

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	PACA Docket No. D-17-0014
)	
)	
Fresh & Easy, LLC,)	
)	
)	
Respondent)	

Consent Decision and Order

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (PACA). The Complaint filed herein, on December 14, 2016, alleged that Respondent had committed flagrant and repeated violations of section 2(4) of the PACA by failing to make full payment promptly to 23 sellers of the agreed purchase prices in the total amount of \$201,468.29 for 380 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce, during the period of March 2015 through December 2015. The Complaint sought the issuance of an order finding that Respondent had committed flagrant and repeated violations of section 2(4) of the PACA, and revocation of Respondent's PACA license pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

The Complaint was served upon Respondent, Respondent agrees that the Secretary has jurisdiction in this matter, Respondent waives all further proceedings in this matter, and the parties have now agreed to the entry of a Consent Decision and Order as set forth herein. Therefore, this Consent Decision and Order is entered without further procedure or hearing pursuant to the consent decision provisions (7 C.F.R. §1.138) of the Rules of Practice Governing Formal Adjudicatory

Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 et seq.) (Rules of Practice) applicable to this proceeding.

Respondent admits the jurisdictional allegations of the Complaint, denies the remaining allegations set forth in the Complaint, but agrees, for the purposes of settlement, to the findings, conclusions, and order in this Consent Decision and Order.

Findings of Fact

1. Respondent is or was a corporation organized and existing under the laws of the state of Delaware. Respondent's business and mailing address is or was 1730 Eastridge Avenue, Riverside, California 92507-7113.

2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20140686 was issued to Respondent on April 30, 2014. The license is due for renewal on April 30, 2018.

3. During the period March 2015 through December 2015, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 23 sellers, 380 lots of perishable agricultural commodities, and failed to make full payment promptly of the agreed purchase prices, in the total amount of \$201,468.29.

Conclusions

Respondent's failure to make full payment promptly to 23 sellers of the agreed purchase prices of the perishable agricultural commodities described in Finding of Fact paragraph 3, above, constitutes flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Order

A finding is issued that Respondent has engaged in flagrant and repeated violations of the

PACA, and Respondent's PACA license shall be revoked pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)). However, this finding, the above conclusion and the revocation of Respondent's license shall be held in abeyance so long as Respondent pays the produce sellers listed in Appendix A to the Complaint the balance of the full amounts owed to each seller, as listed in Appendix A to the Complaint, and referenced in Finding of Fact paragraph 3 above, within sixty days of the effective date of this Consent Decision and Order.

The PACA Division, Specialty Crops Program, of the Agricultural Marketing Service shall be the final arbiter of whether the produce sellers have been paid in the amounts listed in Appendix A to the Complaint. It will be Respondent's obligation to demonstrate that full payment as described above has been made.

Once full payment to the produce sellers is made, Respondent shall pay a civil penalty in the amount of \$30,000. Payment of the civil penalty must be made within 7 business days from the date of demonstration of full payment of creditors. Payment shall be by certified check or bank check made payable to the "United States Treasury" and delivered to the United States Department of Agriculture, PACA Division, 1400 Independence Avenue, S.W. Room 1510 South Bldg., Stop 0242, Washington, D.C. 20250-0242.

If full payment of the produce sellers is made within the 60 days stated above, and Respondent pays the \$30,000.00 civil penalty as described above, the finding of flagrant and repeated violations of the PACA and the revocation of Respondent's license as stated in the Order above will be permanently abated, and the case will be closed.

If full payment to the sellers in the amounts listed in the Appendix A to the Complaint and as described in Finding of Fact paragraph 3 above, and subsequent payment of the \$30,000 civil

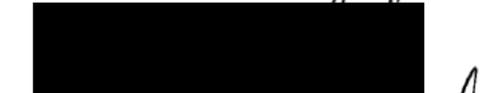
penalty is not made in the manner described above, then the conclusion and finding of flagrant and repeated violations, as stated above, and the revocation of Respondent's PACA license, will no longer be held in abeyance and will be made without further proceeding, *except* notice by Complainant, informing the Administrative Law Judge that Respondent has failed to comply with the terms of the Consent Decision and Order, and requesting that the finding and revocation ordered above no longer be held in abeyance.

This Order shall become effective upon issuance.

Copies hereof shall be served upon parties.


Christopher Young, Esq.
Attorney for Complainant

1/11/17
Date signed


Jason Klinowski, Esq.
For Respondent

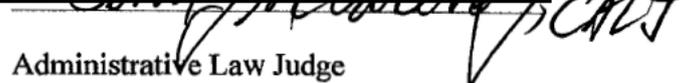
1/16/17
Date signed


Clark R. Hammond, Esq.
for Respondent

1/16/17
Date signed

Done at Washington, D.C.

this 17th day of January, 2017



Administrative Law Judge