

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-05-0022
)	
Gallo Produce and Food Products, Inc.,)	
)	
Respondent)	
)	Decision Without Hearing by
)	Reason of Default

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", instituted by a complaint filed on September 22, 2005, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The complaint alleges that during the period September 2002 through May 2003, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 112 sellers, 924 lots of perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices in the total amount of \$2,292,989.81. The complaint further alleges that during the period December 2002 through April 2003, Respondent failed to make full payment promptly to 2 brokers in the total amount of \$7,587.50 for perishable agricultural commodities purchased, received, and accepted in interstate and foreign commerce.

A copy of the complaint was mailed by the Hearing Clerk to Respondent's Registered Agent by certified mail and was signed for by Respondent's representative on September 30, 2005. Therefore, the Hearing Clerk served the complaint upon Respondent pursuant to Section 1.147 of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By The Secretary (7 C.F.R. § 1.147,

hereinafter referred to as the "Rules of Practice), as of September 30, 2005.

Respondent did not file an answer to the complaint within the 20 day time period prescribed by Section 1.136 of the Rules of Practice. Complainant moved for the issuance of a Decision Without Hearing by the Administrative Law Judge, pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). As Respondent failed to answer the complaint within the 20 day time period prescribed by the Rules of Practice, and upon the motion of the Complainant for the issuance of a Default Order, 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. Respondent is a corporation organized and existing under the laws of the state of Missouri. Its business address is 1010 N. Century, Kansas City, Missouri 64120. Its mailing address is P.O. Box 33870, Kansas City, Missouri 64120-3870. The name and address of Respondent's registered agent is Michael Messina, 111 W. 75th Street, Kansas City, MO 64114.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. Pursuant to the licensing provisions of the Act, license number 19730258 was issued to Respondent on September 6, 1973. This license terminated pursuant to Section 4(a) of the Act (7 U.S.C. § 499d(a)) when Respondent failed to pay the required annual renewal fee on September 6, 2003.

3. During the period September 2002 through May 2003, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 112 sellers, 924 lots of perishable agricultural commodities, and failed to make full payment

promptly of the agreed purchase prices in the total amount of \$2,292,989.81.

4. During the period December 2002 through April 2003, Respondent failed to make full payment promptly to 2 brokers in the total amount of \$7,587.50 for perishable agricultural commodities purchased, received, and accepted, in interstate and foreign commerce.

Conclusions

Respondent's failure to make full payment promptly with respect to the transactions set forth in Findings of Fact No. 3 and 4, 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 of the 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 Act, 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.

Done at Washington, D.C.

this _____ day of _____, 2006

Administrative Law Judge