

USDA
OALJ/OHC

2017 JAN 30 PM 12:33

RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-16-0185
)	
Southern Melon Distributors, 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.*)(the Act or PACA), 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 April 2015 through June 2015, failed to make full payment promptly to three (3) sellers in the total amount of \$252,495.33 for 34 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 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 violations be published. The Complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By The Secretary (7 C.F.R. § 1.130 *et seq.*) (Rules of Practice), were served on Respondent by certified mail on September 26, 2016.

Respondent was duly served with the Complaint pursuant to section 1.147 (c) of the Rules of Practice and did not file an answer to the Complaint within the time period prescribed by section 1.136 (7 C.F.R. § 1.136) of those rules. Failure to file an answer constitutes an admission of the factual allegations in the Complaint. 7 C.F.R. § 1.136(c). Furthermore, the failure to file a timely answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. Therefore, the following Decision and Order is issued without further procedure or hearing pursuant to section 1.139 (7 C.F.R. § 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 Georgia. Respondent's business and mailing address is or was [REDACTED], [REDACTED]

2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20140573 was issued to Respondent on March 21, 2014. The license terminated on March 21, 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 April 2015 through June 2015, on or about the dates and in the transactions set forth in Appendix A to the Complaint, incorporated herein by reference, failed to make full payment promptly to three (3) sellers for 34 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$252,495.33.

Conclusions

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

The facts and circumstances of Respondent's violation shall be published.

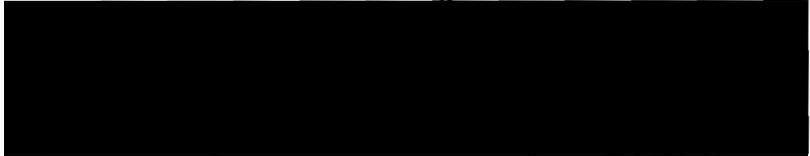
This Order shall take effect on the day that this Decision becomes final.

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.

this 30th day of January, 2017


Administrative Law Judge