

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) PACA Docket No. D-20-J-0162
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)
North Pacific Cannery and Packers, Inc.)
d/b/a NORPAC Foods, Inc.,)
)
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). The Amended Complaint filed herein, on January 19, 2021, alleged that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA by: failing to make full payment promptly to two (2) sellers of the agreed purchase prices in the total amount of \$152,181.14 for five (5) lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce, during the period of June 2019 through August 2019. The Amended Complaint sought the issuance of an order: 1) finding that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA; and 2) ordering the publication of the facts and circumstances of Respondent's PACA violations, pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

The Amended Complaint was served upon Respondent, and 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 admits that the Secretary has jurisdiction in this matter. 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. 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.

Therefore, this Consent Decision and Order is entered without further procedure or hearing pursuant to the consent decision provisions (7 C.F.R. §1.138) of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 et seq.)(Rules of Practice) applicable to this proceeding.

Findings of Fact

1. Respondent is or was a cooperative organized and existing under the laws of the State of Oregon. Respondent's former business and mailing address was 3225 25th Street SE, Salem, Oregon 97302.

2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 1900 6059 was issued to Respondent on December 1, 1931. The license terminated on December 1, 2020, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

3. Respondent, during the period June 2019 through August 2019, on or about the dates and in the transactions set forth in Appendix A (attached to the Amended Complaint filed) failed to make full payment promptly to two (2) sellers for five (5) lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$152,181.14.

Conclusions

Respondent's failure to make full payment promptly to the sellers of the agreed purchase prices of the perishable agricultural commodities described in Finding of Fact paragraph 3 above constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Order

A finding is issued that Respondent has engaged in willful, flagrant, and repeated violations of the PACA, and the facts and circumstances of Respondent's PACA violations license shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)). However, this finding and publication shall be held in abeyance so long as Respondent pays the produce sellers listed in Appendix A to the Amended Complaint the full amounts owed to each seller, as listed in Appendix A to the Amended Complaint, and referenced in Finding of Fact paragraph 3 above, within six months (180 days) of the effective date of this Consent Decision and Order.

The PACA Division of the Agricultural Marketing Service shall be the final arbiter of whether full payment to the produce sellers in the amounts listed in Appendix A to the Amended Complaint has been paid. It will be Respondent's obligation to demonstrate that full payment as described above has been made.

Once full payment to the produce sellers in the amounts listed in Appendix A to the Amended Complaint is made, Respondent shall pay a civil penalty in the amount of \$10,000. Payment of the civil penalty must be made within the 180 day time period from the effective date of this Consent Decision and Order, or within 5 business days from the date of demonstration of full payment of such produce sellers. Payment of the civil penalty shall be by certified check or bank check made payable to the “United States Treasury” and delivered to the United States Department of Agriculture, PACA Branch—Attention: Trade Practices Section, 1400 Independence Avenue, S.W. Room 1510 South Bldg., Stop 0242 Washington, D.C. 20250-0242.

If full payment is made to the produce sellers within the 180 days stated above, and Respondent pays the \$10,000 civil penalty as described above, the finding of willful, flagrant, and repeated violations of the PACA and the publication of the facts and circumstances of Respondent’s PACA violations will be permanently abated, and the case will be closed. If this occurs, no individuals will be finally determined to be responsibly connected to Respondent, no employment sanctions as stated in section 8(b) of the PACA (7 U.S.C. § 499h(b)) will be imposed on any individuals who were initially determined to have been responsibly connected with Respondent, and no licensing sanctions as stated in section 4(b) of the PACA (7 U.S.C. § 499d(b)) will be imposed on any entities associated with such individuals.

If full payment to the sellers, in the amounts listed in Appendix A to the Amended Complaint and as described in Finding of Fact paragraph 3 above, and subsequent payment of the \$10,000 civil penalty is not made in the manner described above, then the finding of willful, flagrant, and repeated violations, as stated in the “Conclusions” section above, and the publication thereof, will no longer be held in abeyance and will be made without further

proceeding, *except* the filing of a Notice by Complainant, informing the Administrative Law Judge that Respondent has failed to comply with the terms of the Consent Decision and Order, and requesting the issuance of an appropriate Order. If this occurs, individuals who were initially determined to have been responsibly connected to Respondent will be provided another opportunity to appeal such initial responsibly connected determinations, and, subject to any such appeal, final responsibly connected determinations may be made, and sanctions may be imposed as stated in section 8(b) of the PACA (7 U.S.C. § 499h(b)).

This Order shall become effective upon issuance.

Copies hereof shall be served upon parties.



Michael Fletcher
Attorney for Respondent

3-1-21
Date signed

CHRISTOPHER YOUNG
Digitally signed by CHRISTOPHER YOUNG
Date: 2021.03.03 13:59:46 -05'00'

Christopher Young, Esq.
Attorney for Complainant

3-3-21
Date Signed

Done at Washington, D.C.

this 3rd day of March, 2021



Channing D. Strother
Chief Administrative Law Judge