

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 14-0040



In re: Maxsun Produce Corp.,

Respondent

Default Decision and Order

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 November 18, 2013, by Bruce W. Summers, the Associate Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA). The Complaint alleges that Respondent, during the period January 2012 through October 2012, failed to make full payment promptly to twenty-three (23) sellers of the agreed purchase prices in the total amount of \$1,018,384.04 for 191 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in interstate and foreign commerce in willful violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

The Complaint and a copy of the Rules of Practice were sent to Respondent by certified mail on November 20, 2013; however, they were returned as being “unclaimed.” Respondent was subsequently served, pursuant to the Rules of Practice, via regular mail on December 19, 2013.

As Respondent failed to file an answer to the Complaint within the twenty (20) day time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), the following

Findings of Fact, Conclusions of Law, and Order will be entered pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Maxsun Produce Corp. is a corporation organized and existing under the laws of the state of New York with a business address in Maspeth, New York. Respondent is no longer operating, and the Complaint was served at the company's last known business address and on its president and owner of record.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License No. 20090236 was issued to Respondent on December 22, 2008. The license was terminated on December 22, 2012, when Respondent failed to pay the required annual renewal fee pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)).

3. Respondent, during the period January 2012 through October 2012, failed to make full payment promptly to twenty-three (23) sellers of the agreed purchase prices in the total amount of \$1,018,384.04 for 191 lots of perishable agricultural commodities,¹ which Respondent purchased, received, and accepted in the course of interstate and foreign commerce.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Respondent willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)).

¹ On May 11, 2013, Respondent filed a Petition pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. § 701 *et seq.*) in the United States Bankruptcy Court for the Eastern District of New York. The Petition was designated Case No. 13-42875. In Schedule F the twenty-three (23) sellers listed in "Appendix A" were listed as having unsecured claims for unpaid produce debt totaling \$1,044,669.00. Schedule F was attached to the Complaint as "Appendix B."

Order

1. The facts and circumstances of Respondent's violations shall be published.
2. This Order shall take effect on the day that this Decision becomes final.
3. Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings thirty-five (35) days after service hereof unless appealed to the Secretary by a party to the proceeding 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 this Decision and Order shall be served upon the parties by the Hearing Clerk.

August 4, 2014

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge