

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

In re: Del CAMPO, INC.,) Docket No. 11-0202
 Respondent)

**DECISION WITHOUT HEARING BY ENTRY
OF DEFAULT AGAINST RESPONDENT**

Preliminary Statement

The instant matter involves a disciplinary proceeding under the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. §§499a et seq. (the Act). The proceeding was instituted by a Complaint filed by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service of the U.S. Department of Agriculture (USDA).

Procedural History

On April 20, 2011, USDA filed a Complaint with the Hearing Clerk, Office of Administrative Law Judges (OALJ), charging Del Campo, Inc., (Respondent) with violations of the Act. The Hearing Clerk attempted to serve the Complaint on Respondent at the following addresses: 1100 71 Plaza Court, Suite 11, Springdale, Arkansas, 72764 and P.O. Box 1850, Springdale, Arkansas, 72764. The Complaint was also served upon respondent’s President, Ruben Cantu, on April 21, 2011 by certified mail. All of the mail was returned as “unclaimed”, and on May 17, 2011, the Hearing Clerk sent a copy of the Complaint to all known addresses by regular mail. The Hearing Clerk advised Respondent that pursuant to the Rules of Practice applicable to adjudications before OALJ (the Rules), Respondent was required to file a formal Answer to the Complaint by not later than twenty days from the receipt of the correspondence, pursuant to 7 C.F.R. § 1.136. Respondent did not respond to the mailings, and none of the correspondence served on Respondent was returned as undeliverable.

The case was assigned to me, and by Order issued June 9, 2011, I directed the parties to show cause in writing within twenty days why default should not be entered against Respondent for failure to timely file an Answer to the Complaint. On June 20, 2011, Complainant filed a motion for Default Decision, pursuant to 7 C.F.R. § 1.139. Respondent has failed to file objections as required by 7 C.F.R. § 1.139, and did not respond to my Order to show cause.

Discussion

Pursuant to 7 C.F.R. § 1.136(c), the failure to file an answer within the time frame set forth by 7 C.F.R. § 1.136(a) constitutes an admission of the allegations in the Complaint, and the failure to deny or otherwise respond to an allegation of the Complaint shall be deemed an admission of the allegation. In such instances, the entry of default against a Respondent is appropriate. In addition, pursuant to 7 C.F.R. § 1.139, the failure to file an answer constitutes a waiver of a hearing on the Complaint. If no objection to a motion for entry of proposed decision is filed by Respondent, “the Judge shall issue a decision without further procedure or hearing.” 7 C.F.R. § 1.139.

In the instant matter, no answer was filed, nor did Respondent file an objection to Complainant’s motion for entry of a decision on the record. Accordingly, I find it appropriate to enter default, pursuant to 7 C.F.R. § 1.136.

Findings of Fact

- 1.) Del Campo, Inc. is a corporation incorporated and existing under the laws of Arkansas. Respondent’s business address was 1100 71 Plaza Court, Suite 11, Springdale, Arkansas, 72764. Respondent also maintained a business address at P.O. Box 1850, Springdale, Arkansas, 72764. The company is out of business and the Respondent’s current mailing address is the home address of Respondent’s president and registered agent, Reuben Cantu.

- 2.) At all times material herein, Respondent was operating subject to license under the provisions of the Act.
- 3.) Respondent never held a valid license issued by USDA.
- 4.) During the period from April 10, 2009 through October 21, 2010, on or about the dates set forth in Appendix A attached hereto and incorporated herein by reference, Respondent failed to make full payment promptly to nine (9) sellers of the agreed purchase prices, or the balance of those prices, in the total amount of \$478,162.25 for forty-seven (47) lots of perishable agricultural commodities which Respondent purchased, received and accepted in the course of interstate and foreign commerce.
- 5.) On June 17, 2010, Respondent filed a voluntary Petition, designated Case No. 10-73141, pursuant to Chapter 11 of Bankruptcy Code in the United States Bankruptcy Court for the Western District of Arkansas.
- 6.) Respondent's bankruptcy petition was converted to Chapter 7 on December 8, 2010, and its creditors included the nine (9) produce sellers listed in Appendix A.

Conclusions of Law

By reason of the facts alleged in paragraphs 1 through 6, supra., Respondent has willfully, flagrantly and repeatedly violated section 2(4) of the Act (7 U.S.C. § 499b(4) and its prevailing regulations set forth at 7 C.F.R. § 46.2(aa).

ORDER

The facts and circumstances underlying this Decision and Order shall be published.

This Decision shall become final and effective without further proceedings 35 days after the date of service upon Respondent, unless it is appealed to the Judicial Officer by a party to the proceeding within thirty (30) days, pursuant to the Rules, 7 C.F.R. §1.145.

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

So ORDERED this _____ day of July, 2011 at Washington, D.C.

Janice K. Bullard
Administrative Law Judge