

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0216

In re: Dutchie Boy Produce, Inc.,

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 or the Act), instituted by a Complaint filed on May 5, 2011, by the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture (Complainant). The Complaint alleges that during the period of July 18, 2009 through January 9, 2010, Respondent failed to make full payment promptly to 15 sellers of the agreed purchase prices, or the balance of those prices, in the total amount of \$150,772.00 for 88 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate or foreign commerce.

A copy of the Complaint was sent to Respondent's President, William DeVuono, by certified mail on May 5, 2011 and by regular mail on June 1, 2011.¹ Both the Complaint and 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

¹ The Complaint was originally mailed to Respondent via certified mail on May 5, 2011 (delivery receipt number 7009 1680 0001 9851 9381); however, the complaint was returned as unclaimed to the U.S. Department of Agriculture, Office of the Hearing Clerk on May 27, 2011.

any allegation of the Complaint. Respondent, nevertheless, failed to answer the Complaint within twenty (20) days.

Accordingly, upon the motion of Complainant for the issuance of a Decision Without Hearing by Reason of Default, 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. Dutchie Boy Produce, Inc. is a corporation incorporated and existing under the laws of the state of New Jersey. Respondent's business address is in Springfield Township, New Jersey. Respondent is no longer in business.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 2002 0437 was issued to Respondent on December 18, 2001. The license terminated on January 6, 2011, 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 July 18, 2009 through January 9, 2010, failed to make full payment promptly to 15 sellers of the agreed purchase prices, or the balance of those prices, in the total amount of \$150,772.00 for 88 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. Respondent committed willful, flagrant and repeated violations of section 2 of the Act (7 U.S.C. § 499b(4)). As a result, the facts and circumstances of this matter shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

2. This Decision will become final without further proceedings thirty-five (35) 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).

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

October 14, 2011

Peter M. Davenport
Chief Administrative Law Judge