UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

New York Mart Group, Inc., )
) Consent Decision and Order
Respondent )

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 September 30, 2019, Complainant filed a Complaint alleging that Respondent, during the period October 2016 through December 2018, on or about the dates and in the transactions set forth in Appendix A to the Complaint, failed to make full payment promptly to 23 sellers for 309 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of $896,107.36.

The Complaint was served upon Respondent, and Respondent filed an Answer to the Complaint. A Decision and Order was issued on September 16, 2021, finding that Respondent had committed willful, flagrant and repeated violations of the PACA and ordering the publication of the facts and circumstances of the violations in lieu of revocation (since Respondent’s license was terminated). Respondent Appealed the Decision. Complainant and Respondent now consent and agree, for the purpose of settling this matter, to the entry of this Consent Decision and Order, pursuant to section 1.138 of the Rules of Practice (7 C.F.R. § 1.138). Respondent admits that the Secretary has jurisdiction in this matter. The parties agree to the issuance of the following Consent
Decision and Order without further procedure or hearing. Respondent specifically waives its right to any further process or procedure in this proceeding. Respondent further waives all rights to seek judicial review and otherwise challenge or contest the validity of this decision, including waiving challenges to the Administrative Law Judge’s authority or the Judicial Officer’s authority to enter this Decision and Order under the Administrative Procedure Act and the Constitution of the United States, and waives any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 et seq.) for fees and other expenses incurred by Respondent in connection with this proceeding or any action against any USDA employee in their individual capacity.

The parties have agreed to the entry of a Consent Decision and Order as set forth herein. Therefore, this Consent Decision and Order is entered without further procedure or hearing pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 et seq.)(Rules of Practice) applicable to this proceeding (7 C.F.R. §1.138).

Findings of Fact

1. Respondent is a corporation organized and existing under the laws of the State of New York. Respondent’s business and mailing address is 2-39 54th Avenue, Long Island City, New York 11101.

2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 2017 0895 was issued to Respondent on July 6, 2017. The license was suspended pursuant to section 7 of the PACA (7 U.S.C. § 499g) following non-payment of a reparation award issued on February 28, 2019, for an amount of $87,659.76 owed to a produce seller (Respondent subsequently paid the award). Respondent’s PACA license was
then terminated pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a), when Respondent failed to pay its annual renewal fee by July 6, 2019.

3. Respondent, during the period October 2016 through December 2018, on or about the dates and in the transactions set forth in Appendix A to the Complaint, failed to make full payment promptly to 23 sellers for 309 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of $896,107.36.

Conclusions

Respondent failed to make full payment promptly\(^1\) to 23 sellers for 309 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, during the period October 2016 through December 2018, on or about the dates and in the transactions set forth in Appendix A to the Complaint, in the total amount of $896,107.36.

Order

A finding is made that Respondent has committed flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. §499b(4)), and Respondent’s PACA violations shall be published (in lieu of license revocation\(^2\), as the license was terminated, see Finding of Fact 2, above) pursuant to section 8 of the PACA (7 U.S.C. §499h).

However, this finding and publication shall be held in abeyance so long as Respondent pays the produce sellers listed in Appendix A to the Complaint the full amounts owed to each

\(^1\)“Full payment promptly” is defined and more fully described in section 46.2(aa) of the regulations (7 C.F.R. § 46.2(aa)).

seller, as listed in Appendix A to the Complaint, and referenced in Finding of Fact paragraph 3 above, within three months (90 days) of the effective date of this Consent Decision and Order.

Once full payment to creditors is made, Respondent shall pay a civil penalty in the amount of $45,000.00. Payment of the civil penalty must be made within 30 days after the 90 day period allowed to Respondent to make full payment to the sellers listed in Appendix A to the Complaint. Respondent has the option to demonstrate full payment anytime within the 90 day timeframe mentioned above, and the option to pay the civil penalty anytime within the total timeframe mentioned above (within the total 120 day frame enumerated). Payment of the civil penalty shall be by certified check or bank check made payable to the “United States Treasury” and delivered to the United States Department of Agriculture, PACA Branch—Attention: Trade Practices Section, 1400 Independence Avenue, S.W. Room 1510 South Bldg., Stop 0242 Washington, D.C. 20250-0242.

If full payment to sellers is made within the 90 days stated above, and Respondent pays the $45,000.00 civil penalty as described above, the finding of willful, flagrant, and repeated violations of the PACA and the publication of that finding will be permanently abated, and the case will be closed.

If full payment to the sellers in the amounts listed in the Appendix A to the Complaint and as owed as described in Finding of Fact paragraph 3 above, and subsequent payment of the $45,000.00 civil penalty is not made in the manner described above, then the finding of flagrant and repeated violations as stated in the “Conclusions” section above, and the publication of that finding, will no longer be held in abeyance and will be made without further proceeding except the filing of a Notice by Complainant, informing the Judicial Officer that Respondent has failed
to comply with the terms of the Consent Decision and Order, and requesting the issuance of any further appropriate Order.

This Consent Decision and Order is effective upon issuance.

Jason Klinowski, Esq.
Attorney for Respondent

Christopher Young, Esq.
Attorney for Complainant

Done at Washington, D.C.,

John Walk
Judicial Officer
Office of the Secretary