

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) PACA Docket No. D-03-0024
)
Gary L. Comella)
d/b/a Southwest Produce,)
) Decision Without Hearing
Respondent) by Reason of Default

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (hereinafter referred to as the "Act"), instituted by a complaint filed on May 29, 2003, by the Associate Deputy Administrator, Perishable Agricultural Commodities Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture.

The complaint alleges that during the period November 1999 through January 2001, Gary L. Comella, d/b/a Southwest Produce, (hereinafter "Respondent") failed to make full payment promptly to 11 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$387,011.02 for 93 lots of perishable agricultural commodities that he purchased, received, and accepted in interstate and foreign commerce.

A copy of the complaint was mailed to Respondent by certified mail at his last known principal place of business on May 29, 2003, and was returned to the office of the Hearing Clerk.

A copy of the complaint was remailed to Respondent by regular mail **on June 17, 2003 pursuant to Section 1.147(c) of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §1.130 et seq., hereinafter "Rules of Practice")**. No answer to the complaint has been received. The time for

filing an answer having expired, and upon motion of the Complainant for the issuance of a decision without hearing

based upon Respondent's default, the following Decision and Order shall be issued without further investigation or hearing pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent, Gary L. Comella, doing business as Southwest Produce, (hereinafter "Respondent") is an individual operating as a sole proprietor under the laws of the state of Arizona. His business address was 7423 West Highway 95, Somerton, Arizona 85350. His mailing address is P. O. Box 1339, Somerton, Arizona 85350.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 980062 was issued to Respondent on October 10, 1997. This license terminated on October 10, 2000, pursuant to Section 4(a) of the PACA (7 U.S.C. § 499(a)), when Respondent failed to pay the required renewal fee.

3. During the period November 1999 through January 2001, Respondent purchased, received, and accepted in the course of interstate and foreign commerce, 93 lots of perishable agricultural commodities from 11 sellers, but failed to make full payment promptly of the agreed purchase prices, or balances thereof, in the total amount of \$387,011.02.

Conclusions

Respondent's failure to make full payment promptly with respect to the transactions set forth in Finding of Fact No. 3 above, constitutes willful, flagrant, and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)), for which the Order below is issued.

Order

A finding is made that Respondent has committed willful, flagrant, and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)), and the facts and circumstances of the violations set forth above shall be published.

This order shall take effect on the 11th day after this Decision becomes final.

Pursuant to the Rules of Practice, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 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 hereof shall be served upon the parties.

Done at Washington, D.C.

this 15 day of April, 2004

Marc Hillson
Administrative Law Judge

