

ORIGINAL

USDA  
OALJ/OHC

UNITED STATES DEPARTMENT OF AGRICULTURE 2010 DEC -8 PM 12: 55

BEFORE THE SECRETARY OF AGRICULTURE

RECEIVED

In re:

SK Foods, L.P.,

Respondent

)  
)  
)  
)  
)  
)

PACA Docket No. D-10-0111

Decision Without Hearing By Reason of Consent

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 ("Complaint") filed by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture, against SK Foods, L.P.

The Complaint alleged that SK Foods, L.P., during the period of May 26, 2008 through May 24, 2009, failed to make full payment promptly to 12 sellers of the agreed purchase prices in the total amount of \$594,705.96 for 46 lots of perishable agricultural commodities, which SK Foods, L.P., purchased, received, and accepted in interstate and foreign commerce.

A copy of the Complaint was served upon SK Foods, L.P. Appearing in place and stead of, and on behalf of the estate of SK Foods, L.P. (hereafter "Debtor"), is Bradley D. Sharp, duly appointed and acting Chapter 11 Trustee (hereafter, "Trustee") of the estate of SK Foods, L.P., in that certain Bankruptcy matter on file in the Eastern District of California and titled, *In re SK Foods, a California Limited Partnership, Debtor*, Case No. 09-29162-D-11, filed an answer thereto, denying liability, and asserting nine Affirmative Defenses. Complainant and Respondent have agreed, for the purpose of settling this proceeding and only for that purpose, to

the entry of a Decision Without Hearing by Reason of Consent as set forth herein. Therefore, this Decision Without Hearing by Reason of Consent is entered without further procedure or hearing pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (hereinafter, "Rules of Practice") (7 C.F.R. § 1.138).

#### Findings of Fact

1. SK Foods L.P., is a limited partnership organized and existing under the laws of the state of California. During all times material herein, its business address was 1175 S. 19<sup>th</sup> Avenue, Lemoore, California 93245.

2. At all times material herein, SK Foods L.P., was operating subject to the provisions of the PACA. SK Foods L.P., is not and has never been licensed under the PACA.

3. On May 5, 2009 involuntary petitions were filed under Chapter 11 of the Bankruptcy Code on behalf of SK Foods, L.P., in the Eastern District of California, and on May 7, 2009 voluntary petitions for relief were filed by Debtor under Chapter 11 of the Bankruptcy Code and the matter is captioned as *In re SK Foods L.P., a California Limited Partnership, Debtor*, 09-29162-D-11 (the "Bankruptcy Proceeding").

4. As a result of the filing of the petitions and subsequent sale of the Debtor's assets, the Debtor is no longer operating a business and has not been since July 7, 2009.

#### Conclusions

Respondent admits the jurisdictional allegations of the Complaint, neither admits nor denies the remaining allegations of the Complaint, and agrees to the following order as to the matters stated in the Complaint for the purpose of settling this proceeding and only for that

purpose.

Order

Respondent is found to have committed flagrant and repeated violations of section 2(4) of PACA (7 U.S.C. § 499b(4)) as stated in the Complaint, and the facts and circumstances surrounding the violations shall be published. This Order is without prejudice to that Order Establishing and Implementing Exclusive Procedures for Administering Prepetition PACA and California Producers Lien Claims, which was entered in the Bankruptcy Proceeding on September 2, 2009 [Docket No. 678], as amended [Docket No. 867], and the bar date for asserting PACA claims established under that Order. This Order shall not prejudice the Respondent's or the estate's rights or defenses in any private action or the Bankruptcy Proceeding, including, without limitation, the right to assert that a seller identified in the Complaint failed to preserve the PACA trust under section 5(c)(3) or (4) of PACA (7 U.S.C. §§499e(c)(3), (4)). Pursuant to section 1.138 of the Rules of Practice (7 C.F.R. § 1.138), this Decision will become final upon issuance.

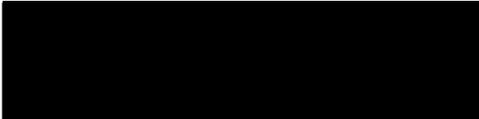
Copies hereof shall be served upon the parties.

  
for Robert C. Keeney  
Deputy Administrator  
Fruit and Vegetable Programs  
Agricultural Marketing Service

12/3/10  
Date signed

  
Christopher Young, Esq.  
Attorney for Complainant

11/15/10  
Date Signed



Kathryn N. Richter, Esq.  
Schnader, Harrison, Segal & Lewis, LLP  
Attorneys for Bradley D. Sharp  
Chapter 11 Trustee for the Estate of  
SK Foods, LP

11-16-10

Date Signed

Done at Washington, D.C.  
this 8<sup>th</sup> day of ~~November~~ December, 2010



Administrative Law Judge

for *Jud. S. Crifton*