

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-05-0016
)	
Adams Apple Produce, 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 July 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 May 2003 through September 2004, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 37 sellers, 164 lots of perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices in the total amount of \$887,507.77.

A copy of the complaint was mailed by the Hearing Clerk to Respondent by certified mail and was signed for by Respondent's representative on August 3, 2005. Subsequently, however, a copy of the complaint was returned by the U.S. Postal Service with a forwarding address. Although the complaint had already been signed for by certified mail, Complainant re-served the complaint to that forwarding address by certified mail, and the complaint was signed for by Respondent's representative on April 11, 2006. 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 August 3, 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 Tennessee. Its business address is 3625 County Road, Flatrock, Alabama 35966. Its mailing address is P.O. Box 219, Higdon, Alabama 35979-0219. The corporation's Registered Agent is Paul Thornton. Mr. Thornton's address is 719 Kentucky Avenue, Signal Mountain, Tennessee 37377. Mr. Thornton's alternate address is 1107 Montvale Circle, Signal Mountain, Tennessee 37377.

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 1997-2047 was issued to Respondent on August 25, 1997. 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 August 25, 2004.

3. During the period May 2003 through September 2004, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 37 sellers, 164 lots of perishable agricultural commodities, and failed to make full payment promptly of the agreed purchase prices in the total amount of \$887,507.77.

Conclusions

Respondent's failure to make full payment promptly with respect to the 164 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 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

8/5/06

PMD _____

Administrative Law Judge

