

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:) PACA Docket No. D-17-0216
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)
Organic Avenue, 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). The Complaint filed herein, on February 7, 2017, 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 four (4) sellers of the agreed purchase prices in the total amount of \$249,272.88 for 82 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce, during the period of August 2015 through October 2015. The Complaint sought the issuance of an order finding that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA, and publication thereof.¹

The Respondent ceased all operations and filed a petition for relief under chapter 7, title 11 of the United States Code (the "Bankruptcy Code") on October 15, 2015 with the Clerk of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). Respondent's chapter 7 bankruptcy case is captioned *In re Organic Avenue, LLC*, Chapter 7 Case

¹ Complainant sought publication of the facts and circumstances surrounding Respondent's PACA violations, rather than revocation of Respondent's PACA license, as Respondent's PACA license terminated on February 16, 2015, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual fee.

No. 15-12787 (the "Bankruptcy Case"). On October 16, 2015, Jil Mazer-Marino was appointed as the interim chapter 7 trustee for Respondent and has since qualified as permanent chapter 7 trustee (the "Trustee").

The Bankruptcy Court has entered an order authorizing the Trustee to agree that the Secretary has jurisdiction in this matter, and to further agree to the entry of a Consent Decision and Order as set forth herein. The Complainant agrees that the Secretary has jurisdiction and agrees to the entry of a Consent Decision and Order as set forth herein. Therefore, this Consent Decision and Order is entered without further procedure or hearing pursuant to the consent decision provisions 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 (7 C.F.R. §1.138).

Findings of Fact

1. Respondent is or was a limited liability company organized and existing under the laws of the state of New York. Respondent's business and mailing address was 43-46 10th Street, Long Island City, New York, New York 11101.

2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20120616 was issued to Respondent on February 16, 2012. The license terminated on February 16, 2015, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee. The Trustee lacks the personal knowledge necessary to admit or deny those allegations, but does not dispute those allegations for purposes of this Consent Decision and Order.

3. Respondent, during the period August 2015 through October 2015, on or about the dates and in the transactions set forth in Appendix A of the Complaint and incorporated by reference, failed to make full payment promptly to four (4) sellers for 82 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$249,272.88. The Trustee lacks the personal knowledge necessary to admit or deny those allegations, but does not dispute those allegations for purposes of this Consent Decision and Order.

4. The Trustee caused the Respondent's chapter 7 estate to pay the claims of seller Four Seasons, Inc. in full. The Trustee shall cause the Respondent's bankruptcy estate to pay the claims of the remaining sellers in accordance with applicable provisions of the Bankruptcy Code.

Conclusions

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

Order


A finding is issued that prior to the commencement of the Bankruptcy Case, Respondent engaged in flagrant and repeated violations of the PACA, and the facts and circumstances of the violation shall be published, in lieu of revocation.²

Respondent waives all further proceeding in this matter.

Complainant waives all claims against the Trustee and Respondent's chapter 7 estate; provided however, that Complainant retains all rights and remedies against the Respondent and its principals.

This Order shall become final and effective upon issuance.

Copies hereof shall be served upon parties.


Christopher Young, Esq.
Attorney for Complainant

6/2/17
Date signed


Sign: 

Print: Jil Mazer Marino, not individually
but as Chapter 7 Trustee for Organic
Avenue, LLC

5/12/2017
Date Signed

Done at Washington, D.C.

this 9th day of June, 2017


Administrative Law Judge

² See *In re: Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 547 (1998).