

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/HCO
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In re:)
)
J & J Distributing Company,) PACA-D Docket No. 22-J-0028
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Shelton Smallwood, Esq., and Christopher Young, 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 J & J Distributing Company (“Respondent”) on February 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 twelve sellers for 103 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce in the total amount of \$493,611.39.¹ Further, the Complaint requests:

¹ 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 order the revocation of Respondent’s PACA license pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).²

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).³

On April 5, 2022, I issued an order (“Show Cause Order”) directing the parties to show cause, not later than twenty days after that date, why default should not be entered against Respondent.⁴

² Although Complainant seeks revocation of Respondent’s PACA license, the license terminated on April 13, 2022. *See infra* Finding of Fact No. 2. Therefore, the appropriate sanction is now publication of the facts and circumstances regarding Respondent’s PACA violations. *See infra* note 10 and accompanying text.

³ United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on February 28, 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 21, 2022. Respondent has not filed an answer.

⁴ The Show Cause Order also provided: “Unless the parties have agreed to a consent decision, Complainant’s response shall be accompanied by: (1) a proposed decision and order and (2) a motion for adoption of that proposed decision in accordance with the provisions of 7 C.F.R. § 1.139.” Show Cause Order at 2.

On April 15, 2022, Complainant filed a Response to Show Cause Order and Request 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).⁵ Respondent did not respond to the Show Cause Order and has not filed any objections to Complainant’s Motion for Default or Proposed Decision.⁶

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.⁷ 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.⁸

⁵ Through its Motion, Complainant requests that “I order the revocation of Respondent’s PACA license pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).” Proposed Decision at 3; Motion for Default at 2. However, revocation is not an appropriate sanction as Respondent’s PACA license has been terminated. *See infra* Finding of Fact No. 2; *Baiardi Food Chain v. United States*, 482 F.3d 238, 240 (3d Cir. 2007) (“Because [the respondent] had failed to pay its license renewal fee, its PACA license terminated . . . ; as such, the only sanction open to the secretary was the publication of the facts and circumstances of the case.”); *Koam Produce, Inc.*, 65 Agric. Dec. 589, 621 (U.S.D.A. 2006) (holding that revocation was not an appropriate sanction where the respondent’s PACA license had terminated before the ALJ issued her initial decision).

⁶ United States Postal Service records reflect that Complainant’s Motion for Default and Proposed Decision were sent to Respondent via certified and delivered on May 5, 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 day. 7 C.F.R. § 1.147(h). In this case, Respondent’s objections were due on or before May 25, 2022. Respondent has not filed any objections.

⁷ 7 C.F.R. § 1.136(c).

⁸ *See supra* note 6 and accompanying text.

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 J & J Distributing Company is a corporation organized under the laws of the State of Minnesota. Respondent's business address is or was 653 Rice Street, St. Paul, Minnesota 55103. The Complaint was served on Respondent's address and on Respondent's principal, whose address was provided to the Hearing Clerk's Office but withheld from the Complaint to protect the principal's personal information and privacy.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of PACA. License number 1980 0526 was issued to Respondent on February 12, 1980. Respondent's license was suspended due to an unpaid reparation award on July 30, 2021 pursuant to PACA section 7(d) (7 U.S.C. § 499(g)(d)). The license terminated on April 13, 2022, 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 June 2020 through April 2021, on or about the dates and in the transactions set forth in Appendix A (attached to the Complaint and incorporated herein by reference), failed to make full payment promptly to twelve sellers for 103 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$493,611.39.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent J & J Distributing Company's failure to make full payment promptly with respect to the 103 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.⁹
4. As Respondent's PACA license is terminated, the appropriate sanction is publication of the facts and circumstances of Respondent's violations.¹⁰

ORDER

1. Complainant's Motion for Default is GRANTED.
2. A finding is made that Respondent J & J Distributing Company committed willful, flagrant, and repeated violations of PACA section 2(4) (7 U.S.C. § 499b(4)).

⁹ 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).

¹⁰ See *Baiardi Food Chain*, 482 F.3d at 240 ("Because [the respondent] had failed to pay its license renewal fee, its PACA license terminated . . . ; as such, the only sanction open to the secretary was the publication of the facts and circumstances of the case."); *Koam Produce, Inc.*, 65 Agric. Dec. at 621 ("Publication of the facts and circumstances of Respondent's violations has the same effect on Respondent and persons responsibly connected with Respondent as revocation of Respondent's PACA license."); *Hogan Distrib., Inc.*, 55 Agric. Dec. 622, 633 (U.S.D.A. 1996) ("Where, as in the instant case, Respondent does not have a license, publication of the facts and circumstances of the violation is a substitute for revocation of a license.").

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
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Date: 2022.06.01
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Channing D. Strother
Chief Administrative Law Judge

Hearing Clerk's Office
United States Department of Agriculture
Stop 9203, South Building, Room 1031
1400 Independence Avenue, SW
Washington, DC 20250-9203
Tel: 202-720-4443
Fax: 844-325-6940
SM.OHA.HearingClerks@USDA.GOV