

## DISCIPLINARY PROCEEDINGS

### AGRICULTURAL PRODUCE AGENT'S COUNCIL

vs

**ALGOABAAI MARKET AGENTS 1<sup>st</sup> Accused**

**CHARL MEYER 2<sup>nd</sup> Accused**

**REAAAN VAN DYK 3<sup>rd</sup> Accused**

**HENDRI WILHELM PRETORIUS 4<sup>th</sup> Accused**

On the 15<sup>th</sup> January 2018 and at Pretoria:

The First and Second Accused were found guilty of improper conduct (as defined in section 23 (a) and/or (c) of the Agricultural Produce Agent's Act, 12 of 1992 ("the Act") by -

1. contravening Rule 32(4) 32(4) in that they sold fresh produce on the credit of their principals, without the prior written approval of the principal concerned, more specifically potatoes received and sold on behalf of its principals Burlington and Aqua Farming, in contravention of the aforesaid rule;
2. contravening Section 18 of the Act, read together with Rule 23 and/or 27, in that they were obliged to keep full and correct accounting records of, *inter alia*, all agricultural produce received, kept, sold and lawfully destroyed and failed to do so, or to do so correctly, which failure resulted in a deficit of the produce held on behalf of their principals and a surplus of the produce held on behalf of their principals
3. contravening Section 19(1)(b) read together with Section 19(4) and Rules 31(6)(a) and (b) promulgated in terms of the Act, in that there were shortages in the agricultural produce stock of the First Accused, more specifically a deficit of the produce held on behalf of their principals.

The Second Accused was found 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:

- a) honestly and conscientiously in the practising of his occupation;
- b) in the best interest of his principals;
- c) with the required integrity and objectivity envisaged in the said Rule, and

more particularly in the following respects:

- i) The Second Accused fraudulently and/or intentionally, created fictitious sales notes to hide the fact that certain sales were being done on credit and on behalf of his principals without the necessary authorisation from such principal;
- ii) The Second Accused fraudulently and intentionally issued fictitious sales notes to conceal the fact that there was a trust shortage of fresh produce stock of the First Accused, due to incorrect and or improper account record keeping.

### **Sanction (Finding)**

1. The First and Second Accused shall, jointly and severally the one paying the other to be absolved, pay a fine of R60 000, by way of 6 equal monthly instalments in the amount of R10 000.00 per month, the first such payment to be made on or before the 31 January 2018, with all subsequent payments to be made on or before the first day of each month, until the full amount outstanding has been paid in full.
2. Should the Accused fail to make payment of any one instalment on due date, the full amount outstanding, together with interest, shall immediately become due and payable.
3. In terms of the provisions of section 26 (1)(c) the Fidelity Fund Certificate of the Second Accused (Certificate No: 1815 issued on 29 November 2011) is withdrawn however, in in terms of section 26 (2) such withdrawal shall be suspended for a period of 3 years, subject to the Second Accused not again being found guilty of a similar offence.
4. In addition to the above and by agreement between the Parties, the First and Second Accused are directed to pay the costs of the Council in connection with the disciplinary proceedings. In terms of section 26(6) the costs are to be calculated in accordance with the High Court Tariff applicable to civil litigation. The taxing master of the High Court has jurisdiction to tax the costs, and the costs include the costs of recording, transcribing and preparing copies of any record (if that becomes relevant) and includes the costs of the prosecutor, accountant or other persons appointed to inspect and investigate the records of the Accused and/or his/her employees books of account and any other documents or records or things relating to the Accused or his/her employees business operations, and also includes the costs associated with the attendance of the members of the disciplinary tribunal and any costs associated with their attendance at the disciplinary proceedings.

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