

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

In re:)
)
RRD Produce, Co.,) PACA Docket No. 20-J-0046
)
Respondent.)

Decision and Order Without Hearing

Appearances:

Shelton S. Smallwood, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington D.C., for Complainant, the Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service (“AMS”); and

Ricardo Villalobos, representative of Respondent RRD Produce, Co.

This is a disciplinary proceeding brought pursuant to the provisions of 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. Part 46) (“Regulations”), and the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By the Secretary (7 C.F.R. §§ 1.130 through 1.151) (“Rules of Practice”).

The Complaint, filed February 25, 2020, alleges that Respondent committed willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to seventeen (17) sellers for purchases of seventy (70) lots of perishable agricultural commodities in the course of interstate and foreign commerce in the amount of \$174,464.75 during the period from May 2018 through December 2018. Complainant requests the issuance of an order finding that Respondent committed willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), and publication of the facts and circumstances surrounding the violations.

In an email response to the Complaint filed by Mr. Ricardo Villalobos on behalf of

Respondent (“First Answer”), Respondent does not deny that it violated the PACA by failing to pay produce sellers fully and promptly. Further, Respondent states in its First Answer, at 1, that it filed for bankruptcy, that the company is closed, and that the company does not have any assets. Thereafter, on April 10, 2020, Maricruz Villalobos and Baudelio Villalobos, former principals of Respondent, by and through counsel filed an Answer to the Complaint (“Second Answer”), admitting, at 1, to part of the jurisdictional allegations in paragraph II of the Complaint, and denying all other allegations and raising, at 2-3 several affirmative defenses.

On August 25, 2020, Complainant filed a Motion for An Order Requiring Respondent To Show Cause Why A Decision Without Hearing Should Not Be Issued (“Complainant’s First Motion”), arguing at 2, that neither Respondent’s First nor Second Answer would require a hearing to be held, that Respondent’s First Answer arguably admits the material allegations of the Complaint, and that the Second Answer “is not an acceptable defense to liability in a case in which a Complaint a Complaint has been filed alleging the violation of section 2(4) of the PACA due to the failure to make full payment promptly.”¹

On September 14, 2020, Baudelio Villalobos and Maricruz Villalobos (hereafter referred to as “Mr. and Ms. Villalobos”), former principals of Respondent, filed a Response to Complainant’s First Motion. In their response, Mr. and Ms. Villalobos stated, at 1, that on February 26, 2020, they were sent a letter from USDA, along with proof of service of the Complaint, in which they were identified as “Respondents.” Mr. and Ms. Villalobos explained, *id.*, that “in order to avoid having any action taking against them in relation to this matter, they filed an Answer to the Complaint on April 10, 2020, which set forth their denials and defenses.”

¹ Citing 7 C.F.R. § 1.136(b).

Mr. and Ms. Villalobos state that: “On or about May 1, 2019, RRD Produce, Co. filed for bankruptcy” which was “successfully completed on July 9, 2019, and RRD was declared to be ‘no asset’ by the Trustee and the case was closed by the court.” Mr. and Ms. Villalobos go on to state that, because the Complainant states that RRD Produce, Co. is the only Respondent in this matter,² and the Complaint has not been amended to add any other parties, Mr. and Ms. Villalobos do not have liability in this matter.

On September 22, 2020, Complainant filed a Motion for A Decision Without Hearing (“Complainant’s Second Motion”), which included the Declaration of Steve Sao as Attachment 1 and a propose Decision and Order as Attachment 2, asking that a decision and order without hearing be issued against Respondent due to its failure to make a full and prompt payment for produce purchases made in willful, flagrant, and repeated violation of PACA (7 U.S.C. § 499b(4)). In its Second Motion, Complainant argues, at 2, that “Respondent’s Answer arguably admits the material allegations of the Complainant” and the “former principals’ Response merely offers general denials of the allegations made in the Complaint pertaining to RRD Produce Co.’s failure to make full payment promptly.” Respondent did not file an objection to Complainant’s Second Motion.³

Respondent was served with the Complaint on March 2, 2020. According to the USDA

² Mr. and Ms. Villalobos state, Response at 2, “Since Complainant states that RRD Produce, Co. is the only *Complainant*” (emphasis added) which can be taken as a typo that meant to state *Respondent*.

³ United States Postal Service records reflect that Complainant’s Second Motion was sent to Respondent via certified mail and delivered on September 26, 2020. Respondent had twenty(20) days from the date of service to file objections thereto. 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 workday. 7 C.F.R. § 1.147(h). In this case, Respondent’s objections were due by October 16, 2020.

Judicial Officer's policy set forth in *Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 548- 549 (1998), which states that when a complaint is filed alleging the failure to make full payment promptly under the PACA, if the Respondent is not in full compliance with the PACA within 120 days after the complaint is served upon the Respondent or the date of the hearing, whichever occurs first, (July 2, 2020, in this matter) the case will be treated as a "no pay" case for which the sanction is license revocation.⁴ Complainant moves that a Decision Without Hearing be issued, finding that Respondent has committed willful, flagrant and repeated violations of section 2(4) of the PACA, and ordering that the facts and circumstances of Respondent's violations be published.

Pursuant to the Department's policy set forth in the *Scamcorp* decision, upon the Complainant's motion for the issuance of a decision and order without hearing, and due to Respondent's failure to object to Complainant's motion for a decision and order without hearing, the following decision and order is issued without further procedure or hearing pursuant to 7 C.F.R. § 1.139.

Findings of Fact

1. Respondent was incorporated and existed under the laws of the state of California.

Respondent's business address was 746 South Central Avenue, A3 100/101, Los Angeles, California 90021. The Complaint in this case was served on Respondent's business address and its principals' home addresses, which were provided to the Hearing Clerk's Office for

⁴ In its Motion for a Decision Without Hearing at 1, fn. 1, Complainant notes that it seeks publication of the facts and circumstances surrounding Respondent's PACA violations, rather than revocation of Respondent's PACA license, as Respondent's PACA license terminated on May 13, 2019, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

service purposes; they were withheld from this Complaint to protect the principals' personal information and privacy.

2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20171122 was issued to Respondent on September 18, 2017. This license was suspended on May 13, 2019, for failure to pay a reparation award pursuant to section 7(d) of the PACA (7 U.S.C. § 499g(d)). The license was terminated on September 18, 2019, 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 2018 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 seventeen (17) sellers for seventy (70) lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$174,464.75.
4. On May 1, 2019, Respondent filed a Voluntary Petition pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. § 701 et seq.) in the United States Bankruptcy Court, Central District of California, Los Angeles Division. The petition was designated Case No. 19-bk-15104-BB. Respondent lists in its Schedule E/F that fifteen (15) of the seventeen (17) PACA creditors listed in Appendix A to this Complaint hold unsecured produce debt claims against Respondent in the amount of \$177,387.55.

Legal Conclusion

Respondent's failure to make full payment promptly with respect to the seventy (70) transactions 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)).

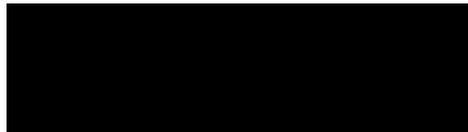
Order

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

Pursuant to the Rules of Practice governing procedures under the PACA, this Decision will become final without further proceeding thirty-five (35) days after service hereof unless appealed to the Secretary by a party to the proceeding 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 Without Hearing by Reason of Admissions shall be served by the Hearing Clerk on each of the parties.

Done this 23rd day of October 2020, at Washington, D.C.



Tierney Carlos
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building, Room 1031
Stop 9203, 1400 Independence Avenue, SW
Washington, D.C. 20250-9203
Tel: 1-202-720-4443
Fax: 1-844-325-6940
SM.OHA.HearingClerks@USDA.GOV