

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Lucas Trading Company, LLC,) PACA Docket No. D-17-0264
)
Respondent)

DECISION WITHOUT HEARING BY REASON OF DEFAULT

Appearances:

Shelton S. Smallwood, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington D.C. 20250, for the Complainant, Agricultural Marketing Service (AMS); and

Respondent Lucas Trading Company, LLC, pro se.

Preliminary Statement

This is a disciplinary proceeding brought pursuant to 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) (“Regulations”), and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) (“Rules of Practice”).

Complainant, Specialty Crops Program, Agricultural Marketing Service, initiated this proceeding against Lucas Trading Company, LLC (“Respondent”) by filing a disciplinary complaint on June 16, 2017, 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 eighteen (18) sellers of the agreed purchase prices, or balances thereof, in the total amount of \$656,325.27 for seventy-six (76) lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce. The Complaint alleges the violations occurred in

commerce during the period of May 2015 and September 2016, on or about the dates and in the transactions set forth in Appendix A to the Complaint, incorporated herein by reference.

The Complaint requests that I find that Respondent has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) and that I order that the facts and circumstances of the violations be published.

Respondent was duly served with the Complaint and did not file an answer within the twenty-day time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).¹ On August 8, 2017, Complainant filed a Motion for Decision Without Hearing by Reason of Default (“Motion for Default”) and Proposed Decision Without Hearing by Reason of Default (“Proposed Decision”). Respondent has not filed any objections thereto.²

As Respondent failed to file an answer within the twenty-day time period prescribed by the Rules of Practice, and upon motion of Complainant for issuance of a decision without hearing by reason of default, the following Decision and Order is issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

¹ United States Postal Service records reflect that a copy of the Complaint was sent via certified mail and delivered to Respondent’s owner of record on June 26, 2017. Respondent had twenty (20) days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. §§ 1.147(g), (h). In this case, Respondent’s answer was due by July 17, 2017. Respondent did not file an answer on or before that date. Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision. 7 C.F.R. § 1.136(c). Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely filed answer where, as in the present case, no meritorious objections have been filed. 7 C.F.R. § 1.139; *see infra* note 2.

² United States Postal Service records reflect that the Motion for Default and Proposed Decision were delivered to Respondent’s owner of record on August 14, 2017. Respondent had twenty (20) days from the date of service to file objections to Complainant’s motion. 7 C.F.R. § 1.139. Weekends and federal holidays shall not be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. §§ 1.147(g), (h). In this case, Respondent’s objections were due by September 5, 2017. Respondent has not filed any objections.

Findings of Fact

1. Respondent is or was a corporation organized and existing under the laws of the State of Missouri. Respondent's mailing address is or was P.O. Box 280, St. Louis, Missouri 63338. The Complaint was served upon Respondent's 100% owner of record, Charles B. Lucas.³
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20100750 was issued to Respondent on April 21, 2010. This license terminated on November 4, 2016, for failure to pay reparation awards, pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)). On April 21, 2017, the license was terminated pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)) when Respondent failed to pay the required annual renewal fee.
3. Respondent, during the period May 2015 through September 2016, on or about the dates and in the transactions set forth in Appendix A, attached hereto and incorporated by reference, failed to make full payment promptly to eighteen (18) sellers for seventy-six (76) lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce, in the total amount of \$656,325.27. Although Respondent is licensed as a "broker," it occasionally, as in the transactions herein, acts as a "dealer" as that term is defined in the Regulations (7 C.F.R. § 46.2).

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent's failure to make full payment promptly with respect to the seventy-six (76) transactions referenced in Finding of Fact No. 3 above, and set forth in Appendix A to the

³ Mr. Lucas's address is withheld from this Decision and Order to protect his personal information and privacy. The address was provided to the Hearing Clerk's Office for service purposes.

Complaint, constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), for which the below Order is issued.

ORDER

1. A finding is made that Respondent has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).
2. It is hereby ORDERED that the facts and circumstances of these violations be published.

This Decision and Order shall be final and effective without further proceedings thirty-five (35) days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (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 by the Hearing Clerk upon each of the parties, with courtesy copies provided via email where available.

Done at Washington, D.C.,
this 17th day of October, 2017


Bobbie J. McCartney
Chief Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building, Room 1031
1400 Independence Avenue, SW
Washington, D.C. 20250-9203
Tel: 202-720-4443
Fax: 202-720-9776
SM.OHA.HearingClerks@OHA.USDA.GOV

APPENDIX A

| Seller's Name | No. Lots | Commodity | Dates Accepted | Dates Payment Due | Amounts Past Due & Unpaid |
|---|----------|-----------|----------------------------|----------------------------|---------------------------|
| 1 Anthony Vineyards, Inc. Bakersfield, CA | 3 | Grapes | 05/15/15 to 06/25/16 | 05/28/15 to 07/08/16 | \$67,773.80 |
| 2 Sunview Marketing International Delano, CA | 5 | Grapes | 10/01/15 to 12/10/15 | 10/25/15 to 01/03/16 | \$32,467.70 |
| 3 Vincent B. Zaninovich and Sons, Inc. Richgrove, CA | 7 | Grapes | 11/05/15 to 12/21/15 | 11/18/15 to 01/03/16 | \$52,206.82 |
| 4 Southern Sun LLC Woolwich, NJ | 8 | MXF | 01/21/16 to 03/01/16 | 02/03/16 to 03/14/16 | \$56,884.00 |
| 5 Dandrea Produce Vineland, NJ | 4 | MXF | 02/10/16 to 03/03/16 | 02/23/16 to 03/16/16 | \$8,624.00 |
| 6 Pacific Trellis Fruit LLC Fresno, CA | 9 | MXF | 02/26/16 to 03/24/16 | 03/10/16 to 04/06/16 | \$61,172.00 |
| 7 R & C Berndt, Inc., d/b/a Sierra Produce Tustin, CA | 1 | Grapes | 03/30/16 | 04/12/16 | \$27,744.00 |
| 8 AMC Direct, Inc. Fresno, CA | 10 | Grapes | 03/30/16 to 05/02/16 | 04/12/16 to 05/15/16 | \$83,522.50 |
| 9 Weis Buy Farms, Inc. Ft. Myers, FL | 7 | MXV | 04/22/16 to 06/09/16 | 05/05/16 to 06/22/16 | \$69,360.60 |
| 10 Stellar Distributing, Inc. Madera, CA | 2 | Kiwi | 05/06/16 to 05/16/16 | 06/08/16 to 06/18/16 | \$17,760.00 |

| Seller's Name | No. Lots | Commodity | Dates Accepted | Dates Payment Due | Amounts Past Due & Unpaid |
|--|-----------|-------------|----------------------------|----------------------------|----------------------------|
| Richard Bagdasarian, 11 Inc. Mecca, CA | 1 | Grapes | 05/17/15 | 05/30/16 | \$12,353.00 |
| Grapeman Farms LP, 12 d/b/a Stevco, Inc. Beverly Hills, CA | 1 | Grapes | 06/03/16 | 06/16/16 | \$13,105.00 |
| 13 Desert Fresh, Inc. Coachella, CA | 2 | Grapes | 06/09/16 to 06/16/16 | 06/22/16 to 06/29/16 | \$34,000.00 |
| 14 Fruit Royale, Inc. Delano, CA | 2 | Grapes | 06/16/16 to 07/08/16 | 07/10/16 to 08/01/16 | \$22,975.50 |
| 15 RNY, Inc. d/b/a Top Shelf Produce Sales Reedley, CA | 5 | Grapes | 07/07/16 to 08/05/16 | 07/20/16 to 08/18/16 | \$22,696.35 |
| 16 Kingsburg Orchards Kingsburg, CA | 2 | Plums | 07/08/16 to 07/12/16 | 07/21/16 to 07/25/16 | \$7,036.00 |
| 17 Kern Vineyards, Inc. Bakersfield, CA | 5 | MXV | 07/08/16 to 08/09/16 | 07/21/16 to 08/22/16 | \$53,385.00 |
| 18 Fowler Packing Co, Inc. Fresno, CA | 2 | Grapes | 08/27/16 | 09/10/16 | \$13,259.00 |
| 18 Sellers | 76 | Lots | | Total | <u>\$656,325.27</u> |