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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [PACA-D]
) Docket No. **15-0014**
Pangea Produce Distributors, Inc.)
) **Decision and Order**
Respondent) **on the Written Record**

Appearances:

Shelton S. Smallwood, Esq., Office of the General Counsel, United States Department of Agriculture, Washington, D.C., for the Complainant, AMS ¹; and

Scott Alan Orth, Esq., Hollywood, FL, for the Respondent, Pangea Produce Distributors, Inc. ²

Decision Summary

1. Pangea Produce Distributors, Inc. willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) during October 8, 2010 through December 7, 2013 by failing to make full payment promptly of the purchase prices, or balances thereof, for \$217,544.07 in fruits and vegetables [being \$142,716.79 to De Bruyn Produce Company; \$20,017.34 to G.W. Palmer & Co. Inc.; and \$54,809.94 to Premier Trading LLC], all being

1. The Complainant is the Administrator, Fruit and Vegetable Program, Agricultural Marketing Service, United States Department of Agriculture ("AMS" or "Complainant").

2. The Respondent is Pangea Produce Distributors, Inc., a corporation existing under the laws of the state of Florida ("Pangea Produce" or "Respondent").

perishable agricultural commodities that Pangea Produce Distributors, Inc. purchased, received, and accepted in the course of interstate or foreign commerce.

Parties and Allegations

2. The Complainant is the Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service, United States Department of Agriculture (herein frequently “AMS” or “Complainant”).
3. The Respondent is Pangea Produce Distributors, Inc., a corporation existing under the laws of the state of Florida (“Pangea Produce” or “Respondent”).
4. AMS alleges in the Complaint filed on October 23, 2014, that the Respondent Pangea Produce violated section 2(4) of the PACA (7 U.S.C. § 499b(4)), by failing to pay 3 produce sellers for \$262,199.48 in produce purchases during 2010-2013, as more particularly described in Appendix A to the Complaint. The Complaint alleges that Pangea Produce willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) and asks the judge so to find and to order the facts and circumstances of the violations published, pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).
5. AMS’s “Motion for Decision Without Hearing by Reason of Admissions”, filed December 17, 2014 (“Motion for Decision Without Hearing by Reason of Admissions”), asks me to issue a decision based on the requirements of the PACA in light of Pangea Produce’s admissions. AMS’s Motion asserts that there is no need for a hearing. Following careful review of all documents filed, I agree that there is no need for an oral hearing and that I will issue this Decision and Order based on the written record.

6. Pangea Produce timely filed its Answer on December 5, 2014, and timely filed its Response to the Motion for Decision on February 26, 2015 (“Pangea Produce’s Response”). Pangea Produce explains and documents certain of Pangea Produce’s transactions with the 3 produce sellers:

- a. De Bruyn Produce Company, Weslaco, Texas;
- b. G.W. Palmer & Co., Inc., Memphis, Tennessee; and
- c. Premier Trading LLC, Greenwood Village, Colorado.

These 3 produce sellers are all of the produce sellers described in Appendix A to the Complaint, that Pangea Produce allegedly owed \$262,199.48, past due and unpaid, for produce purchases during 2010-2013.

De Bruyn Produce Company, Weslaco, Texas

7. The amount past due and unpaid by Pangea Produce to De Bruyn Produce Company, Weslaco, Texas, according to the Complaint, Appendix A, was \$142,716.79, due October 8, 2010 through December 10, 2011.

8. A “Stipulation for Judgment” signed April 5, 2012, was entered in the U.S. District Court for the Southern District of Florida, Miami, Division (Case No. 1:12-cv-20120-JEM) in the amount of \$142,716.79, against Pangea Produce, in favor of De Bruyn Produce. *See* Exhibit A to AMS’s “Motion for Decision Without Hearing by Reason of Admissions”. Of the \$142,716.79, Pangea Produce asserts in its Response filed February 26, 2015, that it no longer owes anything to De Bruyn Produce. While laudable if true, that would not negate

the requirement to pay promptly under the PACA. *See* 7 C.F.R. § 46.2(aa) regarding making full payment promptly, especially 7 C.F.R. § 46.2(aa)(5) and (11).

G.W. Palmer & Co., Inc., Memphis, Tennessee

9. The amount past due and unpaid by Pangea Produce to G.W. Palmer & Co., Inc., Memphis, Tennessee, according to the Complaint, Appendix A, was \$24,179.34, due March 29, 2013, through April 27, 2013.

10. Pangea Produce claimed the pending balance to be \$20,017.34, in its letter to AMS/PACA dated October 10, 2013 (a copy of which is attached to Pangea Produce's Response). Earlier, Pangea Produce had written that it owed G.W. Palmer \$25,017.33, in its email to Stan Paluszewski at G.W. Palmer & Co. Inc., dated July 16, 2013 (a copy of which is attached to Pangea Produce's Response).

11. Pangea Produce states in its Response filed February 26, 2015, that "(t)here were a total of 13 loads and the final adjustments amount to only one load being in dispute."

12. For purposes of this Decision and Order, I will accept Pangea Produce's admission in its Response, that Pangea Produce owed, past due and unpaid, \$20,017.34 to G.W. Palmer & Co. Inc. as of October 10, 2013. Whether Pangea Produce owed G.W. Palmer more than \$20,017.34, or at an earlier time owed G.W. Palmer more than \$20,017.34, is not material for purposes of this Decision and Order, because the precise past due dollar amount that Pangea Produce failed to pay promptly to G.W. Palmer does not affect the outcome.

Premier Trading LLC, Greenwood Village, Colorado

13. The amount past due and unpaid by Pangea Produce to Premier Trading LLC, Greenwood Village, Colorado, according to the Complaint, Appendix A, was \$95,303.35, due November 1, 2013, through December 7, 2013. A reparation order in the amount of \$95,303.35 was entered by default against Pangea Produce, in favor of Premier Trading LLC.
14. The reparation Complaint that Premier Trading LLC prepared on March 6, 2014, and filed with the PACA Branch on March 10, 2014, contained a correct address in paragraph 2 for Pangea Produce, 751 N.E. 75th Street, Miami, Florida 33138. Inexplicably, the AMS letter dated March 24, 2014 that was intended to provide notice of the Complaint to Pangea Produce was mistakenly addressed to a "Padilla" (misspelling) and mistakenly addressed to "NE1 NE 75th Street".
15. Consequently, any reparation order in the amount of \$95,303.35 entered by default is disregarded for purposes of this Decision and Order. Instead, for this Decision and Order, I will accept Pangea Produce's admission in its Response filed February 26, 2015, at page 3, that Pangea Produce owes \$54,809.94 to Premier Trading LLC. Pangea Produce attached to its Response copies of numerous complaints it made to Premier Trading regarding the quality of the product, especially when shipments were not kept cool enough. For example, Pangea Produce lodged complaints regarding cantaloupes that arrived over-ripe and soft, bell peppers that were not the prescribed size and had some decay, and concerns regarding avocados, jalapenos and pineapples that had not been kept cool enough during shipping.

Whether Pangea Produce owes Premier Trading LLC more than \$54,809.94, or at an earlier time owed Premier Trading LLC more than \$54,809.94, is not material for purposes of this Decision and Order, because the precise past due dollar amount that Pangea Produce failed to pay promptly to Premier Trading LLC does not affect the outcome.

Discussion

16. Section 2(4) of the PACA (7 U.S.C. § 499b(4)) requires licensed produce dealers to make “full payment promptly” for fruit and vegetable purchases, usually within ten days of acceptance, unless the parties agreed to different terms prior to the purchase. *See* 7 C.F.R. § 46.2(aa)(5) and (11) (defining “full payment promptly”).

17. A respondent in an administrative proceeding does not have a right to an oral hearing under all circumstances, and an agency may dispense with a hearing when there is no material issue of fact on which a meaningful hearing can be held. *In re: H. Schnell & Company, Inc.*, 57 Agric. Dec. 1722, 1729 (1998). *See also, In re: Five Star Food Distributors, Inc.*, 56 Agric. Dec. 880, 894 (1997) (decision without hearing by reason of admissions).

18. The policy of the U.S. Department of Agriculture in cases where PACA licensees have failed to make full or prompt payment for produce is straightforward:

In any PACA disciplinary proceeding in which it is alleged that a respondent has failed to pay in accordance with the PACA and respondent admits the material allegations in the complaint and makes no assertion that the respondent has achieved full compliance or will achieve full compliance with the PACA within 120 days after the complaint was served on the respondent, or the date of the hearing, whichever occurs first, the PACA case will be treated as a “no-pay” case. In any

“no-pay” case in which the violations are flagrant or repeated, the license of a PACA licensee, shown to have violated the payment provisions of the PACA, will be revoked.

In re: Scamcorp, Inc., d/b/a Goodness Greeness, 57 Agric. Dec. 527, 549 (1998).

19. The Complaint was served October 29, 2014 (USPS tracking number 7012 3460 0003 3833 9455). More than 120 days later, Pangea Produce still had failed to pay past due amounts (at minimum, the \$54,809.94 still owed to fruit and vegetable seller Premier Trading LLC, Greenwood Village, Colorado). Pangea Produce’s inability to assert that it had achieved full compliance with the PACA within 120 days of having been served with the Complaint makes this a “no-pay” case. “Full compliance” requires not only that the respondent have paid all produce sellers in accordance with the PACA, but also, that the respondent have no credit agreements with produce sellers for more than 30 days. *In re Scamcorp, Inc., 57 Agric. Dec. 527, 549 (1998); In re Carpentino Bros., Inc., 46 Agric. Dec. 486, 505-06 (1987), aff’d, 851 F.2d 1500 (D.C. Cir. 1988).*

20. The appropriate sanction in a “no-pay” case where the violations are flagrant and repeated is license revocation. A civil penalty is not appropriate because “limiting participation in the perishable agricultural commodities industry to financially responsible persons is one of the primary goals of the PACA”, and it would not be consistent with the Congressional intent to require a PACA violator to pay the Government while produce sellers are left unpaid. *In re Scamcorp, Inc., 57 Agric. Dec. 527, 570-71 (1998).*

21. Pangea’s Produce “shifted the risk of nonpayment to sellers of the perishable agricultural commodities”, intentionally, or with careless disregard for the payment

requirements in section 2(4) of the PACA. *In re Scamcorp, Inc.*, 57 Agric. Dec. 527, 553 (1998).

22. Where there is no longer a valid license to revoke, the appropriate sanction in lieu of revocation is a finding of willful, flagrant and repeated violations of the PACA and publication of the facts and circumstances of the violations. *In re: Furr's Supermarkets Inc.*, 62 Agric. Dec. 385, 386-387 (2003).

23. Pangea Produce stated in its Answer and provided documentation to show that it was owed (as of November 19, 2014) a total of \$268,996.46 in overdue receivables; that Pangea Produce was a victim of buyers that did not pay for commodities. Such mitigating circumstances do not negate findings of "willful, flagrant and repeated violations" in disciplinary cases such as this. Here, buying perishable agricultural commodities without sufficient funds to comply with the prompt payment provision of the PACA is regarded as an intentional violation of the PACA or, at the least, careless disregard of the statutory requirements.

Findings of Fact

24. Pangea Produce Distributors, Inc., the Respondent, is a corporation existing under the laws of the state of Florida. Pangea Produce has ceased operations, but Pangea Produce's address was 751 N.E. 75th Street, Miami, Florida 33138-5275.

25. Pangea Produce was licensed for two years under the provisions of the PACA: license number 2012 0658 was issued to Pangea Produce Distributors, Inc. on February 24,

2012, and terminated on February 24, 2014, after Respondent Pangea Produce failed to pay the annual renewal fee. Section 4(a) of the PACA (7 U.S.C. § 499d(a)).

26. Pangea Produce owed, past due and unpaid, \$142,716.79 to De Bruyn Produce Company, Weslaco, Texas. *See* “Stipulation for Judgment”, signed April 5, 2012, entered in the U.S. District Court for the Southern District of Florida, Miami, Division (Case No. 1:12-cv-20120-JEM).

27. Pangea Produce owed, past due and unpaid, \$20,017.34 to G.W. Palmer & Co., Inc., Memphis, Tennessee. *See* Pangea Produce’s letter to AMS/ PACA dated October 10, 2013 (a copy of which is attached to Pangea Produce’s Response).

28. Pangea Produce owes, past due and unpaid, \$54,809.94 to Premier Trading LLC, Greenwood Village, Colorado. *See* Pangea Produce’s Response filed February 26, 2015, at page 3.

29. Respondent Pangea Produce was not in full compliance with the PACA within 120 days after having been served with the Complaint. The Complaint was served on October 29, 2014; the \$54,809.94 past due amount owed to Premier Trading LLC remained unpaid more than 120 days after the Complaint was served. Respondent Pangea Produce’s inability to show full compliance with the PACA within 120 days of having been served with the Complaint makes this a “no-pay” case.

30. Respondent Pangea Produce Distributors, Inc. failed, during October 8, 2010 through December 7, 2013, to make full payment promptly of the purchase prices, or balances thereof, for \$217,544.07 in fruits and vegetables, all being perishable agricultural

commodities, that Pangea Produce Distributors, Inc. purchased, received, and accepted in the course of interstate or foreign commerce.

31. Pangea Produce's violations of the PACA are willful, as that term is used in the Administrative Procedure Act (5 U.S.C. § 558(c)), because of "the length of time during which the violations occurred and the number and dollar amount of the violative transactions involved." *In re: Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 553 (1998); *Allred's Produce v. U.S. Dep't of Agric.*, 178 F.3d 743, 748 (5th Cir.), *cert. denied*, 528 U.S. 1021 (1999); *Cox v. U.S. Dep't of Agric.*, 925 F.2d 1102, 1105 (8th Cir.), *cert. denied*, 502 U.S. 860 (1991); *American Fruit Purveyors, Inc. v. United States*, 630 F.2d 370, 374 (5th Cir. 1980), *cert. denied*, 450 U.S. 997 (1981); *Eastern Produce Co. v. Benson*, 278 F.2d 606, 609 (3d Cir. 1960).

32. Willfulness under the PACA does not require evil intent. Willfulness requires intentional actions or actions undertaken with careless disregard of the statutory requirements. *See, e.g. Toney v. Glickman*, 101 F.3d 1236, 1241 (8th Cir. 1996); *Finer Foods Sales Co. v. Block*, 708 F.2d 774, 777-78 (D.C. Cir. 1983); *In re Ocean View Produce, Inc.*, 2009 WL 218027, 68 Agric. Dec. 594, 599 (2009).

33. Respondent Pangea Produce intentionally, or with careless disregard for the payment requirements in section 2(4) of the PACA, "shifted the risk of nonpayment to sellers of the perishable agricultural commodities." *In re: Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 553 (1998).

34. Pangea Produce's violations are "repeated" (repeated means more than one); and Pangea Produce's violations are "flagrant". Whether violations are "flagrant" under the PACA is a function of the number of violations, the amount of money involved, and the time period during which the violations occurred. *Allred's Produce v. U.S. Dep't of Agric.*, 178 F.3d 743, 748 (5th Cir.), *cert. denied*, 528 U.S. 1021 (1999); *In re Five Star Food Distributors, Inc.*, 56 Agric. Dec. 880, 894-95 (1997); *In re D.W. Produce, Inc.*, 53 Agric. Dec. 1672, 1678 (1994).

Conclusions

35. The Secretary of Agriculture has jurisdiction over Pangea Produce Distributors, Inc. and the subject matter involved herein.

36. Pangea Produce Distributors, Inc. failed to comply with 7 C.F.R. § 46.2(aa) regarding making full payment promptly.

37. Pangea Produce Distributors, Inc. willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly of the purchase prices, or balances thereof, during October 8, 2010 through December 7, 2013, for \$217,544.07 in fruits and vegetables, all being perishable agricultural commodities that Pangea Produce Distributors, Inc. purchased, received, and accepted in the course of interstate or foreign commerce.

Order

38. Pangea Produce Distributors, Inc. is found to have committed willful, repeated, and flagrant violations of section 2(4) of the PACA, 7 U.S.C. § 499b(4). The facts and

circumstances of the violations shall be published pursuant to section 8(a) of the PACA, 7 U.S.C. § 499h(a).


39. This Order shall take effect on the 11th day after this Decision becomes final.

Finality

40. This Decision and Order shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties (to Respondent's counsel by certified mail; to AMS's counsel by in-person delivery to an Office of the General Counsel representative).

Done at Washington, D.C.
this 23rd day of June 2015



Jill S. Clifton
Administrative Law Judge

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APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145