

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) PACA Docket No. D06-0019
)
Tung Wan Company, Inc.,)
)
Respondent) Decision without Hearing
) by Reason of Default

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (“PACA”), instituted by a Complaint filed on July 26, 2006, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleges that during the period of December 2003 through September 2005, Respondent Tung Wan Company, Inc. (“Respondent”) failed to make full payment promptly to 9 sellers of perishable agricultural commodities of the agreed purchase prices in the total amount of \$237,178.44 for 33 lots of perishable agricultural commodities that Respondent purchased, received and accepted in the course of interstate commerce. In addition, the Complaint alleged that Respondent, while acting as a dealer, made, for a fraudulent purpose, false and misleading statements when Respondent failed to account truly and correctly to a seller of perishable agricultural commodities by underreporting the sales price of 1,152 cartons of broccoli by \$8,039.81 to the seller. Finally, the Complaint also alleged that Respondent failed to maintain adequate records in violation of Section 9 of the Act.

A copy of the Complaint was served upon Respondent by certified mail on August 4, 2006. Respondent has not answered the Complaint. The time for filing an answer having run, and upon the motion of Complainant for the issuance of a Decision without Hearing by Reason of Default, the following decision and order is issued without further investigation or hearing pursuant to Section 1.139 (7 C.F.R. § 1.139) of the Rules of Practice Governing Formal

Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 et. seq.)(“Rules of Practice”).

Findings of Fact

1. Respondent was a corporation organized and existing under the laws of the State of Maryland. Respondent’s business address was 1201 67th Street, Baltimore, Maryland 21237.
2. At all times material to this order, Respondent was licensed or subject to the provisions of the PACA. License number 19990513 was issued on February 10, 1999. This license was renewed annually until February 10, 2005 when it terminated pursuant to Section 4(a) of the PACA (7 U.S.C. § 499a) when Respondent failed to pay the required annual renewal fee. Respondent continued to operate subject to the PACA until license number 20050645 was issued to Respondent on April 14, 2005. License number 20050645 terminated on April 14, 2006, pursuant to Section 4(a) of the PACA (7 U.S.C. § 499a) when Respondent failed to pay the required annual renewal fee.
3. During the period of December 25, 2003, through September 28, 2005, Respondent failed to make full payment promptly to nine sellers of the agreed purchase prices, or balances thereof, in the total amount of \$237,178.44 for 33 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate commerce.
4. Respondent, on or about October 15, 2004 through November 29, 2004, while acting as a dealer, made, for a fraudulent purpose, false and misleading statements in connection with a transaction involving 1,152 cartons of broccoli, which is a perishable agricultural commodity, that Respondent received, accepted, and sold in interstate commerce on behalf of All-American Farms, Inc. of Boca Raton Florida. Respondent failed to account truly and correctly to All American Farms, Inc. for the 1,152 cartons of broccoli when Respondent sold the 1,152 cartons of broccoli to buyers and under-reported the sales price by \$8,039.81.
5. During the period December 2003 through September 2005, Respondent failed to maintain adequate records that fully and correctly disclose all transactions involved in its

business, in that Respondent failed to: 1) disclose all transactions in the business in sufficient detail as to be readily understood and audited; 2) keep an adequate receiving record; 3) provide sales tickets with printed serial numbers on cash tickets; 4) assign lot numbers to each shipment; 5) account for dumped produce; 6) provide evidence of dumping; and 7) maintain complete and detailed records of Respondent's commission sales as more fully described in 7 C.F.R. §46.29(a).

Conclusions

Respondent's failure to make full payment promptly regarding the 33 lots of produce, which is described 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)). Respondent's false and misleading statements in connection with a the sale of a perishable agricultural commodity, which is described in Finding of Fact No. 4 above, constitutes a willful, flagrant and repeated violation of Section 2(4) of the Act. Respondent's failures to keep adequate records, which is described in Finding of Fact No. 5 above, constitutes a willful, flagrant and repeated violation of Section 9 of the Act (7 U.S.C. § 499i). Therefore, Respondent has willfully, flagrantly and repeatedly violated Section 2(4) and Section 9 of the PACA (7 U.S.C. §§ 499b(4), 499i), and the facts and circumstances of those violations shall be published.

Pursuant to the Rules of Practice, this Decision will become final without further proceedings 35 days after it is served unless a party to the proceeding appeals the Decision to the Secretary 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 of this Decision shall be served upon the parties.

Done at Washington, D.C.
This 8th day of January, 2007

MARC R. HILLSON
Administrative Law Judge