

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0011

In re: Market 52, Inc.

Respondent

Default 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 Program, Agricultural Marketing Service, initiated this proceeding against Market 52, Inc. (Respondent) by filing a disciplinary Complaint on October 4, 2012, alleging that Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to 9 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$842,429.81 for 48 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of or in contemplation of interstate and foreign commerce. The Complaint alleges the violations occurred in commerce between July 23, 2011, and November 11, 2011 on or about the dates and in the transactions set forth in Appendix A to the Complaint, incorporated herein by reference. The Complaint requested that an Administrative Law Judge find that Respondent has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), and

order that the facts and circumstances of those violations be published.

As Respondent failed to answer the Complaint, the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 (7 C.F.R. § 1.139) of the Rules of Practice.

Findings of Fact

1. Market 52, Inc., (Respondent), is a corporation organized and existing under the laws of the state of California with a business address in Kingsburg, California. Respondent is out of business and the Complaint was served on Respondent's attorney.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License No. 2011 1238 was issued to Respondent on July 29, 2011. This license status was changed to Active with Bankruptcy on January 27, 2012, and terminated on July 29, 2012, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)) when Respondent failed to submit the required annual renewal fee.

3. Respondent, during the period July 23, 2011, through November 11, 2011, on or about the dates and in the transactions set forth in Appendix A of the Complaint and incorporated herein by reference, failed to make full payment promptly to 9 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$842,429.81 for 48 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce.

4. On January 27, 2012, Respondent filed a Voluntary Petition pursuant to Chapter 11 of the Bankruptcy Code (11 U.S.C. §701 et seq.) in the United States Bankruptcy Court for the Eastern District of California. The petition was designated Case No. 12-10694. Respondent admitted in

its Schedule F that all 9 of the sellers listed in Appendix A, hold unsecured claims for unpaid produce debt totaling \$839,096.34.¹

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent willfully, flagrantly and repeatedly violated section 2(4) of the Act (7 U.S.C. § 499b(4)).

Order

1. The facts and circumstances of the violations shall be published.
2. Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceeding 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 and Order shall be served upon the parties.

March 8, 2013

Peter M. Davenport
Chief Administrative Law Judge

¹ The amount of claims listed on the Schedule F for four of the nine sellers is less than the amount listed in Appendix A to the Complaint. The Schedule F was attached to the Complaint as Attachment A. Complainant, pursuant to section 1.141(h)(6) of the Rules of Practice (7 C.F.R. § 1.141(h)(6)), respectfully requested that the ALJ take official notice of that court record.