

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0218

In re: Liborio Markets #10, Inc.,

Respondent

Default Decision and Order

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.)(the Act or PACA), instituted by a Complaint filed on April 19, 2013, by the Associate Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA).

The Complaint filed by Complainant alleges that Respondent, during the period October 22, 2009 through December 20, 2011, failed to make full payment promptly to thirteen (13) sellers of the agreed purchase prices in the total amount of \$425,599.83 for 377 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in interstate and foreign commerce in willful violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

The Complaint was mailed to Respondent by certified mail on May 1, 2013, but was returned as being “unclaimed.” Respondent was then served pursuant to the Rules of Practice by regular mail on May 23, 2013.

As Respondent failed to file an answer to the Complaint within the 20 day time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings Of Fact

1. Respondent Liborio Markets #10, Inc. is a corporation organized and existing under the laws of the state of California with a business address formerly in Westminster, Colorado. Respondent is no longer operating and the Complaint was served at the company's last known mailing address and on its president and director.
2. At all times material herein, Respondent was licensed under the provisions of the PACA. License No. 2009 0709 was issued to Respondent on April 30, 2009, and is next scheduled for renewal on April 30, 2015.
3. Respondent, during the period October 22, 2009 through December 20, 2011, failed to make full payment promptly of the agreed purchase prices, or balances thereof, for 377 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce from thirteen (13) sellers, in the total amount of \$425,599.83.

Conclusions of Law

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

Order

1. The facts and circumstances of Respondent's violations 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 hereof shall be served upon parties.

August 21, 2013

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge