

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) PACA Docket No. D-06-0012  
)  
Judith's Fine Foods )  
International, Inc., )  
)  
Respondent ) **Order Denying Petition to Reconsider**

**PROCEDURAL HISTORY**

Eric M. Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on May 2, 2006. Complainant instituted the proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a-499s) [hereinafter the PACA]; the regulations promulgated pursuant to the PACA (7 C.F.R. pt. 46); 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].

Complainant alleges: (1) during the period January 2005 through August 2005, Judith's Fine Foods International, Inc. [hereinafter Respondent], failed to make full

payment promptly to eight sellers<sup>1</sup> of the agreed purchase prices in the total amount of \$395,687.09 for 115 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in the course of interstate and foreign commerce;

(2) on October 10, 2005, Respondent filed a voluntary petition pursuant to chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court, District of Puerto Rico;

(3) Respondent admitted in a document filed in the United States Bankruptcy Court, District of Puerto Rico, that the eight produce sellers referred to in the Complaint hold unsecured claims for \$338,942.07; and (4) Respondent's failure to make full payment promptly to eight sellers of the agreed purchase prices in the total amount of \$395,687.09 for 115 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in the course of interstate and foreign commerce constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).<sup>2</sup> On July 10, 2006, Respondent filed an answer in which Respondent denied it willfully violated the PACA, as alleged in the Complaint.<sup>3</sup>

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<sup>1</sup>Complainant identified these eight produce sellers as: (1) A & J Produce Corp., Bronx, New York; (2) Wada Farms Marketing Group, Idaho Falls, Idaho; (3) Herbs Unlimited, Inc., Miami, Florida; (4) K & R Farms Produce, Inc., Orlando, Florida; (5) Tristen's Brokerage Co., Inc., Los Angeles, California; (6) Mann Packing Co., Inc.; (7) Freedom Fresh, LLC; and (8) C.H. Robinson Co. (Compl. ¶ III).

<sup>2</sup>Compl. ¶¶ III-V.

<sup>3</sup>Response to Compl.

On August 17, 2006, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a Motion for a Decision Without Hearing by Reason of Admissions [hereinafter Motion for Default Decision] and a proposed Decision Without Hearing by Reason of Admissions [hereinafter Proposed Default Decision]. On October 24, 2006, Respondent filed objections to Complainant's Motion for Default Decision and Complainant's Proposed Default Decision.

On October 25, 2006, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued a Decision Without Hearing by Reason of Admissions [hereinafter Initial Decision]: (1) finding, during the period January 2005 through August 2005, Respondent failed to make full payment promptly to eight sellers of the agreed purchase prices in the total amount of \$338,942.07 for 115 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in the course of interstate and foreign commerce; (2) concluding Respondent willfully, repeatedly, and flagrantly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)); and (3) ordering publication of the facts and circumstances of Respondent's PACA violations.<sup>4</sup>

On December 12, 2006, Respondent appealed to the Judicial Officer.<sup>5</sup> On January 11, 2007, Complainant filed a response to Respondent's appeal petition.<sup>6</sup> On

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<sup>4</sup>Initial Decision at 4-5.

<sup>5</sup>Appeal of Decision Against Defendant.

<sup>6</sup>Response to Appeal of Respondent.

January 16, 2007, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

On January 31, 2007, I issued a Decision and Order affirming the ALJ's Initial Decision.<sup>7</sup> On February 28, 2007, Respondent filed a petition to reconsider *In re Judith's Fine Foods International, Inc.*, \_\_\_ Agric. Dec. \_\_\_ (Jan. 31, 2007).<sup>8</sup> On March 9, 2007, Complainant filed a response to Respondent's Petition to Reconsider. On March 13, 2007, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Respondent's Petition to Reconsider. Based upon a careful consideration of the record, I deny Respondent's Petition to Reconsider.

#### **CONCLUSIONS BY THE JUDICIAL OFFICER ON RECONSIDERATION**

Respondent contends it was deprived of a right to a hearing.

Complainant alleges, during the period January 2005 through August 2005, Respondent failed to make full payment promptly to eight sellers of the agreed purchase prices in the total amount of \$395,687.09 for 115 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in the course of interstate and foreign commerce.<sup>9</sup> On October 10, 2005, Respondent filed a voluntary petition under chapter 7 of the Bankruptcy Code in *In re Judith's Fine Foods*

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<sup>7</sup>*In re Judith's Fine Foods International, Inc.*, \_\_\_ Agric. Dec. \_\_\_ (Jan. 31, 2007).

<sup>8</sup>Petition for Reconsideration of Decision Against Defendant [hereinafter Petition to Reconsider].

<sup>9</sup>Compl. ¶ III.

*International, Inc.*, Case No. 05-10629-SEK7 (Bankr. D.P.R. Oct. 10, 2005). Respondent admitted in Schedule F - Creditors Holding Unsecured Nonpriority Claims filed in this bankruptcy proceeding that it owed \$338,942.07 to the eight produce sellers identified in the Complaint.<sup>10</sup>

As Respondent admitted the material allegations of the Complaint, there are no issues of fact on which a meaningful hearing could be held in this proceeding, and I conclude *In re Judith's Fine Foods International, Inc.*, \_\_\_ Agric. Dec. \_\_\_ (Jan. 31, 2007), was properly issued in accordance with the default provisions in section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). The application of the default provisions in the Rules of Practice does not deprive Respondent of its rights under the due process clause of the Fifth Amendment to the Constitution of the United States.<sup>11</sup>

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<sup>10</sup>A copy of Schedule F - Creditors Holding Unsecured Nonpriority Claims is attached to Complainant's Motion for Default Decision and marked Exhibit A.

<sup>11</sup>*See United States v. Hulings*, 484 F. Supp. 562, 567-68 (D. Kan. 1980) (concluding a hearing was not required under the Fifth Amendment to the Constitution of the United States where the respondent was notified that failure to deny the allegations of the complaint would constitute an admission of those allegations under the Rules of Practice and the respondent failed to specifically deny the allegations). *See also Father & Sons Lumber and Building Supplies, Inc. v. NLRB*, 931 F.2d 1093, 1096 (6th Cir. 1991) (stating due process generally does not entitle parties to an evidentiary hearing where the National Labor Relations Board has properly determined that a default summary judgment is appropriate due to a party's failure to file a timely response); *Kirk v. INS*, 927 F.2d 1106, 1108 (9th Cir. 1991) (rejecting the contention that the administrative law judge erred by issuing a default judgment based on a party's failure to file a timely answer).

For the foregoing reasons and the reasons set forth in *In re Judith's Fine Foods International, Inc.*, \_\_\_ Agric. Dec. \_\_\_ (Jan. 31, 2007), Respondent's Petition to Reconsider is denied.

Section 1.146(b) of the Rules of Practice (7 C.F.R. § 1.146(b)) provides that the decision of the Judicial Officer shall automatically be stayed pending the determination to grant or deny a timely-filed petition to reconsider. Respondent's Petition to Reconsider was timely filed and automatically stayed *In re Judith's Fine Foods International, Inc.*, \_\_\_ Agric. Dec. \_\_\_ (Jan. 31, 2007). Therefore, since Respondent's Petition to Reconsider is denied, I hereby lift the automatic stay, and the Order in *In re Judith's Fine Foods International, Inc.*, \_\_\_ Agric. Dec. \_\_\_ (Jan. 31, 2007), is reinstated; except that the effective date of the Order is the date indicated in the Order in this Order Denying Petition to Reconsider.

For the foregoing reasons, the following Order should be issued.

### **ORDER**

Respondent has committed 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 violations shall be published. The publication of the facts and circumstances of Respondent's PACA violations shall be effective 60 days after service of this Order on Respondent.

**RIGHT TO JUDICIAL REVIEW**

Respondent has the right to seek judicial review of the Order in this Order Denying Petition to Reconsider in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. Respondent must seek judicial review within 60 days after entry of the Order in this Order Denying Petition to Reconsider.<sup>12</sup> The date of entry of the Order in this Order Denying Petition to Reconsider is March 19, 2007.

Done at Washington, DC

March 19, 2007

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William G. Jenson  
Judicial Officer

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<sup>12</sup>See 28 U.S.C. § 2344.