

## ANNUAL REPORT OF THE JUDICIAL OFFICER

### FISCAL YEAR 2014

The Judicial Officer issues final decisions for the Secretary of Agriculture in all cases appealed from initial decisions of USDA's administrative law judges. These cases arise under approximately 40 statutes administered by the Secretary of Agriculture. During FY 2014, the Judicial Officer issued cases arising under the Agricultural Marketing Agreements Act, the Animal Welfare Act, the Equal Access to Justice Act, the Federal Meat Inspection Act, the Horse Protection Act, the Organic Foods Production Act, the Packers and Stockyards Act, and the Perishable Agricultural Commodities Act. The Judicial Officer also issues reparation orders for money damages under the Packers and Stockyards Act and the Perishable Agricultural Commodities Act, issues final decisions in cases appealed from initial decisions of the Commissioner of the Plant Variety Protection Office under the Plant Variety Protection Act, and rules on motions filed by parties to proceedings and questions submitted by administrative law judges. Appeals from the Judicial Officer's decisions lie primarily to the United States Courts of Appeals, but, under some statutes, appeals lie to the United States District Courts. USDA has no right of appeal from a decision by the Judicial Officer.

The Office of the Judicial Officer is staffed by three persons: the Judicial Officer, an attorney, and a legal technician, who also serves as secretary, paralegal, and administrative assistant.

The following two tables provide an indication of the production of the office and the direction of the backlog in the office.

#### CASES AND MOTIONS RECEIVED – DECIDED – PENDING

	FY 2012	FY 2013	FY 2014
Cases and Motions Pending Beginning of the FY	7	5	3
Cases and Motions Received During the FY	531	456	396
Cases and Motions Decided During FY	533	458	396
Cases and Motions Pending End of the FY	5	3	3

**INTERVAL BETWEEN REFERRAL TO JO AND JO DISPOSITION**

<b>Fiscal Year</b>	<b>Median Interval</b>	<b>Longest Interval</b>	<b>Number of Cases Over 4 Months</b>	<b>Number of Cases Over 8 Months</b>
2000	3 wks.	6 mo. 2 wk.	1	0
2001	1 wk.	2 mo.	0	0
2002	2 wk.	3 mo. 2wk.	0	0
2003	1 wk.	11 mo. 2 wk.	3	3
2004	1 wk.	1 yr. 5 mo.	4	4
2005	1 wk. 3 da.	1 yr. 6 mo.	3	1
2006	2 wk.	1 yr. 2 wk.	6	4
2007	1 mo. 3 wk.	11 mo. 1 wk.	6	2
2008	2 wk.	1 yr. 7 mo.	10	7
2009	1 wk. 3 da.	1 yr. 11 mo.	9	5
2010	5 da.	7 mo. 3 wk.	10	0
2011	1 da.	5 mo. 3 wk.	2	0
2012	4 da.	8 mo. 2 wk.	4	1
2013	4 da.	1 yr. 2 mo.	9	6
2014	2 da.	9 mo. 3 wk.	2	1

The following are summaries of major decisions issued by the Judicial Officer in FY 2014.

**SUMMARIES OF MAJOR DECISIONS BY THE JUDICIAL OFFICER**

**Fiscal Year 2014**

In *In re Bodie S. Knapp* (Order Denying Amended Pet. for Recons.), AWA Docket No. 09-0175, decided by the Judicial Officer on November 6, 2013, the Judicial Officer denied Mr. Knapp's Amended Petition for Reconsideration of *In re Bodie S. Knapp*, \_\_\_ Agric. Dec. \_\_\_ (June 3, 2013). The Judicial Officer rejected Mr. Knapp's contention that he was denied due process of law stating Mr. Knapp was provided with the fundamental elements of due process; viz., notice and an opportunity to be heard. The Judicial Officer, citing 5 U.S.C. § 557(b) and the Attorney General's Manual on the Administrative Procedure Act, held that the Judicial Officer could substitute his judgment for that of the administrative law judge. The Judicial Officer rejected Mr. Knapp's contention that he was not required to obtain an Animal Welfare Act license for his purchases of animals because the purchases were for his own use or enjoyment. The Judicial Officer held that the "own use or enjoyment" exemption in 9 C.F.R. § 2.1(a)(3)(viii) is not available to persons who also sell or exhibit animals and the evidence established that Mr. Knapp sold animals for a regulated purpose. The Judicial Officer rejected Mr. Knapp's contention that the sanctions in 7 U.S.C. § 2149 could only be imposed on a person who holds an Animal Welfare Act license. The Judicial Officer, citing *Brotherhood of R.R. Trainmen v. Baltimore & O.R.R.*, 331 U.S. 519 (1947), stated that the headings and titles of statutes do not take the place of provisions of the text of

statutes. The Judicial Officer rejected Mr. Knapp's contention that the Judicial Officer had to take Mr. Knapp's financial circumstances and the number of Mr. Knapp's children into account when determining the amount of the civil penalty to be assessed for Mr. Knapp's violations of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a)(1) and 2.10(c). The Judicial Officer held that the Secretary of Agriculture is required to assess Mr. Knapp a \$1,650 civil penalty for each of his knowing failures to obey cease and desist orders issued in *In re Bodie S. Knapp* (Order Denying Mot. for Recons.), 64 Agric. Dec. 1668 (2005), and *In re Coastal Bend Zoological Ass'n.*, 65 Agric. Dec. 993 (2006). The Judicial Officer rejected Mr. Knapp's contention that he was the victim of selective enforcement, that the Judicial Officer's disposition of the proceeding was tainted by the Judicial Officer's employment relationship with USDA, and that the Judicial Officer harbors personal animosity toward Mr. Knapp.

In *In re RDM International, Inc.*, PACA Docket Nos. 12-0458 and 12-0601, decided by the Judicial Officer on February 12, 2014, the Judicial Officer, pursuant to 7 C.F.R. § 1.145(i), adopted Administrative Law Judge Janice K. Bullard's (ALJ) July 23, 2013, Decision and Order as the final order in the proceeding. The ALJ: (1) found, during the period November 13, 2008, through June 17, 2011, RDM International, Inc. (RDM), failed to make full payment promptly to eight produce sellers of the agreed purchase prices, or balances of the agreed purchase prices, for 74 lots of perishable agricultural commodities which RDM purchased in the course of interstate and foreign commerce, in the amount of \$832,934.95, of which \$804,257.04 remained unpaid as of May 19, 2013; (2) concluded RDM's failure to make full payment promptly to eight produce sellers constitutes willful, repeated, and flagrant violations of 7 U.S.C. § 499b(4); (3) ordered publication of the facts and circumstances of RDM's willful, flagrant, and repeated violations of 7 U.S.C. § 499b(4); and (4) affirmed the refusal of the Agricultural Marketing Service to issue a PACA license to RDM.

In *In re Kriegel, Inc.*, OFPA Docket No. 14-0027, decided by the Judicial Officer on March 6, 2014, the Judicial Officer dismissed the Petitioners' appeal petition. The Judicial Officer held that, after a certifying agent denies an application for organic certification, the applicant may appeal the denial to the Administrator, Agricultural Marketing Service; however, the procedures applicable to the review of the Administrator's denial of an applicant's appeal (7 C.F.R. § 205.681(a)(2)) do not provide that an applicant may initiate a proceeding to review the Administrator's denial of the applicant's appeal, as the Petitioners have done. Instead, the regulations provide that USDA will initiate the formal administrative proceeding to deny organic certification.

In *In re Josephine E. Bonaccurso, Inc.*, P.&S. Docket No. D-13-0115, decided by the Judicial Officer on March 25, 2014, the Judicial Officer, pursuant to 7 C.F.R. § 1.145(i), adopted Administrative Law Judge Janice K. Bullard's (ALJ) November 25, 2013, Decision and Order by Reason of Default as the final order in the proceeding. The ALJ: (1) concluded Josephine E. Bonaccurso, Inc., and Samuel Bonaccurso

(Respondents) willfully violated 7 U.S.C. §§ 192(a) and 228b and 9 C.F.R. § 201.43 by failing to pay the full amount of the purchase price for livestock within the time period required by the Packers and Stockyards Act; (2) concluded Respondents failed to comply with orders issued in *United States v. Josephine E. Bonaccorso, Inc.*, Case No. 1:11-cv-6001-RBK-AMD (D. N.J. Dec. 16, 2011), *United States v. Josephine E. Bonaccorso, Inc.*, Case No. 1:07-cv-01551-RBK-JS (D. N.J. Oct. 19, 2007), *In re Josephine E. Bonaccorso, Inc.* (Consent Decision and Understanding Regarding Consent Decision), \_\_ Agric. Dec. \_\_ (Feb. 28, 2012), and *In re Josephine E. Bonaccorso, Inc.* (Consent Decision), 62 Agric. Dec. 261 (2003), by continuing to fail to pay the full amount of the purchase price of livestock within the time period required by the Packers and Stockyards Act; (3) concluded Respondents failed to comply with the order issued in *In re Josephine E. Bonaccorso, Inc.* (Consent Decision and Understanding Regarding Consent Decision), \_\_ Agric. Dec. \_\_ (Feb. 28, 2012), by making payments for livestock purchases by other than cash, wire transfer, or certified check, and by failing to pay timely the \$19,500 civil penalty assessed against them; (4) ordered Respondents to cease and desist from purchasing livestock, except under the condition that Respondents must deliver to the seller the full amount of the purchase price by payment in United States currency, by certified check, or by wire transfer before the close of the next business day following the purchase of the livestock and the transfer of possession of the livestock; (5) ordered Respondents to cease and desist from failing to pay the full purchase price of livestock before the close of the next business day following each purchase of the livestock, as required by 7 U.S.C. §§ 192(a) and 228b; and (6) assessed Respondents a \$462,000 civil penalty. The Judicial Officer rejected Respondents' contention that the ALJ's failure to consider the gravity of Respondents' violations, the size of Respondents' business, and the effect of the civil penalty on Respondents' ability to continue in business when determining the amount of the civil penalty necessitated remand of the proceeding to the ALJ. The Judicial Officer also rejected Respondents' contention that the ALJ's finding that Respondents' violations of 7 U.S.C. §§ 192(a) and 228b and 9 C.F.R. § 201.43 were willful, without first affording Respondents a hearing, was error. The Judicial Officer stated the Respondents' failure to deny the allegations in the complaint constituted an admission that Respondents willfully violated 7 U.S.C. §§ 192(a) and 228b and 9 C.F.R. § 201.43 and waiver of hearing.

In *In re Burnette Foods, Inc.* (Ruling Denying the Administrator's Motion for Stay), AMAA Docket No. 11-0334, decided by the Judicial Officer on April 9, 2014, the Judicial Officer denied the Agricultural Marketing Service's Motion for Stay Pending Appeal. The Judicial Officer stated the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders (7 C.F.R. §§ 900.50-.71) provide that an administrative law judge's decision shall become final without further procedure 35 days after service of the administrative law judge's decision, unless the decision is appealed to the Secretary of Agriculture by a party to the proceeding (7 C.F.R. § 900.64(c)). As the Administrator appealed the administrative law judge's decision, *In re Burnette Foods, Inc.*, \_\_ Agric. Dec. \_\_ (Mar. 18, 2014), to the Judicial Officer, the

administrative law judge's decision will not become final and will have no effect pending final disposition of this proceeding by the Judicial Officer. Therefore, a stay of *In re Burnette Foods, Inc.*, \_\_\_ Agric. Dec. \_\_\_ (Mar. 18, 2014), pending completion of the appeal process, would be mere surplusage.

In *In re Hope Knaust*, AWA Docket No. 12-0552, decided by the Judicial Officer on April 9, 2014, the Judicial Officer affirmed Chief Administrative Law Judge Peter M. Davenport's (Chief ALJ) decision granting the Administrator, Animal and Plant Health Inspection Service's motion for summary judgment in part and denying the Administrator's motion for summary judgment in part. The Judicial Officer rejected Respondents' contention that the Chief ALJ's consideration of hearsay evidence, was error, stating hearsay evidence is admissible in proceedings conducted under the Administrative Procedure Act and the Rules of Practice.

In *In re Kriegel, Inc.*, OFPA Docket No. 14-0027, decided by the Judicial Officer on April 11, 2014, the Judicial Officer denied Petitioners' appeal of *In re Kriegel, Inc.*, \_\_\_ Agric. Dec. \_\_\_ (Mar. 6, 2014). The Judicial Officer held that *In re Kriegel, Inc.*, \_\_\_ Agric. Dec. \_\_\_ (Mar. 6, 2014), was the final USDA decision in the proceeding; therefore, Petitioners seek relief in the wrong forum and Petitioners' March 24, 2014, appeal petition must be denied.

In *In re Amersino Marketing Group, LLC*, PACA Docket Nos. D-12-0221 and D-12-0222, decided by the Judicial Officer on April 18, 2014, the Judicial Officer affirmed Administrative Law Judge Janice K. Bullard's (ALJ) decision concluding that Amersino Marketing Group, LLC, and Southeast Produce Limited, USA, willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4) by failing to make full payment promptly to at least four produce sellers of the agreed purchase prices for perishable agricultural commodities and ordering publication of the facts and circumstances of Respondents' violations of 7 U.S.C. § 499b(4). The Judicial Officer rejected Respondents' contention that the ALJ's conclusion that Respondents willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4), is error. The Judicial Officer stated, while willfulness is not a prerequisite to the publication of the facts and circumstances of violations of 7 U.S.C. § 499b(4), the record supports a finding that Respondents' violations of the PACA were "willful," as that term is used in the Administrative Procedure Act (5 U.S.C. § 558(c)). Willfulness is reflected by Respondents' violations of express requirements of the PACA (7 U.S.C. § 499b(4)) and the Regulations (7 C.F.R. § 46.2(aa)) and the number and dollar amount of Respondents' violative transactions. Respondents' violations are "flagrant" because of the number of violations, the amount of money involved, and the lengthy time period during which the violations occurred. Respondents' violations are "repeated" because repeated means more than one. The Judicial Officer also rejected Respondents' contention that the ALJ's failure to provide Respondents and Henry Wang an opportunity for hearing, is error. The Judicial Officer stated the Rules of Practice provide that the admission of material allegations of fact contained in the complaint shall constitute a

waiver of hearing and, in their Answer, Respondents admitted the violations found by the ALJ. As for Respondents' contention that the ALJ erroneously failed to provide Henry Wang an opportunity for hearing, the Judicial Officer stated that Mr. Wang's ownership interest in Amersino Marketing Group, LLC, and Southeast Produce Limited, USA, did not make Mr. Wang a party to the proceeding. The Judicial Officer stated the only parties in the proceeding are the party instituting the proceeding and the parties against whom the proceeding was instituted.

In *In re Nicholas Plafcan* (Remand Order), HPA Docket No. 13-0242, decided by the Judicial Officer on April 18, 2014, the Judicial Officer remanded the proceeding to Chief Administrative Law Judge Peter M. Davenport (Chief ALJ) to provide him an opportunity to consider and rule on Mr. Plafcan's February 19, 2014, Petition to Reconsider the Chief ALJ's Default Decision and Order.

In *In re Gus White*, AWA Docket No. 12-0277, decided by the Judicial Officer on May 13, 2014, the Judicial Officer found the Administrator, Animal and Plant Health Inspection Service, proved by a preponderance of the evidence that Mr. White committed 22 violations of the Animal Welfare Act and the Regulations during the period May 24, 2007, through April 19, 2011. The Judicial Officer issued a cease and desist order, assessed Mr. White a \$39,375 civil penalty, and revoked Mr. White's Animal Welfare Act license. The Judicial Officer stated, while Mr. White's correction of violations and explanation of the reasons for his violations may be taken into account when determining the sanction to be imposed, the correction of violations and the reasons for violations do not eliminate the fact that the violations occurred.

In *In re Jennifer Caudill* (Ruling Granting Petition to Reopen and Ruling Granting Request to Issue an Order Dismissing the Proceeding), AWA Docket No. 10-0416, decided by the Judicial Officer on May 16, 2014, the Judicial Officer reopened the hearing pursuant to 7 C.F.R. § 1.146(a)(2) and received in evidence a letter which established that, pursuant to 9 C.F.R. § 2.5, Ms. Caudill's Animal Welfare Act license automatically terminated on its expiration date, October 16, 2013, because Ms. Caudill failed to pay the annual license fee on or before the expiration of the Animal Welfare Act license. Thus, the Judicial Officer found the automatic termination of Ms. Caudill's Animal Welfare Act license, pursuant to 9 C.F.R. § 2.5, rendered moot the proceeding in which the Animal and Plant Health Inspection Service sought termination of Ms. Caudill's Animal Welfare Act license, pursuant to 9 C.F.R. § 2.12, and the Judicial Officer dismissed the proceeding as moot.

In *In re George Finch*, PACA-APP Docket Nos. 13-0068 and 13-0069, decided by the Judicial Officer on June 6, 2014, the Judicial Officer affirmed Chief Administrative Law Judge Peter M. Davenport's Decision in which he found that Mr. Finch and Mr. Honeycutt (Petitioners) were responsibly connected with Third Coast Produce Company, Ltd., during the period of time when Third Coast violated 7 U.S.C. § 499b(4),

by virtue of having been actively involved in the activities that resulted in Third Coast's violations of the PACA and having been officers and directors of Third Coast. The Judicial Officer, quoting extensively from *Zwick v. Freeman*, 373 F.2d 110 (2d Cir.), *cert. denied*, 389 U.S. 835 (1967), rejected the Petitioners' contention that the PACA is unconstitutionally overbroad because it penalizes virtuous, non-culpable, and lawful conduct as if the conduct were contrary. The Judicial Officer also rejected Petitioners' contention that PACA "responsibly connected" proceedings violate principles of due process and Petitioners' contention that PACA provides for the forfeiture of property to the United States in violation of "the spirit" of 18 U.S.C. §§ 981-987. The Judicial Officer further rejected Petitioners' contention that PACA violates the Bill of Attainder Clause in Article 1, Section 9, of the Constitution of the United States.

In *In re Mark Kasmiersky* (Order Dismissing Purported Appeal Pet.), P.&S. Docket No. 12-0600, decided by the Judicial Officer on June 9, 2014, the Judicial Officer dismissed Mark Kasmiersky's purported appeal petition because it did not remotely conform to the requirements for appeal petitions set forth in the Rules of Practice (7 C.F.R. § 1.145(a)).

In *In re Joseph M. Estes* (Order Dismissing Purported Appeal Pet. and Cross-Appeal), AWA Docket No. 11-0027, decided by the Judicial Officer on June 12, 2014, the Judicial Officer dismissed Joseph M. Estes' purported appeal petition because it did not remotely conform to the requirements for appeal petitions set forth in the Rules of Practice (7 C.F.R. § 1.145(a)). The Judicial Officer, citing *In re Onofrio Calabrese*, 51 Agric. Dec. 131 (1992), also declined to consider and dismissed the cross-appeal filed by the Administrator, Animal and Plant Health Inspection Service, because no appeal petition had been filed.

In *In re Brian Staples*, AWA Docket No. 14-0022, decided by the Judicial Officer on June 26, 2014, the Judicial Officer reversed Administrative Law Judge Jill S. Clifton's Ruling Denying Motion for Default Judgment. The Judicial Officer, citing 7 C.F.R. §§ 1.136(c), .139, and .141(a), held Mr. Staples' failure to file a timely answer to the Complaint is deemed, for purposes of the proceeding, an admission of the allegations of the Complaint and constitutes a waiver of hearing. The Judicial Officer found Mr. Staples had failed to file meritorious objections to the Administrator, Animal and Plant Health Inspection Service's motion for a default decision and adopted the Administrator's proposed findings of fact and conclusions of law. The Judicial Officer ordered Mr. Staples to cease and desist from violating the Animal Welfare Act and the Regulations, suspended Mr. Staples' Animal Welfare Act license for nine months, and assessed Mr. Staples a \$11,000 civil penalty.

In *In re Craig Perry*, EAJA Docket No. 12-0645, decided by the Judicial Officer on July 17, 2014, the Judicial Officer awarded Craig Perry and Perry's Wilderness Ranch & Zoo, Inc. (Applicants), \$16,053.83 for attorney fees and other expenses incurred in *In re*

*Terranova Enterprises, Inc.* (Decision as to Craig Perry and Perry's Wilderness Ranch & Zoo, Inc.), \_\_ Agric. Dec. \_\_\_\_ (July 19, 2012). The Judicial Officer found that the Applicants were prevailing parties as to a significant and discrete substantive portion of the adversary adjudication and the Animal and Plant Health Inspection Service's (APHIS) position in the adversary adjudication was not substantially justified. The Judicial Officer rejected APHIS' contentions that: (1) the Applicants failed to identify the APHIS position that the Applicants alleged was not substantially justified, (2) the Applicants failed to provide a net worth exhibit, (3) the Applicants failed to provide full documentation of the fees and expenses they incurred in connection with the adversary adjudication, (4) the Applicants' documentation included attorney services that were not related to the Applicants' defense in the adversary adjudication, and (5) the Applicants unduly and unreasonably protracted the adversary adjudication.

In *In re Brian Staples* (Ruling Granting Joint Mot. to Modify Order), AWA Docket No. 14-0022, decided by the Judicial Officer on July 17, 2014, the Judicial Officer granted a joint motion by the Administrator, Animal and Plant Health Inspection Service, and Brian Staples to modify the Order issued in *In re Brian Staples*, \_\_ Agric. Dec. \_\_\_\_ (June 26, 2014).

In *In re Lancelot Kollman*, AWA Docket No. 13-0293, decided by the Judicial Officer on July 23, 2014, the Judicial Officer affirmed the Animal and Plant Health Inspection Service's denial of Mr. Kollman's application for an Animal Welfare Act (AWA) license. The Judicial Officer found Mr. Kollman previously held an AWA license which was revoked by the Secretary of Agriculture effective October 19, 2009. *In re Octagon Sequence of Eight Inc.* (Decision as to Lancelot Kollman Ramos), 66 Agric. Dec. 1093 (2007), *aff'd sub nom. Ramos v. U.S. Dep't of Agric.*, 322 F. App'x 814 (11th Cir. 2009). The Judicial Officer held 9 C.F.R. §§ 2.10(b) and 2.11(a)(3) provide that an AWA license will not be issued to an applicant who has had an AWA license revoked. The Judicial Officer found there were no genuine issues of material fact to be heard and rejected Mr. Kollman's contention that he is entitled to a hearing under 9 C.F.R. § 2.11(b). The Judicial Officer also rejected Mr. Kollman's contentions that: (1) he was denied due process in *In re Octagon Sequence of Eight Inc.* (Decision as to Lancelot Kollman Ramos), 66 Agric. Dec. 1093 (2007); (2) the Secretary of Agriculture did not have authority to make revocation of an AWA license permanent with no opportunity for reinstatement; and (3) 9 C.F.R. § 2.10(c) does not prohibit Mr. Kollman from exhibiting animals as an employee of another person who holds an AWA license.

In *In re Agri-Sales, Inc.*, PACA Docket No. D-13-0195, decided by the Judicial Officer on August 4, 2014, the Judicial Officer adopted Chief Administrative Law Judge Peter M. Davenport's (Chief ALJ) decision concluding that Agri-Sales, Inc., willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4) by failing to make full payment promptly to at least seven produce sellers of the agreed purchase prices for perishable agricultural commodities and ordering publication of the facts and circumstances of Agri-Sales, Inc.'s violations of 7 U.S.C. § 499b(4) and revocation of Agri-Sales, Inc.'s

PACA license. The Judicial Officer, citing 7 C.F.R. § 1.147(g), rejected Agri-Sales, Inc.'s contention that the mailbox rule applies to proceedings under the Rules of Practice (7 C.F.R. §§ 1.130-.151). The Judicial Officer found the Chief ALJ's failure to rule on Agri-Sales, Inc.'s motion for an extension of time operates as an implicit denial of Agri-Sales, Inc.'s motion. The Judicial Officer also rejected Agri-Sales, Inc.'s contention that the Chief ALJ's failure to conduct a hearing was error, stating there were no genuine issues of material fact to be heard.

In *In re Anthony J. Spinale* (Order Denying Interlocutory Appeal), PACA Docket Nos. D-09-0189 & 10-0138, decided by the Judicial Officer on August 5, 2014, the Judicial Officer dismissed Mr. Spinale and Mr. Sprout, Inc.'s interlocutory appeal of Administrative Law Judge Janice K. Bullard's Order Denying Request for Continuance of Hearing, stating the Rules of Practice do not permit interlocutory appeals.

In *In re Paul Rosberg* (Order Denying Late Appeal), FMIA Docket Nos. 14-0094 and 14-0095, decided by the Judicial Officer on September 10, 2014, the Judicial Officer denied Paul Rosberg and Nebraska's Finest Meats, L.L.C.'s appeal petition filed 1 day after Administrative Law Judge Janice K. Bullard's written decision became final. The Judicial Officer held, under the Rules of Practice, the Judicial Officer has no jurisdiction to hear an appeal that is filed after an administrative law judge's decision becomes final.

In *In re James G. Woudenberg*, AWA Docket No. 12-0538, decided by the Judicial Officer on September 12, 2014, the Judicial Officer reversed Administrative Law Judge Janice K. Bullard's decision dismissing the Complaint. The Judicial Officer found the Administrator, Animal and Plant Health Inspection Service, proved by a preponderance of the evidence that Mr. Woudenberg obtained live random source dogs and a live random source cat from sources that were not permitted, in violation of 9 C.F.R. § 2.132(a). The Judicial Officer found Mr. Woudenberg's violations were not willful and ordered Mr. Woudenberg to cease and desist from future violations of 9 C.F.R. § 2.132(a). The Judicial Officer rejected the Administrator's contention that the ALJ's failure to withdraw from the proceeding was error. Further, the Judicial Officer rejected the Administrator's contention that the ALJ erroneously struck testimony of one of the Administrator's witnesses based upon the Administrator's failure to produce a witness statement in accordance with 7 C.F.R. § 1.141(h)(1)(iii) and the Jencks Act.

In *In re West Coast Commodities, LLC* (Order Denying Late Appeal), P.&S. Docket No. 12-0475, decided by the Judicial Officer on September 18, 2014, the Judicial Officer denied West Coast Commodities, LLC, and Michael Paul Partlow's appeal petition filed after Administrative Law Judge Janice K. Bullard's Decision became final. The Judicial Officer held, under the Rules of Practice, the Judicial Officer has no jurisdiction to hear an appeal that

is filed after an administrative law judge's decision becomes final.

In *In re Paul A. Rosberg* (Remand Order), OFPA Docket No. 12-0216, decided by the Judicial Officer on September 29, 2014, the Judicial Officer concluded that the Hearing Clerk had failed to serve Paul A. Rosberg with the Administrator, Agricultural Marketing Service's Motion for Summary Judgment and remanded the proceeding to Administrative Law Judge Janice K. Bullard to provide Mr. Rosberg an opportunity to respond to the Administrator's Motion for Summary Judgment.

The following are the three cases that were pending before the Judicial Officer on the last day of FY 2014, September 30, 2014.

#### **PENDING CASES APPEALED TO THE JUDICIAL OFFICER**

1. *In re Resolute Forest Products*, CPRI 12-0040  
Referred to the Judicial Officer June 24, 2014
2. *In re LeAnne Smith*, EAJA 14-0020  
Referred to the Judicial Officer July 8, 2014
3. *In re Burnette Foods*, AMAA 11-0334  
Referred to the Judicial Officer August 14, 2014