

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	PACA Docket No. D-17-0015
)	
American Fruit and Produce Corporation,)	
)	
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 December 14, 2016, Complainant filed a Complaint alleging that Respondent, during the period April 2015 through May 2016, on or about the dates and in the transactions set forth in Appendix A to the Complaint, failed to make full payment promptly to 38 sellers for 311 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$2,842,249.34. The Respondent timely filed an Answer to the Complaint, in which it denied in part and admitted in part the allegations of the Complaint.

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.

Findings of Fact

(a) Respondent is a corporation organized and existing under the laws of the state of Florida. Respondent's business and mailing address is or was 12805 NW 42nd Avenue, Opa Locka, Florida 33054-4401.

(b) At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 2005-0265 was issued to Respondent on December 28, 2004. The license is due for renewal on December 28, 2017.

(c) The Complaint alleges an unpaid amount of \$2,842,249.34; 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 promptly¹ to 38 sellers for 311 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, during the period April 2015 through May 2016, on or about the dates and in the transactions set forth in Appendix A to the Complaint, in the total amount of \$2,842,249.34. Respondent's failure to make full payment promptly of all of the undisputed 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 repeated and flagrant 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.

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)).

However, the finding of violation and license suspension shall be held in abeyance so long as Respondent pays a civil penalty of \$45,000.00 no later than 30 days after the effective date of this Consent Decision and Order, or no later than February 28, 2016, 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 \$45,000.00 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, 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.


Tim Henkel, Esq.
Attorney for Respondent


Christopher Young, Esq.
Attorney for Complainant

Issued at Washington, D.C.

this 2d day of February, 2017


Administrative Law Judge

Channing D. Strother

CERTIFICATE OF SERVICE

American Fruit & Produce Corporation, Respondent, Respondent
Docket: 17-0015

Having personal knowledge of the foregoing, I declare under penalty of perjury that the information herein is true and correct and this is to certify that a copy of the CONSENT DECISION AND ORDER SIGNED has been furnished and was served upon the following parties on February 2, 2017 by the following:

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Respectfully Submitted,



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