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**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

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| In re: |) | PACA Docket No. D-16-0035 |
| |) | |
| M & M Produce, Inc., |) | |
| |) | |
| |) | |
| |) | |
| 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 23, 2015, by the Associate 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 May 2014 through March 2015, failed to make full payment promptly to 46 sellers of the agreed purchase prices in the total amount of \$2,873,896.13 for 439 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 violations 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 violation be published.

The Complaint and a copy 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), were served on Respondent by certified mail on January 2 and January 14, 2016. Respondent was duly served with the Complaint 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 did not file an answer to the Complaint within the time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136). On June 16, 2016, I issued an Order to Show Cause Why Default Should Not Be Entered and directed the parties to respond within fifteen (15) days after the date of the Order. Respondent failed to respond while Complainant responded on July 5, 2016 with a Simultaneous Motion that a Decision and Order without Hearing By Reason of Default be issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

For Good Cause Shown, 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 existing under the laws of the state of Connecticut. Respondent's business and mailing address is 101 Reserve Road, Harford Connecticut, 06114. This is the last known business address for Respondent.

2. At all times material herein, Respondent was licensed or operating subject to the provisions of the PACA. License number 19840107 was issued to Respondent on October 27, 1983. The license terminated on October 27, 2015, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

3. Respondent, during the period May 2014 through March 2015, on or about the dates and in the transactions set forth in Appendix A attached hereto and incorporated by reference, failed to make full payment promptly to forty-six (46) sellers for 439 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$2,873,896.13.

Conclusions

Respondent's failure 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)).

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 of this Decision shall be served upon the parties by the Hearing Clerk.

So ORDERED this 6th day of July, 2016, in Washington, D.C.



Bobbie J. McCartney
Chief Administrative Law Judge