

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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| In re:                          | ) | PACA Docket No. D-15-0140                      |
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|                                 | ) |  |
| Santa Cruz Fresh Produce, Inc., | ) |  |
|                                 | ) |  |
| Respondent                      | ) | <b>Decision and Order by Reason of Default</b> |
|                                 | ) |  |

Preliminary Statement

This is a proceeding brought under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*)(PACA or Act), and the regulations issued thereunder (7 C.F.R. §§ 46.1-46.45) (Regulations).

A Complaint in this case was filed on July 2, 2015 against Santa Cruz Fresh Produce, Inc., (Respondent), alleging that Respondent violated the Act by failing to make full payment promptly to nine (9) sellers for 85 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$291,679.79, during the period May 2012 through July 2013. 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 that the facts and circumstances of the violation be published.<sup>1</sup>

The Complaint was sent to Respondent by certified mail on July 2, 2015 and was returned to USDA's Office of the Hearing Clerk as "unclaimed". On December 22, 2015, the

<sup>1</sup> Under section 8(a) of the PACA (7 U.S.C. § 499h(a)), publication in lieu of revocation is the appropriate sanction, since Respondent's PACA license terminated on January 26, 2014, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

Complaint was re-mailed to Respondent at the same address by regular mail pursuant to section 1.147(c) of the Rules of Practice, and service of the Complaint was effected on that date pursuant to that section of the Rules of Practice. 7 C.F.R. § 1.147 (c). Pursuant to section 1.139 of the Rules of Practice, Respondent had 20 days from the date of service to file an answer to the Complaint (7 C.F.R. §§ 1.136), and Respondent failed to do so.

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. Respondent's failure to file an answer constitutes an admission of the allegations in the Complaint (7 C.F.R. § 1.136(c)), and a waiver of hearing (7 C.F.R. § 1.139). Further, on March 31, 2014, Respondent filed a Voluntary Petition pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. § 701 et seq.) in the United States Bankruptcy Court, Central District of California. This petition was designated Case No. 14-16127. Respondent admits in its bankruptcy schedules that all nine of the creditors were owed all of or portions of the debt listed in Appendix A to the Complaint. Respondent admits in its Schedule F<sup>2</sup> (Appendix B to the Complaint) that collectively the nine creditors listed in Appendix A to the Complaint are owed undisputed unsecured produce debt in the amount of \$287,791.18.

Based on the foregoing, and upon motion by Complainant, the following Decision and Order is issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

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<sup>2</sup> Pursuant to section 1.141(h)(6) of the Rules of Practice (7 C.F.R. § 1.141(h)(6)), official notice is taken of Respondent's Schedule F, as requested by Complainant.

### Findings of Fact

1. Respondent is or was a corporation organized and existing under the laws of the state of California. Respondent's business and mailing address was 780 S. Alameda Street, Los Angeles, California 90021-1624

2. At all times material herein, Respondent was licensed and operating subject to the provisions of the PACA. License number 20120523 was issued to Respondent on January 26, 2012. The license terminated on January 26, 2014, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

### Conclusions

Respondent, during the period May 2012 through July 2013, on or about the dates and in the transactions set forth in Appendix A to the Complaint in this case, failed to make full payment promptly to nine (9) sellers for 85 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$291,679.79.


### Order

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 violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)). The facts and circumstances of Respondent's PACA 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 Order shall be sent to the parties and counsel by the Hearing Clerk by regular mail.

So ORDERED this 27<sup>th</sup> day of September, 2016, at Washington, D.C.

  
Bobbie J. McCartney  
Chief Administrative Law Judge