

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/HCO
2022 JUN 7 3:35 PM

In re:)
)
Farm Fresh Packers, LLC,) PACA-D Docket No. 20-J-0163
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

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 Farm Fresh Packers, LLC (“Respondent”) on September 29, 2020. The Complaint alleges that Respondent willfully violated PACA section 2(4) (7 U.S.C. § 499b(4)) by failing to make full payment promptly to four sellers for twenty-four lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce in the total amount of \$309,860.95.¹ Further, the Complaint requests:

¹ Complaint at 2.

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 publication of the facts and circumstances surrounding the violation pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

Complaint at 3 (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).²

On February 9, 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

² The Hearing Clerk sent a copy of the Complaint to Respondent via certified mail; however, the mailing was returned marked “addressee unknown” on May 17, 2021. On June 2, 2021, Complainant filed a “UPS Delivery Notification” with the Hearing Clerk. The Delivery Notification indicates that AMS sent Respondent a package via UPS, which was delivered on May 29, 2021. Complainant states that the package contained “the Complaint, Hearing Clerk’s accompanying letter, and a copy of the Rules of Practice.” Motion for Default at 2. Complainant further states: “This was in accordance with section 1.147(c)(3) of the Rules of Practice (7 C.F.R. § 1.147(c)(3)); the materials were served ‘other than by [regular] mail,’ by UPS[.]” *Id.* Subsequently, the Hearing Clerk sent Respondent another copy of the Complaint via certified mail that was delivered on May 14, 2022. Respondent had twenty days from the date of service to file a response to the Complaint. 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 June 18, 2021 (the UPS delivery date is considered to govern) or June 3, 2022 (if the May 14, 2002 certified-mail delivery date is considered to govern). In any event, Respondent has not filed an answer and, is, thus, in default under the applicable Rules.

(“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.³

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.⁴ 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.⁵

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 Farm Fresh Packers, LLC is or was a corporation organized and existing under the laws of the State of Florida. Respondent’s mailing address is 1901 Green Road, Unit A, Pompano Beach, Florida 33064.

³ United States Postal Service records reflect that Complainant’s Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on February 14, 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 March 7, 2022. Respondent has not filed any objections.

⁴ 7 C.F.R. § 1.136(c).

⁵ See *supra* note 3 and accompanying text.

2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20150304 was issued to Respondent on January 15, 2015. The license terminated on January 15, 2020, pursuant to PACA section (a) (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.
3. Respondent, during the period July 2017 through November 2018, on or about the dates and in the transactions set forth in Appendix A to the Complaint (incorporated herein by reference), failed to make full payment promptly to four sellers for twenty-four lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$309,860.95.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Farm Fresh Packers, LLC's failure to pay promptly with respect to the 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 is more than a *de minimis* amount, thereby obviating the need for a hearing in this matter to determine the exact amount.⁶

⁶ 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).

4. As Respondent's PACA license is terminated, the appropriate sanction is publication of the facts and circumstances of Respondent's violations.⁷

ORDER

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. A finding is made that Respondent Farm Fresh Packers, LLC committed willful, flagrant, and repeated violations of PACA section 2(4) (7 U.S.C. § 499b(4)).
3. The facts and circumstances of Respondent's PACA violations shall be published in accordance with 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).

⁷ See *Baiardi Food Chain v. United States*, 482 F.3d238, 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).

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk.

Done at Washington, D.C.,
this 7th day of June 2022

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CHANNING STROTHER
Date: 2022.06.07
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Channing D. Strother
Chief Administrative Law Judge

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