

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

PACA Docket No. D-09-0163

In re: VINE RIPE TEXAS, 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 “PACA”), instituted by a Complaint filed on August 4, 2009, by the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture (hereinafter “Complainant”). The Complaint alleges that during the period March 10, 2008, through September 12, 2008, Respondent Vine Ripe Texas, Inc. (hereinafter “Respondent”), failed to make full payment promptly to 2 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$312,354.00 for 33 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of or in contemplation of interstate and foreign commerce.

A copy of the Complaint was served on Respondent’s president, Jack R. Goldstein, by certified mail on August 7, 2009. A copy of the Complaint was also served on Respondent’s secretary and treasurer, Donald S. Griffin, by certified mail on or about August 18, 2009.¹ Respondent failed to file an answer as prescribed by section 1.136 of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

¹ United States Postal Service Domestic Return Receipt for Article Number 7005 1160 0001 3560 1075 was stamped as received in Fort Myers, Florida on August 18, 2009. The return receipt was signed and returned to the Hearing Clerk, but it was undated.

(7 C.F.R. § 1.136; hereinafter “Rules of Practice”). Pursuant to section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)), Respondent’s failure to file an answer constitutes an admission of the allegations in the Complaint. The time for filing an answer having run, and upon the motion of 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. Vine Ripe Texas, Inc. (hereinafter “Respondent”), is a corporation organized and existing under the laws of the State of Texas. Its business and mailing address was 2305 Airline Drive, Suite A-B, Houston, Texas 77009-2423. Respondent ceased business operations on December 1, 2008. Respondent’s current mailing addresses are in the care of two of its principals, Jack R. Goldstein, Respondent’s president, in the State of Florida, and Donald S. Griffin, Respondent’s secretary and treasurer, in the State of Florida.

2. At all times material to this decision, Respondent was licensed under the provisions of the PACA. License number 2007-0377 was issued to Respondent on January 30, 2007. The license terminated on January 30, 2009, 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 March 10, 2008, through September 12, 2008, on or about the dates and in the transactions set forth below, failed to make full payment promptly to 2 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$312,354.00 for 33 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of or in contemplation of interstate and foreign commerce. This amount remained unpaid as of the date of the Complaint.

| Seller Name & Origin | No. of Transactions | Commodity | Date(s) Accepted | Date(s) Payment Due | Amount Unpaid |
|--|----------------------------|------------------|----------------------------|----------------------------|---------------------------|
| California Potato Sales, Inc. Edison, CA | 9 | Potatoes | 02/18/08 to 06/28/08 | 03/10/08 to 07/19/08 | \$75,247.50 |
| Sun Pacific Marketing Cooperative, Inc. Los Angeles, CA | 24 | Tomatoes | 07/08/08 to 09/02/08 | 07/18/08 to 09/12/08 | \$237,106.50 ¹ |
| 2 Sellers | 33 | | | | \$312,354.00 |

¹ On February 17, 2009, the United States District Court, Southern District of Texas, issued a Final Judgment and Permanent Injunction in case numbers 4:08-cv-03273 and 4:08-cv-03479 finding, among other things, that Sun Pacific Marketing Cooperative, Inc., was a valid trust beneficiary and entering judgment in its favor against Respondent and its principals, jointly and severally, for the full amount of its PACA claim. The district court awarded Sun Pacific Marketing Cooperative, Inc., \$237,106.50, the same amount that remains unpaid in the chart above.

Conclusions Of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent's failure to make full payment promptly to 2 sellers in the total amount of \$312,354.00 for 33 lots of perishable agricultural commodities as stated in Finding of Fact 3, 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

Respondent is found to have committed willful, flagrant, and repeated violations of section 2(4) of the PACA (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 30 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.
April 9, 2010

PETER M. DAVENPORT
Acting Chief Administrative Law Judge