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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	PACA Docket No. D-18-0044
	)	
Imperial Frozen Foods Op Co LLC ,	)	
	)	
	)	
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), which is conducted pursuant to the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*) (Rules or Rules of Practice).

On June 8, 2018, Complainant filed a Complaint alleging that Respondent, during the period June 2017 through December 2017, on or about the dates and in the transactions set forth in Appendix A to the Complaint, failed to make full payment promptly to 22 sellers for 58 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of $2,242,125.55.

Complainant and Respondent now consent and agree, for the purpose of settling this matter, to the entry of this Consent Decision and Order, pursuant to section 1.138 of the Rules of Practice (7 C.F.R. § 1.138). Respondent agrees that the Secretary has jurisdiction in this matter, and waives all further proceedings in this matter. 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 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.

Findings of Fact

(a) Respondent is a limited liability company whose business and mailing address is 3150 Rogers Rd Ste 212, Wake Forest, North Carolina 27587-4195.

(b) At all times material herein, Respondent was licensed and/ or operating subject to the provisions of the PACA. License number 20150617 was issued to Respondent on April 20, 2015. This license is currently active, and next due for renewal on April 20, 2019.

(c) The Complaint alleges an unpaid amount of $2,242,125.55; Respondent has now paid all sellers and the debt alleged as unpaid in the transactions set forth in Appendix A to the disciplinary Complaint.

Conclusions

Respondent failed to make full payment promptly[1] to 22 sellers for 58 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, during the period of June 2017 through December 2017, on or about the dates and in the transactions set forth in Appendix A to the Complaint, in the total amount of $2,242,125.55. Respondent's failure to make full payment promptly of all of the undisputed

[1] "Full payment promptly" is defined and more fully described in section 46.2(aa) of the regulations (7 C.F.R. § 46.2(aa)).

produce debt described above constitutes slow payment and not prompt payment as required by the Act and regulations.

Order

A finding is made that Respondent has committed flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. §499b(4)) and Respondent's license shall be suspended for a period of 90 days.

However, the finding of violation and license suspension shall be held in abeyance so long as Respondent pays a civil penalty of $40,000.00 no later than 30 days after the effective date of this Consent Decision and Order, or no later than October 10, 2018, whichever occurs first. Payment shall be made by certified check or bank check made payable to the "United States Treasury" and delivered to the United States Department of Agriculture, PACA Division, 1400 Independence Avenue, S.W. Room 1510 South Bldg., Stop 0242 Washington, D.C. 20250-0242.

Should Respondent fail to pay the $40,000.00 civil penalty within the time prescribed above, the finding of flagrant and repeated violation and suspension ordered above and any responsibly connected sanction that flows therefrom, will take effect without further process or procedure five (5) days after Respondent receives notice from the Associate Deputy Administrator of AMS indicating that Respondent has violated the terms of this Order. Should Respondent satisfy the terms of the Order and make the civil penalty payment within the time prescribed above, the finding of violation and suspension ordered above will be permanently abated without further process or procedure and the case will be effectively closed.

This Consent Decision and Order is effective upon issuance.

[redacted]

Patricia J. Rynn, Esq.
Rynn and Janowsky, LLP
Attorney for Respondent

[redacted]

Christopher Young, Esq.
Fair Trade Practices Program, PACA Division
Attorney for Complainant

Issued at Washington, D.C.

this 11th day of September, 2018

[redacted]

Channing D. Strother
Acting Chief Administrative Law Judge