

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-17-0010
)	
Northern Produce Mushroom, Inc.,)	
)	
Respondent)	Consent Decision and Order

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (PACA), which is conducted pursuant to the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*) (Rules or Rules of Practice).

On November 15, 2016, Complainant filed a Complaint alleging that Respondent, during the period December 2014 through September 2015, on or about the dates and in the transactions set forth in Appendix A to the Complaint, failed to make full payment promptly to thirteen (13) sellers for 673 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$422,177.32. The Respondent timely filed an Answer to the Complaint, in which it denied the allegations of the Complaint.

Complainant and Respondent now consent and agree, for the purpose of settling this matter, to the entry of this Consent Decision and Order, pursuant to section 1.138 of the Rules of Practice (7 C.F.R. § 1.138). Respondent admits that the Secretary has jurisdiction in this matter. The parties agree to the issuance of the following Consent Decision and Order without further procedure or hearing. Respondent specifically waives its right to any further process or procedure in this proceeding.

Findings of Fact

(a) Respondent is a corporation organized and existing under the laws of the state of California. Respondent's business and mailing address was [REDACTED],
[REDACTED]

(b) At all times material herein, Respondent was licensed under the provisions of the PACA. License number 19881991 was issued to Respondent on September 21, 1988. The license terminated on September 21, 2015, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

(c) The Complaint alleges an unpaid amount of \$422,177.32. Within 120 days of service of the Complaint in this matter, Respondent has paid all the produce debt alleged as unpaid in the transactions set forth in Appendix A to the Complaint.

Conclusions

Respondent failed to make full payment promptly¹ to thirteen (13) sellers for 673 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, during the period December 2014 through September 2015, on or about the dates and in the transactions set forth in Appendix A to the Complaint, in the total amount of \$422,177.32. Respondent's failure to make full payment of all of the undisputed produce debt described above until March 2017 constitutes slow payment and not prompt payment under the Act and regulations.

¹ "Full payment promptly" is defined and more fully described in section 46.2(aa) of the regulations (7 C.F.R. § 46.2(aa)).

Order

A finding is made that Respondent has committed repeated and flagrant violations of section 2(4) of the PACA (7 U.S.C. §499b(4)) and Respondent is ordered to pay a civil penalty in lieu of license suspension in the amount of \$40,000.00.

However, the finding of violation shall be held in abeyance so long as Respondent pays a civil penalty of \$40,000.00 no later than 30 days after the effective date of this Consent Decision and Order, or no later than April 21, 2017, whichever occurs first. Payment shall be made by certified check or bank check made payable to the "United States Treasury" and delivered to the United States Department of Agriculture, PACA Division, 1400 Independence Avenue, S.W. Room 1510 South Bldg., Stop 0242 Washington, D.C. 20250-0242.

Should Respondent fail to pay the \$40,000 civil penalty within the time prescribed above, the finding of flagrant and repeated violation ordered above and any responsibly connected sanction that flows therefrom, will take effect without further process or procedure five (5) days after Respondent receives notice from the Associate Deputy Administrator of AMS indicating that Respondent has violated the terms of this Order. Should Respondent satisfy the terms of the Order, the finding of violation ordered above will be permanently abated without further process or procedure and the case will be effectively closed.

This Consent Decision and Order is effective upon issuance.

[Redacted]

Jason Klinowski, Esq.
Attorney for Respondent

[Redacted]

Shelton S. Smallwood, Esq.
Attorney for Complainant

Issued at Washington, D.C.

this 21st day of March, 2017

[Redacted]

Chief Administrative Law Judge