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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	
Benny F. Hall & Sons LLC,	)	PACA-D Docket No. 18-0027
	)	
Respondent.	)	

DECISION AND ORDER WITHOUT HEARING BY REASON OF ADMISSIONS

Appearances:

Christopher Young, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service ("AMS")

Benny F. Hall, Sr., appearing pro se as representative of the Respondent, Benny F. Hall & Sons LLC

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a *et seq.*) ("PACA"); the regulations promulgated thereunder by the Secretary of Agriculture (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, Agricultural Marketing Service, United States Department of Agriculture ("AMS" or "Complainant"), initiated this proceeding by filing a complaint alleging that Benny F. Hall & Sons LLC ("Respondent") willfully violated the PACA. On June 18, 2020, AMS moved for a decision without hearing based on admissions pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) and in accordance with the policy set forth by the Judicial Officer in *Scamcorp, Inc.*, 57

Agric. Dec. 527 (U.S.D.A. 1998).[1]

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

Procedural History

On April 10, 2018, AMS filed a disciplinary complaint against Respondent. The Complaint alleged that, during the period July 2016 through August 2017, Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to thirteen sellers for 136 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce in the total amount of $797,113.98.[2] Moreover, the Complaint requested:

> 1. That 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; and
>
> 2. That 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 the revocation of Respondent's PACA license pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

Complaint at 3-4 (emphasis added).[3]

On May 1, 2018, Respondent filed a timely response ("Answer") to the Complaint,[4]

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[1] *See* Motion at 1-2.

[2] *See* Complaint at 2-3.

[3] Although the Complaint requested revocation of Respondent's PACA license, that license terminated on June 18, 2018, pursuant to section 4(a) of the PACA (7 U.S.C. § 499h(a)), when Respondent failed to pay the required renewal fee.

[4] United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on April 17, 2018. 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

which included several attachments.[5] Although it purportedly did "not admit or deny" the material allegations of the Complaint, the Answer stated: "Due to circumstances that were out of our control during 2016 we did fail to make timely payments to our suppliers."[6] Respondent set forth "a few exceptions" as to why certain payments were not made promptly and concluded:

> The remaining sellers we owe most of the amounts on the report, but we are currently paying them down. . . . We have not been able to obtain an operating loan as of yet. Our intention is to get everyone paid with our potato crop this year.

Answer at 2.

On June 18, 2020, AMS filed a Motion for Decision Without Hearing and proposed Decision Without Hearing by Reason of Default ("Proposed Decision")[7] on the basis that "Respondent has admittedly not paid promptly and in full the past-due produce debt identified in the Complaint."[8] Respondent has not filed any objections thereto.[9]

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for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent's answer was due by May 7, 2018.

[5] Attached to Respondent's Answer were copies of the following documents: July 25, 2017 letter from Respondent's owner addressed "To Whom It May Concern," which discusses the history of Respondent's business and its efforts to pay for produce; June 30, 2017 Statement to South Florida Potato Growers; June 30, 217 Statement to Wayne T. Heath Farms, Inc.; and June 30, 2017 Statement to Classic Produce.

[6] Answer at 1.

[7] *See* Motion at 1-2 ("Complainant hereby moves, pursuant to section 1.139 of the Rules of Practice Governing Formal Adjudicatory Procedures Instituted by the Secretary [Under] Various Statutes (7 C.F.R. § 1.139) (Rules of Practice), for a Decision Without Hearing by Reason of Admissions. 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*, 57 Agric. Dec. 527, 547-549 (1998)(and in other case precedent relating to the subject of failure to pay promptly under the PACA . . .)").

[8] Motion at 2.

[9] United States Postal Service records reflect that the Motion for Decision Without Hearing and Proposed Decision were sent to Respondent via certified mail and delivered on June 26, 2020. 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

On August 5, 2020, AMS filed "Complainant's Filing Of Respondent's Payment Updates Submitted by Respondent Following Conference Calls with the ALJ."[10] The filing includes two attachments, or "payment updates [that] are . . . extensions of and updates to amounts of debt admitted by Respondent in its Answer to the Complaint."[11] AMS's Motion for Decision Without Hearing was based, in part, on admissions made in these updates.[12]

Authorities

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes ("Rules of Practice" or "Rules"), set forth at 7 C.F.R. §§ 1.130 *et seq.*, apply to the adjudication of this matter. Pursuant to section 1.136 (7 C.F.R. § 1.136), a respondent is required to file an answer within twenty days after service of a complaint.[13] The Rules provide that an answer shall "[c]learly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent."[14] Moreover, "failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation."[15] With regard to such admission, section 1.139 (7 C.F.R. § 1.139) provides:

The failure to file an answer, *or the admission by the answer of the all the*

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day. 7 C.F.R. § 1.147(h). In this case, Respondent's objections were due by July 16, 2020. Respondent has not filed any objections.

[10] This case was previously assigned to Administrative Law Judge Jill S. Clifton, who presided over the aforementioned conference calls. The case was reassigned to my docket on July 14, 2020.

[11] Complainant's Filing Of Respondent's Payment Updates Submitted by Respondent Following Conference Calls with the ALJ at 1. Respondent sent these updates to AMS on November 27, 2018 and August 22, 2019.

[12] *See id.*

[13] 7 C.F.R. § 1.136(a).

[14] 7 C.F.R. § 1.136(b)(1).

[15] 7 C.F.R. § 1.136(c).

> *material allegations of fact contained in the complaint, shall constitute a waiver of hearing*. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. *If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.*

7 C.F.R. § 1.139.

Also applicable to the instant proceeding are sections 2(4) and 8(a) of the 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.[16] 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."[17] 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 facts and 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.

7 U.S.C. § 499h(a).

In cases where a PACA 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 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

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

[17] 7 U.S.C. § 499b(4).

> achieved *or will achieve* full compliance with the PACA within 120 days after the complaint is served on that respondent, or the date of the hearing, whichever occurs first, the PACA case will be treated as a "no-pay" case.

Scamcorp, Inc., 57 Agric. Dec. 527, 548-49 (U.S.D.A. 1998). 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."[18]

Discussion

I. Respondent Has Admitted to Failing to Make Full Payment in Accordance with the PACA and Controlling Case Law.

The PACA requires licensed produce 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.[19] 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' case."[20] "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."[21]

In Appendix A to the Complaint (attached hereto and incorporated herein by reference), AMS identified thirteen sellers to whom Respondent failed to make full payment promptly, in the total amount of $797,113.98, for 136 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce during the

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[18] *Scamcorp, Inc.*, 57 Agric. Dec. 527, 549 (U.S.D.A. 1998).

[19] 7 C.F.R. § 46.2(aa)(5), (11).

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

[21] *Id.* at 549.

period July 2016 through August 2017.[22] Respondent was served with the Complaint on April 17, 2018.[23] Therefore, in accordance with *Scamcorp*, Respondent had until August 15, 2018 to attain full compliance with the PACA.[24]

In its Answer, Respondent did not deny that it failed to timely pay sellers for perishable agricultural commodities; instead, Respondent suggested there were "a few exceptions" regarding the balances alleged to be owed to several sellers. Specifically, Respondent submitted that: (1) Classic Produce owes Respondent $4,124; (2) Respondent settled certain payables with Wayne Heath Farms and "currently owe[s] him $5,497.00"; (3) "Martins [sic] Fresh has been paid in full"; (4) Respondent settled certain payables with South Florida and "currently owe[s] them approximately $19,000 for bags" but "[t]he produce portion has been taken care of"; (5) "H & S Produce has been paid in full"; (6) Respondent has been paying Fresh on Board and "currently owe[s] them $24,180.00"; (7) "Wilson Family Farm has ben paid"; and (8) Respondent is disputing the amount owed to Real Potatoes "with PACA because they are billing [Respondent] for a load [it] didn't receive."[25] With regard to the "remaining sellers," Respondent stated it "owe[s] most of the amounts on the report[] but [is] currently paying them down."[26]

The explanations provided in Respondent's Answer are not an acceptable defense to liability in a case such as this, where a complaint has been filed alleging violations of section

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[22] *See* Appendix A.

[23] *See supra* note 4; 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 [or] last known principal place of business of the attorney or representative of record of such party[.]").

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

[25] Answer at 1-2.

[26] *Id.* at 2.

2(4) of the PACA due to the failure to make full payment promptly.[27] As the Judicial Officer stated in *Scamcorp*: "PACA requires *full payment promptly*, and commission merchants, dealers, and brokers are required to be in compliance with the payment provisions of the PACA at all times."[28] Here, Respondent has admitted that, even after the August 15, 2018 *Scamcorp* compliance deadline, it still owed a total of at least $519,416.69 to eight sellers.[29] Respondent's November 2018 updated summary[30] shows it still owed the sellers listed in Appendix A to the Complaint as follows:[31]

	SELLER	AMOUNT OWED
1	Wayne E. Bailey Produce Company	$100,800.00 (same amount as alleged in Appendix A)
2	Broad Acres, Inc.	$193,921.53 ("adjusted" lesser amount than that alleged in Appendix A, following adjustments made for shrinkage and quality issues)
3	ShadyBrook Farms, LLC	$110,327.22 (same amount as alleged in Appendix A)
4	Fresh on Board, Inc.	$24,180.00 ("adjusted" lesser amount than that alleged in Appendix A, following payments made)

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[27] *See, e.g.*, *The Caito Produce Co.*, 48 Agric. Dec. 602, 614 (U.S.D.A. 1989) ("Even though a respondent has good excuses for payment violations, perhaps beyond its control, such excuses are never regarded as sufficiently mitigating . . ."); *Finer Food Sales Co.*, 41 Agric. Dec. 1154, 1171 (U.S.D.A. 1982), *aff'd sub nom. Finer Food Sales Co. v. Block*, 708 F.2d 774 (D.C. Cir. 1983) ("[E]ven if it were determined that respondent had a good excuse for the failures to pay involved here, it has been repeatedly held under the Act that all excuses are routinely rejected in determining whether payment violations occurred or whether violations were willful since 'the Act calls for payment -- not excuses.") (quoting *Kafcsak*, 39 Agric. Dec. 683, 686 (U.S.D.A. 1980)).

[28] *Scamcorp, Inc.*, 57 Agric. Dec. at 548.

[29] *See supra* note 24 and accompanying text; Complainant's Filing Of Respondent's Payment Updates Submitted by Respondent Following Conference Calls with the ALJ, Attachment 1.

[30] Respondent's August 2019 updated summary shows the total amount owed as $503,774.50. *See* Complainant's Filing Of Respondent's Payment Updates Submitted by Respondent Following Conference Calls with the ALJ, Attachment 2. As previously discussed, however, the *Scamcorp* deadline had already passed on August 15, 2018.

[31] *See id.*, Attachment 1; Proposed Decision at 3.

5	Martens Fresh, LLC	Paid in full (email provided by seller)
6	Marks Produce	$6,480.00 (same amount as alleged in Appendix A)
7	South Florida Potato Growers	Paid in full (no evidence to support)
8	Real Potatoes, Ltd.	$67,391.94 (same amount as alleged in Appendix A)
9	H&S Produce and Packing, Inc.	Paid in full (email provided by seller)
10	Classic Produce, Inc.	$11,036.00 (same amount as alleged in Appendix A)
11	Wilson Family Farm, Ltd.	Paid in full (email provided by seller)
12	Floyd Wilcox & Sons, Inc.	$5,280.00 (same amount as alleged in Appendix A)
13	Wayne T. Heath Farms, Inc.	Paid in full (no evidence to support)

Even assuming *arguendo* that Respondent had paid the amounts claimed, Respondent has nonetheless admitted to owing more than a *de minimis* amount to produce sellers.[32]

Moreover, Respondent has made no assertion—in its Answer or in any other filing—that full payment has been made or that full compliance will be achieved pursuant to the parameters set forth by *Scamcorp*. To the contrary, the Answer states that Respondent "did fail to make timely payments to [its] suppliers"[33] and still "owe[s] most of the amounts on the report."[34] Accordingly, I find that Respondent has not achieved full compliance with the PACA within 120 days after service of the Complaint.

II. 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

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

[33] Answer at 1.

[34] *Id.* at 2.

committed repeated, flagrant, and willful violations of the PACA.[35] Where a dealer has committed repeated, flagrant, and willful violations of the PACA but has no license to revoke, the appropriate sanction is publication of the facts and circumstances of the violations.[36]

First, Respondent's violations in this case were repeated. Violations are "repeated" under the PACA when they are committed multiple times, non-simultaneously.[37] As Respondent failed to pay thirteen sellers promptly and in full for 136 lots of perishable agricultural commodities over a year-long period, its violations were clearly repeated.[38]

Respondent's violations were also flagrant. Flagrancy is determined by evaluating the number of violations, total money involved, and length of time in which the violations occurred.[39] As previously discussed, Respondent itself admitted to owing a total of at least $519,416.69 to eight of the sellers named in Appendix A to the Complaint as of November 2018.[40] By failing to pay that money—far more than a *de minimis* amount—to multiple sellers and still owing that money more than a year later, Respondent has committed flagrant PACA

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[35] *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).

[36] *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. at 571 n.23 (U.S.D.A. 1998); *Hogan Distrib., Inc.*, 55 Agric. Dec. 622, 633 (U.S.D.A. 1996).

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

[38] *See* Appendix A; Answer at 1-2.

[39] *Five Star Food Distribs., Inc.*, 56 Agric. Dec.at 895; *Havana Potatoes of N.Y. Corp.*, 55 Agric. Dec. 1234, 1270 (U.S.D.A. 1996); *see Reese Sales Co. v. Hardin*, 458 F.2d 183, 185, 187 (9th Cir. 1972).

[40] *See supra* notes 24, 29, and accompanying text.

violations.[41] 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.

Scamcorp, Inc., 57 Agric. Dec. 527, 552-53 (U.S.D.A. 1998). Given the many transactions, substantial amount of debt, and continuation of violations over a year-long 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 the PACA.[42]

III. 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."[43] Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) allows for a decision without hearing by reason of admissions: "The failure to file an answer, *or the admission by the answer of all the material*

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[41] 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 to each seller. *See Baiardi Chain Food Corp.*, 64 Agric. Dec. at 1835-37; *see also Hunts Point Tomato Co.*, 64 Agric. Dec. 1914, 1929-31 (U.S.D.A. 2005).

[42] *The Square Group, LLC*, 75 Agric. Dec. at 695.

[43] *H. Schnell & Co.*, 57 Agric. Dec. 1722, 1729 (U.S.D.A. 1998); *see, e.g.*, *KDLO Enters., Inc.*, 70 Agric. Dec 1098, 1104 (U.S.D.A. 2011); *Kirby Produce Co.*, 58 Agric. Dec. 1011, 1027 (U.S.D.A. 1999).

allegations of fact contained in the complaint, shall constitute a waiver of hearing."[44]

I find no genuine issues of fact that would require a hearing in this case. Respondent has admitted material allegations of the Complaint and filed no objections to AMS's Motion for Decision Without Hearing.[45] As the amount admittedly owed is not *de minimis*, I need not determine the exact amount Respondent has failed to pay.[46]

Where, as in the present case, a complainant moves for default and the respondent files no meritorious objections,[47] the Rules of Practice provide that decision and order shall be entered without further procedure:

> The 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. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. *If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.*

7 C.F.R. § 1.139 (emphasis added).

Based on Respondent's admissions, and upon Complainant's motion for the issuance of a decision without hearing, 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.

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[44] 7 C.F.R. § 1.139 (emphasis added).

[45] *See id.*

[46] *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 debt is enough to make the total more than *de minimis*."); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. at 82-83 ("[U]nless the amount admittedly owed is *de minimis*, there is no basis for a hearing to determine the precise amount owed.").

[47] *See supra* note 9 and accompanying text.

§ 1.139).

Findings of Fact

1. Respondent Benny F. Hall & Sons LLC is or was a limited liability company organized and existing under the laws of the Commonwealth of Virginia. Respondent's business address and current service address is 29350 Horsey Road, Oak Hall, Virginia 23416.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20130984 was issued to Respondent on June 18, 2013. Respondent's PACA license terminated on June 18, 2018, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual fee.
3. Respondent, during the period July 2016 through August 2017, on or about the dates and in the transactions set forth in Appendix A to the Complaint (attached hereto and incorporated by reference), failed to make full payment promptly to thirteen sellers for 136 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of $797,113.98.
4. On August 22, 2019, Respondent provided information that, as of that date, eight sellers were owed a total of $503,744.50 for perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Benny F. Hall & Sons LLC's failure to make full payment promptly to thirteen sellers of the agreed purchase prices of the perishable agricultural commodities described in Finding of Fact No. 4, above, constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

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.[48]
4. As Respondent's license terminated prior to the institution of this proceeding, the appropriate sanction is publication of the facts and circumstances of Respondent's PACA violations.[49]

ORDER

1. AMS's Motion for Decision Without Hearing is GRANTED.
2. A finding is made that Respondent Benny F. Hall & Sons LLC has engaged in willful, flagrant, and repeated violations of the PACA.
3. The facts and circumstances of Respondent's PACA violations, as set forth above, shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).
4. Any employment sanctions attendant to this Order will take effect upon issuance of this Decision and Order.[50]

This Decision and Order shall become final and effective without further proceedings thirty-five (35) days after the date of service upon Respondents, unless it is appealed to the Judicial Officer by a party to the proceeding within thirty (30) days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

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[48] *See The Square Group, LLC*, 75 Agric. Dec. at 695; *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984) (Ruling on Certified Question).

[49] *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).

[50] Section 1(b)(6) of the PACA states that the "term 'dealer' means any person engaged in the business of buying or selling in wholesale or jobbing quantities, as defined by the Secretary, any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered a 'dealer' in respect to sales of any such commodity of his own raising . . . ." 7 U.S.C. § 499a(b)(6). Producers who are not dealers under the PACA definition are not subject to the Act as dealers.

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

Done at Washington, D.C.,
this 11th day of August 2020

Tierney Carlos
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building, Room 1031
1400 Independence Avenue, SW
Washington, DC 20250-9203
Tel: 202-720-4443
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Appendix A

	Seller & Location	No. Lots	Commodity	Date Accepted	Date Payment Due	Amount Past Due & Unpaid
1	Wayne E. Bailey Produce Company Chadbourn, NY	21	Potatoes	07/13/16 to 03/10/17	07/23/16 to 03/20/17	$ 100,800.00
2	Broad Acres, Inc. Dover, DE	33	Potatoes	08/10/16 to 09/27/16	08/20/16 to 10/07/16	$ 218,511.62
3	Shadybrook Farms LLC Dover, DE	29	Potatoes	08/15/16 to 11/18/16	08/25/16 to 11/28/16	$ 110,327.22
4	Fresh on Board, Inc. Montreal, Quebec, CAN	9	MXFV	09/10/16 to 10/13/16	09/20/16 to 10/23/16	$ 62,285.00
5	Martens Fresh LLC Port Byron, NY	3	Onions	10/26/16 to 12/15/16	11/05/16 to 12/25/16	$ 17,750.00
6	Marks Produce Capron, VA Destination: FL	1	Watermelon	10/22/16	11/20/16	$ 6,480.00
7	South Florida Potato Growers Exchange Winter Park, FL	9	Potatoes	02/18/17 to 03/24/17	02/28/17 to 04/03/17	$ 36,636.90
8	Real Potatoes, Ltd. Cornwall, PEI, CAN	2	Potatoes	03/27/17 to 04/01/17	04/26/17 to 05/01/17	$ 67,371.94
9	H & S Produce and Packing, Inc. Pembroke Pine, FL	10	Potatoes	05/04/17 to 06/02/17	05/14/17 to 06/12/17	$ 44,706.52
10	Classic Produce, Inc. Bronx, NY	4	MXFV	04/21/17 to 07/12/17	05/20/17 to 08/11/17	$ 11,036.00

Appendix A

	Seller & Location	No. Lots	Commodity	Date Accepted	Date Payment Due	Amount Past Due & Unpaid
11	Wilson Family Farm, Ltd. Whites Ford, FL	1	Potatoes	05/13/17	05/28/17	$ 1,345.32
12	Floyd Wilcox & Sons, Inc. Rexburg, ID	1	Potatoes	06/20/17	06/30/17	$ 5,280.00
13	Wayne T. Heath Farms, Inc. Townsend, VA Destination: MA, MD, NC, NJ, PA, RI	13	Potatoes	06/21/17 to 07/09/17	07/01/17 to 07/19/17	$ 114,583.46
13	**Sellers**	**136**	**Lots**			**$ 797,113.98**