

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/DALJ/DHC
2020 DEC 31 AM 10:53

In re:)	
)	
Wayne Bailey, Inc.)	PACA Docket No. D-19-J-0099
And)	
Wayne Bailey Produce Co., LLC,)	PACA Docket No. D-19-J-0100
)	
Respondents)	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 June 11, 2019, alleged that Respondents had committed willful, flagrant and repeated violations of section 2(4) of the PACA by failing to make full payment promptly to 46 sellers of the agreed purchase prices in the total amount of \$8,182,415.59 for 1,941 lots of perishable agricultural commodities, which were purchased, received, and accepted in the course of interstate and foreign commerce, during the period of June 2015 through April 2018.

The Complaint sought the issuance of an order finding that Respondents had committed willful, flagrant and repeated violations of section 2(4) of the PACA, revocation¹ of Respondents' PACA licenses, and publication of the facts and circumstances of the PACA violations pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

The Complaint was served upon Respondents, and Respondents agree that the Secretary has jurisdiction in this matter and waive all further proceedings in this matter. Respondents further waive 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

¹ Since the filing of the Complaint, Respondents' PACA licenses have terminated, and neither Respondent is currently operating.

Decision and Order under the Administrative Procedure Act and the Constitution of the United States, and waive 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 Respondents in connection with this proceeding or any action against any USDA employee in their individual capacity.

Neither named Respondent is currently operating subject to the PACA, and the parties have agreed, for various reasons, that it is appropriate to dismiss Respondent Wayne Bailey Produce Co., LLC from this proceeding. Therefore, that Respondent is hereby dismissed, and this Consent Decision and Order pertains only to Respondent Wayne Bailey, Inc (Respondent). 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 Wayne Bailey, Inc. (“W. Bailey, Inc.”) is or was a corporation incorporated and existing under the laws of the state of North Carolina.
2. At all times material herein, W. Bailey, Inc. was licensed and/or operating subject to the provisions of the PACA. License number 19183341 was issued to on October 1, 1959, and was terminated after W. Bailey, Inc. filed for Chapter 11 bankruptcy protection on January 21, 2018.
3. The Secretary has jurisdiction to issue an order in this proceeding.

4. W. Bailey, Inc., during the period of June 2015 through April 2018, on or about the dates and in the transactions set forth in Appendix A to the Complaint in this case, failed to make full payment promptly to 46 sellers for 1,941 lots of perishable agricultural commodities which W. Bailey, Inc. purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$8,182,415.59.

5. On January 21, 2018, W. Bailey, Inc. filed a Voluntary Petition pursuant to Chapter 11 of the Bankruptcy Code (11 U.S.C. § 701 et seq.) in the United States Bankruptcy Court, Eastern District of North Carolina. The petition was designated Case No. 18-00284. W. Bailey, Inc. stated in its bankruptcy Schedule F (Appendix B to the Complaint) that collectively the 46 creditors/produce sellers listed in Appendix A to the Complaint were owed undisputed unsecured produce debt in the amount of \$10,744,631.30.

Conclusions

W. Bailey, Inc.'s failure to make full payment promptly to 46 sellers of the agreed purchase prices of the perishable agricultural commodities described in Finding 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 Wayne Bailey, Inc. has engaged in flagrant and repeated violations of the PACA for failing to pay the produce sellers listed in the Complaint and its Appendices, and the facts and circumstances of Wayne Bailey, Inc.'s PACA violations shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

Respondent Wayne Bailey Produce Co., LLC, is dismissed from this proceeding, and

PACA Docket No. D-19-J-0100 is hereby closed.

This Order shall become final and effective upon issuance.

Copies hereof shall be served upon the parties.

CHRISTOPHER YOUNG
Digitally signed by
CHRISTOPHER YOUNG
Date: 2020.12.31
09:23:52 -0500'

Christopher Young, Esq.
Attorney for Complainant

12/31/20
Date signed



Steven De Falco
Attorney for Respondent

12/31/2020
Date signed

Done at Washington, D.C.

this 31 day of DEC, 2021

2020
JSC



Jill S. Clifton
Administrative Law Judge