

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

NOV -7 PM 2: 54
RECEIVED

In re:)
)
Farmers Best of NYC, Inc.,) PACA Docket No. D-18-0023
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:¹

Christopher P. Young, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250, for the Complainant, Agricultural Marketing Service (“AMS”).

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499 *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”).

The Associate Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture (“AMS”), initiated this proceeding against Farmers Best of NYC, Inc. (“Respondent”) by filing a disciplinary complaint on March 15, 2018. The Complaint alleged that Respondent willfully, flagrantly, and repeatedly violated 2(4) of the PACA (7 U.S.C. § 499b(4)) during the period February 2016 through October 2016 by failing to make full payment promptly to eleven sellers, in the total amount of \$610,685.91, for thirty-four lots of perishable agricultural commodities that Respondent

¹ On May 1, 2018, David M. Bradford, Esq., filed a Notice of Appearance as Respondent’s counsel. However, Attorney Bradford filed a Notice of Withdrawal from the proceeding on June 1, 2018.

purchased, received, and accepted in interstate and foreign commerce. The Complaint also requested that an Administrative Law Judge find that Respondent committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order that Respondent's PACA license be revoked pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).²

Respondent was duly served with a copy of the Complaint and did not file an answer within the twenty-day period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).³

On July 10, 2018, I issued an order directing the parties to show cause ("Show Cause Order"), not later than twenty days after that date, why default should not be entered against Respondent. On August 9, 2018, AMS filed a Response to Show Cause Order and Request for Decision Without Hearing by Reason of Default ("Motion for Default") and a proposed Decision Without Hearing by Reason of Default ("Proposed Decision"). Respondent failed to respond to

² In its Proposed Decision, AMS requested "that in lieu of [an order revoking Respondent's PACA license], in the event Respondent's license had not been renewed, that the facts and circumstances of Respondent's PACA violations be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a))." Proposed Decision at 1. *See Scamcorp, Inc.*, 57 Agric. Dec. 527, 547-49 (U.S.D.A. 1998).

³ The Hearing Clerk's records reflect that the Complaint was sent to Respondent via certified mail but returned "unclaimed" on May 10, 2018. In accordance with section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)), the Hearing Clerk re-mailed the Complaint to the same address via ordinary mail on June 4, 2018. Respondent had twenty 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(h). In this case, Respondent's answer was due on or before June 25, 2018. Respondent has not filed an answer in this matter.

the Show Cause Order⁴ and has not filed any objections to AMS' Motion for Default or Proposed Decision.⁵

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.⁶ Other than a consent decision, the Rules of Practice do not provide exceptions to the regulatory consequences where, as in the present case, no meritorious objections have been filed.⁷

As Respondent failed to answer the Complaint, and upon AMS' motion for the issuance of a decision without hearing by reason of default, this 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).

Findings of Fact

1. Respondent is or was a corporation organized and existing under the laws of the state of New York. Respondent's business address is 700 Columbia Street, Brooklyn, New York 11231, and its mailing address is 6611 14th Avenue, 3rd Floor Suite 3, Brooklyn, New York 11219.

⁴ The Show Cause Order was issued on July 10, 2018; therefore, the parties were required to file responses on or before July 29, 2018. As of this date, Respondent has not filed a response.

⁵ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail but returned unclaimed on September 28, 2018. In accordance with section 1.147 of the Rules of Practice (7 C.F.R. § 1.147(c)(1)), the Hearing Clerk's Office re-mailed the documents to the same address via ordinary mail on October 10, 2018. Respondent had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. 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(h). In this case, Respondent's objections were due on or before October 30, 2018. Respondent has not filed any objections.

⁶ 7 C.F.R. § 1.136(c).

⁷ See *supra* note 5; 7 C.F.R. § 1.139.

2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20160027 was issued to Respondent on October 13, 2015; the license terminated on October 13, 2016, 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 February 2016 through October 2016, on or about the dates and in the transactions set forth in Appendix A to the Complaint, attached hereto and incorporated by reference, failed to make full payment promptly to eleven sellers for thirty-four lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$610,685.91.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent's failure to pay promptly with respect to the transactions referenced in Finding of Fact No. 3 above, as set forth in Appendix A to the 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.
3. The total unpaid balance due to produce sellers represents more than a *de minimis* amount, thereby obviating the need for a hearing in this matter.⁸
4. As Respondent's PACA license terminated prior to the institution of this proceeding, the appropriate sanction is publication of the facts and circumstances of Respondent's violations.⁹

⁸ See *The Square Group, LLC*, 75 Agric. Dec. 689, 695 (U.S.D.A. 2016); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984) (Ruling on Certified Question).

⁹ See *Baiardi Chain Food Corp.*, 64 Agric. Dec. 1822, 1832 (U.S.D.A. 2005), *petition for review denied*, 482 F.3d 238 (3d Cir. 2002); *Scamcorp, Inc.*, 57 Agric. Dec. 527, 571 n.23 (U.S.D.A. 1998); *Hogan Distrib., Inc.*, 55 Agric. Dec. 622, 633 (U.S.D.A. 1996).

ORDER

1. Respondent is found to have committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).
2. The facts and circumstances of Respondent's violations, as set forth above, shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

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 7th day of November 2018



Channing D. Strother
Chief Administrative Law Judge

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

	Seller's Name	No. Lots	Commodity	Dates Accepted	Dates Payment Due	Amounts Past Due & Unpaid
1	Sea Breeze Produce LLC Edinburg, TX	1	Carrots	01/26/16	02/16/16	\$4,013.00
2	Zilo Produce LLC Lockport, IL	1	Strawberries	02/22/16	03/03/16	\$49,410.00
3	HLB Specialities Pomapano Beach, FL	2	MXF	04/10/16 to 04/24/16	04/20/16 to 05/04/16	\$36,752.80
4	Stephen Becker Pillsburg, PA	4	MXF	05/27/16 to 09/17/16	06/11/16 to 10/02/16	\$9,965.72
5	Hanline & Co Inc. Shelby, OH	12	MXF	07/20/16 to 09/05/16	08/05/16 to 09/24/16	\$70,434.20
6	Max Group Corporation City of Industry, CA	1	Mangoes	08/29/16	09/08/16	\$4,838.40
7	Sandhu Bros Growers Crown Landing, CA	6	Yams	08/29/16 to 10/09/16	09/08/16 to 10/19/16	\$129,627.00
8	Grower Alliance LLC Rio Rico, AZ	2	MXF	09/15/16 to 09/18/16	09/25/16 to 09/28/16	\$35,302.14
9	Angela Russo Orangeburg, NY *	1	Lemons	09/30/16	10/10/16	\$11,880.00
10	Luimon Produce LLC Pharr, TX	1	MXF	09/24/16	10/15/16	\$22,342.65
11	Promexavo Corp. Pharr, TX	3	Avocados	09/14/16 to 09/27/16	10/05/16 to 10/18/16	\$236,120.00
11	Sellers	34	Lots		Total	<u>\$610,685.91</u>

* Interstate and foreign commerce established on invoices

APPENDIX A