

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	PACA Docket No. D-07-0171
Frank J. Gatto, Inc.,	)	
	)	Decision by
Respondent	)	Reason of Default

The Complaint, filed on August 15, 2007, under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (“the Act” or “the PACA”), alleges that during the period of April 2006 through October 2006, Respondent Frank J. Gatto, Inc. (“Respondent”), failed to make full payment promptly to 22 sellers of the agreed purchase prices in the total amount of \$633,389.94 for 172 lots of perishable agricultural commodities, which it purchased, received, and accepted in the course of interstate and foreign commerce or in contemplation of interstate or foreign commerce.

Parties and Counsel

Complainant, the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture (“AMS” or “Complainant”), is represented by Jonathan Gordy, Esq., with the Trade Practices Division, Office of the General Counsel, United States Department of Agriculture, Washington D.C. 20250-1413.

Respondent is a corporation organized and existing under the laws of the state of New Jersey.

### Respondent's Failure to Answer

Respondent has not answered the Complaint. The time for filing an answer has expired. Complainant's Motion for Decision Without Hearing by Reason of Default is before me. The Rules of Practice provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. § 1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. Accordingly, the material allegations in the Complaint, which are admitted by Respondent's default, are adopted and set forth herein as Findings of Fact. This Decision, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

### Findings of Fact

1. Respondent Frank J. Gatto, Inc. is a corporation organized and existing under the laws of the state of New Jersey. Respondent's business address was 837 E Esperanza Suite C, McAllen, TX 78502. Its mailing address was P.O. Box 6078, McAllen, TX 78504-6078. Respondent ceased operations on December 7, 2006.
2. At all times material herein, Respondent Frank J. Gatto, Inc. was licensed under the provisions of the PACA. License number 1916-5381 was issued to Respondent on June 22, 1956. This license is due for renewal on June 22, 2008.
3. During April 2006 through October 2006, Respondent Frank J. Gatto, Inc. failed to make full payment promptly to 22 sellers of the agreed purchase prices in the total amount of \$633,389.94 for 172 lots of perishable agricultural commodities, which it purchased, received, and accepted in the course of interstate and foreign commerce or in contemplation of interstate or foreign commerce.

Conclusions

Respondent Frank J. Gatto, Inc.'s failure to make full payment promptly with respect to the 172 transactions set forth in Finding of Fact No. 3 above, constitutes willful, flagrant and repeated violations of Section 2(4) of the PACA (7 U.S.C. § 499b(4)), and the license of Respondent is revoked.

Finality

This Decision will become final and effective without further proceedings 35 days after it is served unless a party to the proceeding files with the Hearing Clerk an appeal to the Judicial Officer 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). See attached Appendix A, containing 7 C.F.R. § 1.145).

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.  
this 6<sup>th</sup> day of November 2007

Jill S. Clifton  
Administrative Law Judge

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