

**In re: DAL-DON PRODUCE.
PACA Docket D-04-0026.
Order Vacating Finding.
Filed June 1, 2006.**

Charles Kendall for Complainant.

Ruling by Administrative Law Judge Victor W. Palmer.

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) ("the Act") and the regulations issued thereunder (7 C.F.R. Part 46)("the Regulations"), instituted by a Complaint filed on September 29, 2004 by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture.

The Complaint alleged that Respondent Dal-Don Produce Co., Inc. (hereinafter "Respondent") failed to make full payment promptly in the total amount of \$46,644.55 to seven (7) sellers for 19 lots of perishable agricultural commodities which it purchased, received, and accepted in or in contemplation of interstate commerce during the period January 15, 2003 through January 30, 2003, and that Respondent, while acting as a growers' agent, failed to remit net proceeds in the total amount of \$511,272.14 to nine (9) growers for 203 lots of watermelons which it received, accepted, and sold in interstate commerce or in contemplation of interstate commerce during the period August 20, 2003 through December 26, 2003.

Complainant requested that the Administrative Law Judge find that Respondent has wilfully, flagrantly and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)), and order that the facts and circumstances of these violations be published.

The parties agreed to the entry of a Decision Without Hearing by Reason of Consent, and a Decision was issued by Administrative Law Judge (ALJ) Victor W. Palmer on February 10, 2006. The Decision found that Respondent engaged in repeated and flagrant violations of section 2(4) of the PACA; however, that finding and the publication of the facts and circumstances of the violations were held in abeyance in accordance with the terms of the Understanding Regarding the Consent

Decision (hereinafter "Understanding") entered into between Complainant and Respondent. The Decision also found that Respondent completed making full payment to the sellers and growers listed in the Complaint on February 3, 2006.

Respondent having satisfied the terms of the Understanding, Complainant requests that the Administrative Law Judge issue an order, effective immediately, vacating the finding and publication which were held in abeyance. Therefore, the Order below is issued.

Order

The finding that Respondent has committed willful, flagrant and repeated violations of Section 2 of the Act (7 U.S.C. § 499b) is hereby vacated.

This order shall take effect immediately.

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.