

# UNITED STATES DEPARTMENT OF AGRICULTURE

## BEFORE THE SECRETARY OF AGRICULTURE

PACA Docket No. D-09-0095

In re: KALIL FRESH MARKETING, INC.  
d/b/a HOUSTON'S FINEST PRODUCE CO.

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 "PACA" or the "Act"), instituted by a complaint filed on April 9, 2009 by the Acting Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture.

The complaint alleges that during the period of October 2007 through February 2008, Kalil Fresh Marketing, Inc., doing business as Houston's Finest Produce Co, (hereinafter "Respondent"), failed to make full payment promptly to 55 sellers of the agreed purchase prices in the amount of \$1,617,014.93 for 645 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate commerce.

Respondent ceased business operations on January 28, 2008. Copies of the Complaint were served upon its three principals, as provided by 7 C.F.R. 1.147(c) (3) (ii).<sup>1</sup> John Kalil received the Complaint on April 17, 2009. Additionally, on April 16, 2009, Complainant spoke with counsel for Samuel Petro and Brian Herr and confirmed their receipt of the Complaint.

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<sup>1</sup> Service addresses are on file with the Hearing Clerk's Office. John Kalil is the 50% shareholder of the Respondent corporation and Samuel Petro and Brian Herr each own 25% of the Respondent's stock.

No answer to the Complaint was received. The time for filing an answer having expired, and upon motion of the Complainant for the issuance of a default decision, the following Decision and Order shall be issued without further investigation or hearing. (7 C.F.R.§ 1.139).

### **Findings of Fact**

1. Kalil Fresh Marketing Inc., doing business as Houston's Finest Produce Co. (herein "Respondent") is a corporation registered in the State of Texas. Respondent ceased business operations on January 28, 2008.

2. At all times material herein, Respondent was licensed or operating subject to license under the provisions of the PACA. License number 20011323 was issued to Respondent on August 17, 2001. This license terminated on August 17, 2008, 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 October 11, 2007, through February 17, 2008, failed to make full payment promptly to 55 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$1,617,014.93 for 645 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of, or in contemplation of, interstate and foreign commerce.

4. On January 29, 2008, 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 Southern District of Texas, Houston Division. The petition was designated Case No. 08-30350. Respondent, in its bankruptcy pleading and schedule, admitted that 52 of the 55 sellers listed in Finding of Fact 3 held unsecured claims for unpaid produce debt. Respondent's bankruptcy pleading admitted that it owed \$1,604,062.87 to the 52 sellers. The amounts admitted to be due to the 52 sellers were greater than or equal to the amounts alleged in paragraph III of the

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

### **Conclusions of Law**

1. The Secretary has jurisdiction in this matter.
2. Respondent's failure to make full payment promptly with respect to the 645 lots of perishable agricultural commodities set forth in Finding of Fact No. 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**

1. 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.
2. Pursuant to the Rules of Practice, this Decision will become final without further proceedings thirty-five 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).

A copy of this Decision and Order will be served on the parties.

Done at Washington, D.C.  
March 23, 2010

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**PETER M. DAVENPORT**  
Acting Chief Administrative Law Judge