

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

In re:) PACA Docket No. D-16-0092
)
Sandia Distributors, Inc.,)
)
Respondent)

DECISION WITHOUT HEARING 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.)(the Act or PACA), instituted by a Complaint filed on March 30, 2016, by the Associate Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA).

The Complaint filed by Complainant alleges that Respondent, during the period May 2014 through May 2015, failed to promptly remit to four (4) sellers proceeds from the sales of perishable agricultural commodities in the total amount of \$1,769,070.12 for 527 lots of perishable agricultural commodities which Respondent received, accepted, and sold on behalf of growers and sellers in interstate and foreign commerce.

The Complaint alleges that Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)), and that the failure of Respondent to fully remit promptly, as more fully described in section 46.2(aa) of the Regulations (7 C.F.R. § 46.2 (aa)), of the agreed purchase prices for perishable agricultural commodities that received, accepted and sold on

behalf of growers and sellers in interstate and foreign commerce, constitutes willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

The Complaint requests that pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)), 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 that Respondent's PACA license be revoked. The Complainant originally sought revocation of Respondent's PACA license; however, that license has since been terminated in accordance with the provisions of the PACA. The license terminated on May 24, 2016, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee. Complainant therefore, in its Motion for Decision filed, requested that an order be issued publishing the facts and circumstances of the violation. The Complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary (7 C.F.R. § 1.130 *et seq.*) (Rules of Practice), were served on Respondent by certified mail on April 12, 2016.

Respondent was duly served with the Complaint pursuant to section 1.147 (c) of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary (7 C.F.R. § 1.130 *et seq.*) (Rules of Practice), and did not file an answer to the Complaint within the time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136). Therefore, the following 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 is a corporation organized under the laws of the state of Arizona. Respondent's business address is 1777 N. Smokey Lane, Nogales, Arizona 85621.
2. At all times material herein, Respondent was licensed or operating subject to the provisions of the PACA. License number 19851185 was issued to Respondent on May 24, 1985. The license terminated on May 24, 2016, 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 2014 through May 2015, on or about the dates and in the transactions set forth in Appendix A attached hereto and incorporated by reference, failed to promptly remit net proceeds to four (4) sellers/growers for 527 lots of perishable agricultural commodities which Respondent received, accepted, and sold on behalf of growers in interstate and foreign commerce, in the total amount of \$1,769,070.12.

Conclusions

Respondent's failure to promptly remit net proceeds, as more fully described in section 46.2(aa) of the Regulations (7 C.F.R. § 46.2(aa)), from the agreed sale prices for perishable agricultural commodities that it received, accepted and sold on behalf of growers and sellers in interstate and foreign commerce constitutes willful, flagrant and repeated violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Order

The facts and circumstances of Respondent's violation shall be published. This Order shall take effect on the day that this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, 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 parties.

Done at Washington, D.C.
this 21st day of November, 2016


Bobbie J. McCartney
Chief Administrative Law Judge

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