

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	PACA Docket No. D-04-0021
	)	
A & B Produce, Inc.	)	
	)	Decision Without Hearing
Respondent	)	by Reason of Default

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.; hereinafter “Act” or “PACA”), instituted by a Complaint filed on August 26, 2004, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleges that during the period December 2002 through October 2003, Respondent A & B Produce, Inc., (hereinafter “Respondent”) failed to make full payment promptly to 31 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$1,426,837.12 for 204 lots of perishable agricultural commodities which it purchased, received, and accepted in interstate and foreign commerce.

On August 26, 2004, a copy of the Complaint was mailed to Respondent via certified mail to its business mailing address. The Complaint was returned unclaimed on September 24, 2004. On November 12, 2004, a copy of the Complaint was re-mailed to Respondent’s business address via regular mail by the Hearing Clerk. Pursuant to Section 1.147(c) (7 C.F.R. § 1.147(c)) of the

Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

(7 C.F.R. § 1.130 et seq.; hereinafter "Rules of Practice"), service is deemed made on the date of remailing by regular mail. Respondent has not answered the Complaint. The time for filing an Answer having expired, and upon motion of the Complainant for the issuance of a Default Order, the following Decision and Order shall be issued without further investigation or hearing pursuant to Section 1.139 (7 C.F.R § 1.139) of the Rules of Practice.

Findings of Fact

1. Respondent is a corporation organized and existing under the laws of the State of Pennsylvania. Its business mailing address is 3301 S. Galloway Street, Unit 65, Philadelphia, Pennsylvania 19148-5442.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. PACA license number 20021152 was issued to Respondent on June 4, 2002. That license terminated on June 4, 2004, pursuant to Section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

3. During the period December 2002 through October 2003, Respondent purchased, received and accepted in interstate and foreign commerce from 31 sellers,

204 lots of fruits and vegetables, all being perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices, or balances thereof, in the total amount of \$1,426,837.12.

### Conclusions

Respondent's failure to make full payment promptly with respect to the 204 transactions set forth in Finding of Fact No. 3 above, constitutes willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)), for which the Order below is issued.

### Order

A finding is made that Respondent has committed willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)), and the facts and circumstances of the violations shall be published.

Pursuant to the Rules of Practice, 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.

this 31<sup>st</sup> day of March, 2005

Peter M. Davenport  
Administrative Law Judge