

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0443
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In re: Custom Cuts, Inc.,
and
Custom Cuts Fresh, LLC

Decision and Order

Preliminary Statement

This is a disciplinary proceeding brought pursuant to the provisions of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (PACA), the Regulations promulgated pursuant to the PACA (7 C.F.R. §§ 46.1 through 46.45), and the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By the Secretary (7 C.F.R. §§ 1.130 through 1.151).

Complainant, Fruit and Vegetable Programs, Agricultural Marketing Service, initiated this proceeding against Custom Cuts, Inc. (CCI) by filing a disciplinary Complaint on May 21, 2012, alleging that Respondent CCI willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to 2 sellers of produce it purchased, received and accepted, and seeking that the facts and circumstances of the violations be published. Complainant also initiated this proceeding against Custom Cuts Fresh, LLC (CCF) alleging that Respondent CCF willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to 8 sellers of produce it purchased, received and accepted, and

seeking that the facts and circumstances of the violations be published. Respondents filed a timely Answer to the Complaint.

In response to Respondents' Answer, Complainant moved for a decision without hearing based on admissions pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Complainant made its motion based on admissions of fact that Respondents have made in their Answer to the Complaint. As Respondents' Answer admits a majority of the material allegations of the Complaint, no hearing is warranted in this matter.

The Complaint alleges that Respondent CCI willfully violated the Act by failing to make full payment promptly to 2 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$217,127.84 for 30 lots of perishable agricultural commodities. The two sellers were identified as Sun Coast Farms and Harvest Food Group in Appendix A of the Complaint. Respondent CCI denies it failed to make full payment promptly to Sun Coast Farms. In its Answer, Respondent CCI claims that "Sun Coast Farms was a minor vendor to CCI from 7/20/08 thru 10/10/08 and all outstanding invoices were paid. This is the first I have ever heard of any money owed to Sun Coast Farms. If they claim funds are owed, I have never seen proof of such." (Answer, p. 1.) Respondent CCI did not however, deny it failed to make full payment promptly to Harvest Food Group in the amount owed of \$9,899.25 as listed in Appendix A of the Complaint. Having failed to deny this material allegation of the Complaint and having offered no defense to this material allegation of the Complaint regarding Harvest Food Group, Respondent CCI has implicitly admitted that it failed to make full payment promptly and still owes the amount stated in the Appendix A as it relates to Harvest Food Group.

The Complaint alleges that Respondent CCF willfully violated the Act by failing to make full payment promptly to 8 sellers of the agreed purchase prices, or balances thereof, in the total

amount of \$976,398.92 for 144 lots of perishable agricultural commodities. Respondent CCF admits that “[t]he balance of \$976,398.92 owed to the other eight suppliers to CCF is, I believe, sufficiently covered by funds held at the law firm of Beck, Cheat, Bamberger, and Polsky in Milwaukee.” (Answer, p. 1.) Additionally, Respondent CCF states “[t]o the best of my knowledge there is sufficient funds to pay the outstanding claims.” (*Id.*) Respondent CCF does not deny that it failed to make full payment promptly of the amount alleged in the Complaint and offers no defense to this material allegation of the Complaint. Rather, Respondent CCF merely directs Complainant as to where such admittedly owed amount may be collected.

Findings of Fact

1. Respondent CCI was a corporation organized and existing under the laws of the State of Wisconsin, with its last known business and mailing address in Milwaukee, Wisconsin. Respondent CCI is out of business.
2. At all times material herein, Respondent CCI was licensed under the provisions of the PACA. License No. 1999 0535 was issued to Respondent CCI on February 11, 1999. The license terminated on December 14, 2009, when Respondent CCI formed a new business entity.
3. Respondent CCI, during the period September 15, 2009 through September 25, 2009, on or about the dates and in the transactions set forth in Appendix A and incorporated herein by reference, failed to make full payment promptly to a seller of the agreed purchase prices, or balances thereof, in the total amount of \$9,899.25 for one lot of perishable agricultural commodities, which Respondent CCI, purchased in the course of interstate and foreign commerce.¹

¹ Although Appendix A of the Complaint identifies 2 sellers, Sun Coast Farms and Harvest Food Group, Respondent CCI denied failing to make full payment promptly only as to Sun Coast Farms. CCI’s transactions with Sun Coast Farms involved 29 lots of produce in the total amount of \$207,228.59.

4. Respondent CCF was a limited liability company organized and existing under the laws of the State of Wisconsin with its last known business and mailing address in Milwaukee, Wisconsin. Respondent CCF is out of business.

5. At all times material herein, Respondent CCF was licensed under the provisions of the PACA. License No. 2010 0322 was issued to Respondent CCF on December 14, 2009. The license was suspended on October 7, 2011, for failure to pay a reparation award pursuant to section 7(d) of the PACA (7 U.S.C. § 499g(d)). The license terminated on December 14, 2011, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

6. Respondent CCF, during the period November 21, 2010, through July 24, 2011, on or about the dates and in the transactions set forth in Appendix B and incorporated herein by reference, failed to make full payment promptly to 8 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$976,398.92 for 144 lots of perishable agricultural commodities, which Respondent CCF, purchased in the course of interstate and foreign commerce.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondents willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Order

1. The facts and circumstances of the violations found herein shall be published.
2. This order shall take effect on the day that this Decision becomes final.

3. Pursuant to the Rules of Practice governing procedures under the Act, 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 shall be served upon the parties.

September 25, 2012

Peter M. Davenport
Chief Administrative Law Judge