

USDA
OALJ/OHC

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

2017 MAR 22 PM 3:50

RECEIVED

In re:)	
)	
ABL FARMS, INC.)	PACA Docket No. D-16-0184
)	
Respondent)	

DEFAULT DECISION AND ORDER

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) [PACA], and the regulations promulgated thereunder (7 C.F.R. §§ 46.1 through 46.45) [Regulations]. This proceeding was instituted by a Complaint filed on September 20, 2016 by the Associate Deputy Administrator, Specialty Crops Program, Agricultural Marketing Service [AMS], United States Department of Agriculture [USDA].

The Complaint alleges that Respondent, during the period May 2015 through September 2015, failed to make full payment promptly to eighteen (18) sellers in the total amount of \$2,600,701.25 for 413 lots of perishable agricultural commodities, as listed in Appendix A to the Complaint and incorporated therein by reference, which Respondent purchased, received, and accepted in interstate and foreign commerce.

The Complaint further alleges that Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) and that the failure of Respondent to pay sellers promptly, as more fully described in section 46.2(aa) of the Regulations (7 C.F.R. § 46.2(aa)), of the agreed purchase prices for perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

The Complaint requests that, pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)), the Chief Administrative Law Judge find that Respondent has willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order that the facts and circumstances of Respondent's violation be published.

The Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes [Rules of Practice], set forth at 7 C.F.R. § 1.130 *et seq.*, apply to adjudication of the instant matter. Pursuant to the Rules of Practice, Respondent was required to file an answer within twenty (20) days after service of the Complaint. 7 C.F.R. § 1.136(a). The Hearing Clerk's records reflect that Respondent has failed to file a timely answer to the Complaint.¹

On January 4, 2017, Complainant filed a "Motion for a Decision Without Hearing by Reason of Default" [Motion for Default] and a proposed "Decision Without Hearing by Reason of Default" [Proposed Decision]. As of this date, Respondent has not filed any objections thereto.²

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision. 7 C.F.R. § 1.136(c). As Respondent

¹ United States Postal Service records reflect that Dona Bearden signed for receipt of the Complaint on September 26, 2016. Respondent had twenty (20) days from the date of service to file a response. Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. §§ 1.147(g), (h). In this case, Respondent's answer was due by October 17, 2016. Respondent has not filed any pleadings as of this date.

² United States Postal Service records reflect that Dona Bearden signed for receipt of the Motion for Default and Proposed Decision on January 10, 2017. Respondent had twenty (20) days from the date of service to file objections to Complainant's Motion. 7 C.F.R. § 1.139. Weekends and federal holidays shall not be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. §§ 1.147(g), (h). In this case, Respondent's objections were due by January 30, 2017. Respondent has not filed any objections as of this date.

failed to file an answer within the time period prescribed in section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), this Decision and Order is issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent is or was a corporation organized and existing under the laws of the state of Florida. Respondent's business and mailing address is or was 675 Seminole Avenue, N.E., Suite 103, Atlanta, Georgia 30307-3411.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20110264 was issued to Respondent on January 11, 2011. The license terminated on January 11, 2016, 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. Respondent, during the period May 2015 through September 2015, on or about the dates in the transactions set forth in Appendix A to the Complaint, incorporated herein by reference, failed to make full payment promptly to eighteen (18) sellers for 413 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$2,600,701.25.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent's failure to pay sellers promptly, as more fully described in section 46.2(aa) of the Regulations (7 C.F.R. § 46.2(aa)), of the agreed purchase prices for perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

ORDER

1. The facts and circumstances of Respondent's violation shall be published.
2. This Order shall take effect on the day that this Decision becomes final.

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

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties with courtesy copies provided via email where available.

Done at Washington, D.C.,
this 22nd day of March, 2017



Bobbie J. McCartney
Chief Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building, Room 1031
1400 Independence Avenue, SW
Washington, D.C. 20250-9203
Tel: 202-720-4443
Fax: 202-720-9776