

R223651

Case No: -

IN THE HIGH COURT OF SOUTH AFRICA

(-)

Pretoria, 30 November 2015, Disciplinary Tribunal

In the matter between: The Registrar of the Agricultural Produce Agent's Council and 1. NECTARINE TRADING 4 CC (REG NO: 2010/0594894/23) T/A FARMERS DIRECT MARKET AGENTS("FARMERS DIRECT MTHATHA").

2. P H S ENGELBRECHT.**3. H V SWARTZ.****4. V S WESTERBERG.**

**(Collectively and severally "the Accused")
In re: Disciplinary Hearing**

On 30 November 2015 and at Pretoria, the Accused was found guilty of the following charges:

COUNT 1:

During on or about June 2015 and at Kei Fresh Produce Market, Vulindlela Heights, Mthatha, the accused made themselves guilty of improper conduct [as defined in Section 23(a) and / or (c) of the Act] read with Sections 19(3)(c) and 19(4) by contravening Section 19(1)(b) read together with Section 19(4) and Rules 31(6)(a) and (b) in that there was a stock deficit of 9828 units in the agricultural produce stock of the First Accused, being food produce and in the control of the accused, which stock forms part of the First Accused trust account.

COUNT 2:

During June 2015 and at Kei Fresh Produce Market, Vulindlela Heights, Mthatha, the Accused made themselves guilty of improper conduct [as defined in Section 23(a) and/or (c) of the Act] read with Section 19(3)(c) and Rule 23(1) promulgated in terms of the Act in that they failed to correctly and properly issue sale notes after each sale transaction before the produce concerned was removed from the Accused's custody.

COUNT 3:

During April to June 2015 and at Kei Fresh Produce Market, Vulindlela Heights, Mthatha, 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 their principals without the proper prior written approval of the principal concerned.

COUNT 4:

During April to June 2015 and at Kei Fresh Produce Market, Vulindlela Heights, Mthatha, the Accused made themselves guilty of improper conduct [as defined in Section 23(a) and/or (c) of the Act] by contravening Rule 32(1) in that they failed to make payment to their principals timeously and within 5 business day after the produce concerned had been sold.

Sanction Imposed:

1. The accused's Fidelity Fund Certificate be withdrawn, which withdrawal is suspended for a period of 3 (Three) years from the date on which this sanction is imposed by the Disciplinary Tribunal on condition:

a) that the accused are not convicted of the same or similar offence committed within the 3 (Three) year suspension period; and

b) compliance with paragraphs 2 to 3 below.

2. The accused are jointly and severally liable to pay a fine in the amount of R70 000.00 (Seventy Thousand Rand) to APAC of which the amount of R10 000.00 (Ten Thousand Rand) is suspended on condition that the accused are not convicted of the same or similar offences within the 3 (Three) year suspension period referred to above.

3. The accused are jointly and severally liable to make a contribution towards APAC's costs in the amount of R10 000.00 (Ten Thousand Rand) which is to be paid within 7 (seven) days of the date on which this sanction is imposed by the Disciplinary Tribunal.

4. The fine referred to in 2 above shall be payable by way of 6 (Six) equal monthly instalments in the amount of R10 000.00 (Ten Thousand Rand) each together with interest calculated thereon at the prescribed rate of interest from time to time, the first payment to be made on/or before 5 December 2015 and thereafter on or before the last day of every succeeding month with the understanding that the entire outstanding amount plus interest thereon shall become immediately due and payable should the accused fail to make any payment on the due date thereof.