

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
The Miles Smith Family Corp.)	PACA Docket No. D-03-0005
d/b/a Cal Fresh Produce,)	
)	Ruling Denying Motion
Respondent)	for Default Decision

This disciplinary proceeding was initiated by a Complaint filed on October 30, 2002, under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (herein frequently, “the PACA” or “the Act”). Because my Decision, issued on June 6, 2003, was issued in error, I reopened the case and vacated the Decision. [I had erroneously asserted in the Decision: “A copy of the complaint was served upon Respondent, and Respondent has not filed an answer.”]

Before me are (1) the Complainant’s Motion for Decision Without Hearing By Reason of Default, filed September 26, 2007; (2) White and Laramie’s Response to Request for Default, filed October 9, 2007; and (3) the Complainant’s Notice of Service, filed October 15, 2007.

The Complaint has not yet been served upon the Respondent, The Miles Smith Family Corp., d/b/a Cal Fresh Produce (“Respondent”). The attempt to serve the Respondent by delivery to FORMER officers/directors of the Respondent corporation was not effective. What we still have in this case, PACA Docket No. D-03-0005, In re: The Miles Smith Family

Corp., d/b/a Cal Fresh Produce, Respondent, is lack of service in accordance with 7 C.F.R. § 1.147(c). Corporate officers and directors who, when served, are currently officers or directors, have authority and responsibility with regard to the corporation under 7 C.F.R. § 1.147(c). FORMER officers and directors do not. Consequently, I am in agreement with White and Laramie's Response to Request for Default, filed October 9, 2007; the Complainant's Motion filed on September 26, 2007, is **DENIED**.

This Ruling is appealable to the Judicial Officer. *See* 7 C.F.R. § 1.139, providing that denial of a motion for a default decision may be appealed pursuant to 7 C.F.R. § 1.145. (7 C.F.R. § 1.145, see enclosed Appendix A). Copies of this Ruling (by regular mail), shall be served by the Hearing Clerk upon each of the parties, **and the Respondent shall be served at all three addresses:**

Cal Fresh Produce
2705 5th Street, Ste 5
Sacramento, California 95818

and

The Miles Smith Family Corp., d/b/a Cal Fresh Produce
385 Inverness Drive **South, Suite 380**
Englewood, Colorado 80112

and

The Miles Smith Family Corp., d/b/a Cal Fresh Produce
c/o CrossPoint Foods Corporation
1050 17th Street, Suite 195
Denver, Colorado 80265

and a courtesy copy (by regular mail) shall be served on counsel for Mssrs. White and Laramie,

Luis A. Toro, Esq.
1801 California St 4300
Denver Colorado 80202-2604.

Done at Washington, D.C.
this 17th day of October 2007

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Bldg Room 1031
1400 Independence Avenue, SW
Washington, DC 20250-9203
202-720-4443
Fax: 202-720-9776