

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0469

In re: Delicias Produce Co., Inc.

Respondent

Decision and Order Without Hearing

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 Respondent Delicias Produce Co., Inc. by filing a Complaint on June 13, 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 15 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$519,883.71 for 62 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of or in contemplation of interstate and/or foreign commerce. The Complaint alleges the violations occurred in commerce between September 15, 2010, and July 18, 2011 on or about the dates and in the transactions set forth in Appendix A to the Complaint, incorporated herein by reference.

On January 17, 2013, I issued an Order requiring Respondent to demonstrate it made full

payment of \$519,883.71 owed to 15 sellers, as alleged in the Complaint, by October 18, 2012. In that Order, I informed Respondent that if it failed to provide such evidence, this case would be treated as a “no pay” case and that a Decision Without Hearing would be issued finding that it had committed willful, flagrant and repeated violations of section 2(4) of the PACA, and ordering that Respondent’s violations be published. Respondent failed to respond to the Order. The time for responding to my January 17, 2013 Order having passed, and upon the motion of Complainant for the issuance of a Decision Without Hearing, the following decision and order is issued without further procedure or hearing.

Findings of Fact

1. Respondent is a corporation incorporated and existing under the laws of the State of Tennessee.
2. At all times material herein, Respondent operated subject to the licensing requirements of the PACA. License No. 2007 1245 was issued to Respondent on August 28, 2007. This license terminated on August 28, 2010, 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 of September 15, 2010, through July 18, 2011, on or about the dates and in the transactions set forth in Appendix A attached the Complaint and incorporated herein by reference, failed to make full payment promptly to 15 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$519,883.71 for 62 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and/or foreign commerce.

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. 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.

April 9, 2013

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge