

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-06-0005
)	
WR Foods, Inc., d/b/a Western Rose)	
Foods,)	
)	Decision Without Hearing by Reason
Respondent)	of Default

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (hereinafter, APACA), instituted by a complaint filed on February 13, 2006, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The complaint alleged that Respondent, during the period January 1998 through March 2003, failed to make full payment promptly to four sellers of the agreed purchase prices, or balances thereof, in the total amount of \$422,421.54 for 457 lots of perishable agricultural commodities which it purchased, received, and accepted in interstate and or foreign commerce or in contemplation of interstate or foreign commerce, in willful, flagrant and repeated violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)). The complaint requested that the Administrative Law Judge find that Respondent willfully, flagrantly and repeatedly violated section 2(4) of the PACA, and order that the facts and circumstances of Respondent's violations be published.

Respondent, on April 30, 2003, filed a Voluntary Petition in bankruptcy pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. § 701 et seq.) in the United States Bankruptcy Court, Middle District of Pennsylvania, Case No. 03-02568, and the complaint was mailed, by certified mail, to Respondent's bankruptcy trustee, Leon P. Haller, Bankruptcy Trustee, Purcell,

Krug and Haller, 1719 North Front Street, Harrisburg, Pennsylvania 17102.¹ The complaint was received and accepted on February 21, 2006. According to section 1.136(a) of the Rules of Practice Governing Formal Adjudicatory Procedures Instituted by the Secretary Covering Various Statutes (7 C.F.R. § 1.136(a)) (hereinafter, "Rules of Practice"), an answer is due within 20 days after service of the complaint. No answer to the complaint has been received. The time for filing an answer having run, and upon motion of the Complainant for the issuance of a Decision Without Hearing by Reason of Default, the following Decision and Order is 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. WR Foods, Inc., d/b/a Western Rose Foods (hereinafter "Respondent"), is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Respondent ceased operations in April 2003. While Respondent was operating, its business address was 1302 Slate Hill Road, Camp Hill, Pennsylvania 17011. Respondent's current business address is c/o Leon P. Haller, Bankruptcy Trustee, Purcell, Krug and Haller, 1719 North Front Street, Harrisburg, Pennsylvania 17102.

¹ When a respondent is no longer operating and has filed for bankruptcy, service of the complaint by certified mail upon the respondent's bankruptcy trustee is considered proper service. See In re: Scarpaci Brothers, Inc., 60 Agric. Dec. 874 (2001); In re: Golden Phoenix Trading, Inc., 59 Agric. Dec. 894 (2000).

2. At all times material herein, Respondent was licensed or operating subject to license under the provisions of the PACA. PACA license number 19941063 was issued to Respondent on April 22, 1994, which terminated on April 22, 1996, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required renewal fee. Respondent was issued PACA license number 19970355, on November 25, 1996, which terminated on November 25, 1997, when Respondent failed to pay the required renewal fee. Respondent was issued PACA license number 19980726, on March 3, 1998, which terminated on March 3, 2000, when Respondent failed to pay the required renewal fee. Respondent was issued PACA license number 20001299, on June 27, 2000, which terminated on June 27, 2003, when Respondent failed to pay the required renewal fee.

3. As more fully set forth in paragraph III of the complaint, Respondent, during the period January 1998 through March 2003, failed to make full payment promptly to four sellers the agreed purchase prices, or balances thereof, in the total amount of \$422,421.54 for 457 lots of perishable agricultural commodities which it purchased, received, and accepted in interstate and or foreign commerce or in contemplation of interstate or foreign commerce.

4. On April 30, 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, Middle District of Pennsylvania. This petition was designated Case No. 03-02568. The Petition contains Schedule F, A Creditors Holding Unsecured Nonpriority Claims, in which Respondent admits that three of the four produce sellers set forth in Paragraph III herein have claims that are equal to the amounts alleged in Paragraph III, and admits that the fourth seller, Penn Produce,

Inc., has a claim of \$325,000, which is less than the \$388,816.54 alleged in Paragraph III.

Respondent does not allege in Schedule F that any of the claims set forth therein are disputed.

Conclusions

Respondent=s failure to make full payment promptly with respect to the transactions referred to in Finding of Fact 3 above constitutes willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C.   499b(4)), for which the Order below is issued.

Order

A finding is made that Respondent has committed willful, repeated and flagrant violations of section 2(4) of the Perishable Agricultural Commodities Act (7 U.S.C.   499b(4)), and the facts and circumstances of the violations 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 PACA, 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 thirty days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R.    1.139, 1.145).

Copies hereof shall be served upon the parties.

Done at Washington, D.C.

this 2nd day of August, 2006

Marc R. Hillson
Administrative Law Judge