

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/HCO  
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In re: )  
 )  
R & S Export & Import Inc., ) PACA-D Docket No. 22-J-0023  
 )  
Respondent. )

**DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT**

Appearance:

*Shelton Smallwood, 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 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 Deputy Administrator of the Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture (“Complainant”), initiated this proceeding by filing a complaint against R & S Export & Import Inc. (“Respondent”) on January 11, 2022. The Complaint alleges that Respondent violated PACA section 2(4) (7 U.S.C. § 499b(4)) by failing to make full payment promptly to eight sellers for twenty-five lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce in the total amount of \$298,099.60.<sup>1</sup> Further, the Complaint requests:

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<sup>1</sup> Complaint at 2-3.

1. That *unless Respondent fails to file an answer within the time allowed, or admits all the material allegations of this Complaint, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the PACA; and*
2. That the Administrative Law Judge find that Respondent has willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)), and publish the facts and circumstances of Respondent’s violations pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

Complaint at 3-4 (emphasis added).

Respondent was duly served with a copy of the Complaint and did not file an answer within the twenty-day period as prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).<sup>2</sup>

On April 12, 2022, Complainant filed a motion for decision without hearing by reason of default (“Motion for Default”) and proposed decision without hearing by reason of default (“Proposed Decision”) pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Respondent has not filed any objections to Complainant’s Motion for Default or Proposed Decision.<sup>3</sup>

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<sup>2</sup> United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on January 19, 2022. Respondent had twenty 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 March 7, 2022. Respondent has not filed an answer.

<sup>3</sup> United States Postal Service records reflect that Complainant’s Motion for Default and Proposed Decision were sent to Respondent via certified and delivered on April 25, 2022. Respondent had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. 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

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.<sup>4</sup> Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an unfiled answer where, as in the present case, no meritorious objections have been filed.<sup>5</sup>

As Respondent failed to answer the Complaint, and upon Complainant's motion for the issuance of a decision without hearing, 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 R & S Export & Import Inc. is or was a corporation organized and existing under the laws of the state of Florida, and its mailing address is 10450 Doral Blvd Suite 206, Doral, Florida 33178. The Complaint in this case was served at the company mailing address.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of PACA. License number 2003 0259 was issued to Respondent on November 21, 2002. This license terminated on November 21, 2020, pursuant to PACA section 4(a) (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.
3. Respondent, during the period January 2020 through April 2020, on or about the dates and in the transactions set forth in Appendix A (attached to the Complaint and incorporated herein

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day. 7 C.F.R. § 1.147(h). In this case, Respondent's objections were due on or before May 16, 2022. Respondent has not filed any objections.

<sup>4</sup> 7 C.F.R. § 1.136(c).

<sup>5</sup> See *supra* note 3 and accompanying text.

by reference), failed to make full payment promptly to eight sellers for twenty-five lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$298,099.60.

### **Conclusions**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent R & S Export & Import Inc.'s failure to make full payment promptly with respect to the twenty-five transactions referenced in Finding of Fact No. 3 above, and as set forth in Appendix A to the Complaint, constitutes willful, flagrant, and repeated violations of PACA section 2(4) (7 U.S.C. § 499b(4)), for which the below Order is issued.
3. The total unpaid balance due to sellers represents more than a *de minimis* amount, thereby obviating the need for a hearing in this matter.<sup>6</sup>
4. As Respondent's PACA license is terminated, the appropriate sanction is publication of the facts and circumstances of Respondent's violations.<sup>7</sup>

### **ORDER**

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. A finding is made that Respondent R & S Export & Import Inc. committed willful, flagrant, and repeated violations of PACA section 2(4) (7 U.S.C. § 499b(4)).

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<sup>6</sup> See *The Square Group, LLC*, 75 Agric. Dec. 689, 695 (U.S.D.A. 2016); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984) (Ruling on Certified Question).

<sup>7</sup> See *Baiardi Food Chain v. United States*, 482 F.3d 238, 240 (3d Cir. 2007); *Koam Produce, Inc.*, 65 Agric. Dec. 589, 621 (U.S.D.A. 2006); *Hogan Distrib., Inc.*, 55 Agric. Dec. 622, 633 (U.S.D.A. 1996).

3. The facts and circumstances of Respondent's PACA violations shall be published pursuant to PACA section 8(a) (7 U.S.C. § 499h(a)).

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 upon the parties and counsel by the Hearing Clerk.

Done at Washington, D.C.,  
this 1st day of June 2022

**CHANNING  
STROTHER** Digitally signed by  
CHANNING STROTHER  
Date: 2022.06.01  
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Channing D. Strother  
Chief Administrative Law Judge

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