

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-1157

September Term, 2000

Anthony L. Thomas,
Petitioner

Filed On: January 30, 2001 [572721]

v.

Department of Agriculture and
United States of America,
Respondents

On Petition for Review of an Order of
the Secretary, United States Department of Agriculture

Before: WILLIAMS, GINSBURG and GARLAND, *Circuit Judges*.

J U D G M E N T

This petition for review of a decision and order of the Department of Agriculture was presented to the Court and briefed by counsel. The Court has accorded the issues full consideration and has determined that they occasion no need for a published opinion. *See* D.C. Cir. Rule 36(b). For the reasons set forth in the attached memorandum, it is

ORDERED and **ADJUDGED** that the petition for review by Anthony L. Thomas is denied.

The clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* D.C. Cir. Rule 41(a)(1).

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Deputy Clerk

MEMORANDUM

Petitioner Anthony L. Thomas petitions for review of the determination of the Secretary of the Department of Agriculture that he was “responsibly connected” to Sanford Produce Exchange, Inc., during the period in which the corporation committed willful, repeated, and flagrant violations of the prompt payment provision of the Perishable Agricultural Commodities Act (PACA), 7 U.S.C. § 499b(4).

Thomas does not dispute the Secretary’s finding that Sanford Produce committed 88 violations of the PACA after January 10, 1997. He contends, however, that he was not responsibly connected to Sanford after that date. Thomas asserts that on January 10, he effectively resigned as president, director, vice-president, and shareholder of the corporation. Even if his resignation were not effective, Thomas argues, he was not responsibly connected because he was not actively involved in the corporation’s violations.

Under the PACA, an officer, director, or holder of more than ten percent of the stock of a corporation licensed under the PACA is presumed to be “responsibly connected” to that corporation. 7 U.S.C. § 499a(b)(9). Section 499a(b)(9) provides that such an individual may rebut this presumption:

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.

*Id.** An appellate court must uphold the Secretary’s factual findings if they are

* As the provision set forth in the text makes clear, the presumption may be rebutted only if the person demonstrates both that he was not actively involved in the PACA violations, and that he either: (i) was only nominally an officer, or (ii) was not an owner of an entity that was the alter ego of its owners. As discussed in the text, Thomas’ effort to rebut the presumption misses the mark because he fails to demonstrate that he was not actively involved in Sanford’s violations. Although therefore not necessary to our disposition, we also conclude there was substantial evidence to support the Secretary’s findings that Thomas failed to demonstrate that he fell into either category (i) or (ii) above.

supported by substantial evidence. *See Veg-Mix, Inc. v. U.S. Dep't of Agriculture*, 832 F.2d 601, 612 & n.7 (D.C. Cir. 1987).

We conclude that there is substantial evidence to support the Secretary's finding that Thomas continued to serve as an officer of the corporation after January 10, 1997. That evidence includes Thomas' signature and statement -- made under penalty of perjury on the corporation's quarterly federal tax return -- that he was the corporation's president on May 5, 1997. It includes, as well, other documents Thomas signed in his capacity as president after January 10, 1997, notably a credit agreement and state tax form.

There is also substantial evidence to support the Secretary's finding that Thomas was actively involved in the corporation's PACA violations. That evidence includes Thomas' own testimony that he knew that the corporation's principal -- Vincent Giuffrida -- had hired him to operate the business in order to "mask Giuffrida's involvement in the company." Giuffrida did so, Thomas said, because produce suppliers "would be hesitant, if not unwilling" to do business with Giuffrida, who had recently shut down another produce company while owing money to suppliers. Further evidence includes Thomas' testimony that, at Giuffrida's direction, he engaged in "hammering" shippers, i.e., falsely stating that customers had complaints about a product in order "to get the price lowered," and that Giuffrida put him "in the middle of situations" where he had to give creditors the "shuck and jive." And it also includes the fact that Thomas continued to serve as the primary contact person at Sanford Produce, and to sign a host of checks and other financial documents, during the period of the violations.

In sum, because there is substantial evidence -- indeed, considerably more than "substantial" evidence -- to support the Secretary's determination that Thomas was a responsibly connected person, the petition for review is denied.