

## **DISCIPLINARY PROCEEDINGS**

### **AGRICULTURAL PRODUCE AGENT'S COUNCIL**

**vs**

**Accused 1 – NAK MARKET AGENTS CC**

**Accused 2 – MR JACOBUS WEYERS OOSTHUIZEN**

**Accused 3 – MR VIAN COLESKE**

**(Jointly “the Accused”)**

On 21 October 2014 and at Brooklyn, Pretoria, the three accused were found guilty of the following charges;

1. During the period of March 2014 to May 2014 and at the Uitenhage fresh Produce Market the Accused made themselves guilty of improper conduct (as defined in Section 23(a) and/or (c) of the Act) by contravening Rule 21(2)(b) in that they failed to record the particulars referred to in Rule 21(1) in respect of fresh produce received from a producer called Roodedraai Boerdery;
2. During the period March 2014 to May 2014 and at the Uitenhage fresh Produce Market, the Accused made themselves guilty of improper conduct (as defined in Section 23(a) and/or (c) of the Act) by contravening Rule 23 in that they failed to issue sales notes as envisaged in the aforesaid Rule in respect of the fresh produce delivered;
3. During the period March 2014 to May 2014 and at the Uitenhage fresh Produce Market, the Accused made themselves guilty of improper conduct (as defined in Section 23(a) and/or (c) of the Act) by contravening Rule 32 (4) in that they sold fresh produce on the credit of a producer called Roodedraai Boerdery in contravention of the aforesaid Rule;

In addition the third accused was also found guilty of the following charges:

1. During the period October 2014 to June 2014 and at the Uitenhage fresh Produce Market, the Accused made himself guilty of improper conduct (as defined in Section 23(a) and/or (c) of the Act) by contravening Section 19(1)(b) of the Act and which conduct amounts to unprofessional and/or improper conduct within the meaning of Section 26 of the Act, by failing to deposit into the First Accused's Trust account the proceeds of the sale of agricultural produce sold by him on the instruction of or on behalf of its principals;
2. During the period October 2014 to June 2014 and at the Uitenhage fresh Produce Market, the Accused made himself guilty of improper

conduct (as defined in Section 23(a) and/or (c) of the Act) by contravening Rule 2 in that he failed to act honestly and conscientiously in the practising of his occupation; in the best interest of his principals; and with the required integrity and objectivity envisaged in the said Rule. More particularly in the following respects he misappropriated funds received to the benefit of certain suppliers, by making payment of those funds to different suppliers; he supplied incorrect and/or falsified information to suppliers; and he sold fresh produce at prices below the average price for such products.

## **FINDING (SANCTION)**

### **SANCTION**

1. The fidelity fund certificates of the First and Second Accused were withdrawn in terms of Section 26(1)(c) of act 12 of 1992 ("the Act"), and such withdrawal was suspended in terms of section 26(2) of the Act for a period of three years subject to the following conditions :
  - 1.1 They are not found guilty of a similar offence committed within a period of 3 (three) years of the date of conviction;
  - 1.2 That the Second Accused attends the Comsel 100, 200 and 300 course within 6 months from 21 October 2014;
  - 1.3 That the Second Accused must attend a mentorship program to the satisfaction of the Registrar for a period of not less than 2 weeks, and which program he should attend within a period of three months from 21 October 2014.
  - 1.4 The First and Second Accused must jointly and severally, in terms of section 26 (6) of the Act, make a contribution towards APAC's legal costs in the sum of R10 000.00 (Ten Thousand Rand) to be paid by way of monthly instalments of R2500.00 (Two Thousand Five Hundred Rand) each, the first payment to be made on or before the 30<sup>th</sup> of November 2014 and all subsequent payments thereafter to be made on or before the 30<sup>th</sup> of each and every succeeding month, until the said amount has been paid in full. Payment is to be made into the trust account of APAC's attorneys, Weavind & Weavind Inc.
- 2 The Third Accused's fidelity fund certificate is withdrawn in terms of Section 26 (1) (c) of the Act and he is ordered to pay a fine of R70 000.00 (Seventy Thousand Rand) to be paid by way of monthly instalments of R10 000.00 (Ten Thousand Rand) each, the first payment to be made on or before the 30<sup>th</sup> of November 2014, with each and every subsequent payment thereafter to be paid on or before the last day of every succeeding month thereafter until the said amount has been paid

in full. Payment is to be made into the trust account of APAC's attorneys, Weavind & Weavind Inc.