

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0263

In re: Florida European Export-Import Co., Inc.,

Respondent

Decision and Order

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.)(the Act or PACA), instituted by a Complaint filed on June 12, 2013, by Bruce W. Summers, then the Associate Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA).

The Complaint filed by Complainant alleges that Respondent, during the period from December of 2010 through June of 2012, failed to make full payment promptly to nine (9) sellers of the agreed purchase prices in the total amount of \$383,991.14 for 139 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in interstate and foreign commerce in willful violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)). A copy of the Complaint and the Rules of Practice were served upon Respondent by certified mail.

On June 25, 2013, the Hearing Clerk's Office received a facsimile request for an extension of time in which to file an Answer and on June 26, 2013, an Order was granted giving the Respondent until July 25, 2013 in which to answer.

On August 9, 2013, a Notice of Appearance was entered by Lawrence H. Meurers, Esquire of Naples, Florida which was accompanied by a request for a further extension of time in which to file an answer and an Answer which was tendered in the event the Department was not inclined to grant the request for extension of time.¹

On January 28, 2014, after review of the record indicated that the matter might be resolved without the necessity of a hearing, I entered an Order directing the parties to file cross motions for summary judgment, together with supporting memoranda and documentary evidence. The Complainant complied; however, despite the time for filing its motion and supporting documents, nothing has been received from the Respondent.

Respondent failed to file an answer to the Complaint within the time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136) as further extended by the Administrative Law Judge on two occasions until July 25, 2013 and having further failed to comply with my Order of January 28, 2014. Accordingly, the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) and consistent with Departmental policy as set forth in *In re Scamcorp, IncGoodness Greenness*, 57 Agric. Dec. 527, 547-49 (1998).

Findings Of Fact

1. Respondent is a corporation organized and existing under the laws of the state of Florida with a business address formerly in Miami, Florida. Respondent is no longer operating and the Complaint was served on its majority owners of record.

¹ It will be noted that the matter is pending before an Administrative Law Judge who makes decisions independently of the Department and that the Answer tendered was not timely.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License No. 19792062 was issued to Respondent on September 19, 1979. The license was terminated on September 19, 2012 when Respondent failed to pay the required annual renewal fee.

3. Respondent, during the period from December of 2010 through June of 2012, failed to make full payment promptly to nine (9) sellers of the agreed purchase prices in the total amount of \$383,991.14 for 139 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in interstate and foreign commerce.

4. On July 5, 2012, Respondent filed a Voluntary Petition pursuant to Chapter 11 of the Bankruptcy Code (11 U.S.C. §1101, *et seq.*) in the United States Bankruptcy Court for the Southern District of Florida, the same being designated as Docket No. 12-26338. The schedules filed with the Petition contain undisputed debts to two of the nine produce seller listed in the Appendix to the Complaint in the amount of \$179,063.12.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Respondent willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Order

1. The facts and circumstances of Respondent's violations shall be published.

2. This order shall take effect on the day that this Decision becomes final.

4. Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the

Secretary by a party to the proceeding within 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 hereof shall be served upon parties.

April 15, 2014

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge