

original

USDA
OALJ/OHC

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

2017 JUL 31 AM 11:09

RECEIVED

In re:)	PACA Docket No. D-16-0147
)	
Yuqing (Henry) Wang,)	
)	
Respondent)	Consent Decision and Order

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (PACA), which is conducted pursuant to the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*) (Rules or Rules of Practice).

On August 16, 2016, Complainant filed a Complaint alleging that Respondent failed to comply with his PACA employment sanction and restrictions, which began on June 18, 2014, by being unlawfully employed by and affiliated with Hop Hing Produces Inc. (Hop Hing), a PACA licensee, between at least July 2014 through September 2015, during the period in which employment restrictions were in effect under Section 8(b) of the PACA (7 U.S.C. §499h(b)).

On September 30, 2016, Respondent filed a timely answer admitting in part and denying in part the allegations of the Complaint and requesting an oral hearing. An oral hearing was held on July 12, 2017, wherein after Complainant and Respondent made statements on the record¹, a finding was made that Respondent violated the Act by being unlawfully employed by and affiliated with Hop Hing. Complainant and Respondent have consented and agreed on the record at hearing, and memorialize that agreement in the instant document, to the entry of a Decision

¹ A hearing in its entirety was not conducted; the parties made statements and placed a Consent agreement on the record, which Judge Strother, in effect, based on the statements made by the parties, ratified in a finding and order on the record.

Without Hearing by Reason of Consent, pursuant to section 1.138 of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary governing this proceeding (7 C.F.R. §1.138). Respondent specifically waives its right to any further process or procedure.

Pertinent Statutory Provisions

Section 8(b) of the PACA (7 U.S.C. §499h(b)) provides:

Except with the approval of the Secretary, no licensee shall employ any person, or any person who is or has been responsibly connected with any person –

* * * *

- (1) whose license has been revoked or is currently suspended by order of the Secretary;*
- (2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or*

(3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 7(c) (3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 7(c).

The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 2, if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the Secretary as assurance that such licensee's business will be conducted in accordance with this Act and that the licensee will pay all reparation awards, subject to its right of appeal under section 7(c), which may be issued against it in connection with transactions occurring within four years following the approval. The Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary order. The Secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond. A licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and if the licensee fails to do so the approval of employment shall automatically terminate. The Secretary may, after thirty days' notice and an opportunity for a hearing, suspend or revoke the license of any licensee who, after the date given in such notice, continues to employ any person in violation of this section. The Secretary may extend the period of employment sanction as to a responsibly connected person for an additional one-year period upon the determination that the person has been unlawfully employed as provided in this subsection.

Section 1 of the PACA (7 U.S.C. §499a(10)) provides:

The terms "employ" and "employment" mean any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment.

Findings of Fact

1. Respondent is an individual whose mailing address, upon information and belief, is a home address, and will not be stated here to protect Respondent's privacy.

2. On March 12, 2012, the PACA Branch of the Agricultural Marketing Service (AMS) made an initial determination that Respondent was responsibly connected to Amersino Marketing Group, LLC (Amersino) and Southeast Produce Limited USA (Southeast), when a PACA disciplinary complaint against Amersino and Southeast was filed alleging that they violated section 2(4) of the PACA by failing to make full payment promptly for produce purchased, received, and accepted in interstate commerce. The AMS informed Respondent of the initial determination and the administrative disciplinary Complaint by letter dated March 12, 2012. Respondent was further informed that the initial determination, if not contested, would become the final determination.

3. Respondent did not contest the March 12, 2012 responsibly connected determination. On July 17, 2012, a Decision and Order was issued finding that Amersino and Southeast willfully, flagrantly, and repeatedly violated section 2(4) of the PACA by failing to make full payment promptly for produce purchased, received, and accepted in interstate commerce in the amount of \$429,031.50.

4. Amersino and Southeast appealed the Decision and Order to the Department's Judicial Officer (JO) on August 27, 2012. On April 18, 2014, the JO issued a Decision and Order affirming the July 17, 2012 Decision and Order. Amersino and Southeast did not appeal

the JO's Decision and Order, and it became final and effective on June 18, 2014. Respondent's responsibly connected employment restrictions under section 8(b) of the PACA (7 U.S.C. §499h(b)) began as of that date.

5. On October 6, 2014, the AMS advised Respondent that he was still under employment and licensing restrictions and could not be employed by or affiliated with another PACA licensee, in any capacity, for a period of two years from June 18, 2014 without the approval of the Secretary of Agriculture and the posting of a suitable surety bond.²

6. Hop Hing is a corporation whose business and mailing address is listed with the AMS as 58-45 47th Street, Maspeth, New York 11378-2106. At all times material herein, Hop Hing was licensed under the provisions of the PACA. License number 2010-1374 was issued to Hop Hing on September 30, 2010. This license is currently active.

7. An investigation conducted by the AMS in September 2015 determined that Respondent was employed by or affiliated with Hop Hing, as defined by the PACA, from at least July of 2014 through September of 2015.

Conclusions

Respondent failed to comply with the PACA employment sanction, which began on June 18, 2014, by being employed by Hop Hing, a PACA licensee, between at least July of 2014 through September of 2015, during the period in which employment restrictions were in effect under Section 8(b) of the PACA (7 U.S.C. §499h(b)).

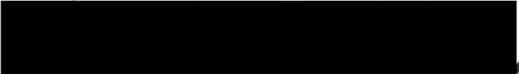
²Beginning June 18, 2014, Respondent was prohibited, *inter alia*, from being employed by or affiliated with a PACA licensee in any capacity for a period of two years, until June 18, 2016. Respondent was *eligible* to be employed after one year from the June 18, 2014 date that the employment sanctions went into effect, provided that Respondent sought and obtained the approval of AMS, and posted a surety bond in form and amount satisfactory to AMS. (7 U.S.C. §499h(b)). No such approval was sought by Respondent or Hop Hing.

Order

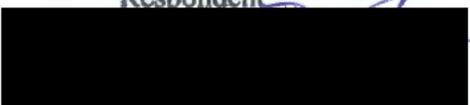
Respondent violated Section 8(b) of the PACA (7 U.S.C. §499h(b)), by failing to comply with employment restrictions imposed under section 8(b) of the Act. Pursuant to Section 8(b) of the PACA (7 U.S.C. §499h(b)), Respondent's employment restrictions are extended for an additional one year from the date ordered at the July 12, 2017 hearing in this matter; specifically, from July 12, 2017 through July 11, 2018.

Issued at Washington, D.C.

This 31st day of July, 2017


Channing D. Strother
Administrative Law Judge


Yuqiag (Henry) Wang
Respondent


Christopher Young
Attorney for Complainant

