

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AMAA Docket No. 07-0068
)
INTERNATIONAL ALMOND,)
EXCHANGE, INC.,)
)
Respondent)

DECISION AND ORDER UPON
ADMISSION OF FACTS BY REASON OF DEFAULT

This proceeding was instituted under the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. § 601 et seq. (the "Act"), and the Marketing Order for Almonds Grown in California, 7 C.F.R. Part 981 (the "Order") by a complaint filed by the Administrator, Agricultural Marketing Service ("AMS") United States Department of Agriculture, alleging that Respondent willfully violated the Act and the Order.

A copy of the complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were served on the Respondent by certified mail on March 8, 2007. On March 27, 2007, I issued an Order extending the time to answer the complaint to April 24, 2007, "when the Hearing Clerk must receive it." No answer was received by April 24, 2007. On June 15, 2007 Complainant filed a motion that a decision be issued upon reason of default upon admission of facts.

On July 5, 2007, the Hearing Clerk received an answer to the complaint. On July 6, 2007, counsel for Respondent filed an "Objection to Motion for Decision" stating that the late answer should be accepted.

Although Respondent's answer was not timely filed, it is undisputed that, following settlement talks, significant payments were made on Respondent's behalf to USDA. Respondent's counsel contends there was a settlement, which Complainant's counsel disputes. Clearly, there is no written settlement agreement. However, the USDA has accepted substantial payments which Respondent contends is tantamount to a settlement.

The complaint sought a total of \$229,625.20 in unpaid assessments, interest and late fees. Respondent contended during an untranscribed telephone conference with me and counsel for Complainant, that in conversations that were held even before the complaint was issued, an agreement was reached whereby Respondent would pay \$227,450.58 to Complainant. Respondent subsequently presented evidence, through cancelled checks, that this amount was paid in five increments over a period of approximately six months. Counsel for Complainant stated during the same telephone conference that he had indicated that Complainant would accept such a payment as resolution only if the payment were made promptly and via a single payment. Counsel for Complainant did not have a good explanation as to why Complainant continued to accept the checks if they believed there was no agreement, and Counsel for Respondent did not have a good explanation as to why he did not file an answer.

Since there is neither a timely answer nor a written settlement agreement, the material facts alleged in the complaint, which are admitted by the Respondent's failure to file an answer, are adopted and set forth herein as Findings of Fact and Conclusions of Law. However, since it appears that Respondent has paid all but \$2,174.62 of the amount alleged by Complainant, I am finding that Respondent owes \$2,174.62 in late payments, interest and late fees. In addition while Complainant seeks a civil penalty of \$20,000, I find that in light of the payments already made by Respondent a civil penalty of \$5,000 is more appropriate. Even though the violations

continued over a long period of time, the relatively prompt and complete payment of amounts owed at the time the complaint was filed and counsel for Complainant's concession that he would have accepted the amount Respondent actually paid had it been paid immediately and in a single lump sum constitute a basis for mitigating the civil penalty.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

Findings of Fact and Conclusions of Law

1. Respondent, International Almond Exchange, Inc., is a California corporation and the mailing address is of its principal place of business is 144 Westlake Avenue, Watsonville, California 95076.
2. At all times material hereto, Respondent was a "handler" of California almonds as that term is defined in the Act and the Order.
3. Respondent willfully violated section 981.81 of the Order (7 C.F.R. § 981.81) and section 981.481 of the Regulations (7 C.F.R. § 981.481) by failing to pay when due the assessments invoiced by the Almond Board of California ("Board") for the period August 1, through October 31, 2003 (the first assessment billing for the 2003-04 crop year).
4. Respondent willfully violated section 981.81 of the Order (7 C.F.R. § 981.81) and section 981.481 of the Regulations (7 C.F.R. § 981.481) by failing to pay when due the assessments invoiced by the Almond Board of California for the period November 1, through December 31, 2003 (the second assessment billing for the 2003-04 crop year).
5. Respondent willfully violated section 981.81 of the Order (7 C.F.R. § 981.81) and section 981.481 of the Regulations (7 C.F.R. § 981.481) by failing to pay when due the

assessments invoiced by the Board for the period January 1, through March 31, 2004 (the third assessment billing for the 2003-04 crop year).

6. Respondent willfully violated section 981.81 of the Order (7 C.F.R. §981.81) and section 981.481 of the Regulations (7 C.F.R. § 981.481) by failing to pay when due the assessments invoiced by the Board for the period April 1, through July 31, 2004 (the fourth assessment billing for the 2003-04 crop year).

7. Respondent willfully violated section 981.81 of the Order (7 C.F.R. § 981.81) and section 981.481 of the Regulations (7 C.F.R. § 981.481) by failing to pay when due the assessments invoiced by the Board for the period August 1, through October 31, 2004 (the first assessment billing for the 2004-05 crop year).

8. Respondent willfully violated section 981.81 of the Order (7 C.F.R. § 981.81) and section 981.481 of the Regulations (7 C.F.R. § 981.481) by failing to pay when due the assessments invoiced by the Board for the period November 1, through December 31, 2004 (the second assessment billing for the 2004-05 crop year).

9. Respondent willfully violated section 981.81 of the Order (7 C.F.R. § 981.81) and section 981.481 of the Regulations (7 C.F.R. § 981.481) by failing to pay when due the assessments invoiced by the Board for the period January 1, through March 31, 2005 (the third assessment billing for the 2004-05 crop year).

10. Respondent willfully violated section 981.81 of the Order (7 C.F.R. § 981.81) and section 981.481 of the Regulations (7 C.F.R. § 981.481) by failing to pay when due the assessments invoiced by the Board for the period April 1, through July 31, 2005 (the fourth assessment billing for the 2004-05 crop year).

11. Respondent willfully violated section 981.81 of the Order (7 C.F.R. § 981.81) and section 981.481 of the Regulations (7 C.F.R. § 981.481) by failing to pay when due the assessments invoiced by the Board for the period August 1, through October 31, 2005 (the first assessment billing for the 2005-06 crop year).

12. Respondent willfully violated section 981.81 of the Order (7 C.F.R. § 981.81) and section 981.481 of the Regulations (7 C.F.R. § 981.481) by failing to pay when due the assessments invoiced by the Board for the period November 1, through December 31, 2005 (the second assessment billing for the 2005-06 crop year).

13. Respondent willfully violated section 981.81 of the Order (7 C.F.R. § 981.81) and section 981.481 of the Regulations (7 C.F.R. § 981.481) by failing to pay when due the assessments invoiced by the Board for the period January 1, through March 31, 2006 (the third assessment billing for the 2005-06 crop year).

14. Respondent willfully violated section 981.81 of the Order (7 C.F.R. § 981.81) and section 981.481 of the Regulations (7 C.F.R. § 981.481) by failing to pay when due the assessments invoiced by the Board for the period April 1, through July 31, 2006 (the fourth assessment billing for the 2005-06 crop year).

15. Respondent willfully violated section 981.81 of the Order (7 C.F.R. § 981.81) and section 981.481 of the Regulations (7 C.F.R. § 981.481) by failing to pay when due the assessments invoiced by the Board for the period August 1, through October 31, 2006 (the first assessment billing for the 2006-07 crop year).

16. Respondent willfully violated section 981.81 of the Order (7 C.F.R. § 981.81) and section 981.481 of the Regulations (7 C.F.R. § 981.481) by failing to pay when due the

assessments invoiced by the Board for the period November 1, through December 31, 2006 (the second assessment billing for the 2006-07 crop year).

17. As of November 30, 2006, Respondent owed the Board \$172,256.50 in unpaid assessments, \$40,782.04 in interest on assessments not paid within 30 days of the invoice date, and \$16,568.66 in late payment charges on assessments not paid within 60 days of the invoice date (7 C.F.R. § 981.481).

18. On or about August 31, 2005, Respondent violated section 981.42 of the Order (7 C.F.R. § 981.42), section 981.442 (a)(5) of the Regulations (7 C.F.R. § 981.442 (a)(5)) by failing to dispose on time 16,586 kernel-weight pounds of inedible almonds acquired by respondents during the 2004/2005 crop year.

19. On or about August 31, 2005, Respondent violated section 981.42(a) of the Order (7 C.F.R. § 981.42(a)), section 981.442 (a)(4)(i) of the Regulations (7 C.F.R. § 981.442 (a)(4)(i)), and section 981.442(a)(5) of the Regulations (7 C.F.R. § 981.442(a)(5)) by failing to dispose of 255 kernel-weight pounds of inedible almonds acquired by respondents during the 2004/2005 crop year.

20. On or about August 31, 2005, Respondent violated section 981.42 of the Order (7 C.F.R. § 981.42) and section 981.442(a)(5) of the Regulations (7 C.F.R. § 981.442(a)(5)) by failing to dispose of at least 25% of their true inedible obligation. Their 25% obligation for the 2004/2005 crop year was 7,716 kernel-weight pounds of almonds; Respondents disposed of only 5,451 kernel-pounds.

21. On October 5, 2003, Respondent violated section 981.72 of the Order (7 C.F.R. § 981.72) and section 981.472 of the Regulations (7 C.F.R. § 981.472) by failing to submit on time to the Board a report on ABC Form 1 on the acquisition of almonds.

22. On March 5, 2004, Respondent violated section 981.72 of the Order (7 C.F.R. § 981.72) and section 981.472 of the Regulations (7 C.F.R. § 981.472) by failing to submit on time to the Board a report on ABC Form 1 on the acquisition of almonds.

23. On April 5, 2004, Respondent violated section 981.72 of the Order (7 C.F.R. § 981.72) and section 981.472 of the Regulations (7 C.F.R. § 981.472) by failing to submit on time to the Board a report on ABC Form 1 on the acquisition of almonds.

24. On October 5, 2003, Respondent violated section 981.74 of the Order (7 C.F.R. § 981.74) and section 981.474 of the Regulations (7 C.F.R. § 981.474) by failing to submit on time to the Board a report on ABC Form 25-1 on the shipment of almonds.

25. On March 5, 2004, Respondent violated section 981.74 of the Order (7 C.F.R. § 981.74) and section 981.474 of the Regulations (7 C.F.R. § 981.474) by failing to submit on time to the Board a report on ABC Form 25-1 on the shipment of almonds.

26. On October 5, 2003, Respondent violated section 981.74 of the Order (7 C.F.R. § 981.74) and section 981.474 of the Regulations (7 C.F.R. § 981.474) by failing to submit on time to the Board a report on ABC Form 25-2 on the commitment of almonds.

27. On March 5, 2004, Respondent violated section 981.74 of the Order (7 C.F.R. § 981.74) and section 981.474 of the Regulations (7 C.F.R. § 981.474) by failing to submit on time to the Board a report on ABC Form 25-2 on the commitment of almonds.

28. On December 5, 2004, Respondent violated section 981.72 of the Order (7 C.F.R. § 981.72) and section 981.472 of the Regulations (7 C.F.R. § 981.472) by failing to submit on time to the Board a report on ABC Form 1 on the acquisition of almonds.

29. On September 5, 2004, Respondent violated section 981.74 of the Order (7 C.F.R. § 981.74) and section 981.474 of the Regulations (7 C.F.R. § 981.474) by failing to submit on time to the Board a report on ABC Form 25-1 on the shipment of almonds.

30. On December 5, 2004, Respondent violated section 981.74 of the Order (7 C.F.R. § 981.74) and section 981.474 of the Regulations (7 C.F.R. § 981.474) by failing to submit on time to the Board a report on ABC Form 25-1 of the shipment on almonds.

31. On September 5, 2004, Respondent violated section 981.74 of the Order (7 C.F.R. § 981.74) and section 981.474 of the Regulations (7 C.F.R. § 981.474) by failing to submit on time to the Board a report on ABC Form 25-2 on the commitment of almonds.

32. On December 5, 2004, Respondent violated section 981.74 of the Order (7 C.F.R. § 981.74) and section 981.474 of the Regulations (7 C.F.R. § 981.474) by failing to submit on time to the Board a report on ABC Form 25-2 on the commitment of almonds.

33. On December 5, 2005, Respondent violated section 981.72 of the Order (7 C.F.R. § 981.72) and section 981.472 of the Regulations (7 C.F.R. § 981.472) by failing to submit on time to the Board a report on ABC Form 1 on the acquisition of almonds.

34. On February 5, 2006, Respondent violated section 981.72 of the Order (7 C.F.R. § 981.72) and section 981.472 of the Regulations (7 C.F.R. § 981.472) by failing to submit on time to the Board a report on ABC Form 1 on the acquisition of almonds.

35. On January 15, 2006, Respondent violated section 981.73 of the Order (7 C.F.R. § 981.73) and section 981.473 of the regulations (7 C.F.R. § 981.473) and section by failing to submit on time to the Board a report on ABC Form 2 on the redetermination of almonds.

36. On December 5, 2005, Respondent violated section 981.74 of the Order (7 C.F.R. § 981.74) and section 981.474 of the Regulations (7 C.F.R. § 981.474) by failing to submit on time to the Board a report on ABC Form 25-1 on the shipment of almonds.

37. On February 5, 2006, Respondent violated section 981.74 of the Order (7 C.F.R. § 981.74) and section 981.474 of the Regulations (7 C.F.R. § 981.474) by failing to submit on time to the Board a report on ABC Form 25-1 on the shipment of almonds.

38. On December 5, 2005, Respondent violated section 981.74 of the Order (7 C.F.R. § 981.74) and section 981.474 of the Regulations (7 C.F.R. § 981.474) by failing to submit on time to the Board a report on ABC Form 25-2 on the commitment of almonds.

39. On February 6, 2006, Respondent violated section 981.74 of the Order (7 C.F.R. § 981.74) and section 981.474 of the Regulations (7 C.F.R. § 981.474) by failing to submit on time to the Board a report on ABC Form 25-2 on the commitment of almonds.

Conclusions

1. The Secretary has jurisdiction in this matter.
2. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. Respondent, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the Order, and in particular, shall cease and desist from

(a) failing to file required reports and to pay assessments and charges under the Act in a timely manner, and

(b) failing to submit past-due assessments, interest, and late payment charges to the Almond Board.

2. Since Respondent has paid \$227,450.58 in unpaid assessments, interest and late fees, Respondent shall pay the remaining \$2,174.62 alleged in the complaint.

3. Respondent is assessed a civil penalty of \$5,000.00.

4. Respondent shall pay the \$7,174.62 imposed in the above two paragraphs by a certified check or money order made payable to the Treasurer of United States. This payment shall be sent to the Attorney for Complainant within 30 days from the effective date of this order.

The provisions of this order shall become effective on the first day after this decision becomes final.

Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145, unless appealed.

Copies of this decision shall be served upon the parties.

Done at Washington, D.C.
this 18th day of December 2007

Marc R. Hillson
Chief Administrative Law Judge