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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	PACA Docket No. D-15-0044
)	
Phoenix Produce Company,)	
)	
)	
Respondent)	Decision Without Hearing By Reason of
)	Default

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.)(the Act or PACA), instituted by a Complaint filed on December 22, 2014, by the Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA).

The Complaint filed by Complainant alleges that Respondent, during the period March 2011 through February 2013, failed to make full payment promptly to 17 sellers of the agreed purchase prices in the total amount of \$987,843.00 for 405 lots of perishable agricultural commodities, as listed in Appendix A to the Complaint and incorporated therein by reference, which Respondent purchased, received, and accepted in interstate and foreign commerce.

The Complaint alleges that Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)), and that the failure of Respondent to make full payment promptly (as more fully described in section 46.2(aa) of the Regulations (7 C.F.R. § 46.2(aa))) of the agreed

purchase prices for perishable agricultural commodities that it purchased, received and accepted in interstate and foreign commerce, constitutes willful, flagrant and repeated violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

The Complaint requests that pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)), the Administrative Law Judge find that Respondent has willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order that the facts and circumstances of the violations be published.

The Complaint was served on Respondent on December 29, 2014, pursuant to section 1.147 (c) of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By The Secretary (7 C.F.R. § 1.130 *et seq.*) (Rules of Practice), and Respondent's answer was due on January 20, 2015.

Respondent was duly served with the Complaint, and did not file an answer to the Complaint within the 20 day time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136). Since Respondent failed to answer within the 20 day time period prescribed by the Rules of Practice, the following Decision and Order is issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings Of Fact

1. Respondent is or was a corporation organized and existing under the laws of the state of Illinois. During all times material herein, its business address was 2404 S. Wolcott Avenue, Chicago, Illinois 60608.

2. At all times material herein, Respondent was licensed under and operating subject to the provisions of the PACA. License number 20101326 was issued to Respondent on September 28, 2010. This license terminated on September 28, 2013, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual fee.

3. Respondent, during the period March 21, 2011 through February 20, 2013, on or about the dates and in the transactions set forth in Appendix A to the Complaint, failed to make full payment promptly to 17 sellers of the agreed purchase prices in the total amount of \$987,843.00 for 405 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in interstate and foreign commerce.

Conclusions

Respondent's failure to make full payment promptly of the agreed purchase prices for perishable agricultural commodities that it purchased, received and accepted in interstate and foreign commerce, as more fully described in paragraph 3 above, constitutes willful, flagrant and repeated violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)).¹

Order

The facts and circumstances of Respondent's violation shall be published.

This Order shall take effect on the day that this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

Copies hereof shall be served upon parties.

Done at Washington, D.C.

this 21 day of April, 2015



Jill S. Clifton

~~Chief~~ Administrative Law Judge

JSC

¹ See also section 46.2(aa) of the Regulations (7 C.F.R. § 46.2(aa)).