

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) PACA Docket No. D-03-0022
)
Fielders Choice Produce)
Investors, LLC)
) Decision Without Hearing
Respondent) 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.) (hereinafter referred to as the "Act"), instituted by a complaint filed on May 20, 2003, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture.

The complaint alleges that during the period November 2000 through January 2002, Fielders Choice Produce Investors, LLC, (hereinafter "Respondent") failed to make full payment promptly to eight sellers of the agreed purchase prices, or balances thereof, for 207 lots of perishable agricultural commodities that it purchased, received, and accepted in interstate and foreign commerce in the total amount of \$244,114.33.

A copy of the complaint was mailed to Respondent by certified mail at its last known principal place of business on May 20, 2003, and was returned to the office of the Hearing Clerk. A copy of the complaint was served on Respondent by regular mail on June 11, 2003, and **pursuant to Section 1.147(c) of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §1.130 *et seq.*, hereinafter "Rules of Practice")** the Respondent is deemed served with the complaint on the date of that mailing. No answer to the complaint has been received. The time for filing an

answer having expired, and upon motion of the Complainant for the issuance of a decision without hearing based upon Respondent's default, the following Decision and Order shall be issued without further investigation 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 limited liability company organized and existing under the laws of the state of Arizona. Its business mailing address was 490 East Pima, Phoenix, Arizona 85004-2838.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 010664 was issued to Respondent on April 11, 2001. This license terminated on April 11, 2002, pursuant to Section 4(a) of the PACA (7 U.S.C. § 499(a)), when Respondent failed to pay the required annual renewal fee.

3. During the period November 2000 through January 2002, Respondent purchased, received and accepted in interstate and foreign commerce, 207 lots of perishable agricultural commodities from eight sellers, but failed to make full payment promptly of the agreed purchase prices, or balances thereof, in the total amount of \$244,114.33.

Conclusions

Respondent's failure to make full payment promptly with respect to the transactions set forth in Finding of Fact No. 3 above, constitutes willful, flagrant, and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)), for which the Order below is issued.

Order

A finding is made that Respondent has committed willful, flagrant, and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)), and the facts and circumstances of the violations set forth above shall be published.

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

Pursuant to the Rules of Practice, 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 the parties.

Done at Washington, D.C.

this 27th day of July, 2004

/s/ Marc R. Hillson
Chief Administrative Law Judge