

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

| | | |
|----------------------|---|-----------------------------|
| In re: |) | PACA Docket No. D-05-0012 |
| |) | |
| McGee 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 May 23, 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 August 31, 2003 through July 23, 2004, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 7 sellers, 148 lots of perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices in the total amount of \$392,289.31.

A copy of the complaint was mailed by the Hearing Clerk to Respondent by certified mail on May 24, 2005, and was returned as undeliverable. On February 13, 2006, a copy of the complaint was personally served upon Respondent's registered agent 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). 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. McGee Produce, Inc., (hereinafter "Respondent") is a corporation organized and existing under the laws of the state of North Carolina. Its business address is 4423 Wilkinson Boulevard, Charlotte, North Carolina 28208-5528. Its mailing address is P.O. Box 19323, Charlotte, North Carolina 28219-9323. The address of Jeffrey A. McGee, Respondent's registered agent, is 5409 Pecan Bluff Court, Charlotte, NC 28216.

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. During the period August 31, 2003 through July 23, 2004, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 7 sellers, 148 lots of perishable agricultural commodities, and failed to make full payment promptly of the agreed purchase prices in the total amount of \$392,289.31.

Conclusions

Respondent's failure to make full payment promptly with respect to the 148 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 28 day of November, 2006

Marc R. Hillson
Administrative Law Judge