

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/HCO
2022 MAY 5 2:22 PM

In re:) PACA Docket No. D-22-0012
)
Ayar Produce NY, Inc.,)
)
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 November 23, 2021, alleged that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA by failing to make full payment promptly to fourteen (14) sellers of the agreed purchase prices in the total amount of \$720,226.05 for 38 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce, during the period of February 2020 through September 2020. 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 the violations¹.

The Complaint was served upon Respondent, Respondent agrees that the Secretary has jurisdiction in this matter, and the parties have now agreed to the entry of a Consent Decision and Order as set forth herein. Respondent filed an Answer to the Complaint wherein it denied the allegations contained therein. Respondent agrees, solely for the purposes of settling this proceeding, to the following Consent Decision and Order. Complainant and Respondent now

¹ In lieu of revocation of Respondent's PACA license, pursuant to the sanction policy set forth in *In re Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 547-549 (1998).

consent and agree to the entry of this Consent Decision and Order without further procedure or hearing pursuant to the applicable 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)(7 C.F.R. § 1.138). Respondent admits that the Secretary has jurisdiction in this matter. The parties agree to the issuance of the following Consent Decision and Order without further procedure or hearing. Respondent specifically waives its right to any further process or procedure in this proceeding. 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 following findings and conclusions are made without any determination as to whether the responsibly connected party to the Respondent, Necati Ayar, knowingly, intentionally, or recklessly committed any wrongful acts or defalcations of their obligations under the PACA.

Findings of Fact

1. Respondent is or was a corporation organized and existing under the laws of the state of New York and its mailing address is 109 Bay 8th Street, 2nd Floor, Brooklyn, New York 11228.

2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20190151 was issued to Respondent on December 13, 2019. This license terminated on December 13, 2020, 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 of February 2020 through September 2020, failed to make full payment promptly to fourteen (14) sellers of the agreed purchase prices in the total amount of \$720,226.05 for 38 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce.

4. Respondent and Complainant agree, for the purpose of settling this matter, that the *determination* made by the Director of the PACA Division that Mr. Necati Ayar, Respondent's President and 100% shareholder, was "responsibly connected" to Ayar Produce NY, Inc. at the time of its violations is final. Respondent agrees that it will no longer challenge that determination.

The parties further agree that the “responsibly connected” determination does not impose personal liability upon Mr. Ayar for any debt that may remain owing by Ayar Produce NY, Inc. or subject Mr. Ayar to any sanctions, other than the employment and licensing sanctions set out in section 4 (b) and (c) of the PACA (7 U.S.C. §499d(b),(c)) and section 8a of the Act (7 U.S.C. § 499h(b))².

Conclusions

Respondent’s failure to make full payment promptly to fourteen (14) sellers of the agreed purchase prices in the total amount of \$720,226.05 for 38 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce, during the period of February 2020 through September 2020 constitutes flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

² Section 8(b) of the PACA (7 U.S.C. §499h(b)) provides that: *no licensee shall employ any person, or any person who is or has been responsibly connected with any person... who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2... . The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 2, if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the Secretary as assurance that such licensee's business will be conducted in accordance with this Act and that the licensee will pay all reparation awards, subject to its right of appeal under section 7(c), which may be issued against it in connection with transactions occurring within four years following the approval. The Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary order. Sections 4 (b) and (c) of the PACA (7 U.S.C. §499d(b),(c)) provide that: The Secretary shall refuse to issue a license to any applicant... found to have committed any flagrant or repeated violation of section 2... for a two year period... if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the Secretary... . In the event such applicant does not furnish such a surety bond, the Secretary shall not issue a license...until three years have elapsed after the date of the applicable order of the Secretary or decision of the court on appeal.*

Order

A finding is issued that Respondent has engaged in flagrant and repeated violations of the PACA. Accordingly, the facts and circumstances of the violations shall be published.

This Order shall become final and effective upon issuance.

Copies hereof shall be served upon parties.

**CHRISTOPHER
ER YOUNG**

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Christopher Young, Esq.
Co-Counsel for Complainant

Date signed


**SHELTON
SMALLWOOD**

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Shelton S. Smallwood
Co-Counsel for Complainant

Date signed

5-4-2022


Necati Ayar
President of Respondent

Date signed

Done at Washington, D.C.

this 5th day of May, 2022

CHANNING
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Chief Administrative Law Judge
Channing D. Strother