaid creditors would be paid when the company's computer was operational again (*see* RX-18; RX-35), subsequent events made it clear that this was an attempt to obnubilate as they prepared to file for bankruptcy in an effort to cut off any personal liability for TMI's debts. *See* RX-20. By January 15, 2010, Casey and his wife had executed Chapter 7 bankruptcy declarations and their petition was filed on February 5, 2010. *See id.*

Based on the foregoing facts, it is clear that Casey had an actual, significant nexus with TMI and that his affiliation with the company as an officer and ownership of more than 10 percent of the company's stock was more than nominal. *See Thomas*, 59 Agric. Dec. at 386. He was also actively involved in the company's failure-to-pay violations of the PACA as a result of his control over TMI's day-to-day operations, including the company's payables and receivables. As the Judicial Officer noted in *Norinsberg*, 58 Agric. Dec. at 615:

“[I]f an individual, whose only activity on behalf of the corporation and only authority within the corporation is the payment of accounts payable, fails to pay a produce seller in accordance with the PACA, the individual [is] actively involved in an activity that resulted in a violation of the PACA.”

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Tan-O-On Marketing Incorporated (“TMI”) is a Colorado corporation that engaged in the business of buying and selling potatoes in commerce in 2009. TMI operated from an office in Albuquerque, New Mexico and through an independent sales agent in Boise, Idaho. *See* RX-17. The company was licensed as a wholesale broker under the PACA until September 22, 2009. *See* RX-8 at 11.

2. In 2006, Petitioner Casey entered a contract to purchase TMI from its former owners, Gerald and Julie Anderson. *See* RX-9-10. Casey agreed to pay the Andersons \$500,000 for the company over a ten year period. *See* RX-10. Monthly payments of \$5,000 were automatically withdrawn from TMI’s operating account. *See* RX-31 (TMI operating account statement showing \$5,000 payment). In September of 2006, TMI notified the PACA Branch that Casey had purchased 20 percent of TMI’s stock and was now an officer of the company. *See* RX-8 at 7 – 9; Tr. at 29 – 30 (Parker). After speaking with Casey, the PACA Branch modified TMI’s PACA license certificate to reflect his new ownership stake in the company and his corporate office. *See* RX-8 at 7 - 8. He continued to be listed as an officer and greater than 10 percent shareholder until TMI failed to renew its license in 2009. *See id.* at 11; RX-34 at 1 (“Casey did not pay his PACA fee and allowed his PACA license to lapse”).

3. By the end of 2009, Casey owned 55 percent of TMI’s stock. *See* RX-36 at 3; *see also* Tr. at 102 (Wright) (Casey informed Wright that he had a majority stake in the company). Pursuant to the purchase agreement that Casey entered with the Andersons for TMI, he was “treated as the owner of such stock for all purposes, except

the power to vote such stock” which was retained by the Andersons until the full purchase price had been paid. *See* RX-10 at 5.

4. After contracting to buy TMI, Casey managed and controlled the company’s day-to-day operations. *See* RX-9 at 3. Regardless of any restriction on his title under the stock purchase agreement (*see* RX-11 at 2), Casey functioned as the *de facto* chief executive officer of the company and represented that he was the president of the company. *See* RX-19 at 1; RX-22 at 2; RX-28 at 3; Tr. at 79 - 80. TMI’s internet site at <http://www.tnipotatoes.com> showed him to be the president of the company. *See* RX-17. Gerald Anderson, who actually held the title of president of TMI pursuant to the terms of the purchase agreement, “did very little for the business in 2007, less in 2008 and nothing in 2009.” *See* RX-13 at 2.

5. Although Casey has maintained that he “held no authority to enter into or alter any commitments or contracts held by TMI,” the evidence of record is to the contrary. *See* RX-9 at 3. While managing and controlling TMI’s day-to-operations as the *de facto* chief executive of the company, Casey entered and signed contracts on behalf of the company. *See* RX-22 (credit agreement); RX-23 (lease). Casey also cured delinquencies in TMI’s corporate filings with the Colorado Secretary of State and changed the corporation’s registered agent. *See* RX-16

6. Casey also hired and fired employees and contractors for TMI and paid their salaries. *See* RX-18; RX-9 at 2 (“I began to lay off staff”); Tr. at 72 – 73, 79 – 80, 83 (Wright).

7. At all times pertinent to the PACA violations by TMI, Casey controlled TMI’s accounts payable and receivable, including payments from TMI’s checking

accounts. *See* RX-30 – 32; RX-37 – 39; Tr. at 72, 111 (Wright) (“all the checks were always written by Shannon, okayed by Shannon”).

8. PACA Branch investigators contacted the creditors that were listed in Casey’s bankruptcy schedules and obtained checks that had been made payable under his signature authority. *See* Tr. at 47 (Blake); RX-24; RX-25; RX-26; RX-27; *see also* RX-8 at 10 (PACA license check).

9. Although Casey employed a bookkeeper, he personally handled payments from TMI’s accounts. *See* Tr. at 72, 111 (Wright); RX-30 – 32; RX-37 – 39.

10. Starting in the fall of 2009, Casey selectively left many of TMI’s suppliers in the Northwest unpaid while he made large payments to other suppliers. *See* Tr. at 97 (Wright) (noting that his “suppliers were the ones that were not paid”). For example, while many of TMI’s suppliers were being left unpaid, one vendor, Frenchman Valley, received large payments from Casey for \$83,739.50, \$109,761.60, and \$92,106.00 in September and October of 2009, and a \$254,695.85 wire transfer on November 16, 2009. *See* RX-30 at 3, 8; RX-31 at 8. Casey purportedly considered trying to merge TMI into Frenchmen Valley. *See* Tr. 96 (Wright).

11. Although Casey stated in documents filed with the PACA Branch that he “quit taking weekly salaries for [himself] and [his] wife in an effort to stimulate cash flow and ease the pressure” (*see* RX-9 at 2), the evidence clearly indicates that he continued to write checks to himself and his wife from TMI’s operating account during the time period that payments to certain suppliers were being withheld in violation of the PACA. *See* RX-30 – 32.

12. Casey's base salary of roughly \$940.00 per week was the highest in the company. *See id.* Casey's wife also received roughly \$460.00 per week. *See id.* Another employee, possibly Gerald Anderson, received \$769.23 per week. *See id.*

13. TMI's operating account bank statement for October of 2009 shows that Casey signed a check for \$460.81 payable to his wife on October 1st and another check payable to himself for \$940.13 on the same date. *See RX-32* at 2. Two more withdrawals for \$460.81 were made from TMI's operating account on October 19th and 27th, in addition to a withdrawal for \$460.82 on October 14th. *See RX-31* at 3. Three additional withdrawals in amounts matching Casey's weekly salary of \$940.13 were made from TMI's operating account on October 14th, 19th and 27th. *See id.* at 1, 3. The salary payments to Casey and his wife totalled \$5,603.77 in October of 2009.

14. TMI's operating account bank statement for November of 2009 shows that Casey signed a check for \$460.82 payable to his wife on November 19th and another for \$460.81 on November 25th. *See RX-30* at 8. The statement also shows two additional withdrawals for \$460.81 on November 16th. *See id.* at 3. Casey also signed two checks payable to himself for \$940.13 on October 19th and 25th. *See id.* at 8. In addition, the account statement also shows three more payments of \$940.13 that were withdrawn on November 3rd and 16th. *See id.* at 3. The payments to Casey and his wife totalled \$6,543.90 in November of 2009.

15. By the fall of 2009, dissatisfied with the price that he was paying for TMI and the continued contractual obligation to pay a salary to the Andersons even though they had turned over their day-to-day functions to him, Casey attempted unsuccessfully to negotiate a reduced purchase price for TMI. *See RX-9; RX-13; RX-33; RX-34.*

16. His efforts rejected by the Andersons, Casey began to divert money away from TMI's operating account at the Bank of Albuquerque into a separate account at Sunflower Bank. *See* RX-37 – RX- 39; Tr. at 104 (Wright), 54 -55 (Blake).

17. In late 2009 and early 2010, Casey used the Sunflower account to pay more than \$1.3 million to one large potato grower in Colorado, Hi-Land Potato, and began telling people, sometimes in writing, that he was going to merge TMI with Hi-Land Potato. *See* RX-37 – RX- 39; RX-18.

18. After the bulk of the funds had been transferred to Hi-Land Potato, Casey closed TMI's office in Albuquerque, New Mexico in late December 2009 and terminated the company's sales agent in Idaho. *See* RX-18; RX-23; Tr. at 83 (Wright).

19. Although Casey indicated that he had surrendered all TMI's records to the company's former owners (*see* RX-9 at 3), there is no evidence in the record to support this contention. In fact, until filing for bankruptcy, Casey and his wife told creditors that they were in possession of TMI's records and that everyone would be paid as soon as the computer was relocated and made operational again. *See* RX-18; RX-34 at 2; RX-35; Tr. at 98 (Wright).

20. While Casey and his wife were assuring TMI's creditors that they would be paid when the consolidation of TMI with Hi-Land Potato was complete (*see* RX-18; RX-35), they were actually preparing to file for bankruptcy to cut off any personal liability to the creditors. *See* RX-20; RX-36.

21. After filing for bankruptcy in early February of 2010, Casey's wife continued working for Hi-Land Potato, selling potatoes to TMI's former customers. *See* RX-18; RX-35; Tr. at 89 (Wright).

22. A number of TMI's unpaid produce suppliers filed formal reparation complaints with the Secretary of Agriculture and obtained Default Orders. *See* RX-1 –RX-6; RX-40 – RX-45.

23. Although the Secretary ordered TMI to make reparation to the suppliers, most of the judgments remain unpaid. *See* RX-1 – RX-6. One supplier was able to obtain payment directly from Hi-Land Potato. *See* Tr. at 93 – 94 (Wright).

24. As a result of the unpaid reparation awards against TMI, the PACA Branch began the process of seeking licensing and employment restrictions against the principals of record at TMI.

25. The agency determined that Casey was responsibly connected to TMI as an officer and significant shareholder when the company violated the PACA in October, November, and December of 2009. *See* RX-7; Tr. at 17 (Parker). An initial determination letter was sent to Casey's home address on July 29, 2010. *See* RX-7. Casey disputed the agency's initial determination and submitted documents in his defense. *See* RX-9.

26. After reviewing the materials that Casey submitted in response to the PACA Branch's initial determination letter, the Chief of the Branch issued a final determination that he was responsibly connected to TMI during the time period that the company violated the PACA by failing to pay its suppliers. *See* Agency Certified Record. The Chief's final determination letter was delivered to Casey's home address via Federal Express on December 28, 2010. *See id.*; Tr. at 19 (Parker).

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Shannon P. Casey is an individual responsibly connected to TMI by virtue of his active significant nexus to and participation in corporate operations, including exclusive control over the corporate financial decisions which resulted in the company's failure to pay violations, the day-to-day operational control, his ownership of 55% of the shares of the corporation and his status as a corporate officer and *de facto* Chief Executive Officer of the corporation.

3. By virtue of being responsibly connected to a violating corporation, Casey is subject to the employment restrictions of the Act.

Order

1. The determination of the Chief of the PACA Branch that Shannon P. Casey was responsibly connected to TMI during the period of September of 2009 to December of 2009 that the corporation was committing willful, flagrant, and repeated violations of the Act is **AFFIRMED**.

2. Shannon P. Casey is accordingly subject to the licensing restrictions and employment sanctions contained in Section 4(b) and 8(b) of the Act (7 U.S.C. §499d(b) and §499h(b)).

3. This Decision and Order shall become final and effective without further proceedings thirty-five days (35) after service on Respondent, unless appealed to the Judicial Officer by a party to the proceeding within thirty (30) days, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies of this Decision and Order will be served upon the parties by the Hearing Clerk.

July 6, 2011

PETER M. DAVENPORT
Chief Administrative Law Judge

Copies to: Shannon P. Casey
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