

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-07-0104
)	
Old Dixie Produce & Packaging, Inc.,)	
)	Decision and Order
Respondent)	by Reason of Default

1. This disciplinary proceeding was initiated under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (herein frequently “the PACA” or “the Act”), by the Complaint filed on May 8, 2007.
2. The Complainant, the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture (herein frequently “AMS” or “Complainant”), is represented by Tonya Keusseyan, Esq., with the Trade Practices Division, Office of the General Counsel, United States Department of Agriculture.
3. On May 8, 2007, the Hearing Clerk sent to Respondent Old Dixie Produce & Packaging, Inc. (herein frequently “Old Dixie Produce” or “Respondent”), by certified mail, return receipt requested, a copy of the Complaint and a copy of the Rules of Practice, together with a cover letter (service letter). Respondent was informed in the service letter, among other things, that it had 20 days from receipt to file its answer.
4. Respondent Old Dixie Produce received the Complaint, Rules of Practice, and service letter on May 14, 2007, and did not answer the Complaint. The Rules of Practice provide

that an answer is due to be filed within 20 days after service of the complaint, and 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.

5. The Complaint alleged, among other things, that during October 2004 through March 2005, Respondent Old Dixie Produce & Packaging, Inc. failed to make full payment promptly to 45 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$4,353,004.62 for 605 transactions involving perishable agricultural commodities that Respondent purchased, received, and accepted in the course of interstate and foreign commerce. [Of the \$4,353,004.62 which Respondent Old Dixie Produce was alleged to have failed to pay promptly, \$845.40 was for brokerage fees for 7 transactions involving perishable agricultural commodities.]

6. AMS requested that Respondent Old Dixie Produce be found to have willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)), and that the facts and circumstances be ordered to be published. AMS's Motion for Decision Without Hearing by Reason of Default, filed October 3, 2007, is before me.

7. Respondent Old Dixie Produce is in default. The time for filing an answer expired on June 4, 2007. Respondent Old Dixie Produce's filings on June 20 and 21, 2007, which do not deny the allegations of the Complaint, are not an answer. This proceeding is not stayed by the bankruptcy proceedings.

8. Accordingly, the material allegations of the Complaint, which are admitted by Respondent Old Dixie Produce's default, are adopted and set forth herein as Findings of Fact. This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139. *See* 7 C.F.R. §1.130 *et seq.*

Findings of Fact

9. Respondent Old Dixie Produce & Packaging, Inc. is a corporation organized and existing under the laws of the State of Louisiana. Respondent's business and mailing address was 5801 G Street New Orleans, LA 70183. Respondent ceased business operations in March 2005. Respondent's current mailing address is c/o Anthony Peraino, 7516 Bluebonnet Blvd PMB 171, Baton Rouge, LA 70810.

10. At all times material herein, Respondent Old Dixie Produce was licensed under the provisions of the PACA. License number 19197643 was issued to Respondent on July 31, 1962. This license terminated on July 31, 2006, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

11. Respondent Old Dixie Produce, during October 2004 through March 2005, failed to make full payment promptly, as is more fully set forth in Appendix A to the Complaint, to 45 sellers of the agreed purchase prices, or balances thereof, in 605 transactions involving perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce. The total amount which Respondent failed to pay promptly in these transactions was \$4,353,004.62, of which \$845.40 was for brokerage fees for 7 transactions involving perishable agricultural commodities.

12. On July 29, 2005, Respondent Old Dixie Produce filed a Voluntary Petition pursuant to Chapter 11 of the Bankruptcy Code (11 U.S.C. § 1101 *et seq.*) in the U.S. Bankruptcy Court, Eastern District of Louisiana, New Orleans Louisiana. The bankruptcy petition was designated case number 05-16397. Respondent, in bankruptcy pleadings and in bankruptcy schedule F, admitted that all 45 sellers listed in the Complaint hold unsecured claims for unpaid produce debt. Of the \$4,353,004.62 that the Complaint alleges to be due and owing for perishable agricultural commodities to those sellers, Respondent has admitted that it owes \$4,240,907.33.

Conclusions

13. The Secretary of Agriculture has jurisdiction.

14. Respondent Old Dixie Produce willfully, flagrantly and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing, during October 2004 through March 2005, to make full payment promptly of the agreed purchase prices, or balances thereof, in the total amount of \$4,353,004.62, to 45 sellers in 605 transactions involving perishable agricultural commodities which Respondent purchased, received, and accepted in the course of interstate and foreign commerce.

Order

15. Respondent Old Dixie Produce committed wilful, flagrant and repeated violations of Section 2(4) of the Perishable Agricultural Commodities Act (the PACA) (7 U.S.C. § 499b(4)), and the facts and circumstances of the violations shall be published.

16. This Order shall take effect on the 11th day after this Decision becomes final.

Finality

This Decision and Order shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

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

Done at Washington, D.C.
this 21st day of December 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
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APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in

§ 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of

objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145