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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	PACA-APP-16-0151
	)	
Cathy G. Poppell,	)	
	)	
Petitioner	)	Consent Decision and Order

This is a “responsibly connected” proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (PACA), which is conducted pursuant to the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*) (Rules or Rules of Practice).

On July 22, 2016, the Director of the PACA Division, Specialty Crops Program, Agricultural Marketing Service (Respondent), issued a final determination that Cathy G. Poppell was “responsibly connected” as that term is defined under section 1(b)(9) of the PACA (7 U.S.C. § 499a(b)(9)), to Poppell’s Produce, Inc. (Poppell’s Produce) during the period of time that the company violated section 2 of the PACA (7 U.S.C. § 499b). On August 18, 2016, Cathy G. Poppell, (Petitioner), filed a petition for review of the determination of the Director pursuant to section 47.49 of the regulations attendant to the PACA (7 C.F.R. § 47.49) and sections 1.133-1.135 of the Rules of Practice (7 C.F.R. § 1.133-1.135).

Respondent and Petitioner now consent and agree, for the purpose of settling this matter, to the entry of this Consent Decision and Order, pursuant to section 1.138 of the Rules of Practice (7 C.F.R. § 1.133). Petitioner admits that the Secretary has jurisdiction in this matter. The

parties agree to the issuance of the following Consent Decision and Order without further procedure or hearing.

Pertinent Statutory Provision:

Section 1(b)(9) of the PACA (7 U.S.C. § 499a(b)(9)):

*(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 per centum 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 Act 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.*

Findings of Fact

(a) Poppell's Produce, Inc. was a for-profit corporation that was organized and existed under the laws of the State of Georgia. Poppell's Produce was a small agricultural-produce business located in Wayne County, Georgia and was engaged in the buying and selling of perishable agricultural commodities. Poppell's Produce was incorporated on December 8, 1993.

(b) Since said date, Poppell's Produce was wholly-owned and wholly-managed by Rick Poppell. Mr. Poppell was the only shareholder and officer of Poppell's Produce. He was the Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), Secretary, and Registered Agent.

(c) However, Rick Poppell was killed in a plane crash on December 10, 2012. Mr. Poppell was flying his small, single-engine plane. Mr. Poppell's death was both sudden and unexpected.

(d) Mrs. Poppell had no role in the business operations of Poppell's Produce prior to Mr. Poppell's sudden death. Moreover, she had no knowledge of any third party claims or demands or the financial condition of Poppell's Produce.

(e) On December 14, 2012, Mrs. Poppell was appointed by the Probate Court of Wayne County, Georgia as the Executrix of the Estate of Ricky R. Poppell. Mrs. Poppell's connection to Poppell's Produce was through her role as the Executrix of the Estate of Ricky Poppell. As Executrix of the Estate of Ricky Poppell, Mrs. Poppell was tasked with continuing the business of the decedent, Ricky Poppell.

(f) On April 28, 2016, a Decision and Order was issued finding that Poppell's Produce willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499a(b)(4)) and ordered the facts and circumstances of those violations be published.

(g) On July 22, 2016, the Director of the PACA Division, Specialty Crops Program, Agricultural Marketing Service issued a final determination that Cathy G. Poppell was "responsibly connected" as that term is defined under section 1(b)(9) of the PACA (7 U.S.C. § 499a(b)(9)), to Poppell's Produce during the period of time that the company violated section 2 of the PACA (7 U.S.C. § 499b).

(h) The Petitioner and Respondent agree, for the purpose of settling this matter, that the determination by the Director of the PACA Division that Petitioner was "responsibly connected" to Poppell's Produce at the time of its violations will no longer be challenged. The parties further agree that the "responsibly connected" determination does not impose personal liability upon Petitioner for any debt that may remain owing by Poppell's Produce or subject the Petitioner to any penal sanctions, other than as specifically set out herein.

Conclusions

In fulfillment of her duties as Executrix of the Estate of Ricky Poppell, Petitioner, Cathy G. Poppell, was "responsibly connected" as that term is defined in 7 U.S.C. § 499a(b)(9) with Poppell's Produce at the time of the PACA violations.

Order

Petitioner Cathy G. Poppell, is subject to the licensing restrictions identified in section 4(b) of the PACA (7 U.S.C. § 499d(b)) and the employment sanctions identified in section 8(b) of the PACA (7 U.S.C. § 499h(b)).

This Consent Decision and Order and attendant sanctions are effective upon issuance.

Issued at Washington, D.C.

this 23<sup>rd</sup> day of May, 2017

  
Bobbie J. McCartney  
Chief Administrative Law Judge

  
Cathy G. Poppell  
Petitioner

  
D. Michael Conner  
Attorney for Petitioner

  
Shelton S. Smallwood  
Attorney for Respondent