

In re:) PACA Docket No. D- 01-0014
A. Sam & Sons Produce, Inc.,)
Dayoub Marketing, Inc., and)
Michael P. Schindler,)
Respondents)

DECISION WITHOUT HEARING BY REASON OF CONSENT

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (PACA). Complainant has filed a complaint alleging that Respondents A. Sam & Sons Produce, Inc. and Dayoub Marketing, Inc., violated section 8(b) of the PACA (7 U.S.C. § 499h(b)) by unlawfully employing Respondent Michael P. Schindler without securing an appropriate bond approved by the Secretary of Agriculture. The complaint sought the sanction of 90 day suspensions of the PACA licenses of Respondents A. Sam and Dayoub, and an order extending the period of employment sanction of Respondent Schindler for an additional one year period.

Respondents have agreed to the entry of a Decision Without Hearing by Reason of Consent as set forth herein. Therefore, this Decision Without Hearing by Reason of Consent is entered without further procedure or hearing pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

Findings of Fact

1. Respondent A. Sam & Sons Produce Co., Inc., is a corporation organized and existing under the laws of the State of New York. Its mailing address is P.O. Box 591, Dunkirk, New York, 14048-0591 and its street address is 4869 West Lake Road, Dunkirk, New York

14048.

2. At all times material herein, Respondent A. Sam was licensed under the provisions of the PACA. License number 132126 was issued to Respondent A. Sam on January 23, 1951. This license has been renewed annually and is next subject to renewal on or before January 23, 2002.

3. Respondent Dayoub Marketing, Inc., is a corporation organized and existing under the laws of the State of New York. Its mailing address is P.O. Box 146, Fredonia, New York, 14063-0146. During the period September 9, 1999, through at least May 15, 2000, Respondent Dayoub conducted business at 4869 West Lake Road, Dunkirk, New York 14048, the same place of business of Respondent A. Sam.

4. At all times material herein, Respondent Dayoub was licensed under the provisions of the PACA. License number 990573 was issued to Respondent Dayoub on February 23, 1999. This license has been renewed and is next subject to renewal on or before February 23, 2002.

5. Respondent Michael P. Schindler is an individual whose last known address is 44 West 7th Street, Dunkirk, New York 14048. License number 971857 was issued to Respondent Schindler d/b/a First Rate Brokerage, on July 17, 1997. The license terminated on July 17, 1999, when Respondent Schindler failed to pay the required license fee.

6. On December 24, 1998, January 20, 1999, and April 15, 1999, reparation orders were issued against Respondent Schindler (L & M Companies, Inc. v. Michael P. Schindler d/b/a First Rate Brokerage, PACA Docket No. RD-99-066, Burch Farms v. Michael P. Schindler d/b/a First Rate Brokerage, PACA Docket No. RD-99-067, and Hemdale Farms, Inc. v. Michael P. Schindler d/b/a First Rate Brokerage, PACA Docket No. RD-99-101, respectively), awarding a

total of \$33,626.32 plus interest, plus additional reparation of \$900.00. The orders became final on January 29, 1999, February 19, 1999, and May 15, 1999, respectively. Respondent Schindler failed to pay the awards or appeal the orders and, as a result, his license was automatically suspended until payment of the awards (7 U.S.C. § 499g(d)). Respondent Schindler has never paid any of the reparation awards.

7. Complainant sent a letter to Respondent A. Sam, dated August 2, 1999, and served on August 5, 1999, stating that Complainant had received information that Respondent Schindler was employed by Respondent A. Sam. Complainant advised that any employment or affiliation of Respondent Schindler with Respondent A. Sam was in violation of section 8(b) of the PACA. Complainant noted that, under the provisions of section 8(b), the Secretary of Agriculture may approve Respondent Schindler's employment provided Respondent A. Sam posted and maintained a suitable surety bond in an amount satisfactory to the Secretary. Complainant stated that, after 30 days from the receipt of the letter, Respondent Schindler could no longer be employed or affiliated with Respondent A. Sam unless Respondent A. Sam obtained and maintained the required surety bond. Complainant advised that continuing such employment after the expiration of the 30 day period without posting the required surety bond could result in a disciplinary action to suspend or revoke Respondent A. Sam's PACA license.

8. Complainant sent a letter to Respondent Dayoub, dated February 11, 2000, and served on February 17, 2000, stating that Complainant had received information that Respondent Schindler was employed by Respondent Dayoub. Complainant advised that any employment or affiliation of Respondent Schindler with Respondent Dayoub was in violation of section 8(b) of the PACA. Complainant noted that the Secretary of Agriculture may approve Respondent Schindler's employment provided Respondent Dayoub posted and maintained a suitable surety

bond in an amount satisfactory to the Secretary. Complainant stated that, after 30 days from the receipt of the letter, Respondent Schindler could no longer be employed or affiliated with Respondent Dayoub unless it obtained and maintained the required surety bond. Complainant advised that continuing such employment after the expiration of the 30 day period without posting the required surety bond could result in a disciplinary action to suspend or revoke Respondent Dayoub's PACA license.

9. During the period September 9, 1999, through at least May 15, 2000, Respondents A. Sam and Dayoub employed Respondent Schindler, but never posted a surety bond in the amount required by the Secretary.

Conclusion

The unlawful employment of Respondent Schindler by Respondents A. Sam and Dayoub, without securing an appropriate bond approved by Complainant, as set forth in Findings of Fact 6 through 9 above, is in violation of section 8(b) of the PACA (7 U.S.C. § 499h(b)).

Order

Respondents A. Sam & Sons Produce, Inc., and Dayoub Marketing, Inc., are found to have employed Respondent Michael P. Schindler, pursuant to section 1(10) of the PACA (7 U.S.C. § 499a(10)), in violation of section 8(b) of the PACA (7 U.S.C. § 499h(b)).

The PACA licenses of Respondents A. Sam & Sons Produce, Inc., and Dayoub Marketing, Inc., are hereby suspended for 60 days, with such suspensions to be served concurrently.

Except with the approval of the Secretary of Agriculture, Respondent Michael P. Schindler shall not be employed by a PACA licensee for the period of one year from the effective date of this Order. The Secretary may approve the employment of Respondent Michael P.

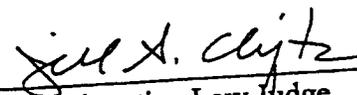
Schindler by a PACA licensee only if the licensee furnishes a surety bond in form and amount satisfactory to the Secretary, pursuant to section 8(b) of the PACA.

This Order will take effect 10 days from the date this Decision becomes final. This Decision will become final without further proceedings upon its issuance, pursuant to section 1.138 of the Rules of Practice (7 C.F.R. § 1.138).

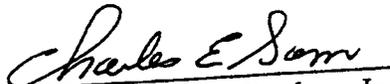
Copies of this Order shall be served upon the parties.

Done at Washington, D.C.

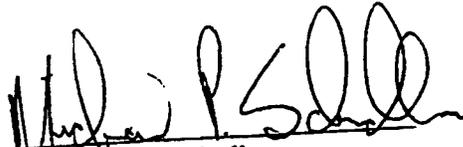
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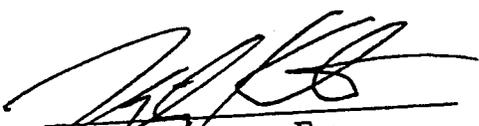

Administrative Law Judge

For Respondents

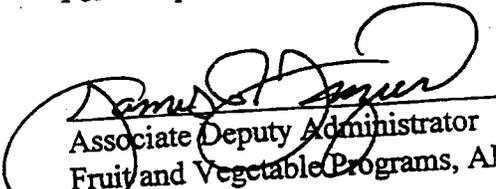

for A. Sam & Sons Produce, Inc.


for Dayoub Marketing, Inc.


Michael P. Schindler


Michael J. Keaton, Esq.
Attorney for Respondents,
A. Sam & Sons Produce, Inc.
and Dayoub Marketing, Inc.

For Complainant


Associate Deputy Administrator
Fruit and Vegetable Programs, AMS


Andrew Y. Stanton, Esq.
Attorney for Complainant