

In re: SOUTH PEAK PRODUCE, INC.
PACA Docket No. D-05 - 0017
Decision Without Hearing by Reason of Default
Filed March 27, 2006.

For Complainant
for Respondent
Decision and Order by Administrative Law Judge Peter M. Davenport.
Preliminary Statement

This is a disciplinary proceeding under the Perishable Agriculture Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (the "Act"), instituted by a Complaint filed on July 22, 2005, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleged that during the period February 3, 2002 through May 24, 2004, Respondent South Peak Produce, Inc. (hereinafter "Respondent") failed to make full payment promptly to seven (7) sellers of the agreed purchase prices, or balances thereof, in the total amount of \$188,552.73 for 92 lots of perishable agricultural commodities which it purchased, received, and accepted in interstate commerce.

A copy of the Complaint was mailed to Respondent by certified mail at its last known principal place of business, its PACA address of record (see 7 CFR § 46.1 3(a)(1)) on July 22, 2005, and was returned by the Postal Service to the Department of Agriculture on August 8, 2005 marked "Undeliverable as Addressed".

Research of Auto Track Corporate Records by the PACA Branch of the Fruit and Vegetable Programs, Agricultural Marketing Service indicated that the registered agent for Respondent is Respondent's president, Steven R. Lewandowski (Attachment A). The records further indicated that Mr. Lewandowski's address is 1 Pennwood Lane, Greenville, South Carolina (Attachment B). On September 9, 2005, counsel for Complainant notified the Hearing Clerk of the address of Respondent's registered agent (Attachment C), and the Hearing Clerk sent a copy of the Complaint to that address by certified mail.

The Postal Service returned the certified mailing addressed to Respondent's registered agent to the Department of Agriculture marked "Return to Sender" and "Unclaimed". The Hearing Clerk remailed a copy of the Complaint to Respondent's registered agent at the same address by ordinary mail on December 7, 2005 pursuant to Section 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") (Attachment D). 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 procedure pursuant to Section 1.139 of the Rules of Practice.

Findings of Fact

1. Respondent is a corporation incorporated in the state of South Carolina. Its business mailing address is 1354 Rutherford Road, Greenville, South Carolina 29609.
2. Respondent is not, and has never been, licensed under the PACA. At all times material herein, Respondent has conducted business subject to the PACA.
3. The Secretary has jurisdiction over Respondent and the subject matter involved herein.
4. As set forth in paragraph III of the Complaint, during the period February 3, 2002 through May 24, 2004, Respondent purchased, received, and accepted in interstate commerce, from seven (7) sellers, 92 lots of perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices, in the total amount of \$188,552.73.

Conclusions

Respondent's failure to make full payment promptly with respect to the 92 lots set forth in Finding of Fact No. 4 above constitutes wilful, repeated and flagrant violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)), for which the Order below is issued.

Order

Respondent has committed wilful, flagrant and repeated violations of Section 2 of the Act (7 U.S.C. 499b), and the facts and circumstances of the violations shall be published.

This order shall take effect on the 11 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 parties.