

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
JLD Inc., d/b/a North Country Wholesale) PACA-D Docket No. 20-J-0123
)
Respondent.)

REC'D - USDA/OALJ/OHC
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DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Christopher Young, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service (“AMS”).

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a *et seq.*) (“PACA”); the regulations promulgated thereunder (7 C.F.R. Part 46) (“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 Complainant, Deputy Administrator, Fair Trade Practices Program, PACA Division, Agricultural Marketing Service, United States Department of Agriculture, initiated this proceeding against Respondent JLD Inc., doing business as North Country Wholesale, by filing a complaint on May 4, 2020. The Complaint alleged that Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) during the period April 2018 through January 2019 (on or about the dates and in the transactions set forth in Appendix A to the Complaint, incorporated herein by reference), by failing to make full payment promptly to eighteen (18) sellers in the total amount of \$260,260.77 for 740 lots of perishable agricultural commodities which

Respondent purchased, received, and accepted in interstate commerce. The Complaint requested that an Administrative Law Judge find that Respondent has 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 violations be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)). *Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 547-549 (1998).

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).¹

On October 7, 2020, 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 to Complainant's Motion for Default or Proposed Decision.²

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

¹ United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail on May 7, 2020 and delivered on May 18, 2020. 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(h). In this case, Respondent's answer was due on or before June 8, 2020. Respondent has not filed an answer in this matter.

² United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail on October 7, 2020 and delivered on October 14, 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 work day. 7 C.F.R. § 1.147(h). In this case, Respondent's objections were due by November 3, 2020. Respondent has not filed any objections.

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.³

As Respondent failed to answer the Complaint, and upon Complainant'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 is or was a corporation organized and existing under the laws of the state of New Hampshire and its mailing address is or was 40 Old West Side Road, North Conway, New Hampshire 03860.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 19891020 was issued to Respondent on April 6, 1989. This license terminated on April 6, 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, and after Respondent's 100 percent owner filed for bankruptcy on March 11, 2019.
3. Respondent, during the period April 2018 through January 2019, on or about the dates and in the transactions set forth in Appendix A, attached to the Complaint and incorporated by reference, failed to make full payment promptly to eighteen (18) sellers for 740 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate commerce, in the total amount of \$260,260.77.

³ 7 C.F.R. § 1.139; *see supra* fn. 2.

4. On March 11, 2019, Respondent's 100 percent owner 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, District of New Hampshire. This petition was designated Case No. 19-10333-BAH. The Schedule F filed in the bankruptcy (see Appendix B to the Complaint) admits that collectively the eighteen (18) sellers listed in Appendix A to this Complaint are owed undisputed unsecured produce debt in the amount of \$255,654.26.⁴

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 Facts Nos. 3 and 4 above, and set forth in Appendix A and B 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 Order below is issued.

ORDER

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. 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)).
3. The facts and circumstances of Respondent JLD Inc.'s, doing business as North Country Wholesale, PACA violations shall be published in accordance with section 8(a) of the PACA (7 U.S.C. § 499h(a)).

⁴ Respondent's 100 percent owner admits in the Schedule F that the sellers listed in Appendix A to this Complaint are owed all of the debt stated in Appendix A with the exception of Garden Fresh Salad Co, wherein the Appendix A states \$33,842.00 is owed and the Schedule F admits \$33,826.00; Peter Condakes Company, Inc., wherein the Appendix A states \$6,187.50 is owed and the Schedule F admits \$3,795.00; and P. Tavilla Co, Inc., wherein the Appendix A states \$16,170.00 is owed and the Schedule F admits \$7,971.99.

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.

Done at Washington, D.C.,
this 9th day of November 2020

A solid black rectangular box redacting the signature of Channing D. Strother.

Channing D. Strother
Chief Administrative Law Judge

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