

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 09-0066

In re: Tran21*, Inc.,
d/b/a 7th International Trading and
d/b/a Super 7 International Trade Co.

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.*)(“PACA”), instituted by a Complaint filed on February 27, 2009, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint was followed by an Amended Complaint, filed on March 18, 2009, to correct a typographical error.

The Amended Complaint filed herein alleged that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA by failing to make full payment promptly to 16 sellers for purchases of 324 lots of perishable agricultural commodities in the course of interstate and foreign commerce in the amount of \$645,586.61 during the period May 11, 2007 through September 1, 2007. The Amended Complaint sought the issuance of an order finding that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA, and publication thereof.¹

¹ The Amended Complaint further alleged that Respondent is not, and has not ever been, licensed under the PACA; at all times material herein, however, Respondent operated as a dealer subject to the Act.

Respondent professed confusion, and reported a change in its representation. In any event, a copy of the Amended Complaint was served upon Respondent on or before July 13, 2009, and Respondent filed an Answer in which it disclaimed responsibility for its failure to make full payment promptly, while not directly denying that failure.

A followup investigation indicated that as of February 12, 2010, an amount of at least \$589,058.31, due to 13 sellers, remained unpaid.² Citing the results of that investigation and Respondent's ambiguous response to the allegations in the Amended Complaint, Complainant filed a motion requesting an Order Requiring Respondent To Show Cause Why a Decision Without Hearing Should Not Be Issued against Respondent due to its failure to make full and prompt payment for produce purchases, in willful, flagrant and repeated violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

² Of the 16 produce creditors listed in the Complaint and Amended Complaint, one (1) creditor was paid in full after the filing of the Amended Complaint, and investigators were unable to contact two (2) of the sellers alleged to have been unpaid a total amount of \$22,884.30.

Complainant cited to the Department's policy set forth in *In re Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 548-549 (1998), which states that when a complaint is filed alleging the failure to make full payment promptly under the PACA, if the Respondent is not in full compliance with the PACA within 120 days after the complaint is served upon the Respondent or the date of the hearing, whichever occurs first, the case will be treated as a "no pay" case for which the sanction is license revocation. Complainant moved for the issuance of an order requiring Respondent to demonstrate that it made full payment of the \$645,586.61 which the Amended Complaint alleges Respondent owed to 16 produce sellers, by November 10, 2009. Complainant further moved that, should Respondent fail to demonstrate that it made full payment of the \$645,586.61 by November 17, 2009, a Decision Without Hearing should be issued, finding that Respondent has committed willful, flagrant and repeated violations of section 2(4) of the PACA, and ordering that the facts and circumstances of Respondent's violations be published.³

Pursuant to the Department's policy set forth in the *Scamcorp* decision, I issued an Order Requiring Respondent To Show Cause Why a Decision Without Hearing Should Not Be Issued on September 9, 2010, allowing Respondent 30 days from the date of service of the Order to demonstrate that it made full payment of \$645,586.61 owed to 16 sellers, as alleged in the complaint, by November 10, 2009. Respondent has failed to respond to the Order.

³ Since Respondent was not and is not licensed under the PACA, but was operating subject to the Act at all times material herein, the appropriate sanction pursuant to the authority provided in section 8 of the Act (7 U.S.C. § 499h) is publication of the facts and circumstances of Respondent's violations.

Accordingly, this case will be treated as a “no pay” case under the policy set forth in *Scamcorp* decision.

Findings of Fact

1. Respondent is a corporation organized and existing under the laws of the State of California. Respondent ceased operating by late November, 2007. Its business address was 620 S. Hacienda Boulevard, City of Industry, CA 91745. Respondent’s current mailing address is 13861 Brookhurst St., Garden Grove, CA 92843.

2. Respondent is not now, and has not ever been, licensed under the PACA. At all times material herein, Respondent operated as a dealer subject to the Act because it purchased produce in interstate and foreign commerce in wholesale quantities for resale through Respondent’s affiliated grocery stores, for restaurants, and for retail customers.

3. As set forth in paragraph III and specified in Attachment A of the Complaint, during the period May 11, 2007 through September 1, 2007, Respondent failed to make full payment promptly of the agreed purchase price for 324 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate commerce from 16 sellers, in the total amount of \$643,943.61. A followup investigation indicated that as of December 9, 2008, an amount of \$610,290.61 due to 15 of these sellers remained unpaid.

Conclusions of Law

1. The Secretary has jurisdiction over Respondent and the subject matter involved herein. 2. Respondent’s failure to make full payment promptly to 16 sellers in the total amount of \$643,943.61 for 324 lots of perishable agricultural commodities, as described in Finding of

Fact No. 4 above, constitutes willful, repeated and flagrant violations of section 2(4) of the Act (7 U.S.C. § 499b(4)).

Order

1. Respondent has committed willful, flagrant and repeated violations of section 2(4) of the Act (7 U.S.C. 499b), and the facts and circumstances of the violations shall be published.

2. This order shall take effect on the 11th day after this Decision becomes final.

3. Pursuant to the Rules of Practice, 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 and 1.145).

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk.

April 21, 2011

PETER M. DAVENPORT
Chief Administrative Law Judge