

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. 12-0458
)	PACA Docket No. 12-0601
RDM International, Inc.,)	
)	
Respondent)	Decision and Order

PROCEDURAL HISTORY

On May 7, 2012, RDM International, Inc. [hereinafter RDM], submitted an application for a license under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a-499s) [hereinafter the PACA], to Charles W. Parrott, Associate Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service, United States Department of Agriculture [hereinafter the Deputy Administrator]. On June 4, 2012, in response to RDM’s PACA license application, the Deputy Administrator filed a Notice to Show Cause and Request for Expedited Hearing [hereinafter Notice to Show Cause] initiating a proceeding in accordance with 7 U.S.C. § 499d(d) and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice] to give RDM the opportunity to show cause why the Deputy Administrator should not refuse to issue a PACA license to RDM.¹

¹The Hearing Clerk assigned the show cause proceeding docket number “PACA Docket No. 12-0458.”

The Deputy Administrator: (1) alleged RDM's application states Robert D. Moore is the sole principal and 100 percent shareholder of RDM;² (2) alleged RDM's application states Mr. Moore filed Chapter 7 bankruptcy on March 29, 2011, and was granted a discharge by the United States Bankruptcy Court for the Central District of California on November 30, 2011;³ (3) alleged Schedule F, the list of Mr. Moore's creditors holding unsecured nonpriority claims, filed by Mr. Moore in *In re Robert Dennis Moore*, Case No. 11-13864 (Bankr. C.D. Cal.), includes undisputed claims totaling \$607,563 from eight produce sellers of which seven are PACA licensees and one is a Canadian produce exporter;⁴ (4) alleged, on March 27, 2012, a judgment was entered by the United States District Court for the Central District of California in favor of the plaintiff, Newland North America Foods, Inc., against defendant, RDM, for a valid PACA Trust debt in the amount of \$400,013.37;⁵ and (5) alleged RDM is unfit to engage in the business of a commission merchant, dealer, or broker under the PACA because of RDM's failure to make full payment promptly of the agreed purchase prices of perishable agricultural commodities that RDM purchased, received, and accepted in interstate and foreign commerce.⁶

²Notice to Show Cause ¶ III(a) at 2, App. A.

³Notice to Show Cause ¶ III(b) at 2, App. A.

⁴Notice to Show Cause ¶ III(c) at 3, Apps. B-C.

⁵Notice to Show Cause ¶ III(d) at 3, App. D.

⁶Notice to Show Cause ¶ IV at 3.

On July 23, 2012, RDM filed an Answer to the Notice to Show Cause and Request for Expedited Hearing [hereinafter Answer] in which RDM did not deny that it failed to make full payment promptly to eight produce sellers, as alleged in the Notice to Show Cause and listed on Schedule F filed by Mr. Moore in *In re Robert Dennis Moore*, Case No. 11-13864 (Bankr. C.D. Cal.). Instead, RDM addressed its failure to make full payment promptly to the eight produce sellers in question, as follows: (1) RDM asserted it disputes Chiquita Brand, LLC's \$31,913 claim; (2) RDM asserted it disputes Columbia Fruit's \$116,737 claim; (3) RDM asserted it was unable to spend the time to defend against Mariscos Bahia's \$25,000 claim and will file a counterclaim against Mariscos Bahia in the future; (4) RDM asserted it is arranging a payment plan with Merrill Blueberry Farms in connection with Merrill Blueberry Farms' \$118,514 claim; (5) RDM asserted it has filed a counterclaim against Naturipe Foods, LLC, in connection with Naturipe Foods, LLC's \$52,252 claim; (6) RDM asserted it has settled Rainsweet, Inc.'s \$122,043 claim and has made scheduled monthly payments to Rainsweet, Inc.; (7) RDM asserted it has made arrangements with South Alder Farms Canada with respect to South Alder Farms Canada's \$78,000 claim; and (8) RDM asserted it is investigating Sill Farms Market, Inc.'s \$61,104 claim and RDM will settle with Sill Farms Market, Inc., when RDM's investigation is complete.⁷

⁷Answer.

The Agricultural Marketing Service conducted an investigation to verify the assertions in RDM's Answer. As a result of this investigation, the Deputy Administrator instituted a disciplinary proceeding in accordance with the PACA and the Rules of Practice against RDM by filing a Complaint, on August 27, 2012.⁸ The Deputy Administrator: (1) alleged that, during the period November 13, 2008, through June 17, 2011, RDM willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4) by failing to make full payment promptly to eight produce sellers of the agreed purchase prices, or the balances of the agreed purchase prices, for 74 lots of perishable agricultural commodities which RDM purchased, received, and accepted in the course of interstate and foreign commerce, in the total amount of \$832,934.95;⁹ and (2) requested that the administrative law judge assigned to the proceeding find RDM willfully, flagrantly, and repeatedly violated 7 U.S.C. § 499b(4) and order publication of the facts and circumstances of RDM's violations pursuant to 7 U.S.C. § 499h(a).¹⁰ RDM failed to file a response to the Complaint.

On August 27, 2012, the Deputy Administrator filed a Motion to Consolidate Complaint and Notice to Show Cause, and, on January 23, 2013, Administrative Law Judge Janice K. Bullard [hereinafter the ALJ] consolidated the show cause proceeding, *In re RDM International, Inc.*, PACA Docket No. 12-0458, and the disciplinary proceeding, *In re RDM International, Inc.*,

⁸The Hearing Clerk assigned the disciplinary proceeding docket number "PACA Docket No. 12-0601."

⁹Compl. ¶¶ III-IV at 2-3, App. A.

¹⁰Compl. at 4.

PACA Docket No. 12-0601.¹¹ The ALJ also ordered RDM to show cause why a decision without hearing should not be issued against RDM and allowed RDM 30 days within which to demonstrate that it made full payment by February 15, 2013, of the \$832,934.95, which the Deputy Administrator alleged RDM owed to eight produce sellers. RDM failed to comply with the ALJ's order.¹²

¹¹Order Granting Reconsideration and Consolidating Cases.

¹²ALJ's Decision and Order Denying Reconsideration at 2.

On May 13, 2013, the Deputy Administrator filed Complainant's Motion for an Order Requiring Respondent to Show Cause Why a Decision Without Hearing Should Not Be Issued. On June 14, 2013, RDM requested an extension of time within which to file a response to the Deputy Administrator's May 13, 2013, motion,¹³ and, on June 24, 2013, the ALJ extended the time for filing RDM's response to July 1, 2013.¹⁴ On July 8, 2013, the ALJ extended the time for RDM's response to July 18, 2013.¹⁵ RDM failed to file a timely response to Complainant's Motion for an Order Requiring Respondent to Show Cause Why a Decision Without Hearing Should Not Be Issued.

¹³Request for Extension.

¹⁴Order Extending Deadlines for Submissions.

¹⁵E-mail, dated July 8, 2013, from the ALJ to RDM and counsel for the Deputy Administrator stating RDM must respond to the Deputy Administrator's May 13, 2013, motion within 20 days after June 28, 2013; namely, no later than July 18, 2013.

On July 23, 2013, the ALJ issued a Decision and Order on the Record [hereinafter Decision and Order] in which the ALJ: (1) found, during the period November 13, 2008, through June 17, 2011, RDM failed to make full payment promptly to eight produce sellers of the agreed purchase prices, or balances of the agreed purchase prices, for 74 lots of perishable agricultural commodities which RDM purchased in the course of interstate and foreign commerce, in the amount of \$832,934.95, of which \$804,257.04 remained unpaid as of May 19, 2013; (2) concluded RDM's failure to make full payment promptly to eight produce sellers in the total amount of \$832,934.95 for 74 lots of perishable agricultural commodities constitutes willful, repeated, and flagrant violations of 7 U.S.C. § 499b(4); (3) ordered publication of the facts and circumstances of RDM's willful, flagrant, and repeated violations of 7 U.S.C. § 499b(4); and (4) affirmed the Deputy Administrator's refusal to issue a PACA license to RDM.¹⁶

On August 23, 2013, RDM requested additional time to respond to the Notice to Show Cause and the Complaint, and, on September 3, 2013, RDM filed Answer for Order Requiring Respondent to Show Cause Why a Decision Without Hearing Should Not Be Issued. The ALJ construed RDM's September 3, 2013, filing as a motion for reconsideration of the ALJ's July 23, 2013, Decision and Order. On September 25, 2013, the ALJ issued a Decision and Order Denying Reconsideration in which the ALJ stated, after careful review of RDM's September 3, 2013, filing, she found no good cause to reconsider the July 23, 2013, Decision and Order.

On October 28, 2013, RDM filed Response and Appeal to Decision and Order Denying

¹⁶ALJ's Decision and Order at 5-6.

Reconsideration [hereinafter Appeal Petition], and on November 21, 2013, the Deputy Administrator filed a response to RDM's Appeal Petition. On November 25, 2013, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

DECISION

The PACA makes it unlawful for any commission merchant, dealer, or broker to fail or refuse to make full payment promptly in respect of any transaction in any perishable agricultural commodity to the person with whom such transaction is had.¹⁷ "Full payment promptly" in accordance with the PACA means payment for produce by a buyer within 10 days after the day on which the produce is accepted.¹⁸

¹⁷7 U.S.C. § 499b(4).

¹⁸7 C.F.R. § 46.2(aa)(5).

RDM admitted that it failed to make full payment promptly to RDM's produce sellers which Mr. Moore identified on Schedule F, filed in *In re Robert Dennis Moore*, Case No. 11-13864 (Bankr. C.D. Cal.), as having undisputed claims.¹⁹ Moreover, RDM's Answer, filed in *In re RDM International, Inc.*, PACA Docket No. 12-0458, does not deny RDM's failure to make full payment promptly to eight produce sellers, as alleged in the Notice to Show Cause and identified on Schedule F.²⁰

Further still, RDM failed to file a timely answer to the Complaint, filed in *In re RDM International, Inc.*, PACA Docket No. 12-0601. Pursuant to 7 C.F.R. § 1.136(c), a failure to file a timely answer to a complaint is deemed, for the purposes of the proceeding, an admission of the allegations in the complaint. Thus, for the purposes of this proceeding, RDM is deemed to have admitted that it failed to make full payment promptly: (1) the amount of \$51,100.97 to Rainsweet, Inc., Salem, Oregon, for 28 lots of berries; (2) the amount of \$87,816 to South Alder Farms, Aldergrove, British Columbia, Canada, for 1 lot of raspberries; (3) the amount of \$52,251.60 to Naturipe Foods, LLC, Grand Junction, Michigan, for 4 lots of berries; (4) the amount of \$32,370.23 to Chiquita Brand, LLC, Philadelphia, Pennsylvania, for 3 lots of mixed fruit; (5) the amount of \$116,045 to Merrill Blueberry Farms, Ellsworth, Maine, for 14 lots of

¹⁹See, *In re Five Star Food Distributors, Inc.*, 56 Agric. Dec. 880, 894 (1997) (stating documents filed in a bankruptcy proceeding that have a direct relation to matters at issue in a PACA disciplinary proceeding have long been officially noticed in PACA disciplinary proceedings); *In re Samuel S. Napolitano Produce, Inc.*, 52 Agric. Dec. 1607, 1610 (1993) (stating, if the failure to pay for agricultural commodities is admitted by a respondent in a bankruptcy proceeding, no hearing is required in the related PACA disciplinary proceeding).

²⁰Answer at 1-2.

blueberries; (6) the amount of \$61,104 to Sill Farms Market, Inc., Lawrence, Michigan, for 2 lots of cherries; (7) the amount of \$396,321.05 to Newland North America Foods, Inc., Vaudreull, Quebec, Canada, for 5 lots of berries; and (8) the amount of \$35,926.10 to Columbia Fruit, Woodland, Washington, for 17 lots of berries.

Finally, RDM failed to comply with the ALJ's order that RDM demonstrate that it made full payment by February 15, 2013, of the \$832,934.95 which the Deputy Administrator alleged RDM owed to eight produce sellers and show cause why a decision without hearing should not be issued against RDM,²¹ and, despite two extensions of time, RDM failed to respond to the Deputy Administrator's May 13, 2013, Motion for an Order Requiring Respondent to Show Cause Why a Decision Without Hearing Should Not Be Issued.

RDM's Appeal Petition provides no basis for overturning the ALJ's July 23, 2013, Decision and Order. Instead, RDM: (1) offers excuses for failing to make full payment promptly to Chiquita Brand, LLC, Columbia Fruit, Naturipe Foods, LLC, and Newland North America Foods, Inc; (2) states RDM is investigating Sill Farms Market, Inc.'s claim; (3) states Merrill Blueberry Farms and South Alder Farms have not filed claims against RDM; (4) states Rainsweet, Inc., and RDM have reached an agreement regarding Rainsweet, Inc.'s claim against RDM; and (5) states Mariscos Bahia never did business with RDM.²²

Based upon my review of the record, I affirm the ALJ's July 23, 2013, Decision and Order, and I find no change or modification of the ALJ's July 23, 2013, Decision and Order is

²¹ALJ's Decision and Order Denying Reconsideration at 2.

²²Appeal Pet. at 4-8.

warranted. The Rules of Practice provide that, under these circumstances, I may adopt an administrative law judge's decision and order as the final order in a proceeding, as follows:

§ 1.145 Appeal to Judicial Officer.

.....
(i) *Decision of the judicial officer on 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.

7 C.F.R. § 1.145(i).

For the foregoing reasons, the following Order is issued.

ORDER

The ALJ's July 23, 2013, Decision and Order is adopted as the final order in this proceeding.

Done at Washington, DC

February 12, 2014

William G. Jenson
Judicial Officer