

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/DALJ/DHG
2020 DEC 8 AM 9:28

In re:)
)
Southern Sun LLC,) PACA Docket No. D-20-J-0048
)
)
Respondent) **Consent Decision and Order**

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (PACA). The Complaint filed herein, on March 3, 2020, alleged that Southern Sun, LLC (“Respondent”) had committed willful, flagrant and repeated violations of section 2(4) of the PACA by failing to make full payment promptly to 14 sellers of the agreed purchase prices in the total amount of \$744,685.37 for 76 lots of perishable agricultural commodities, purchased, received, and accepted in the course of interstate and foreign commerce, during the period of February 2018 through November 2018.

The Complaint sought the issuance of an order finding that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA, and publication of the facts and circumstances of Respondent’s PACA violations pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

The Complaint was served upon Respondent, and Respondent filed an answer wherein it denied certain allegations of the Complaint. Respondent agrees that the Secretary has jurisdiction in this matter and waives all further proceedings in this matter. 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 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 now 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 or was a corporation organized and existing under the laws of the state of New Jersey and with a mailing address of 1 Cobalt Court, Woolwich, New Jersey 08085.

2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20160151 was issued to Respondent on November 9, 2015. This license terminated on November 9, 2018, 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. The Complaint filed in this case alleged that Respondent, during the period of on or about February 2018 through November 2018, and in the transactions set forth in Appendix A to the Complaint, failed to make full payment promptly to 14 sellers for 76 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$744,685.37.

4. On October 17, 2019, the United States District Court for the District of New Jersey (the "Court") entered an order (the "Receivership Order") appointing Jonathan S. Bodner

as receiver (the “Receiver”) for Respondent in the action entitled *Nanak Produce & Marketing, Inc. v. Southern Sun, LLC, et al., Case No.: 18-cv-15448-JHR-KMW* (the “ District Court Action”). Paragraph 2 of the Receivership Order directs that the Receiver has the sole power to act on behalf of the Respondent. Paragraph 7 of the Receivership Order authorizes the Receiver to take all measures to liquidate the Respondent’s assets.

5. By order dated February 17, 2020 (the “PACA Claim Order”), the Court granted the Receiver’s motion to establish certain procedures, and a deadline of March 18, 2020 (30 days of the Court’s entry of the order) (the “PACA Claim Deadline”), for parties to submit claims against the Respondent arising under PACA. Under the PACA Claim Order, “[a]ny Party that does not comply with the foregoing procedures shall be forever barred from asserting any claim arising under PACA against [the Respondent] or any property of [the Respondent] and shall not share in any distribution to be made by the Receiver to PACA claimants.” The Receiver served the PACA Claim Order on all entities identified in the appendix attached to the Complaint. Ampacadora y Procesadora Huamani, International Fruit Company Inc., Exportadora Baika,S.A., and Diazteca Company, did not submit a PACA claim to the Receiver by the PACA Claim Deadline or thereafter. The Receiver also disputes the validity and amounts of the alleged PACA claims submitted by certain of the parties listed on the appendix attached to the Complaint, and the Receiver has advised those parties of the asserted defenses and objections to the alleged PACA claims and that the Receiver filed or will file motions to determine the defenses and objections in the District Court Action if they are not resolved. On that basis, the Receiver denied the allegations contained in paragraphs III and IV of the Complaint.

6. The PACA claims are being, or will be, addressed in the District Court Action.

The Receiver will disburse the proceeds of the liquidation of the Company's assets in accordance with the Court's orders in the District Court Action. The Receiver anticipates a distribution to PACA claimants that complies with the PACA Claim Order from the liquidation of the Company's assets. Notwithstanding the foregoing and any potential distribution in the District Court Action to certain of the parties listed on the appendix attached to the Complaint, Complainant maintains that Respondent committed flagrant and repeated violations of section 2(4) of the PACA by failing to make full payment promptly to sellers of produce as required under PACA and seeks entry of this Consent Decision and Order.

7. Based on the facts and circumstances presented to the Receiver in the District Court Action, and in order to settle this matter without further litigation, the parties agree that Respondent violated section 2(4) of the PACA by failing to make full payment promptly to not less than 5 sellers of produce, in the sum of \$436,401.00, during the approximate period of February 2018 through November 2018, as required under PACA. Complainant and Respondent agree to entry of this Consent Decision and Order solely to the extent provided herein.

Conclusions

Respondent's failure to make full payment promptly to 5 sellers of the agreed purchase prices of the perishable agricultural commodities described in Findings of Fact paragraph 7, above, constitutes flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Order

A finding is issued that Respondent has engaged in flagrant and repeated violations of the PACA for failing to pay promptly 5 produce sellers as set forth in the Findings of Fact paragraph 7 and the Conclusions above.

Nothing herein shall be deemed an agreement or acknowledgement by Respondent as to the Respondent's alleged obligation to any specific party or as to any of the amounts scheduled by Complainant on appendix A to the Complaint.

Respondent's PACA violations shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)), but only to the limited extent agreed in Findings of Fact paragraph 7 herein.

This Order shall become final and effective upon issuance.

Copies hereof shall be served upon the parties.

CHRISTOPH
ER YOUNG

Digitally signed by
CHRISTOPHER YOUNG
Date: 2020.12.07
15:56:09 -05'00'

Christopher Young, Esq.
Attorney for Complainant

12/07/20
Date signed

BODNER LAW PLLC

By: 
Jonathan Bodner, Esq.
Counsel to the Receiver

12/07/2020
Date Signed

Done at Washington, D.C.

this 8th day of December, 2020


Tierney Carlos
Administrative Law Judge