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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	
Olympic Wholesale Produce, Inc.,	)	PACA-D Docket No. 18-0009
	)	
Respondent.	)	

DECISION AND ORDER ON THE WRITTEN RECORD

Appearances:

Christopher P. Young, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250, for the Complainant, Agricultural Marketing Service ("AMS"); and

Stephen P. McCarron, Esq., and Louis W. Diess, III, Esq., of McCarron & Diess, 4530 Wisconsin Avenue, NW, Suite 301, Washington, DC 20016, for the Respondent, Olympic Wholesale Produce, Inc. [1]

Preliminary Statement

This disciplinary proceeding was instituted under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499 *et seq.*) ("PACA"), the regulations promulgated pursuant to PACA (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 of the Specialty Crops Program, Agricultural Marketing Service ("Complainant" or "AMS"), initiated this proceeding by filing a complaint on November 2, 2017 alleging that Olympic Wholesale Produce, Inc. ("Respondent") willfully violated PACA and the Regulations. On July 24, 2018, AMS

[1] Attorneys McCarron and Diess withdrew their appearances as counsel for Respondent on February 9, 2018.

moved for a decision without hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) and the policy set forth by the Judicial Officer in *Scamcorp, Inc.*[2]

For the reasons discussed herein, I find that no hearing is warranted in this matter and a decision on the record is appropriate.

Procedural History

On November 2, 2017, AMS filed a disciplinary complaint against Respondent. The Complaint alleged that, during the period December 2016 through May 2017, Respondent willfully, flagrantly, and repeatedly violated section 2(4) of PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to four sellers for 108 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of $898,725.70. The Complaint requested I find that Respondent willfully, flagrantly, and repeatedly violated section 2(4) of PACA (7 U.S.C. § 499b(4)) and order that Respondent's PACA license be revoked pursuant to section 8(a) of PACA (7 U.S.C. § 499h(a)).[3]

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[2] 57 Agric. Dec. 527 (U.S.D.A. 1998).

[3] The Complaint also requested "[t]hat unless Respondent fails to file an answer within the time allowed, or admits all the material allegations of this Complaint, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the PACA[.]"). Compl. at 4.

On December 8, 2017, Respondent filed a timely answer to the Complaint.[4] The Answer admitted the jurisdictional allegations of the Complaint, generally denied the remaining allegations, and requested an oral hearing.[5]

On February 6, 2018, I issued an Order Setting Deadlines for Submissions ("Exchange Order"). The Exchange Order directed AMS to file with the Hearing Clerk a list of witnesses and exhibits to be used at hearing and to exchange copies of the list and exhibits with Respondent by April 9, 2018. Similarly, the Exchange Order directed Respondent to file with the Hearing Clerk a list of witnesses and exhibits to be used at hearing and to exchange copies of the list and exhibits with AMS by June 8, 2018.

On February 9, 2018, Respondent's counsels of record filed a Notice of Withdrawal from the proceeding. On March 15, 2018, I entered an order granting the withdrawal with instruction that the filing deadlines established in the Exchange Order would remain effective, including Respondent's June 8, 2018 deadline to file its list of witnesses and exhibits with the Hearing Clerk and exchange copies of the list and exhibits with AMS.

On April 5, 2018, AMS filed its Proposed Witness and Exhibit List with the Hearing Clerk. Respondent, however, failed to comply with the Exchange Order. Respondent has not

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[4] United States Postal Service records reflect that the Complaint was sent to Respondent's business address via certified mail and delivered on November 9, 2017. 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 would have been due by November 29, 2017; however, on November 27, 2017, Respondent's counsel filed a request for a thirty-day extension to respond to the Complaint. On December 1, 2017, I entered an order granting Respondent's request and allowing Respondent until December 11, 2017 to file its answer.

[5] *See* Answer at 1 ("1. Respondent admits the allegations of Section II(a) and (b) of the Complaint. 2. Respondent denies the allegations of Sections III and IV of the Complaint.").

filed a list of witnesses and exhibits with the Hearing Clerk, and AMS submits it "has been unable to reach or communicate with Respondent" since counsel's withdrawal.[6]

On July 24, 2018, AMS filed a Motion for Decision Without Hearing and Memorandum in Support Thereof ("Motion for Decision Without Hearing") and proposed Decision Without Hearing ("Proposed Decision") pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) and "the policy set forth by the Judicial Officer in *In re Scamcorp, Inc., d/b/a Goodness Greeness*."[7] Respondent has not filed any objections thereto.[8]

Authorities

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes ("Rules of Practice"), set forth at 7 C.F.R. §§ 1.130 *et seq.*, apply to the adjudication of this matter. Pursuant to section 1.136, a respondent is required to file an answer within twenty days after service of a complaint.[9] The Rules provide that an answer shall "[c]learly admit, deny, or explain each of the allegations of the

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[6] Proposed Decision at 2.

[7] Scamcorp, Inc., 57 Agric. Dec. 527, 547-49 (U.S.D.A. 1998). *See* Mot. for Decision Without Hr'g at 2 ("Complainant also moves for a Decision Without Hearing under the policy set forth by the Judicial Officer in *In re Scamcorp, Inc., d/b/a Goodness Greeness*, . . . since Respondent has not paid promptly and in full the past-due produce debt identified in the Complaint.").

[8] United States Postal Service records reflect that the Motion for Decision Without Hearing and Proposed Decision were sent to Respondent's principal via certified mail and delivered on July 30, 2018. 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 August 20, 2018. Respondent has filed no objections as of this date.

[9] 7 C.F.R. § 1.136(a).

Complaint *and shall clearly set forth any defense asserted by the respondent.*"[10] Moreover, "[t]he failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing."[11]

Also applicable to the instant proceeding are sections 2(4) and 8(a) of PACA (7 U.S.C. §§ 499b(4), 499h(a)). Section 2(4) requires merchants and dealers to make "full payment promptly" for perishable agricultural commodities, usually within ten days of acceptance, unless the parties have agreed to different terms prior to the purchase.[12] Specifically, section 2(4) makes it unlawful "[f]or any commission merchant, dealer, or broker to . . . fail or refuse truly and correctly to account and make full payment promptly in respect of any such transaction in any such commodity to the person with whom such transaction is had."[13] Section 8(a) provides:

> Whenever . . . the Secretary determines, as provided in section 499f of this title, that any commission merchant, dealer, or broker has violated any of the provisions of section 499b of this title . . . the Secretary may publish the circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, *except that, if the violation is flagrant or repeated, the Secretary may, by order, revoke the license of the offender.*[14]

In cases where a PCA licensee has failed to make full or prompt payment of perishable agricultural commodities, the Department's policy is straightforward:

> *In any PACA disciplinary proceeding in which it is shown that a respondent has failed to pay in accordance with the PACA and is not in full compliance with the PACA within 120 days after the complaint is served on that*

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[10] 7 C.F.R. § 1.136(b)(1) (emphasis added).

[11] 7 C.F.R. § 1.139.

[12] *See* 7 C.F.R. §§ 46.2(aa)(5), (11).

[13] 7 U.S.C. § 499b(4).

[14] 7 U.S.C. § 499h(a) (emphasis added).

> *respondent, or the date of the hearing, whichever occurs first, the PACA case will be treated as a "no-pay" case.* In any PACA disciplinary proceeding in which it is alleged that a respondent has failed to pay in accordance with the PACA and that respondent fails to file a timely answer to the complaint, the PACA case will be treated as a "no-pay" case. In any PACA disciplinary proceeding in which it is alleged that a respondent has failed to pay in accordance with the PACA and respondent admits the material allegations in the complaint and makes no assertion that the respondent has achieved full compliance with the PACA or will achieve full compliance with the PACA within 120 days after the complaint was served on the respondent, or the date of the hearing, whichever occurs first, the PACA case will be treated as a "no-pay" case. . . . In any PACA disciplinary proceeding in which it is shown that a respondent has failed to pay in accordance with the PACA, but is in full compliance with the PACA within 120 days after the complaint is served on that respondent, or the date of hearing, whichever occurs first, the PACA case will be treated as a "slow-pay" case.[15]

Further, "[i]n any 'no-pay' case in which the violations are flagrant or repeated, the license of a PACA licensee, shown to have violated the payment provisions of PACA, will be revoked."[16]

Discussion

I. Respondent Has Not Made Full Payment in Accordance with PACA and Controlling Case Law.

PACA requires licensed produced dealers to make full payment promptly for fruit and vegetable purchases within ten days after the produce is accepted, provided that parties may elect to use different payment terms so long as the terms are reduced to writing prior to the transaction.[17] In cases where a respondent fails to make full payment promptly and "is not in full compliance within 120 days after the complaint is served on that respondent, or the date of the hearing, whichever occurs first, the [matter] will be treated as a 'no-pay'

[15] Scamcorp, Inc., 57 Agric. Dec. 527, 548-49 (U.S.D.A. 1998) (emphasis added).

[16] *Id.* at 549.

[17] 7 C.F.R. § 46.2(aa)(5), (11).

case."[18] "Full compliance" requires a respondent to have paid all its produce sellers and "have no credit agreements with produce sellers for more than 30 days."[19]

In its Appendix A to the Complaint, AMS identified four sellers to whom Respondent failed to make full payment promptly, in the total amount of $898,725.70, for 108 lots of perishable agricultural commodities Respondent purchased, received, and accepted in the course of interstate and foreign commerce during the period December 2016 through May 2017.[20] Respondent was served with the Complaint on November 9, 2017.[21] Therefore, in accordance with *Scamcorp*, Respondent had until March 9, 2018 to attain full compliance with PACA.[22]

Respondent has made no assertion—in its Answer or in any other filing[23]—that full payment has been made or that full compliance will be achieved pursuant to the parameters set forth by *Scamcorp*.[24] In response to allegations of PACA violations, the Answer merely stated: "Respondent denies the allegations of Sections III and IV of the Complaint."[25] Subsequent investigation, however, indicates that as of July 10, 2018, all four of the sellers named in the

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[18] *Scamcorp, Inc.*, 57 Agric. Dec. at 548-49.

[19] *Id.* at 549.

[20] *See* Compl. App'x A.

[21] *See* 7 C.F.R. § 1.147(c)(1) ("Any complaint . . . shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the date of delivery by certified or registered mail to the last known principal place of business of such party[.]"). United States Postal Service records indicate that a copy of the Complaint was sent via certified mail and delivered to Respondent's business address on November 9, 2017.

[22] *See Scamcorp, Inc.*, 57 Agric. Dec. at 548-49.

[23] As previously stated, Respondent did not comply with my order regarding exhibit exchange and did not file any objections to AMS's Motion for Decision Without Hearing.

[24] *See Scamcorp, Inc.*, 57 Agric. Dec. at 548-49.

[25] Answer at 1.

Complaint were still owed a substantial balance.[26] Respondent's general denial is not an acceptable defense to liability in a case such as this, where a complaint has been filed alleging the violation of section 2(4) of PACA due to the failure to make full payment promptly. There is no evidence to dispute AMS's allegations that Respondent's transactions resulted in an outstanding balance of more than $800,000.00 owed to produce sellers.

Further, PACA records indicate that Respondent's license has been suspended since the Complaint was filed.[27] Accordingly, I find that Respondent has not achieved full compliance with PACA within 120 days after service of the Complaint.

II. Follow-Up Investigation Shows that Respondent Owes More than a *De Minimis* Amount to Sellers.

A follow-up compliance investigation conducted between June 20, 2018 and June 22, 2018 reveals that, as of the date of the investigation, all four creditors listed in Appendix A to the Complaint were still owed a significant balance.[28] The outstanding balance due far exceeds $5,000.00 and axiomatically represents more than a *de minimis* amount.[29]

Senior Marketing Specialist of the PACA Division, (b) (7)(C) [redacted] communicated with representatives of each of the creditors listed in Appendix A to the Complaint, who confirmed that collectively a total amount of at least $889,233.70 of debt listed in the Complaint was still

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[26] *See* discussion *infra* Part II.

[27] *See* Proposed Decision at 6; PACA Search Engine: License No. 19740290, USDA.GOV, https://apps.ams.usda.gov/pacasearch/ (choose "Specialized Search," select "License Number" from drop-down box, and search the blank field for "19740290").

[28] *See* Mot. for Decision Without Hr'g at 5; Mot. for Decision Without Hr'g Attach. at 1 ¶¶ 2-6.

[29] *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 Mkt'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).

past due and unpaid.[30] Additionally, Mr. (b) (7) investigation revealed that at least $123,567.00 in new or roll-over debt was claimed by other produce sellers not listed in Appendix A to the Complaint as past due and owed by Respondent.[31] Respondent has not denied either of these facts.

Further, a substantial amount—virtually the entire amount listed in the Complaint—of past-due and unpaid produce debt is owed to creditors listed in the Appendix A to the Complaint more than *one year* after the debt became due in accordance with PACA. Under the policy set forth in *Scamcorp*,[32] this is a "no-pay" case for which revocation of Respondent's license is warranted.[33] Respondent failed to pay promptly for more than a *de minimis* amount of produce,[34] and a hearing is not necessary in this case.[35]

III. Respondent's PACA Violations Were Repeated, Flagrant, and Willful.

The Secretary of Agriculture may revoke the license of a dealer who is found to have committed repeated, flagrant, and willful PACA violations.[36] As the Judicial Officer has explained:

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[30] *See* Mot. for Decision Without Hr'g Attach. at 1 ¶¶ 2-6.

[31] *See id.* at 1 ¶ 7. Roll-over debt is an aggravating factor when considering whether a respondent has made full payment in accordance with Department policy. *See* Scamcorp, Inc., 57 Agric. Dec. 527, 567-69 (U.S.D.A. 1998) ("The factors to be considered when deciding whether to impose a civil penalty or a license suspension in a 'slow-pay' case include . . . the roll-over debt, if any, incurred by the PACA violator[.]").

[32] 57 Agric. Dec. 527 (U.S.D.A. 1998).

[33] *See Scamcorp, Inc.*, 57 Agric. Dec. at 548-49.

[34] *See id.*

[35] *See* Tri-State Fruit & Vegetable, Inc. 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984).

[36] *See* 7 U.S.C. § 499h(a); 5 U.S.C. § 588(c); Norinsberg v. U.S. Dep't of Agric., 47 F.3d 1224, 1225 (D.C. Cir. 1995).

> [O]ne of the primary remedial purposes of the PACA [is] the financial protection of sellers of perishable agricultural commodities. Failure to pay for perishable agricultural commodities not only adversely affects those who are not paid, but such violations of the PACA have a tendency to snowball. On occasion, one PACA licensee fails to pay another licensee who is unable to pay a third licensee. Thus, the failure to pay could have serious repercussions to perishable agricultural commodity producers and other PACA licensees and even customers of perishable agricultural commodities who ultimately bear increased industry costs resulting from failures to pay. *These adverse repercussions can be avoided by limiting participation in the perishable agricultural commodities industry to financially responsible persons, which is one of the primary goals of the PACA.*[37]

First, Respondent's violations in this case were repeated. Violations are "repeated" under PACA when they are committed multiple times, non-simultaneously.[38] As Respondent failed to pay four sellers promptly and in full for 108 lots of perishable agricultural commodities over a nearly six-month period, its violations were clearly repeated.

Respondent's PACA violations were also fragrant. Flagrancy is determined by evaluating the number of violations, total money involved, and length of time during which the violations occurred.[39] The signed declaration by PACA employee (b) (7)(C) [redacted] provides that, as of July 10, 2018, Respondent owes a total of at least $889,233.70 to the four sellers named in Appendix A to the Complaint.[40] The declaration further states: "Since the completion of my compliance investigation there have been three additional informal complaints filed against Olympic Wholesale Produce, Inc., in the amount of $123,567.00. Olympic Wholesale Produce, Inc., has

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[37] Havana Potatoes of N.Y. Corp., 55 Agric. Dec. 1234, 1273-74 (U.S.D.A. 1996) (emphasis added).

[38] *See* H.C. MacClaren, Inc. v. U.S. Dep't of Agric., 342 F.3d 584, 592 (6th Cir. 2003); Zwick v. Freeman, 373 F.2d 110, 115 (2d Cir. 1967); Five Star Food Distribs., Inc., 56 Agric. Dec. 880, 895 (U.S.D.A. 1997).

[39] *Five Star Food Distribs., Inc.*, 56 Agric. Dec. at 895; *Havana Potatoes*, 55 Agric. Dec. at 1270; *see* Reese Sales Co. v. Hardin, 458 F. 2d 183, 185 (9th Cir. 1972).

[40] *See* Mot. for Decision Without Hr'g Attach. at 1 ¶¶ 3-6.

not responded to two complaints, and is not disputing the other."[41] By failing to pay that money—far more than a *de minimis* amount—to multiple sellers over a near six-month period and proceeding to accumulate an additional $123,567.00 in produce debt thereafter, Respondent has committed flagrant PACA violations.[42] Respondent submits no evidence to the contrary.

Lastly, Respondent's violations were willful.

> A violation is willful under the Administrative Procedure Act (5 U.S.C. § 558(c)) if a prohibited act is done intentionally, irrespective of evil intent, or done with careless disregard of statutory requirements. Willfulness is reflected by Respondent's violations of express requirements of the PACA (7 U.S.C. § 499b(4)) and the Regulations (7 C.F.R. § 46.2(aa)) and in the length of time during which the violations occurred and the number and dollar amount of violative transactions involved.[43]

Given the many transactions, substantial amount of debt, and continuation of violations over a six-month period in this case, I find that Respondent's violations were willful in that Respondent knew or should have known it did not have sufficient funds with which to comply with the prompt-payment provisions of PACA.[44]

IV. A Decision Without Hearing Is Appropriate.

It is well settled that "a respondent in an administrative proceeding does not have a right to an oral hearing under all circumstances, and an agency may dispense with a hearing when there is no material issue of fact on which a meaningful hearing can be held."[45]

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[41] *Id.* at 1 ¶ 7.

[42] AMS is not required to prove—and I am not required to find—the exact number of unpaid produce sellers or the exact amount Respondent owes each seller. *See* Baiardi Chain Food Corp., 64 Agric. Dec. 1822, 1835-36 (U.S.D.A. 2005), *petition for review denied*, 482 F.3d 238 (3d Cir. 2007); *see also* Hunts Point Tomato Co., 64 Agric. Dec. 1914, 1929-31 (U.S.D.A. 2005).

[43] Scamcorp, Inc., 57 Agric. Dec. 527, 552-53 (U.S.D.A. 1998).

[44] The Square Group, LLC, 75 Agric. Dec. 689, 695 (U.S.D.A. 2016).

[45] H. Schnell & Co., Inc., 57 Agric. Dec. 1722, 1729 (U.S.D.A. 1998).

I find no genuine issue of fact in this case that would require a hearing.[46] Respondent's Answer provided only non-specific, categorical denials and raised no defenses to the Complaint allegations. Respondent failed to comply with my Exchange Order and failed to submit any evidence that might contradict allegations that Respondent's transactions resulted in a balance of approximately $889,233.70 in produce debt.[47] Moreover, Respondent filed no objections to AMS's Motion for Decision Without Hearing.[48] It has been well over 120 days since Respondent was served with the Complaint, yet Respondent has made no suggestion as to whether or when it expects to pay its vendors fully.[49]

Furthermore, the appropriate sanction in a "no-pay" case is license revocation.[50]A civil penalty is not appropriate in this case because, as previously discussed, "limiting participation in the perishable agricultural commodities industry to financially responsible persons is one of the primary goals of the PACA," and it would not be consistent with congressional intent to require a PACA violator to pay the government while produce sellers remain unpaid. Because there can

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[46] *See* Veg-Mix, Inc. v. U.S. Dep't of Agric., 832 F.2d 601, 607 (D.C. Cir. 1987) ("Common sense suggests the futility of hearings when there is no factual dispute of substance.").

[47] As the amount owed is not *de* minimis, I need not determine the exact amount Respondent failed to pay. *See The Square Group, LLC*, 75 Agric. Dec. at 695 ("[E]ven if certain debts are disputed, no hearing is required if the sum of all undisputed debts is enough to make the total owed more than *de minimis*."); Tri-State Fruit & Vegetable, Inc., 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984) (Ruling on Certified Question) ("[U]nless the amount admittedly owed is *de minimis*, there is no basis for a hearing to determine the precise amount owed.").

[48] *See* 7 C.F.R. 1.139 ("If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.").

[49] *See* Scamcorp, Inc., 57 Agric. Dec. 527, 548-49 (U.S.D.A. 1998).

[50] *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. 2007); 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).

be no debate over the appropriate sanction, a decision may be entered without hearing in this case.[51]

Having carefully considered the pleadings, relevant authorities, and arguments of the parties, the following Findings of Fact, Conclusions, and Order are entered without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) and the Department's policy set forth in *Scamcorp*, 57 Agric. Dec. 527, 547-49 (U.S.D.A. 1998).

Findings of Fact

1. Olympic Wholesale Produce, Inc. is or was a corporation organized and existing under the laws of the state of Illinois. Olympic Wholesale Produce, Inc.'s business and mailing address is or was 2404 South Wolcott, Unit 15, Chicago, Illinois 60608.
2. At all times material herein, Olympic Wholesale Produce, Inc. was licensed and/or operating subject to the provisions of PACA. License number 19740290 was issued to Olympic Wholesale Produce, Inc. on August 21, 1973 and was subject for renewal on August 21, 2018. USDA PACA records[52] indicate that, as of this date, the license is suspended.
3. During the period December 2016 through May 2017, on or about the dates and in the transactions set forth in Appendix A attached hereto and incorporated by reference, Olympic Wholesale Produce, Inc. failed to make full payment promptly to four sellers for 108 lots of perishable agricultural commodities which Olympic Wholesale Produce, Inc. purchased, received, and accepted in interstate and foreign commerce, in the total amount of

[51] *See* 7 C.F.R. § 1.139; Moore Mkt'g Int'l, 47 Agric. Dec. 1472, 1482 (U.S.D.A. 1998) (Order Dismissing Appeal) ("It is well-settled under the Department's sanction policy that the license of a produce dealer who fails to pay more than a *de minimis* amount of produce is revoked, absent a legitimate dispute between the parties as to the amount due.").

[52] PACA Search Engine: License No. 19740290, USDA.GOV, https://apps.ams.usda.gov/pacasearch/ (choose "Specialized Search," select "License Number" from drop-down box, and search the blank field for "19740290").

$898,725.70.

4. Olympic Wholesale Produce, Inc. failed to achieve full compliance with PACA within 120 days after the Complaint was served.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Olympic Wholesale Produce, Inc.'s failure to pay promptly with respect to the transactions referenced in Finding of Fact No. 3 above, as set forth in attached Appendix A, constitutes willful, flagrant, and repeated violations of section 2(4) of PACA (7 U.S.C. § 499b(4)), for which the below Order is issued.
3. Where a dealer has committed repeated, flagrant, and willful PACA violations but has no license to be revoked, the appropriate sanction is publication of the facts and circumstances of the violations.[53]

ORDER

1. Olympic Wholesale Produce, Inc.'s Request for Oral Hearing is DENIED.
2. AMS's Motion for Decision Without Hearing is GRANTED.
3. A finding is made that Olympic Wholesale Produce, Inc. committed willful, flagrant, and repeated violations of section 2(4) of PACA (7 U.S.C. § 499b(4)).
4. Olympic Wholesale Produce, Inc.'s PACA license, No. 19740290, is revoked. In the alternative, in the event Olympic Wholesale Produce, Inc. failed to renew its license, the facts and circumstances of Olympic Wholesale Produce Inc.'s PACA violations shall be published.

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[53] *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. 2007); 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, with courtesy copies provided via email where available.

Done at Washington, D.C.

this 28 day of August, 2018

Jill S. Clifton
Administrative Law Judge
for
Channing D. Strother
Acting Chief Administrative Law Judge

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	Seller's Name	No. Lots	Commodity	Dates Accepted	Dates Payment Due	Amounts Past Due & Unpaid
1	Classic Fruit Company, Inc. Red Diamond Fresno, CA	5	MXFV	11/21/16 to 03/14/17	12/01/16 to 03/24/17	$94,229.05
2	New Era Produce, LLC Estero, FL	98	MXFT	11/15/16 to 04/25/17	12/06/16 to 05/16/17	$762,253.05
3	Central American Produce, Inc Pompano Beach, FL	4	MXFT	02/24/17 to 04/11/17	03/06/17 to 04/21/17	$32,751.60
4	Fresh Quest Melons, LLC Pompano Beach, FL	1	Melons	03/09/17	03/30/17	$9,492.00
4	Sellers	108	Lots		Total	$898,725.70

APPENDIX A