

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
Grand Mart, Inc.,)	PACA Docket No. D-12-0056
Min S. Kang)	
and)	
Man S. Kang)	
)	
Grand Mart, International Food, LLC,)	PACA Docket No. D-12-0059
Min S. Kang)	
and)	
Man S. Kang)	
)	
Lucky World Gaithersburg, Inc.,)	PACA Docket No. D-12-0062
Min S. Kang)	
and)	
Man S. Kang)	
)	
Man Min, Inc.,)	PACA Docket No. D-12-0065
Min S. Kang)	
and)	
Man S. Kang)	
)	
Grand Mart 7, Inc.,)	PACA Docket No. D-12-0069
Min S. Kang)	
and)	
Man S. Kang)	
)	
Respondents)	

CONSENT DECISION AND ORDER

This proceeding involves five related and consolidated disciplinary Complaints under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.)(PACA). Each of the five Complaints (“PACA Complaints”) alleged that Respondents Min Kang and Man Kang (“Individual Respondents”) failed to comply with PACA employment sanctions, which began as of March 9, 2011, by being employed by Respondents Grand Mart, Inc. (“Respondent

Grand Mart, Inc.”), Grand Mart International Food, LLC (“Respondent Grand Mart International”), Lucky World Gaithersburg, Inc. (“Respondent Lucky World”), Man Min, Inc. (“Respondent Man Min”), and Grand Mart 7, Inc. (“Respondent Grand Mart 7”) (also referred to collectively as “Corporate Respondents,” the Corporate Respondents and Individual Respondents are collectively referred to as the “Respondents”), all PACA licensees, during the period in which employment restrictions were in effect under section 8(b)(3) of the PACA (7 U.S.C. §499h(b)(3)).

The PACA Complaints further alleged that Corporate Respondents Grand Mart, Grand Mart International, Lucky World, Man Min, and Grand Mart 7 have unlawfully employed or been affiliated with Respondent Min Kang and Respondent Man Kang during the period of their employment sanctions, after being given notice by the PACA Division that pursuant to the employment restrictions of section 8(b) of the PACA (7 U.S.C. §499h(b)), Corporate Respondents were not permitted to employ Individual Respondents Min Kang or Man Kang after March 9, 2011, without the approval of the Secretary and the posting of a surety bond.

The PACA Complaints sought the issuance of an order finding that individual Respondents Min Kang and Man Kang willfully violated section 8(b) of the PACA (7 U.S.C. §499h(b)), and that Corporate Respondents Grand Mart, Grand Mart International, Lucky World, Man Min, and Grand Mart 7 willfully violated section 8(b) of the PACA (7 U.S.C. §499h(b)). The Complaints requested that the Administrative Law Judge find that pursuant to section 8(b) of the PACA (7 U.S.C. §499h(b)):

(a) Individual Respondents Min Kang and Man Kang have been unlawfully employed by Corporate Respondents and extend the period of Individual Respondents’ employment restrictions for an additional year, and publish such finding; and

(b) Corporate Respondents have unlawfully employed individual Respondents Min Kang and Man Kang while they were under employment sanctions, and revoke Corporate Respondents' PACA licenses.

In each of the five above-captioned cases, the PACA Complaint was served upon Respondents, and Respondents submitted a timely answer to the PACA Complaints.

The parties in each of the five PACA Complaints have now agreed to the entry of this consent decision and order ("Consent Decision and Order") as set forth herein. Therefore, this Consent Decision and Order 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

Respondent Grand Mart, Inc.

(1) Respondent Grand Mart, Inc., is a corporation whose business address is listed with the PACA Division of the Agricultural Marketing Service (the "PACA Division") as 6255 Little River Turnpike, Alexandria, VA 22312-1715.

(2) At all times material herein, Respondent Grand Mart, Inc. was licensed under the provisions of the PACA. License number 20071014 was issued to Respondent Grand Mart, Inc. on June 21, 2007, and has been renewed annually. The license is scheduled for renewal on June 21, 2013.

Respondent Grand Mart International Food, LLC.

(1) Respondent Grand Mart International is a limited liability company whose business address is listed with the PACA Division as 46900 Cedar Lake Plaza, Suite 150, Sterling, VA 20164-8677.

(2) At all times material herein, Respondent Grand Mart International was licensed under the provisions of the PACA. License number 20080276 was issued to Respondent Grand Mart International on December 11, 2007, and has been renewed annually. The license is scheduled for renewal on December 11, 2013.

Lucky World Gaithersburg, Inc.

(1) Respondent Lucky World is a corporation whose business address is listed with the PACA Division as 221 Muddy Branch Road, Gaithersburg, MD 20878-1002.

(2) At all times material herein, Respondent Lucky World was licensed under the provisions of the PACA. License number 20070629 was issued to Respondent Lucky World on March 26, 2007, and has been renewed annually. The license is scheduled for renewal on March 26, 2013.

Man Min, Inc.

(1) Respondent Man Min is a corporation whose business address is listed with the PACA Division as 5900 Centreville Crest Lane, Centreville, VA 20121-2341.

(2) At all times material herein, Respondent Man Min was licensed under the provisions of the PACA. License number 20070631 was issued to Respondent Man Min on March 26, 2007, and has been renewed annually. The license is scheduled for renewal on March 26, 2013.

Grand Mart 7, Inc.

(1) Respondent Grand Mart 7 is a corporation whose business address is listed with the PACA Division as 5326 Arlington Blvd., Falls Church, VA 22044-2013.

(2) At all times material herein, Respondent Grand Mart 7 was licensed under the provisions of the PACA. License number 20070630 was issued to Respondent Grand Mart 7 on March 26, 2007, and has been renewed annually. The license is scheduled for renewal on March 26, 2013.

MS Grand, Inc. and Bankruptcy Court Consent Order

(1) MS Grand, Inc. is a corporation organized and existing under the laws of the state of Maryland. Its business mailing address is 4800 Walden Lane, Lanham, Maryland 20706-4884. The Respondent ceased selling produce on or about October 22, 2010.

(2) At all times material herein, MS Grand, Inc. was licensed under the provisions of the PACA. Pursuant to the licensing provisions of the PACA, license number 20040308 was issued to Respondent on January 9, 2004. This license has been renewed annually pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)).

(3) During the period August 2009 through October 2010, Respondent purchased, received, and accepted, in interstate and foreign commerce, from various sellers, (the "PACA Creditors"), perishable agricultural commodities, and failed to make full payment promptly of the agreed purchase prices, in the total amount of \$4,120,968.84. An administrative Consent Decision regarding this failure to pay was entered on January 11, 2012, in PACA Docket No. D-11-0296 ("PACA Administrative Consent Decision").

(4) On October 19, 2010 (the "Petition Date"), Min Sik Kang and Man Sun Kang (collectively, the "Kangs") filed with the United States Bankruptcy Court for the Eastern District

of Virginia, Alexandria Division (the "Bankruptcy Court"), a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing the above-captioned chapter 11 case.

(5) On October 19, 2010, MS Grand, Inc. ("MS Grand" and, together with the Kangs, the "Debtors"), which is wholly owned by the Kangs, filed for bankruptcy in the United States Bankruptcy Court for the District of Maryland. On December 17, 2010, an order was entered transferring the MS Grand case to the Bankruptcy Court.

(6) On or about March 23, 2011, the Bankruptcy Court entered the Final Amended Order for PACA Claims Procedure (the Final Amended Order for PACA Claims Procedure, including any subsequent amendments or modifications by agreement of the PACA Creditors and MS Grand or by appropriate order of the Bankruptcy Court) ("PACA Consent Order"), which provides, among other things, a "framework for entry of an orderly procedure to review, qualify, and satisfy any and all claims pursuant to the PACA, against MS Grand, and its principals Min Sik Kang and Man Sun Kang to maximize the recovery for all unpaid beneficiaries of the PACA trust, and to ensure the rights of all potential claimants are efficiently addressed." The PACA Consent Order further provides numerous protections for the benefit of the PACA Creditors in the event that the Respondent defaults and fails to timely cure such default.

(7) On or about April 7, 2011, the Bankruptcy Court entered the Consent Order Authorizing and Directing the Appointment of Examiner with Expanded Powers (the "Examiner Order"), which among other things, conveyed to the Examiner powers of a trustee appointed pursuant to Section 1104(a) of the Bankruptcy Code and made the Examiner the responsible party of, among other things, the Debtors' Subsidiaries (as defined below). Thereafter, on April

21, 2011, this Court entered the Order Approving Appointment of Chapter 11 Examiner, which, among other things, appointed Neil H. Demchick as the Examiner.

(8) Pursuant to paragraph 4(H) of the Examiner Order, the Examiner is vested with, among other things, the authority “[a]fter such consultation with the Debtors and the Committee as the Examiner deems appropriate under the circumstances, to make all business and legal decisions, to manage, and to exercise control over, all corporations and limited liability companies that are owned directly or indirectly by any of the Debtors (collectively, the ‘Subsidiaries’), to the same extent that the Debtors have the right and ability to exercise such control under applicable non-bankruptcy law.”

(9) On October 27, 2010, prior to the transfer of the MS Grand case to this Court, M&M Packaging filed two identical proofs of claim, reflected as proof of claim no. 5 and proof of claim no. 42 on the MS Grand claims register, asserting identical and duplicative unsecured claims in the total amount of \$61,968.47 (individually referred to as the “Claim,” or collectively referred to as the “Claims”). The basis for each Claim is a default reparation award (the “Reparation Award”) issued by a judicial officer with the United States Department of Agriculture (“USDA”) pursuant to an action by M&M Packaging against MS Grand under PACA. M&M Packaging attached to the Claims the Reparation Award, a number of invoices from M&M Packaging to MS Grand, and a spreadsheet calculating the total amount due.

(10) During the Examiner’s review of the Claims, the Examiner determined that the Claims were overstated and should be reduced to credit payments received by M&M Packaging on account of the invoices underlying the Reparation Award and properly account for prejudgment interest. Accordingly, the Examiner objected to the Claims and requested that the

Bankruptcy Court enter an order finding that Claim No. 5 was overstated and requesting that it be reduced to credit \$22,000.00 in payments by MS Grand to M&M Packaging on account of the invoices underlying the Reparation Award; and to properly account for prejudgment interest awarded by the Reparation Award.

(11) On or about April 27, 2012, the Bankruptcy Court entered an order, among other things, determining that Claim No. 5 was overstated by M&M Packaging by \$24,728.57, and determining that such Claim had been partially satisfied by MS Grand as a result of MS Grand's payments to M&M Packaging in the amount of \$22,000.00. Claim No. 5 was allowed by the Bankruptcy Court in the amount of \$37,239.90 (the "Order Denying In Part Claim No.5").

(12) On or about May 9, 2012, the Bankruptcy Court entered an order, among other things, disallowing and expunging Claim No. 42 because it is a duplicate of Claim No. 5.

Conclusions

At this time, the parties herein agree to enter into a Consent Decision which, similar to that in PACA Docket No. D-11-0296, is contingent upon satisfaction of the terms of the Bankruptcy Court PACA Consent Order. In this case, the Consent Decision is also contingent upon satisfaction of the Reparation Award (in the reduced amount as referenced in the Bankruptcy Court's Order Denying In Part Claim No. 5), which resulted in MS Grand, Inc.'s PACA license suspension under section 7(d) of the PACA for failure to pay a reparation award, (7 U.S.C. §499g(d)), and which precipitated the five above-captioned disciplinary cases. The Reparation Award shall be deemed satisfied once payment is presented in the reduced amount (\$37,239.00) as referenced in the Bankruptcy Court's Order Denying In Part Claim No. 5 to either undersigned counsel for Complainant or M&M Packaging, Inc.

Individual Respondents Min Kang and Man Kang willfully violated section 8(b) of the PACA (7 U.S.C. §499h(b)) by being employed or affiliated with corporate Respondents while Individual Respondents were under employment sanctions. Corporate Respondents Grand Mart, Grand Mart International, Lucky World, Man Min, and Grand Mart 7 willfully violated section 8(b) of the PACA (7 U.S.C. §499h(b)) by unlawfully employing or affiliating with Individual Respondents Min Kang and Man Kang while Individual Respondents were under employment sanctions.

Order

A finding is issued that Individual Respondents and Corporate Respondents have violated section 8(b) of the PACA (7 U.S.C. §499h(b)). Individual Respondents' employment sanctions under 8(b) are extended for one year, and each of Corporate Respondents' PACA licenses are revoked. However, this finding, the extension of Individual Respondents' employment sanctions and the revocation of Corporate Respondents' PACA licenses shall be held in abeyance and stayed so long as: 1) the Reparation Award is satisfied (in the reduced amount as referenced in the Bankruptcy Court's Order Denying In Part Claim No. 5); and 2) Respondent in PACA Docket No. D-11-0296 (MS Grand, Inc.) complies with the terms of the PACA Consent Order. As referenced above, the Reparation Award shall be deemed satisfied once the payment is presented in the reduced amount (\$37,239.00) as referenced in the Bankruptcy Court's Order Denying In Part Claim No. 5 to either undersigned counsel for Complainant or M&M Packaging, Inc.

In the event that the Reparation Award is not satisfied as referenced in the Conclusions section above, then the finding relating to violations of section 8(b) of the PACA, as stated in the

Conclusions section above, and the extension of Individual Respondents' employment sanctions and the revocation of Corporate Respondents' PACA licenses, will no longer be held in abeyance or stayed, and will take effect without further proceeding, other than a Motion from Complainant requesting that the finding and order of extensions and revocations no longer be held in abeyance.

In the event that the PACA Creditors' claims are not satisfied pursuant to, and in accordance with, the PACA Consent Order, then the finding relating to violations of section 8(b) of the PACA, as stated in the Conclusions section above, and the extension of Individual Respondents' employment sanctions and the revocation of Corporate Respondents' PACA licenses will no longer be held in abeyance or stayed, and will take effect without further proceeding, other than a Motion from Complainant requesting that the finding and order of extensions and revocations no longer be held in abeyance.

In the event that the Respondent in PACA Docket No. D-11-0296 (MS Grand, Inc.) defaults with respect to the monthly payments due pursuant to the PACA Consent Order, and such default is not timely cured in accordance with the PACA Consent Order, then the finding relating to violations of section 8(b) of the PACA, as stated in the Conclusions section above, and the extension of Individual Respondents' employment sanctions and the revocation of Corporate Respondents' PACA licenses will no longer be held in abeyance and will take effect without further proceeding, other than a Motion from Complainant requesting that the finding and order of extensions and revocations no longer be held in abeyance. It will be at the discretion of the PACA Division and Complainant to file said Motion at any time following the Respondent MS Grand's uncured default of the PACA Consent Order.

Notwithstanding the preceding paragraph, upon the failure of Respondent in PACA Docket No. D-11-0296 (MS Grand, Inc.) to timely cure any monetary default pursuant to the PACA Consent Order, the revocation of the Corporate Respondents' PACA licenses shall continue to be held in abeyance (and PACA shall not take any action to revoke Corporate Respondents' PACA licenses) for a period of not less than ninety (90) days after the expiration of the cure period referenced in the PACA Consent Order (which ninety (90) day period may be extended by agreement of the Complainant and Respondents or order of the Bankruptcy Court) (the "Cure Period"), during which period the Corporate Respondents may seek to: (a) cure any monetary default under the PACA Consent Order (by agreement with the PACA Creditors or through an order of the Bankruptcy Court), (b) modify, alter or amend the terms of the PACA Consent Order (by agreement with the PACA Creditors or by order of the Bankruptcy Court) or enter into an agreement with the PACA Creditors that replaces the PACA Consent Order. In the event that the Respondents perform either (a) or (b) above within the Cure Period, any default of the PACA Consent Order shall be deemed timely cured and the revocation of the Corporate Respondents' PACA licenses shall continue to be held in abeyance as if no default has occurred.

The Secretary of Agriculture, PACA Division, has determined that the amount of the surety bond that would be required to permit the Corporate Respondents to continue to employ or be affiliated with the Individual Respondents shall be \$50,000.00 per Individual Respondent, for a total surety bond amount of \$100,000.00 (the "Surety Bond"). In the event that the Corporate Respondents elect to obtain the Surety Bond (in addition to or lieu of curing any monetary default of the PACA Consent Order) to continue to employ or be affiliated with the Individual Respondents, to the extent that the Surety Bond is obtained within the Cure Period, the

revocation of the Corporate Respondents' PACA licenses shall continue to be held in abeyance as if no default has occurred (notwithstanding any failure of MS Grand or the Corporate Respondents to cure any default under the PACA Consent Order), and such abeyance shall continue for as long as the Surety Bond remains in affect.

Notwithstanding anything herein, nothing herein shall preclude any of the Corporate Respondents from obtaining the Surety Bond to continue to employ or be affiliated with the Individual Respondents at any time prior to a default by MS Grand related to the PACA Consent Order. In the event that the Corporate Respondents elect to obtain the Surety Bond to continue to employ or be affiliated with the Individual Respondents, the revocation of the Corporate Respondents' PACA licenses shall continue to be held in abeyance notwithstanding any subsequent default by MS Grand under the PACA Consent Order, and such abeyance shall continue for as long as the Surety Bond remains in affect.

The provisions referenced in this Consent Decision and Order are intended only to affect the rights of the Complainant and the above-captioned Respondents and nothing herein is intended to modify, alter or amend any of the rights of the PACA Creditors under the terms of the PACA Consent Order, including, without limitation, the right to seek entry of a permanent injunction against MS Grand and its related and subsidiary companies upon a default which is not timely cured in accordance with the PACA Consent Order.

In the event that the PACA Consent Order, subsequent to the entry of this Consent Decision and Order, is amended or modified in any respect by agreement between the PACA Creditors and MS Grand or through appropriate order of the Bankruptcy Court, such modification or amendment shall not constitute a default under this Consent Decision and Order,

so long as that modification includes a provision for full satisfaction of the claims of the PACA Creditors.

The PACA Division of the Agricultural Marketing Service shall be the final arbiter of whether the claims of the PACA Creditors have been satisfied (in accordance with the PACA Consent Order). In the event of a dispute, it will be Respondents' obligation to demonstrate that such claims have been satisfied. If and when the PACA Creditors' claims are satisfied pursuant to the PACA Consent Order or, alternatively, if the Corporate Respondents have obtained the Surety Bond and such bond requirements have been satisfied in accordance with PACA or by agreement of the Complainant and the Respondents (such that the Surety Bond is no longer required), the finding of violations of section 8(b) of the PACA by Individual Respondents and Corporate Respondents will be permanently abated, and the Corporate Respondents' PACA licenses, at that time, shall be deemed valid.

Individual Respondents and Corporate Respondents waive all further proceeding in this matter.

This Consent Decision and Order shall become final upon issuance.

Copies hereof shall be served upon parties.

[Redacted]

Charles W. Parrott
Associate Deputy Administrator
Fruit and Vegetable Program
Agricultural Marketing Service

8/29/12
Date signed

[Redacted]

Attorney for Complainant

8/21/12
Date signed

Jonathan Gold, Esq.
Attorney for Respondent/Examiner

Date Signed

Sign: [Redacted]
Print: [Redacted]
For Respondent/Examiner

8/23/2012
Date Signed

Done at Washington, D.C.

this 25th day of August 2012

[Redacted]

Peter M. Davenport
Chief Administrative Law Judge