

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) PACA Docket No. D-04-0014  
)  
Potatoes & Vegetable Express, Inc., )  
d/b/a Potato Express and Potatoes & )  
Vegetable Express, )  
) Decision Without Hearing by Reason  
Respondent ) of Default

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (hereinafter, "PACA") instituted by a complaint filed on April 27, 2004, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The complaint alleged that Respondent, during the period January 2000 through July 2002, failed to make full payment promptly to 10 sellers of the agreed purchase prices in the total amount of \$381,766.94 for 233 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in willful, flagrant and repeated violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)). The complaint requested that the Administrative Law Judge issue a finding that Respondent willfully, flagrantly and repeatedly violated section 2(4) of the PACA, and order publication of the facts and circumstances of the violations.

A copy of the complaint was mailed, by certified mail, to Respondent's mailing address on May 19, 2004, and was returned to the office of the Hearing Clerk. A copy of the complaint was remailed to Respondent by regular mail on June 10, 2004, pursuant to section 1.147(c)(1) of the Rules of Practice Governing Formal Adjudicatory Procedures Instituted by the Secretary Covering Various Statutes (7 C.F.R. § 1.147(c)(1)) (hereinafter, "Rules of Practice"). No answer to the complaint has been received. The time for filing an answer having run, and upon motion

of the Complainant for the issuance of a Decision Without Hearing by Reason of Default, 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. Potatoes & Vegetable Express, Inc., d/b/a Potato Express and Potatoes & Vegetable Express (hereinafter **Respondent**) is a corporation incorporated in the State of Nevada.<sup>1</sup> At all times material herein, Respondent's business address was 100 West Carey Avenue, Suite 11, North Las Vegas, Nevada 89030.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 1991-1705 was issued to Respondent on September 10, 1991. This license was renewed on an annual basis, but terminated on September 10, 2003, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), due to Respondent's failure to pay the required annual renewal fee.

3. As more fully set forth in paragraph III of the complaint, Respondent, during the period January 2000 through July 2002, failed to make full payment promptly to 10 sellers of the agreed purchase prices in the total amount of \$381,766.94 for 233 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce.

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<sup>1</sup> According to the public records of the Nevada Secretary of State, Respondent's corporate status has been revoked.

### Conclusions

Respondent's failure to make full payment promptly with respect to the transactions referred to in Finding of Fact 3 above constitutes willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), for which the Order below is issued.

### Order

A finding is made that Respondent has committed willful, repeated and flagrant violations of section 2(4) of the Perishable Agricultural Commodities Act (7 U.S.C. § 499b(4)), and the facts and circumstances of the violations 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 PACA, 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 thirty days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139, 1.145).

Copies hereof shall be served upon the parties.

Done at Washington, D.C.

this 4<sup>th</sup> day of April, 2005

Marc R. Hillson  
Administrative Law Judge