

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

PACA Docket No. D-08-0148

In re: SUPERIOR PRODUCE, INC.,

Respondent

DEFAULT DECISION AND ORDER

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 June 24, 2008, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleges that during the period June 20, 2005 through October 24, 2006, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 11 sellers, 258 lots of perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices in the total amount of \$449,807.04.

A copy of the Complaint was mailed by the Hearing Clerk to Respondent by certified mail and received by Respondent on June 27, 2008. The Complaint was therefore served upon Respondent pursuant to Section 1.147 of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By The Secretary (7 C.F.R. § 1.147, hereinafter referred to as the "Rules of Practice"), on that date. Respondent failed to file an answer to the Complaint within the 20 day time period prescribed by Section 1.136 of the Rules of Practice. The Complainant moved for the issuance of a Decision Without Hearing by the Administrative Law Judge, pursuant

to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Since Respondent failed to answer within the 20 day time period prescribed by the Rules of Practice, the motion of the Complainant for the issuance of a Default will be granted and the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Respondent is a corporation organized and existing under the laws of the state of Texas. Its business mailing address is or was 1501 Market Center Blvd., Dallas, Texas 75207.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. Pursuant to the licensing provisions of the Act, license number 19921143 was issued to Respondent on May 8, 1992. This license terminated on August 21, 2003, pursuant to Section 4(a) of the Act (7 U.S.C. § 499d(a)) when Respondent failed to pay its required annual renewal fee.

3. As more fully set forth in paragraph III of the Complaint, during the period June 20, 2005 through October 24, 2006, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 11 sellers, 258 lots of perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices in the total amount of \$449,807.04.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Respondent's failure to make full payment promptly with respect to the 258 transactions set forth 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(4)), and the facts and circumstances of the violations shall be published.

This order shall take effect on the day that 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 parties.

Done at Washington, D.C.

April 7, 2009



PETER M. DAVENPORT
Administrative Law Judge