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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) [PACA-D]
) Docket No. **16-0077**
World Best Tropical, LLC)
) **Decision and Order**
Respondent) **by Reason of Default**

Appearances:

Christopher P. Young, Esq., Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington D.C. 20250-1405, for the Complainant (AMS); ¹ and

NO APPEARANCE by World Best Tropical, LLC, the Respondent.

1. AMS's Motion for Decision Without Hearing by Reason of Default, filed November 10, 2016, is before me.

2. World Best Tropical, LLC, the Respondent, a limited liability company organized and existing under the laws of the state of Florida, is in default. World Best Tropical, LLC was served with a copy of the Complaint on April 13, 2016 (when a copy of the Complaint, Hearing Clerk's Letter, and Rules of Practice, were re-sent by ordinary mail to the address of the company's listed 100% owner and sole officer). [An earlier effort to serve the same

1. The Complainant is the Associate Deputy Administrator, Specialty Crops Program, Agricultural Marketing Service, United States Department of Agriculture ("AMS" or "Complainant").

documents by certified mail to that same address had been returned marked “Unclaimed” by the Postmaster.]

3. World Best Tropical, LLC failed to file an answer with the Hearing Clerk.

4. The time for filing an answer to the Complaint expired on May 3, 2016 (20 days following April 13, 2016). 7 C.F.R. § 1.136(a). When a complaint has been returned “Unclaimed” under circumstances such as these, “it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address,” under section 1.147(c)(1) of the Rules of Practice, 7 C.F.R. § 1.147(c)(1).

5. Failing to file an answer places the limited liability company in default and is deemed to be an admission of the allegations in the Complaint. 7 C.F.R. § 1.136(c). The Rules of Practice provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. § 1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. The material facts alleged in the Complaint are admitted. 7 C.F.R. § 1.139.

6. The remedies requested by AMS include a finding that World Best Tropical, LLC has willfully, flagrantly, and repeatedly violated the PACA (Perishable Agricultural Commodities Act), and an order that the facts and circumstances of the violations be published.

7. World Best Tropical, LLC was served with a copy of AMS’s Motion for Decision Without Hearing by Reason of Default, on December 13, 2016 (when a copy of that Motion for Decision was re-sent by ordinary mail to the address of the company’s listed 100% owner

and sole officer). [An earlier effort to serve by certified mail to that same address had been returned marked “Unclaimed” by the Postmaster.]

8. World Best Tropical, LLC failed to file a response to the Motion for Decision with the Hearing Clerk. The time for filing a response to the Motion for Decision expired on January 3, 2017 (20 days following December 13, 2016, plus a day, because the 20th day was a holiday). *See* section 1.147(c)(1) of the Rules of Practice, 7 C.F.R. § 1.147(c)(1).

9. Accordingly, the material allegations in the Complaint, which are admitted by World Best Tropical, LLC’s default, are adopted and set forth herein as Findings of Fact. This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

Findings of Fact

10. Respondent World Best Tropical, LLC is or was a limited liability company organized and existing under the laws of the State of Florida, with a business and mailing address that is or was 1421 NW 89 Court, Doral, Florida 33172-3005.

11. At all times material to this Decision, Respondent World Best Tropical, LLC was licensed or operating subject to the provisions of the PACA, the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*). License number 20111052 was issued to Respondent on June 14, 2011. Respondent World Best Tropical, LLC’s license terminated on June 14, 2014, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

12. As more fully set forth in paragraph III of the Complaint, and Appendix A to the Complaint, Respondent World Best Tropical, LLC, during February 2014 through October 2014, failed to make full payment promptly to 8 (eight) sellers of the agreed purchase prices, or balances thereof, in the total amount of \$341,917.99 for 45 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in interstate and/or foreign commerce.

Conclusions

13. The Secretary of Agriculture has jurisdiction over the parties and subject matter.

14. Respondent World Best Tropical, LLC willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)), by willfully failing to make full payment promptly during February 2014 through October 2014, to 8 (eight) sellers of the agreed purchase prices, or balances thereof, in the total amount of \$341,917.99 for 45 lots of fruits and vegetables, all being perishable agricultural commodities, which the Respondent World Best Tropical, LLC purchased, received, and accepted in interstate and/or foreign commerce.

Order

15. The Respondent World Best Tropical, LLC committed willful, flagrant and repeated violations of Section 2(4) of the Perishable Agricultural Commodities Act (the PACA) (7 U.S.C. § 499b(4)), and the facts and circumstances of the violations shall be published pursuant to section 8(a) of the PACA, 7 U.S.C. § 499h(a).

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

Finality

17. This Decision and Order shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision and Order by Reason of Default shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 9th day of February 2017



Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
Stop 9203 South Building Room 1031
1400 Independence Ave SW
Washington, DC 20250-9203
202-720-4443
FAX 202-720-9776
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APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145