UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/OHC
2020 FEB 6 PM4:08

In re:	)	
	)	
Versa Marketing, Inc.,	)	PACA-D Docket No. 20-J-0012
	)	
Respondent.	)	

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT[1]

Appearance:

Shelton S. Smallwood, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, Associate Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service ("AMS").

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a *et seq.*) ("PACA"); the regulations promulgated thereunder (7 C.F.R. §§ 46.1 through 46.5) ("Regulations"); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) ("Rules of Practice").

The Associate Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture ("Complainant" or "AMS"), initiated this proceeding by filing a complaint against Versa Marketing, Inc. ("Respondent") on October 22, 2019. The Complaint alleges that Respondent violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to three sellers for forty lots of agricultural commodities that Respondent purchased, received, and accepted in interstate and

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[1] This Decision and Order modifies and supersedes a Decision and Order filed in this docket on February 4, 2020 by correcting typographical errors that appeared on page 4.

foreign commerce, in the total amount of $792,939.27.[2] Further, the Complaint requests:

> That the Administrative Law Judge find that Respondent has willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)), and publish the facts and circumstances of Respondent's violations pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

Complaint at 4.

Respondent was duly served with a copy of the Complaint and did not file an answer within the twenty-day period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).[3]

On November 21, 2019, Complainant filed a Motion for Decision Without Hearing by Reason of Default ("Motion for Default") and Proposed Decision Without Hearing by Reason of Default ("Proposed Decision"). Respondent has not filed any objections thereto.[4]

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[2] *See* Complaint at 2-3.

[3] United States Postal Service records reflect that the Complaint was sent to Respondent's business address via certified mail and delivered on October 25, 2019. The Complaint was also sent to Respondent's principal of record, (b) (6) [redacted], via certified mail but was returned to the Hearing Clerk's Office as "unclaimed" on December 30, 2019. In accordance with the Rules of Practice, the Hearing Clerk re-mailed (*see* 7 C.F.R. § 1.142) the Complaint to the same address via ordinary mail on January 13, 2020. 7 C.F.R. § 1.147(c). Respondent had twenty days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent's answer was due on or before November 14, 2019 (if going by the date of service to Respondent's business address) or February 3, 2020 (if going by the date of service to (b) (6) [redacted]). Respondent has not filed an answer.

[4] United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent's principal of record, (b) (6) [redacted], via certified mail and delivered on November 29, 2019. The documents were also sent to Respondent's business address via certified mail; however, that mailing was returned to the Hearing Clerk's Office marked "Attempted to Not Known." *See* Complaint at 2 ("Respondent is no longer operating[.]"). Respondent had twenty days from the date of service to file objections the Motion for Default and Proposed Decision. 7 C.F.R. § 1.139. Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. §

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision.[5] Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an unfiled answer where, as in the present case, no meritorious objections have been filed.[6]

As Respondent failed to answer the Complaint, and upon Complainant's motion for the issuance of a decision without hearing by reason of default, this Decision and Order is issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Versa Marketing, Inc. is or was a corporation incorporated and existing under the laws of the state of California.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20011322 was issued to Respondent on August 10, 2001. On December 14, 2018, the license status was updated to "active with bankruptcy." On October 8, 2019, the license was terminated 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 of February 2018 through August 2018, on or about the dates and in the transactions set forth in Appendix A to the Complaint (attached hereto and incorporated by reference), failed to make full payment promptly to three sellers for forty lots

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1.147(h). In this case, Respondent's objections were due by December 19, 2019. Respondent has not filed any objections.

[5] 7 C.F.R. § 1.136(c).

[6] 7 C.F.R. § 1.139; *see supra* note 5 and accompanying text.

of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of $792,939.27.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Versa Marketing, Inc.'s failure to make full payment promptly with respect to the forty transactions referenced in Finding of Fact No. 3 above, and set forth in Appendix A to the Complaint, constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. §499b(4)).
3. The total unpaid balance due to sellers represents more than a *de minimis* amount, thereby obviating the need for a hearing in this matter.[7]
4. As Respondent's license terminated prior to the institution of this proceeding, the appropriate sanction is publication of the facts and circumstances of Respondent's violations.[8]

ORDER

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. A finding is made that Respondent Versa Marketing, Inc. has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).
3. The facts and circumstances of Respondent's violations, as set forth above, shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

This Decision and Order shall be final and effective without further proceedings thirty-five (35) days after service, unless an appeal to the Judicial Officer is filed with the Hearing

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[7] *See The Square Group, LLC*, 75 Agric. Dec. 689, 695 (U.S.D.A. 2016); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984) (Ruling on Certified Question).

[8] *See Baiardi Chain Food Corp.*, 64 Agric. Dec. 1822, 1832 (U.S.D.A. 2005), *petition for review denied*, 482 F.3d 238 (3d Cir. 2002); *Scamcorp, Inc.*, 57 Agric. Dec. 527, 571 n.23 (U.S.D.A. 1998); *Hogan Distrib., Inc.*, 55 Agric. Dec. 622, 633 (U.S.D.A. 1996).

Clerk within thirty (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 of this Decision and Order shall be served by the Hearing Clerk upon the parties and counsel.

Done at Washington, D.C.,
this 6th day of February 2020

Channing D. Strother
Chief Administrative Law Judge

Hearing Clerk's Office
United States Department of Agriculture
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Appendix A

Appendix A

	Seller & Location	No. Lots	Commodity	Date Accepted	Date Payment Due	Amount Past Due & Unpaid
1	La Proxima Estacion SPR de RI d/b/a Frescos De Exportacion SPR de RL Guanajuato, Mexico	36	MXVG	02/02/18 to 04/20/18	02/27/18 to 05/15/18	$734,305.87
2	Oxford Frozen Foods Limited d/b/a Oxford USA, Inc. Oxford, Nova Scotia, Canada	3	Carrots	05/15/18 to 06/18/18	06/14/18 to 07/18/18	$39,704.00
3	Bounduelle Canada, Inc. St. Denis sur Richelieu, Quebec, Canada	1	Corn	07/10/18	08/09/18	$18,929.40
3	**Sellers**	**40**	**Lots**		**Total**	**$792,939.27**