

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/DALJ/OHC
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In re:)
)
Coram Deo Farms, Inc.,) PACA-D Docket No. 19-J-0103
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Shelton S. Smallwood, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, Agricultural Marketing Service ("AMS").

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, as amended (7 U.S.C. §§ 499a *et seq.*) ("PACA"); the regulations promulgated thereunder (7 C.F.R. §§ 46.1 through 46.45) ("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, PACA Division, Agricultural Marketing Service, United States Department of Agriculture ("Complainant" or "AMS"), initiated this proceeding against Coram Deo Farms, Inc. ("Respondent") by filing a complaint on June 11, 2019. The Complaint alleges that, during the period July 2017 through March 2018, Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to four sellers, in the total amount of \$221,564.00, for seventeen lots of perishable agricultural commodities that Respondent, purchased, received, and

accepted in interstate and foreign commerce.¹ Complainant has requested an Administrative Law Judge find that Respondent willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order that the facts and circumstances of Respondents' violations be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).²

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 1, 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

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

¹ Complaint at 2-3.

² *Id.* at 4.

³ United States Postal Service records reflect that the Complaint was sent to [REDACTED], Respondent's president and ninety-percent shareholder, via certified mail and returned "unclaimed" on August 12, 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 August 26, 2019. 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 September 16, 2019. Respondent has not filed an answer.

⁴ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to [REDACTED], Respondent's president and ninety-percent shareholder, via certified mail and returned "unclaimed" on December 5, 2019. In accordance with the Rules of Practice, the Hearing Clerk re-mailed (*see* 7 C.F.R. § 1.142) the Motion for Default and Proposed Decision to the same address via ordinary mail on December 17, 2019. 7 C.F.R. § 1.147(c). 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.

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 Coram Deo Farms, Inc. is or was a corporation organized and existing under the laws of the State of Arizona. Respondent's business and mailing address is or was 20 Avenida Goya, Ste. 1, Tubac, Arizona, 85646. The Complaint was served on Respondent's president and ninety-percent shareholder, [REDACTED] whose home address was provided to the Hearing Clerk's Office for service purposes. [REDACTED] address was withheld from the Complaint to protect his personal information and privacy.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 2017 0849 was issued to Respondent on June 21, 2017. On June 21, 2018, 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 July 2017 through March 2018, 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 four sellers for seventeen lots

⁵ 7 C.F.R. § 1.136(c).

⁶ 7 C.F.R. § 1.139; *see supra* note 4.

of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$221,564.00.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Coram Deo Farms, Inc.'s failure to make full payment promptly with respect to the seventeen transactions referenced in Finding of Fact No. 3 above, as 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.⁷
4. As Respondent's PACA 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. Respondent Coram Deo Farms, Inc. is found to have 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)).

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).

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 each of the parties.

Done at Washington, D.C.,
this 9th day of January 2020



Channing D. Strother
Chief Administrative Law Judge

Hearing Clerk's Office
United States Department of Agriculture
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Seller's Name	No. of lots	Commodity	Dates Accepted	Dates Payment Due	Amounts Past Due & Unpaid
Promexavo Corp. 1 McAllen, TX Origin: MX	1	Avocados	07/26/17	08/15/17	\$73,600.00
Vivafruits USA LLC 2 Pharr, TX Origin: MX	1	Avocados	12/21/17	01/11/18	\$63,840.00
Tancintaro's Finest Fruit LLC 3 Pharr, TX Origin: MX	2	Avocados	03/01/18 to 03/08/18	03/22/18 to 03/29/18	\$63,320.00
J-C Distributing Inc. 4 Nogales, AZ Origin:MX	13	Tomatoes	01/18/18 to 02/21/18	01/28/18 to 03/03/18	\$20,803.91
4 Sellers	17			Total	\$221,563.91