

UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

2003 001 21 1 2 52

In re:)	PACA Docket No. D-03-0015
)	
John Manning Company, Inc.,)	
)	Decision Without Hearing
Respondent)	by Reason of Default

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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" or "PACA"), instituted by a complaint filed on April 22, 2003, by the Associate Deputy Administrator, Perishable Agricultural Commodities Branch, Fruit and Vegetable Programs of the Agricultural Marketing Service, United States Department of Agriculture.

The complaint alleges that during the period October 13, 2001 through August 28, 2002, Respondent John Manning Company, Inc., (hereinafter "Respondent") failed to make full payment promptly to 58 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$1,953,098.39 for 1,102 lots of perishable agricultural commodities that it purchased, received, and accepted in interstate and foreign commerce.

A copy of the complaint was sent to Respondent's last known principal place of business by certified mail on October 29, 2003, but was returned unclaimed on December 10, 2003. The copy of the complaint was then re-mailed to a forwarding address by regular mail on December 18, 2003. Pursuant to section 1.147 of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 et seq., hereinafter "Rules of Practice"), the complaint is deemed served on December 18, 2003, the date on which the Hearing Clerk re-mailed the complaint by regular mail. This complaint has

not been answered. The time for filing an answer having expired, and upon motion of the Complainant for the issuance of a decision without hearing based upon Respondent's default, the following Decision and Order shall be 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 Georgia. Respondent's last known business address is 146 Forest Parkway, Building C, Forest Park, Georgia 30297.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 811167 was issued to Respondent on June 5, 1981. This license terminated on June 5, 2003, pursuant to Section 4(a) of the PACA (7 U.S.C. § 499(a)), when Respondent failed to pay the required annual renewal fee.

3. During the period October 13, 2001 through August 28, 2002, Respondent purchased, received and accepted in interstate and foreign commerce 1,102 lots of perishable agricultural commodities from 58 sellers, but failed to make full payment promptly of the agreed purchase prices, or balances thereof, in the total amount of \$1,953,098.39.

Conclusions

Respondent's failure to make full payment promptly with respect to the 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 set forth above shall be published.


This order shall take effect on the 11th day after this Decision becomes final.

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 the parties.

Done at Washington, D.C.

this 21st day of October, 2004



Administrative Law Judge