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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	
Unified, Ltd.,	)	PACA-D Docket No. 18-0035
d/b/a Pan American Banana,	)	
	)	
Respondent.	)	

DECISION AND ORDER 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, DC 20250, for the Complainant, Agricultural Marketing Service ("AMS"); and

Jonathan Barry Sexton, Esq., of Business Law Center, APC, 640 N. Tustin Avenue, Suite 100, Santa Ana, California 92705, for the Respondent, Unified, Ltd., d/b/a Pan American Banana.

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 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 for the Fair Trade Practices Program, Agricultural Marketing Service ("Complainant" or "AMS"), initiated this proceeding against Unified, Ltd., d/b/a Pan American Banana ("Respondent"), by filing a disciplinary complaint on May 23, 2018. The Complaint alleged that, during the period September 2015 through March 2017 (on or about the dates and in the transaction set forth in Appendix A to the Complaint, attached hereto and incorporated by reference), Respondent willfully violated section 2(4) of PACA (7 U.S.C. §

499b(4)) by failing to make full payment promptly to fourteen sellers, in the total amount of $557,297.14, for 423 lots of perishable agricultural commodities that Respondent 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 PACA (7 U.S.C. § 499b(4)) and publish the facts and circumstances of Respondent's violations pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).[1]

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).[2]

On July 3, 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 July 20, 2018, AMS filed a response to the Show Cause Order ("Motion for Default")[3] and proposed decision without hearing by reason of default ("Proposed Decision").

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[1] *See* Scamcorp, Inc., 57 Agric. Dec. 527, 547-49 (U.S.D.A. 1998).

[2] United States Postal Service records reflect that the Complaint was sent to Respondent's attorney of record via certified mail and delivered on May 29, 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 would have been due by June 18, 2018; however, on June 18, 2018, Respondent's counsel filed a request for an extension of time to respond to the Complaint. On June 19, 2018, I entered an order granting Respondent's request and allowing Respondent until June 25, 2018 to file its answer. Nevertheless, Respondent has yet to file an answer.

[3] As AMS's response "request[ed] that the Acting Chief Administrative Law Judge issue an Order as presented in the . . . proposed Decision Without Hearing by Reason of Default" (Mot. at 2), I will treat the filing as a motion for adoption of AMS's Proposed Decision. *See* 7 C.F.R. § 1.139 ("Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof[.]"). This is consistent with the language provided in AMS's Proposed Decision. *See* Proposed Decision at 2.

Respondent failed to respond to the Show Cause Order[4] and has not filed any objections to AMS's Motion for Default.[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. 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.[6]

Furthermore, Respondent's failure to file a timely answer renders this a "no-pay" case.[7] "In any 'no-pay' case in which the violations are flagrant and repeated, the license of a PACA licensee, shown to have violated the payment provisions of the PACA, will be revoked."[8] Respondent has admitted, by failing to file an answer, that it committed "willful, flagrant, and

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[4] The Show Cause Order was issued on July 3, 2018; therefore, the parties were required to respond on or before July 23, 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's counsel via certified mail and delivered on July 30, 2018. Respondent had twenty days from the date of service to file objections to AMS'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(h). In this case, Respondent's objections were due by August 20, 2018. Respondent has not filed any objections.

[6] 7 C.F.R. § 1.139; *see supra* note 5.

[7] *See* Scamcorp, Inc., 57 Agric. Dec. 527, 549 (U.S.D.A. 1998) ("In any PACA disciplinary proceeding in which it is alleged that a respondent has failed to pay in accordance with the PACA and that respondent fails to file a timely answer to the complaint, the PACA case will be treated as a 'no-pay' case.").

[8] *Id.*

repeated violations"[9]of section 2(4) of PACA (7 U.S.C. § 499b(4)).[10] Respondent's PACA license, however, terminated prior to the institution of this proceeding; therefore, the appropriate sanction is publication of the facts and circumstances of Respondent's violations.[11]

As Respondent failed to answer the Complaint, and upon AMS's 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 Unified, Ltd., d/b/a Pan American Banana, is a corporation organized and existing under the laws of the state of California. Respondent's business address is 730 S. Alameda St., Bld. A1, Los Angeles, California 90021.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of PACA. License number 19850545 was issued to Respondent on January 25, 1985. The license was suspended on October 27, 2017, for failure to pay a reparation award pursuant to section 7(d) of PACA (7 U.S.C. § 499g(d)). On January 25, 2018, the license was terminated pursuant to section 4(a) of PACA (7 U.S.C. § 499d(a)) when Respondent failed to pay the required annual renewal fee.

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[9] Compl. ¶ IV.

[10] *See* 7 C.F.R. § 1.136(c).

[11] *See* Baiardi Food Chain Corp., 64 Agric. Dec. 1822, 1832 (U.S.D.A. 2005); 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).

3. Respondent, during the period September 2015 through March 2017, 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 fourteen sellers for 423 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of $557,297.14.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. The failure of Respondent Unified, Ltd., d/b/a Pan American Banana, 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 PACA (7 U.S.C. § 499b(4)), for which the below Order is issued.
3. 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.

ORDER

1. A finding is made that Respondent Unified, Ltd., d/b/a Pan American Banana, committed willful, flagrant, and repeated violations of section 2(4) of PACA (7 U.S.C. § 499b(4)).
2. The facts and circumstances of Respondent's PACA violations, as set forth above, shall 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 24th day of August, 2018

Jill S. Clifton
Administrative Law Judge
for
Channing D. Strother
Acting Chief Administrative Law Judge

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Appendix A						
	Seller & Location	**No. Lots**	**Commodity**	**Date Accepted**	**Date Payment Due**	**Amount Past Due & Unpaid**
1	Tropical Fruit Trading, Inc. Miami, FL Origin: EC	2	Bananas	08/26/15 to 08/29/15	09/18/15 to 10/24/15	$3,840.00
2	JBR USA LLC McAllen, TX Origin: MX	4	Avocados	04/22/16 to 06/10/16	06/03/16 to 07/22/16	$176,060.00
3	Altiza, Inc. Chula Vista, CA Origin: MX	36	MXFV	07/14/16 to 02/16/17	07/24/16 to 02/26/17	$167,546.55
4	Giumarra Bros Fruit Co., Inc. Los Angeles, CA Origin: MX	2	Avocados	08/17/16 to 12/19/16	09/07/16 to 01/09/17	$4,061.00
5	Aramburo Produce, Inc. Los Angeles, CA Origin: MX	27	MXVG	10/21/16 to 02/07/17	11/11/16 to 02/28/17	$2,646.20
6	La Sucursal Produce, Inc. Los Angeles, CA Origin: MX	188	MXFV	11/15/16 to 02/16/17	11/25/16 to 02/26/17	$58,324.25
7	Lucky Taro, Inc. Los Angeles, CA Origin: CN, MX	7	MXVG	12/01/16 to 01/26/17	12/15/16 to 02/09/17	$6,366.00
8	Prime Fresh Produce Chino Hills, CA Origin: MX	1	Avocados	11/30/16	12/30/16	$12,501.20
9	Coastal Fresh Farms, Inc. Thousand Oaks, CA Origin: MX	12	MXVG	12/20/16 to 02/06/17	12/30/16 to 02/16/17	$18,130.50
10	Max Group Corporation City of Industry, CA Origin: MX	1	MXVG	12/28/16	01/07/17	$6,922.00
11	Golden West Vegetables Newport Beach, CA Origin: MX	11	MXVG	01/09/17 to 02/07/17	01/19/17 to 02/17/17	$17,195.85
12	Valley Fruit & Produce, Inc. Los Angeles, CA Origin: CH, CL, EC, GT, ID, IT, MX, NV, OR, WA	124	MXFV	01/18/17 to 02/16/17	02/08/17 to 03/09/17	$65,549.80

13	Sun Terra Produce Traders, Inc. Newport Beach, CA Origin: MX	6	MXVG	01/31/17 to 02/07/17	02/10/17 to 02/17/17	$14,633.79
14	Benedict Company Maryville, TN	2	MXFV	02/03/17 to 02/17/17	02/13/17 to 02/27/17	$3,520.00
14	**Sellers**	**423**	**Lots**		**Total**	**$557,297.14**