

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-1872

BENJAMIN SUDANO; BRIAN SUDANO,

Petitioners,

versus

UNITED STATES DEPARTMENT OF AGRICULTURE,

Respondent.

On Petition for Review of an Order of the United States Department
of Agriculture. (PACA-APP 02-0001)

Argued: February 2, 2005

Decided: May 13, 2005

Before WILKINS, Chief Judge, WIDENER, Circuit Judge, and Robert E.
PAYNE, United States District Judge for the Eastern District of
Virginia, sitting by designation.

Petition for review denied by unpublished per curiam opinion.

ARGUED: Kenneth David Federman, ROTHBERG & FEDERMAN, P.C.,
Bensalem, Pennsylvania, for Petitioners. Stephen Michael Reilly,
Senior Counsel, UNITED STATES DEPARTMENT OF AGRICULTURE, Office of
General Counsel, Washington, D.C., for Respondent. **ON BRIEF:** James
Michael Kelly, Deputy General Counsel, Margaret M. Breinholt,
Assistant General Counsel, UNITED STATES DEPARTMENT OF AGRICULTURE,
Office of General Counsel, Washington, D.C., for Respondent.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Benjamin Sudano and Brian Sudano seek review of a decision of the United States Department of Agriculture, finding that they were "responsibly connected"¹ to Lexington Produce Co. during the period the company was found to be in violation of the Perishable Agricultural Commodities Act, as amended, 7 U.S.C. §§ 499a-499s (the Act). On review, the Sudanos assert that they were not "responsibly connected" with Lexington Produce Co. between May 1999 and January 2000, the period during which Lexington Produce Co. violated 7 U.S.C. § 499b(4), § 2(4) of the Act, for failing to make "full payment promptly" of \$915,115.25 of payments owed to multiple produce suppliers of perishable agricultural commodities.

We have jurisdiction to entertain this petition because it is from a final order of the Secretary of Agriculture. See 28 U.S.C. § 2342.

In a thorough and detailed opinion, the Secretary of Agriculture found that the Sudanos were "responsibly connected" with Lexington Produce Co. between May 1999 and January 2000. In re Benjamin Sudano, PACA-APP Docket No. 02-0001 (May 21, 2004). In accordance with that decision, we are of opinion and hold that

¹"Responsibly connected" is defined as "affiliated or connected with a commission merchant, dealer, or broker as (A) 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." 7 U.S.C. § 499a(b)(9).

Benjamin Sudano and Brian Sudano were "responsibly connected" with Lexington Produce Co. during the period in question.

We note that the Secretary held administrative hearings on four occasions in three cities, at which hearings oral testimony and documentary evidence were taken. During the period in question, May, 1999 - January, 2000, Benjamin Sudano and Brian Sudano owned 100 percent of the outstanding stock of Lexington Produce Co., 50% each; Benjamin Sudano was the vice president and secretary of Lexington Produce Co., Brian Sudano was the president and treasurer; and both defendants also worked in the business upward of 10 to 13 hours every day of the week, including weekends. During the period May-November, 1999, the Sudanos, together with one John Alascio, controlled the business; and for the November, 1999 - January, 2000 period, the Sudanos alone controlled the business.

Based on these facts and other findings of the Secretary, the Secretary correctly found that the defendants failed to prove under 7 U.S.C. § 499a(b)(9), by a preponderance of the evidence, that they were not "responsibly connected" with their company. Being of opinion the order of the Secretary under review is supported by substantial evidence and is free from reversible error, we accordingly deny the petition for review on the opinion of the Secretary of Agriculture. PACA-APP Docket No. 02-0001, filed May 21, 2004.

The petition for review is accordingly

DENIED.