

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0099

In re: Babaluci Fresh Fruit & Vegetables, LLC,

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 or the Act), instituted by a Complaint filed on December 21, 2010, 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 of September 29, 2009 through December 28, 2009, Babaluci Fresh Fruit & Vegetables LLC (Respondent) failed to make full payment promptly to one seller of the agreed purchase price in the amount of \$1,773,200.42 for 68 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of, or in contemplation of, interstate commerce.

A copy of the Complaint was sent to Respondent and Marco Squeiros, the sole member and 100 percent shareholder of Respondent by certified mail on December 21, 2010.<sup>1</sup> The Complaint contained allegations identical to the findings of fact, *infra*, and advised Respondent that an Answer must be filed with the Hearing Clerk within 20 days after receipt of the Complaint, and that “[f]ailure to file an answer shall constitute an admission of all the material allegations of this Complaint . . .” (Complaint at 3).

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<sup>1</sup> The Complaint was delivered to Respondent on December 24, 2010.

In addition, the letter from the Hearing Clerk serving a copy of the Complaint on Respondent expressly and accurately advised Respondent of the effect of failure to file an Answer or plead specifically to any allegation of the Complaint. After Respondent failed to answer the Complaint within 20 days, the Hearing Clerk notified Respondent by a letter dated January 13, 2011, that an Answer had not been timely filed. The Complainant has filed a Motion for the issuance of a Decision Without Hearing by Reason of Default, which will be granted and the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

#### **Findings of Fact**

1. Babaluci Fresh Fruit & Vegetables, LLC is a limited liability company organized and existing under the laws of Arizona, with a business address in Tucson, Arizona.
2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 2009-0145 was issued to Respondent on November 19, 2008. The license terminated on November 19, 2010, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual fee.
3. Respondent, during the period of September 29, 2009 through December 28, 2009, failed to make full payment promptly to one seller of the agreed purchase prices, or balances thereof, in the total amount of \$1,773,200.42 for 68 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate commerce.

#### **Conclusions of Law**

1. The Secretary has jurisdiction in this matter.

2. Respondent's failure to make full payment promptly with respect to the Findings of Fact in paragraph 3 above constitutes willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

**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, as a result, the facts and circumstances of this matter 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).

April 1, 2011

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