

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	PACA Docket No. D-04-0013
	)	
Mendez Distributing Co., Inc.	)	
	)	
Respondent	)	Decision Without Hearing by Reason of Default

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 27, 2004, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleges that during the period July 2002 through July 2003, Mendez Distributing Co., Inc., (hereinafter, “Respondent”) failed to make full payment promptly to 23 sellers, of the agreed purchase prices, or balances thereof, in the total amount of \$1,036,620.73 for 223 lots of perishable agricultural commodities which it received, accepted and sold in interstate and foreign commerce.

A copy of the complaint was mailed to Respondent by certified mail at its last known principal place of business on May 14, 2004, and was returned to the office of the Hearing Clerk. A copy of the complaint was remailed to Respondent by regular mail on June 14, 2004 pursuant to Section 1.147(c) of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Covering Various Statutes (7 C.F.R. §1.130 *et seq.*, hereinafter “Rules of Practice”). A copy of the complaint was mailed to Respondent by certified mail at its last known mailing address on April 27, 2004, and was returned to the office of the Hearing Clerk. A copy of the complaint was remailed to Respondent to its mailing address by regular mail on May 14, 2004

pursuant to Section 1.147(c) of the Rules of Practice. No answer to the complaint has been received. The time for filing an answer having expired, and upon motion of the Complainant for the issuance of a Default Order, the following Decision and Order shall be 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 is a corporation, organized and existing under the laws of the State of California. Respondent's business mailing address is 746 Market Court, Los Angeles, California 90021-1103. Respondent's mailing address is 672 Darrell Street, Costa Mesa, California 92627-2404.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 20030456 was issued to Respondent on January 7, 2003. This license was suspended on August 20, 2003 because of Respondent's failure to pay a reparation award pursuant to Section 7(d) of the PACA (7 U.S.C. § 499g(d)). The license terminated on January 7, 2004 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, during the period July 2002 through July 2003, Respondent failed to make full payment promptly to 23 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$1,036,620.73 for 223 lots of perishable agricultural commodities, which it purchased, received, accepted in the course of interstate and foreign commerce.

4. On August 14, 2003, Respondent filed a Voluntary Petition pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. § 701 et seq.) in the United States Bankruptcy Court for the Central District of California. The petition was designated Case No. LA 03-32088-VZ. Respondent

admits in its bankruptcy schedules that 17 of the 23 sellers listed in paragraph III of the complaint hold undisputed, unsecured claims for perishable agricultural commodities that are equal to or greater than the amounts alleged in paragraph III, for a total of \$872,134.86.

#### Conclusions

Respondent's failure to make full payment promptly with respect to the 223 transactions referred to in Finding of Fact No. 3 above, constitutes willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)), 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 set forth above, 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 hereof shall be served upon the parties.

Done at Washington, D.C.

this 19<sup>th</sup> day of July, 2005

Peter M. Davenport  
Administrative Law Judge