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UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

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In re:

) PACA Docket No. D-10-0453

)
)
)
) Tropical Banana Company, Inc.,

)
)
) Respondent

) 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.*) (PACA) and the regulations issued thereunder (7 C.F.R. Part 46) (the regulations), instituted by a Complaint filed on September 29, 2010, by the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture.

The Complaint alleged that during the period of August 19, 2008 to April 6, 2009, Respondent failed to make full payment promptly to 16 sellers of the agreed purchase prices, or the balance of those prices, in the total amount of \$746,696.15 for 281 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in the course of, or in contemplation of, interstate or foreign commerce.

The Complaint requested 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 be published.

Respondent and Complainant have now agreed to the entry of a Decision Without Hearing by Reason of Consent as to these allegations 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 (7 C.F.R. § 1.130 *et seq.*) (Rules of Practice).

Findings of Fact.

1. Tropical Banana Company, Inc., (hereinafter "Respondent"), is a corporation registered in the State of Massachusetts. Respondent's business address was 350 Beacham Street, Chelsea, Massachusetts, 02150. Respondent ceased business operations on April 23, 2009.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 19113118 was issued to Respondent on March 22, 1948. The license terminated on March 22, 2009, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a), when Respondent failed to pay the required annual fee.

3. During the period August 19, 2008 through April 6, 2009 on or about the dates set forth in the Complaint, Respondent failed to make full payment promptly to 16 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$746,696.15 for 281 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of, or in contemplation of, interstate or foreign commerce.

Conclusion

Respondent admits the jurisdictional allegations in paragraph II of the Complaint and specifically admits that the Secretary has jurisdiction in this matter, and neither admits or denies the remaining allegations of the Complaint. Respondent waives oral hearing and further procedure, and consents to the entry of the following order.

Order

Respondent is found to have engaged in willful, repeated and flagrant violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) for failing to make full payment promptly of the agreed purchase prices for the perishable agricultural commodities that Respondent purchased, received, and accepted in the course of, or in contemplation of, interstate or foreign commerce, and orders that the facts and circumstances be published.

This Order shall become final upon issuance.

Copies of this Order shall be served upon the parties.

Done at Washington, D.C.

this 7th day of January, 2010

[Redacted signature]

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[Redacted signature]

Norman Novinsky
Attorney for Respondent

[Redacted signature]

Brian Sylvester
Attorney for Complainant

[Redacted signature]

Administrative Law Judge

Robert C. Keeney
Deputy Administrator
Fruit and Vegetables Program
Agricultural Marketing Service