

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

PACA Docket No. D-05-0013

In re: ORIENT FARMS, LLC,

Respondent

DECISION WITHOUT HEARING

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) hereinafter referred to as the "Act", instituted by a Complaint filed on May 31, 2005, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleges that during the period October 2003 through November 2003, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 3 sellers, 173 lots of perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices in the total amount of \$566,256.30.

A copy of the Complaint was served upon Respondent; Respondent submitted an answer in which it generally denied the allegations of the Complaint pertaining to its failure to make payment promptly. On March 7, 2006, documents were sent by Respondent to Complainant which indicated that the 3 sellers listed in the Complaint were still owed \$166,256.30. Based on the documents provided by Respondent on March 7, 2006, Complainant filed a Motion for an Order Requiring Respondent to Show Cause Why a Decision Without Hearing Should Not Be Issued; Respondent did

not answer the Motion. As the Respondent had requested an oral hearing, a teleconference was conducted on November 29, 2006, at which time the Complainant was represented by Christopher Young-Morales, Esquire, Office of the General Counsel, United States Department of Agriculture, Washington, D.C. and the Respondent was represented by F. DeArmond Sharp, Esquire, Robison, Balaustegui, Sharp & Low of Reno, Nevada. During the course of the conference, counsel for the Respondent indicated that his client was not opposed to relief being granted and the parties were directed to submit an appropriate agreed order by December 8, 2006. As no Order has submitted, as directed, this Decision and Order is being issued at this time.

Under the sanction policy enunciated by the Judicial Officer in In re Scamcorp, Inc., d/b/a Goodness Greeness, 57 Agric. Dec. 527, 547 (1998),

"PACA requires *full payment promptly*, and commission merchants, dealers and brokers are required to be in compliance with the payment provisions of the PACA at all times....In any PACA disciplinary proceeding in which it is shown that a [R]espondent has failed to pay in accordance with the PACA and is not in full compliance with the PACA within 120 days after the [C]omplaint is served on that [R]espondent, 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."
Id. at 548-549.

According to the Judicial Officer's policy set forth in Scamcorp, in this case, Respondent had 120 days from the date the complaint was served upon it, or until November 10, 2005, to come into full compliance with the PACA. The admissions contained in the documents submitted by Respondent indicate that \$ 166,256.30 remained unpaid to the 3 produce creditors listed in the PACA complaint over 120 days after service of the complaint. Therefore, as Respondent was not in full compliance by that date, this case should be treated as a "no pay" case for purposes of sanction,

which warrants the issuance of a Decision Without Hearing finding that Respondent committed willful, flagrant and repeated violations of section 2(4) of the PACA and ordering that Respondent's violations be published.

As Respondent has failed to Show Cause Why a Decision Without Hearing Should Not Be Issued, 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).

Findings of Fact

1. Respondent is a corporation organized and existing under the laws of the state of Nevada. Its business address was Mile Marker 60, State Route 447, Empire, Nevada 89405. Its mailing address is P.O. Box 40, Empire, Nevada 89405.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. Pursuant to the licensing provisions of the Act, license number 20010671 was issued to Respondent on February 6, 2001. On February 6, 2006, Respondent failed to renew its license by paying the required annual license renewal fee, thus its PACA license terminated on that date, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)).

3. As more fully set forth in paragraph III of the Complaint, during the period October 2003 through November 2003, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 3 sellers, 173 lots of fruits and vegetables, all being perishable agricultural commodities, and failed to make full payment promptly of the agreed purchase prices, in the total amount of \$566,256.30.

4. Respondent failed to pay the produce debt described above and to come into full compliance with the PACA within 120 days of the filing of the Complaint against it.

Conclusions of Law

Respondent's failure to make full payment promptly with respect to the 173 transactions set forth in the above Findings of Fact, constitutes willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b), for which the Order below is issued.

Order

A finding is made that Respondent has committed willful, flagrant and repeated violations of Section 2 of the Act (7 U.S.C. § 499b), and the violations of Respondent shall be published.

This order shall take effect on the 11th day after 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 hereof shall be served upon parties.

Done at Washington, D.C.
January 10, 2007

PETER M. DAVENPORT
Administrative Law Judge