

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-05-0006
)	
RAWLS BROKERAGE, INC.,)	
)	Decision and Order
Respondent)	by Reason of Default

Procedural History

This disciplinary proceeding was initiated under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (herein frequently, “the PACA” or “the Act”), by a Complaint filed on March 4, 2005. The Complaint alleges, among other things, that during September 2003 through February 2004, Respondent Rawls Brokerage, Inc., failed to make full payment promptly to 100 sellers of the agreed purchase prices, totaling \$2,082,245.93 for 786 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate and foreign commerce.

The Complainant is the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture (herein frequently, “AMS” or “Complainant”). AMS is represented by Christopher Young-Morales, Esq., 202/720-5191, Trade Practices Division, Office of the General Counsel, United States Department of Agriculture, 1400 Independence Ave. SW, Washington, D.C. 20250-1413.

Respondent Rawls Brokerage, Inc. (herein frequently, “Rawls Brokerage” or “Respondent”),

is an Alabama corporation, formerly doing business at 3057 Lorna Road, Suite 210, Birmingham, Alabama 35216. Rawls Brokerage is represented by Lewis B. Hickman, Jr., Esq., 334/264-1441, 915 S. Hull St., Montgomery, Alabama 36104.

The Complaint was served upon Rawls Brokerage on May 20, 2005.¹ No answer to the Complaint has been received. The time for filing an answer expired on June 9, 2005. 7 C.F.R. § 1.136(a).

On August 30, 2005, this case was assigned to me, Jill S. Clifton, United States Administrative Law Judge.

The Rules of Practice provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. § 1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. AMS filed a Motion for a Decision Without Hearing by Reason of Default on July 22, 2005.

AMS claims that Rawls Brokerage's failure to pay promptly the agreed purchase prices of perishable agricultural commodities in the transactions set forth in the Complaint constitutes willful, flagrant, and repeated violations of Section 2(4) of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499b(4)). AMS requests that a finding be made that Rawls Brokerage has committed willful, flagrant, and repeated violations of the PACA, and that an order be entered

¹ On March 7, 2005, the Hearing Clerk sent to Rawls Brokerage, Inc., by certified mail, return receipt requested, a copy of the Complaint and a copy of the Rules of Practice, together with a cover letter (service letter). Rawls Brokerage was informed in the service letter and in the Complaint that an answer to the Complaint should be filed in accordance with the Rules of Practice within 20 days and that failure to answer any allegation in the Complaint would constitute an admission of that allegation. 7 C.F.R. § 1.136. The envelope containing these items was returned to the Hearing Clerk's Office on April 26, 2005, marked "Return to Sender - UNCLAIMED" by the U.S. Postal Service. The Hearing Clerk staff then, on May 20, 2005, sent the copy of the Complaint with accompanying documents to Rawls Brokerage via ordinary mail. The Complaint was thereby deemed to have been received by Rawls Brokerage on May 20, 2005. 7 C.F.R. § 1.137.

that the facts and circumstances of the violations be published, pursuant to the authority of Section 8(a) of the Act (7 U.S.C. § 499h(a)).

Rawls Brokerage filed an Objection on August 22, 2005, and had previously filed a letter dated August 1, 2005, on August 9, 2005. In response to my Request, Rawls Brokerage filed a letter dated January 23, 2006, on January 30, 2006. These documents filed by Rawls Brokerage show Rawls Brokerage PACA Trust Account Payments in 2004 totaling approximately \$1,250,100.00, largely pursuant to an Order for an Interim Distribution in the pending PACA litigation in the U.S. District Court for the Northern District of Alabama. (Nearly all those disbursements were dated September 29, 2004, with the exception of \$21,105.38 dated November 3, 2004.) The Rawls Brokerage filings indicate that another \$430,000.00 in funds on deposit awaits the next Order for distribution, and that Rawls Brokerage continues its efforts to collect additional money.

The Complaint incorporates Exhibit A, which details the \$2,082,245.93 “Past Due & Unpaid” by Rawls Brokerage. Exhibit A fails to show the date on which those outstanding balances were tallied, except that it was prior to the filing of the Complaint (March 4, 2005). The last payment due date shown on Exhibit A is 02/09/04, so the \$2,082,245.93 was tallied after that date. Even if I were to assume that the \$2,082,245.93 was tallied before the \$1,250,100.00 was disbursed, and I were consequently to credit the \$1,250,100.00 against the \$2,082,245.93, I would find that the Sellers identified on Exhibit A still were not fully paid, and the Sellers identified on Exhibit A still were not promptly paid.

Also, Rawls Brokerage failed to come into full compliance with the PACA within 120 days after the Complaint was served. The date by which Rawls Brokerage would have had to be in full compliance with the PACA, to be regarded as “slow pay” instead of “no pay,” was September 17,

2005. That date was four months ago.

Findings of Fact

1. Rawls Brokerage, Inc. is an Alabama corporation, formerly doing business at 3057 Lorna Road, Suite 210, Birmingham, Alabama 35216.

2. Rawls Brokerage, Inc. was licensed under the provisions of the PACA at all times material to the allegations of the Complaint. PACA license number 1979-0084 was issued to Rawls Brokerage, Inc. on October 12, 1978. This license was terminated on October 12, 2004, pursuant to Section 4(a) of the Act (7 U.S.C. § 499d(a)), when Rawls Brokerage failed to pay its required annual license renewal fee.

3. Rawls Brokerage, Inc., during September 2003 through February 2004, failed to make full payment promptly to 100 sellers of the agreed purchase prices in the total amount of \$2,082,245.93, or balances thereof, for 786 lots of fruits and vegetables, all being perishable agricultural commodities, which it purchased, received, and accepted in interstate and foreign commerce.

Conclusions

1. The Secretary of Agriculture has jurisdiction.

2. Rawls Brokerage, Inc. willfully, flagrantly and repeatedly violated Section 2(4) of the Perishable Agricultural Commodities Act (7 U.S.C. § 499b(4)), by willfully failing to make full payment promptly to 100 sellers of the agreed purchase prices totaling \$2,082,245.93, or balances thereof, for 786 lots of fruits and vegetables, all being perishable agricultural commodities, which it purchased, received, and accepted in interstate and foreign commerce during September 2003

through February 2004.

Order

1. Rawls Brokerage, Inc. committed willful, flagrant and repeated violations of Section 2(4) of the Perishable Agricultural Commodities Act (the PACA) (7 U.S.C. § 499b(4)) during September 2003 through February 2004, and the facts and circumstances of the violations shall be published.

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

Finality

This Decision and Order shall have the same force and effect as if entered after a full hearing and shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 3rd day of February 2006

Jill S. Clifton

Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Bldg Room 1031
1400 Independence Avenue, SW
Washington, DC 20250-9203
202-720-4443
Fax: 202-720-9776

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time

allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145