UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/OHC
2020 FEB 11 PM2:28

In re:	)	
	)	
Mibo Fresh Foods, LLC,	)	PACA-D Docket No. 20-J-0022
	)	
Respondent.	)	

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearances:

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"); and

Uzor Nwoko, representative of the Respondent, Mibo Fresh Foods, LLC.

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 Mibo Fresh Foods, LLC ("Respondent") on December 9, 2019. The Complaint alleges that Respondent violated section 2(4) of the PACA (7 U.S.C. § 499 b(4)) by failing to make full payment promptly to fourteen sellers, in the total amount of $1,861,502.93, for 165 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce during the period May

2018 through June 2019.[1] 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 order the publication of 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).[2]

On January 9, 2020, 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 objections to the Motion for Default or Proposed Decision.[3] However, on January 27, 2020, Mr. Uzor Nwoko, on behalf of Respondent, filed an untitled document ("Response") stating in relevant part:

> This is a response to Docket 20-J-0022.
>
> Mibo Fresh Foods LLC ("mibo") and I disagree with the premises and conclusion presented in this case for the following reasons:

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

[2] United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on December 12, 2019. 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 January 2, 2020. Respondent did not file a response until January 27, 2020.

[3] United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on January 16, 2020. Respondent had twenty days from the date of service to file objections thereto. 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. § 1.147(h). In this case, Respondent's objections were due by January 6, 2020. Respondent has not filed any objections.

- mibo does not owe fourteen (14) vendors the amount of $1,861,502.93 for their invoices, load and lots presented in the exhibit;
- there is approximately $504,461.70 due vendors on this list which are on an agreed scheduled to be paid off before the end of July;
- mibo has established payment agreements with its vendors for commodities purchased;
- these payments vary in the number of days and is specific to each individual vendor; and
- any outstanding payments from this lot of products will be on an existing and agreed to payment plans with the individual vendors.

Response at 1. Although Respondent does not specify whether it intended the filing to respond to the Complaint or to the Motion for Default, Respondent's reference to "the exhibit" suggests that Respondent was answering the Complaint.[4] The Response, therefore, is twenty-five days late.[5]

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.[6] 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.[7]

As Respondent failed to file a timely answer the Complaint, and upon Complainant's

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[4] Attached to the Complaint is an "Appendix A," which lists the details of transactions wherein Respondent failed to make full payment promptly to produce sellers. Neither the Motion for Default nor the Proposed Decision includes any attachments.

[5] *See supra* note 2. Assuming, *arguendo*, the Response had been timely filed, Respondent admits to owing $504,461.70 to sellers – far more than a *de minimis* amount. *See H.M. Shield, Inc.*, 48 Agric. Dec. 573, 581 (U.S.D.A. 1989) ("[T]here is no need for complainant to prevail as to each of the transactions, since the same order would be entered in any event, so long as the violations are not *de minimis*."); *Moore Mk'g Int'l, Inc.*, 47 Agric. Dec. 1472, 1482 (U.S.D.A. 1988); *Fava & Co.*, 46 Agric. Dec. 79, 81 (U.S.D.A. 1984); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984) (Ruling on Certified Question). A hearing, still, would not be necessary. *See Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. at 82-83.

[6] 7 C.F.R. § 1.136(c).

[7] 7 C.F.R. § 1.139; *see supra* note 3 and accompanying text.

motion for the issuance of a decision without hearing, 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 Mibo Fresh Foods, LLC is a limited liability company organized and existing under the laws of the State of Texas. Respondent's business address is 715 East 9th Street, Fort Worth, Texas 76102, whereupon the Complaint was served.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 2013 0054 was issued to Respondent on October 15, 2012. The license terminated on October 15, 2019, 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 May 2018 through June 2019, on or about the dates and in the transactions set forth in Appendix A to the Complaint, attached hereto and incorporated herein by reference, failed to make full payment promptly to fourteen sellers for 165 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of $1,861,502.93.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Mibo Fresh Foods, LLC's failure to make full payment promptly with respect to the 165 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)), for which the below Order is issued.

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.[8]
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.[9]

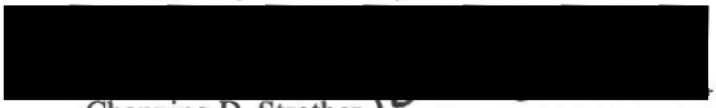
ORDER

1. Complainant's Motion for Decision Without Hearing is GRANTED.
2. A finding is made that Respondent Mibo Fresh Foods, LLC 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 PACA 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 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 11th day of February 2020



Channing D. Strother
Chief Administrative Law Judge

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[8] *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).

[9] *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).

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Appendix A

	Seller's Name	No. Lots	Commodity	Dates Accepted	Dates Payment Due	Amounts Past Due & Unpaid
1	Innovative Produce Santa Maria, CA	2	MXV	04/23/18 to 04/30/18	05/23/18 to 05/30/18	$25,885.25
2	Freska Produce International LLC Oxnard, CA	14	Mangos	08/06/18 to 12/01/18	08/16/18 to 12/11/18	$257,277.30
3	Paradise Fruits & Vegetables, LP Dallas, TX	4	Grapes Strawberries Melons	08/15/18 to 09/06/18	08/25/18 to 09/16/18	$13,049.50
4	Viva Tierra Organic, Inc. Mount Vernon, WA	6	Apples	08/15/18 to 11/28/18	08/25/18 to 12/08/18	$207,251.30
5	Prime Produce, Inc. Dallas, TX	52	MXF	08/20/18 to 05/30/19	08/30/18 to 06/09/19	$496,456.50
6	Tom Lange Company, Inc. Rockwall, TX	23	MXF	10/05/18 to 01/14/19	10/15/18 to 01/24/19	$254,965.90
7	Bounty Holding Group LLC d/b/a Chestnut Hill Farms Coral Gables, FL	11	Pineapples	10/08/18 to 01/24/19	10/18/18 to 02/03/19	$171,903.34
8	Pure Hothouse Foods, Inc. Leamington, Ontario Canada	6	Tomatoes (MX)	10/25/18 to 12/13/18	11/04/18 to 12/23/18	$10,827.50
9	Can-Am Pepper Company (U.S.A.) LP Line Aylmer, Ontario, Canada	8	Squash Watermelons	10/17/18 to 02/27/19	11/07/18 to 03/20/19	$126,845.49
10	Midstate Produce Co., Inc. St. Louis, MO	3	Lettuce	12/03/18 to 01/15/19	01/02/19 to 02/14/19	$45,339.60
11	Visa Fruit LLC Austin, TX	6	Pineapples	12/24/18 to 03/15/19	01/03/19 to 03/25/19	$75,180.00
12	Fresh Produce, Inc. Dallas, TX	17	MXFV	12/07/18 to 02/05/19	01/06/19 to 03/07/19	$110,926.50
13	American Fresh Produce LLC Dallas, TX	4	MXFV	01/25/19 to 02/02/19	02/02/19 to 02/12/19	$32,372.25

14	Castillo's Produce, Inc. Dallas, TX	9	MXFV	02/20/19 to 03/14/19	03/13/19 to 04/04/19	$33,222.50
14	**Sellers**	**165**	**Lots**		**Total**	**$1,861,502.93**