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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	AWA Docket No. 16-0117
	)	
Ontario Produce, LLC,	)	
	)	
Respondent.	)	DECISION AND ORDER

This proceeding was instituted under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. § 601 et seq.)("Act"), by a complaint filed by the Administrator of the Agricultural Marketing Service (AMS), alleging that Ontario Produce, LLC ("respondent") violated the Act and the rules and regulations promulgated under the Act. Respondent has failed to file a timely answer.

On June 16, 2016, the Administrator of AMS filed a complaint alleging the respondent had failed to remit $11,508.36 of assessments which were due under 7 C.F.R. Part 958, Onions Grown in Certain Designated Counties in Idaho and Malheur County, Oregon ("Onion Order"), which itself was issued pursuant to the Act. The Office of the Hearing Clerk (OHC) effected service of the complaint on the respondent, pursuant to 7 C.F.R. § 1.147(c)(1). Specifically, OHC served respondent on June 20, 2016, at the address of its registered agent, David Melina, 649 Amity Road, Suite #203, Bethany, Connecticut 06524, and delivery of the complaint appears to be signed for by said agent. Pursuant to section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)), respondent was required to file an answer to the complaint within 20 days of service. The 20th day after service was July 10, 2016. As that date falls on a Sunday, respondent had until June 11, 2016 to answer the complaint, in accordance with 7 C.F.R. § 1.147(h). The respondent did not file an answer by that date, or at all. Consequently, the material facts alleged in the complaint are admitted by the respondent's failure to file an answer and are adopted and set forth herein as Findings of Fact and Conclusions of Law. This decision and order is issued pursuant to section 1.139 of the Rules of

Practice.

FINDINGS OF FACT

1. Ontario Produce, LLC is a limited liability company whose principal place of business at all times relevant to this complaint was 41 Village Lane, Bethany, Connecticut 06524. The registered agent for service of process is David Melina, whose address is 649 Amity Road, Suite #203, Bethany, Connecticut 06524.

2. The respondent, at all times material herein, was operating as a "handler" of onions as defined in section 958.6 of the Onion Order (7 C.F.R. § 958.6).

3. The rate of assessment on onions handled from July 1, 2005 until June 30, 2015 was $0.10 per hundredweight of onions (70 Fed. Reg. 51,578 (August 31, 2005)). Only after this time was the assessment rate lowered to $0.05 per hundredweight of onions (7 C.F.R. § 958.240).

4. From November 2013 through January 2014, the respondent accrued $15,344.50 in assessments under the Onion Order which was not paid in a timely fashion. Specifically, the respondent failed to pay $5,577.90 in assessments accrued during the month of November 2013, $7,304.40 in the month of December 2013 and $2,462.20 in the month of January 2014.

5. The Respondent, through its President, David Melina, signed an agreement in October of 2014 obligating itself to make monthly payments to the Idaho-Eastern Oregon Onion Committee on the unpaid assessments that had accrued from November 2013 to January 2014, with such payments to be completed over the course of twelve months.

6. The Respondent made two payments under the agreement (one of which was doubled in amount), but has failed to remit the final nine payments, totaling $11,508.36.

7. The Respondent, having failed to pay the full amount of assessments due on onions that it handled from November 2013 through January 2014, is in violation of the Onion Order.

See 7 C.F.R. § 958.42. Each day that the Respondent fails to remit the assessments due constitutes a separate violation of the Act, for which a civil penalty applies. 7 U.S.C. § 608c(14)(B).

CONCLUSIONS OF LAW

1. The Onion Order requires that handlers of onions in the designated area pay an assessment on the onions handled, pursuant to a rate established by the Secretary (7 C.F.R. §§ 958.42, 958.240).

2. The respondent was a handler as defined by 7 C.F.R. § 958.6, and was therefore subject to regulation under the Onion Order.

3. The respondent acknowledged and reaffirmed the obligation to pay the unpaid assessments by the act of signing an agreement in October 2014, which specified the payment terms for the $15,344.50 balance owed to the Idaho-Eastern Oregon Onion Committee (of which $11,508.36 remains unpaid).

4. Pursuant to 7 U.S.C. § 608c(14)(B) respondent may be assessed a civil penalty not exceeding $1,000 for each violation, with each day constituting a separate violation.[1]

5. Calculating a civil penalty beginning March 1, 2014 (one month after the respondent's failure to fully pay assessments for the 3rd consecutive month) and ending on June 16, 2016 (when this action was filed), results in a maximum allowable civil penalty of $746,900, excepting the dates between October 20, 2014 and March 27, 2015 during which respondent was under a repayment agreement prior to their breach of that agreement on March 28, 2015.

ORDER

1. Respondent shall immediately remit the $11,508.36 of unpaid assessments to the

[1] Pursuant to the Federal Civil Penalties Inflation Act of 1990 (Pub. L. 101-410), as amended, rulemaking was undertaken (75 FR 17555, 17558, August 7, 2010) which raised the maximum civil penalty that could be assessed per violation to $1,100. This newer amount is codified at 7 C.F.R. § 3.91(b)(1)(vii).

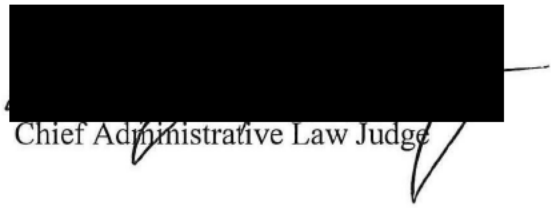
Idaho-Eastern Oregon Onion Committee.

2. Respondent shall remit $746,900 in civil penalties for the 679 days which it was in violation of the Order, made payable to the Treasurer of the United States.

3. Respondent shall cease-and-desist from failing to timely pay assessments due under the Act and the Onion Order.

The provisions of this order shall become effective on the first day after this decision becomes final. This decision becomes final without further proceedings 35 days after service as provided in sections 1.142 and 1.145 of the Rules of Practice. Copies of this decision shall be served upon the parties.

Done at Washington, D.C.
this 31st day of Oct, 2016



Chief Administrative Law Judge