

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) PACA Docket No. D-06-0011  
 )  
Primo's Tropical Produce Corp. )  
 )  
Respondent ) Decision Without Hearing

Preliminary Statement

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 April 25, 2006, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleged that during the period during the period April 2003 through January 2004 Respondent purchased, received, and accepted, in interstate and foreign commerce, from 12 sellers, 166 lots of perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices in the total amount of \$579,290.15.

A copy of the Complaint was served upon Respondent; Respondent submitted a Request for Hearing which was treated as an Answer to the Complaint pertaining to its failure to make payment promptly. During the period of February 1, 2007 through April 9, 2007, a follow up investigation was conducted by the PACA Branch of the Agricultural Marketing Service which revealed that as of April 9, 2007, ten (10) of the sellers listed in the Complaint were still owed \$496,740.42. Based on the results of the investigation, Complainant filed a Motion for an Order Requiring Respondent to Show Cause Why a Decision Without Hearing Should Not Be Issued.

Respondent indicated via electronic mail on July 12, 2007 that it did not object to issuance of a Show Cause Order. I issued the Show Cause Order on July 10, 2007. The Order was based upon Complainant's allegation in its Motion, substantiated by affidavit, that Respondent failed to pay the produce debt alleged in the Complaint within 120 days of the service of the Complaint. The Order afforded Respondent 30 days from the date of service of the Order to demonstrate that it made full payment, by November 17, 2006, of the \$579,290.15, owed to 12 sellers, alleged in the Complaint. The Order was served on Respondent on July 12, 2007, and no response was filed by Respondent. Accordingly, I grant Complainant's motion for the issuance of a Decision Without Hearing finding that Respondent committed willful, flagrant and repeated violations of section 2(4) of the PACA and publishing Respondent's violations.

Under the sanction policy enunciated by the Judicial Officer in In re Scamcorp, Inc., d/b/a Goodness Greeness, 57 Agric. Dec. 527, 547 (1998),

"PACA requires *full payment promptly*, and commission merchants, dealers and brokers are required to be in compliance with the payment provisions of the PACA at all times....In any PACA disciplinary proceeding in which it is shown that a [R]espondent has failed to pay in accordance with the PACA and is not in full compliance with the PACA within 120 days after the [C]omplaint is served on that [R]espondent, or the date of the hearing, whichever occurs first, the PACA case will be treated as a "no-pay" case .... In any "no-pay" case in which the violations are flagrant or repeated, the license of a PACA licensee, shown to have violated the payment provisions of the PACA, will be revoked." Id. at 548-549.

According to the Judicial Officer's policy set forth in Scamcorp, Respondent had 120 days from the date the Complaint was served upon it, or on or about November 17, 2006, to come into full compliance with the PACA. Therefore, as Respondent was not in full compliance by that date, this case should be treated as a "no pay" case for purposes of sanction, which

warrants the issuance of a Decision Without Hearing finding that Respondent committed willful, flagrant and repeated violations of section 2(4) of the PACA and ordering that Respondent's violations be published.

Since Respondent has failed to Show Cause Why a Decision Without Hearing Should Not Be Issued, the following Findings and Order are 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 Primo's Tropical Produce Corp., (hereinafter "Respondent") is a corporation organized and existing under the laws of the State of New York. Its business mailing address was 1312 Randall Avenue, Bronx, New York 10474.

2. At all times material herein, Respondent was licensed under the PACA or conducting business subject to the PACA. License number 2002-0265 was issued to Respondent on October 30, 2001. This license terminated on October 30, 2003, pursuant to Section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

3. As more fully set forth in paragraph III of the Complaint, Respondent, during the period April 2003 through January 2004, failed to make full payment promptly of the agreed purchase price for 166 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate and foreign commerce from 12 sellers, in the total amount of \$579,290.15.

4. Respondent failed to pay the produce debt to 12 sellers and failed to come into full compliance with the PACA within 120 days of the filing of the Complaint against it.

### Conclusions

Respondent's failure to make full payment promptly with respect to 166 lots of perishable agricultural commodities it purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$579,290.15, constitutes willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b), 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), and the facts and circumstances of the violations of Respondent 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 shall be served upon the parties.

Done at Washington, D.C.  
this 1st day of October, 2007

Marc R. Hillson  
**Marc R. Hillson**  
Chief Administrative Law Judge