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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Tumi Produce International Corp.,) PACA-D Docket No. 18-0039
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearances:

Christopher P. Young, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250, for the Complainant, Agricultural Marketing Service (“AMS”); and

Leonard Kreinces, Esq., of Kreinces & Rosenberg, P.C., 900 Merchant Concourse, Suite 305, Westbury, New York 11590, for the Respondent, Tumi Produce International Corp.¹

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a *et seq.*) (“PACA”); the regulations promulgated pursuant thereunder (7 C.F.R. §§ 46.1 through 46.45) (“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 Associate Deputy Administrator, Fair Trade Practices Program, PACA Division, Agricultural Marketing Service, United States Department of Agriculture (“Complainant” or “AMS”), initiated this proceeding against Tumi Produce International Corp. (“Respondent”) by filing a complaint on May 31, 2018. The Complaint alleged that, during the period of October 2016 through May 2017, Respondent willfully violated section 2(4) of the PACA (7 U.S.C. §

¹ The Complaint identified Leonard Kreinces, Esq. as counsel of record for Respondent. However, Attorney Kreinces has not filed a notice of appearance or any other documents in this proceeding.

499b(4)) by failing to make full payment promptly to seven sellers, in the total amount of \$563,831.23, for forty-eight lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce. AMS requested that an Administrative Law Judge find that Respondent committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order that the facts and circumstances of Respondent's PACA violations be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

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

On July 26, 2018, I issued an order directing the parties to show cause ("Show Cause Order"), not later than twenty days after that date, why default should not be entered against Respondent. On August 30, 2018, AMS 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"). Respondent failed to respond to the Show Cause Order³ and has not filed any objections to AMS' Motion for Default or Proposed Decision.⁴

² United States Postal Service records reflect that the Complaint was sent to Respondent's counsel via certified mail and delivered on June 8, 2018. 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 June 28, 2018. Respondent has not filed an answer in this matter.

³ The Show Cause Order was issued on July 26, 2018; therefore, the parties were required to respond on or before August 15, 2018. As of this date, Respondent has not filed a response.

⁴ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent's counsel via certified mail and delivered on September 14, 2018. Respondent had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal holidays shall not be included in the count; however, if the due date falls on a Saturday, Sunday, or federal

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 C.F.R. § 1.136(c). Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely filed answer where, as in the present case, no meritorious objections have been filed.⁵

As Respondent failed to answer the Complaint, and upon AMS' motion for the issuance of a decision without hearing by reason of default, 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 Tumi Produce International Corp. is or was a corporation incorporated and existing under the laws of the state of New York. Respondent's business address and mailing address is or was 3082 Decatur Avenue, Bronx, New York 10467.
2. At all times material herein, Respondent Tumi Produce International Corp. was licensed and/or operating subject to the provisions of the PACA. License number 20170051 was issued to Respondent on October 18, 2016. This license terminated on October 18, 2017, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), after Respondent failed to pay the required annual renewal fee.
3. Respondent Tumi Produce International Corp, during the period of October 2016 through May 2017, on or about the dates and in the transactions set forth in Appendix A to the Complaint

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 by October 4, 2018. Respondent has not filed any objections.

⁵ 7 C.F.R. § 1.139; *see supra* note 4.

(attached hereto and incorporated by reference), failed to make full payment promptly to seven sellers, in the total amount of \$563,831.23, for forty-eight lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Tumi Produce International Corp.'s failure to pay promptly with respect to the transactions referenced in Finding of Fact No. 3 above and set forth in Appendix A constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), for which the below Order is issued.
3. The total unpaid balance due to produce sellers represents more than a *de minimis* amount, thereby obviating the need for a hearing in this matter.⁶
4. As Tumi Produce International Corp.'s PACA license terminated prior to the institution of this proceeding, the appropriate sanction is publication of the facts and circumstances of Tumi Produce International Corp.'s violations.⁷

ORDER

1. AMS' Request for Decision Without Hearing by Reason of Default is GRANTED.
2. A finding is made that Tumi Produce International Corp. has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

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).

⁷ See *Baiardi Chain Food Corp.*, 64 Agric. Dec. 1822, 1832 (U.S.D.A. 2005), *petition for review denied*, 482 F.3d 238 (3d Cir. 2007); *Scamcorp, Inc.*, 57 Agric. Dec. 527, 571 n.23 (U.S.D.A. 1998); *Hogan Distrib., Inc.*, 55 Agric. Dec. 622, 633 (U.S.D.A. 1996).

3. The facts and circumstances of Tumi Produce International Corp.'s PACA violations shall be published pursuant to section 8(a) of the PACA (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 by the Hearing Clerk upon each of the parties, with courtesy copies provided via email where available.

Done at Washington, D.C.,
this 9th day of October 2018



Jill S. Clifton
Administrative Law Judge
for
Channing D. Strother
Acting Chief Administrative Law Judge

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Appendix A

Seller & Location	No. Lots	Commodity	Date Accepted	Date Payment Due	Amount Past Due & Unpaid
1 Moza LLC Moscow, PA	27	MXFV	10/04/16 to 12/22/16	10/14/16 to 01/01/17	\$ 271,632.78
2 Pier-C Produce, Inc. Leamington, Ontario, CAN	3	Carrots	02/20/17 to 03/13/17	03/02/17 to 03/23/17	\$ 20,310.00
3 Sandhu Bros. Growers Crows Landing, CA	1	Yams	03/01/17	03/11/17	\$ 26,838.00
4 JStar Produce LLC White Plains, NY Origin: CA, FL	13	MXFT	03/13/17 to 04/04/17	04/07/17 to 05/04/17	\$ 177,861.95
5 A. Casas Farms, Inc. Pismo Beach, CA	2	Peas	04/17/17 to 04/29/17	04/27/17 to 05/09/17	\$ 39,373.50
6 Sunterra Produce Traders East Hewitt, NJ	1	Mangos	04/21/17	05/01/17	\$ 19,495.00
7 New York Produce Bronx, NY Origin: MX	1	Avocados	05/01/17	05/22/17	\$ 8,320.00
7 Sellers	48	Lots			\$ 563,831.23