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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	PACA Docket No. D-11-0323
)	
Richard Vega,)	
)	
)	
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; Regulations). The proceeding was initiated by a Complaint filed against Richard Vega (Respondent) on July 19, 2011, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, pursuant to 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). On August 10, 2011, Respondent filed an Answer denying the allegations listed in the Complaint.

The parties have now agreed to the entry of a Decision Without Hearing by Reason of Consent 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) applicable to this proceeding (7 C.F.R. §1.138).

Findings Of Fact

(1) Respondent Richard Vega is an individual who has been involved with various produce businesses, including Miami Best Tropical Enterprise Inc., and United Fruit and

Vegetables, LLC (and United Fruits and Vegetables, Inc). Respondent's current mailing address is a home address, and will not be stated in this complaint to protect his privacy, but will be provided to the Hearing Clerk's Office, United States Department of Agriculture, for the purposes of service of this complaint.

(2) On March 4, 2009, the PACA Branch of the AMS received a license application from United Fruits and Vegetables, Inc., in Miami Florida. The license application listed Respondent as 100% stockholder of the company, and the application was signed by Respondent. The license application was returned by the PACA Branch to the Respondent as incomplete on March 17, 2009, and the PACA Branch requested additional information for completion.

(3) On January 9, 2009, there was a change in ownership of PACA licensee Miami Best Tropical Enterprise, Inc. Respondent filed this change in ownership with the Florida Secretary of State in April 2009, to reflect that Respondent was the 100% owner. On August 18, 2009, Respondent informed the PACA Branch National License Center via fax that there was a change in ownership on the existing PACA license (#20070621) of Miami Best Tropical Enterprise, Inc., and that Respondent was 100% stockholder of the company.

(4) On August 21, 2009, the PACA Branch suspended the license of Miami Best Tropical Enterprise, Inc., due to an unpaid reparation award, pursuant to 7 U.S.C. §499g(d). The PACA also informed Richard Vega that as 100% owner of the company and based on his involvement with the company, he was considered by the PACA Branch to be responsibly connected to Miami Best Tropical Enterprise, Inc., and that he was therefore subject to employment sanctions under section 8(b)(3) of the PACA (7 U.S.C. §499h(b)(3)). Respondent did not contest this determination, therefore, it became the PACA Branch's final determination.

Respondent's employment restrictions under section 8(b)(3) of the PACA began as of August 21, 2009.

(5) On September 3, 2009, the PACA Branch met with Respondent and he stated that Miami Best Tropical Enterprise, Inc. was no longer operating, that he was no longer 100 % owner of United Fruits and Vegetables, Inc., and that Diana Bacallao was "running" United Fruits and Vegetables, Inc.

(6) On September 11, 2009, the PACA Branch of the AMS received a second license application from United Fruit and Vegetables, LLC, in Miami Florida. The license application listed Diane Bacallao as the only principal of the company with a title of "Registered Agent". The application was signed by Mrs. Bacallao. The license application was returned by the PACA Branch as incomplete on September 18, 2009, and the PACA Branch requested additional information for completion. A completed application was never submitted by United Fruits and Vegetables, Inc or by United Fruit and Vegetable, LLC.

(7) An investigation conducted by the PACA Branch between May 10, 2010 and May 15, 2010 determined that Respondent was employed by or was affiliated with United Fruit and Vegetables, Inc./LLC, during the period in which 1) United Fruit and Vegetables, Inc./LLC operated subject to the Act¹; and 2) Respondent was subject to employment restrictions under section 8(b)(3) of the PACA (7 U.S.C. §499h(b)(3)).

(8) Section 8b of the PACA (7 U.S.C. §§ 499h(b)) states that the Secretary may extend the period of employment sanction as to a responsibly connected person for an additional one-year period upon the determination that the person has been unlawfully employed.

¹ The investigation disclosed that United Fruit and Vegetables, Inc./LLC operated subject to the Act without a valid PACA license.

Conclusions

Respondent failed to comply with the PACA employment sanction, which began on August 21, 2009, by being employed by United Fruit and Vegetables, Inc./LLC, a company operating subject to the PACA, during the period in which employment restrictions of Respondent were in effect under section 8(b)(3) of the PACA (7 U.S.C. §499h(b)(3)). The failure of Respondent to comply with the employment and licensing restrictions under the PACA warrants the extension of an additional year of employment sanctions pursuant to section 8(b) of the Act (7 U.S.C. §499h(b)).

The parties have agreed that Respondent's employment and licensing restrictions shall be extended for one year pursuant to section 8(b) of the PACA, beginning upon the effective date of this Consent Decision. After the one year period, the PACA Branch may approve Respondent's employment with a PACA licensee or entity operating subject to the PACA, if the licensee or entity furnishes and maintains a surety bond in form and amount satisfactory to the PACA Branch as assurance that the licensee or entity will pay all reparation awards, subject to their right of appeal under 7(c) of the Act, which may be issued against them in connection with transactions occurring within four years following the approval.

Order

Respondent willfully violated section 8(b) of the PACA (7 U.S.C. §499h(b)). Respondent's employment and licensing restrictions under Section 8(b) of the PACA (7 U.S.C. §499h(b)) are hereby extended for a period of one year. The Administrative Law Judge will retain jurisdiction over this case pending any final motions by the parties.

This Order shall become final upon issuance. Copies of this Order shall be served upon the parties.

Done at Washington, D.C.

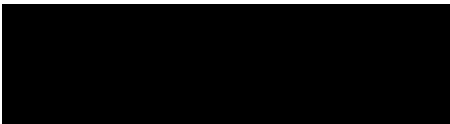
this 9 day of Dec, 2011

Jill S. Clifton
Administrative Law Judge

12/8/11
Date signed

11-16-11
Date Signed

12-1-11
Date Signed



Charles W. Parrott
Associate Deputy Administrator
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Agricultural Marketing Service



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Richard Vega
Respondent