

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) PACA Docket No. D-03-0020
)
Louis Produce Corporation, Inc.)
)
Respondent) Decision Without Hearing

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 12, 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 January 2002 through June 2002, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 18 sellers, 251 lots of perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices in the total amount of \$337,694.77.

The complaint also asserts that on July 17, 2002, Respondent filed a Voluntary Petition in Bankruptcy pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. § 1101 et seq.) in the United States Bankruptcy Court for the Eastern District of Louisiana (Case No. 02-15072). Respondent admitted in its bankruptcy schedules that the 18 sellers listed in the complaint hold unsecured claims in amounts greater than or equal to the amounts alleged in the complaint. The complaint requests the issuance of a finding that Respondent committed willful, repeated and

flagrant violations of section 2(4) of the PACA, and publication of the facts and circumstances of the violations.

Respondent has filed an answer in which Respondent admitted that it has failed to make full payment promptly to the produce sellers listed in the complaint, but denies that its failure to pay as required by the Act was willful. Respondent's admissions in its answer are sufficient to justify the issuance of this Decision Without Hearing Based on Admissions.

The Judicial Officer's policy with respect to admissions in PACA disciplinary cases in which the respondent is alleged to have failed to make full payment promptly is set forth in In re: Scamcorp, Inc., d/b/a Goodness Greeness, 57 Agric. Dec. 527, 549 (1998), as follows:

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 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 "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 the PACA, will be revoked. (Emphasis added)

The complaint in this case was served on the Respondent on May 17, 2003 by certified U.S. mail, as evidenced by the posting date of the return receipt which was attached to the complaint. Respondent admitted in its answer that it failed to pay produce vendors the amounts alleged in the complaint. Under Scamcorp, Respondent was required to be in full compliance

with the PACA by September 14, 2003, 120 days after service of the complaint. The affidavit of Gregory A. Breasher of the PACA Branch, Agricultural Marketing Service, attached to Complainant's Motion for Decision Without Hearing Based on Admissions, indicated that in December 2003, Mr. Breasher contacted five of the produce sellers listed in the complaint, and found that those five sellers were still owed **\$217,506.00** for purchases of various perishable agricultural commodities. This case, therefore, shall be treated as a "no-pay" case which, as the Judicial Officer stated in Scamcorp, warrants the revocation of Respondent's PACA license. Since Respondent's license has terminated due to its failure to pay the annual renewal fee (complaint, paragraph II(b)), the appropriate sanction here is the issuance of a finding that Respondent committed willful, flagrant and repeated violations of section 2(4) of the PACA, and publication of the facts and circumstances of the violations.

Respondent stated in its answer that it did not willfully make "misleading or false statements to defraud any supplier to profit." Louis Despaux, President of the Respondent corporation, explained that all of his suppliers knew the money problems he was having and still continued to sell to him. The Judicial Officer addressed this issue in In re: Hogan Distributing, Inc., 55 Agric. Dec. 622 (1996), stating that the respondent's failure to pay its produce obligations were willful, despite the respondent's claim that financial difficulties forced the violations to occur. The Judicial Officer held that a "violation is willful if, irrespective of evil motive or erroneous advice, a person intentionally does an act prohibited by a statute or if a person carelessly disregards the requirements of a statute." Id. at 626. The Judicial Officer again addressed the issue in Scamcorp, stating that the respondent in that case knew, or should have known, that it could not make prompt payment for amount of perishable agricultural

commodities it ordered, and by continuing to order such goods, it intentionally violated the PACA and operated in careless disregard of the payment requirements of the PACA. Scamcorp, 57 Agric. Dec. at 553. The same analysis applies here.

As stated by the Judicial Officer in In re Hogan Distributing, Inc., 55 Agric. Dec. 622, 633 (1996):

[B]ecause of the peculiar nature of the perishable agricultural commodities industry, and the Congressional purpose that only financially responsible persons should be engaged in the perishable agricultural commodities industry, excuses for nonpayment in a particular case are not sufficient to prevent a license revocation where there have been repeated failures to pay a substantial amount of money over an extended period of time.

In view of Respondent's admission that it has failed to make full payment promptly to 18 sellers in the total amount of \$337,694.77 for 251 lots of perishable agricultural commodities, and the fact that Respondent has not paid the aggrieved sellers in full within 120 days of service of the complaint, Complainant's Motion for a Decision Without Hearing Based On Admissions is granted.

Findings of Fact

1. Louis Produce Corporation, Inc. is a corporation organized and existing under the laws of the State of Louisiana. Its business address is 67-81 French Market Place, New Orleans, Louisiana 70116. Its mailing address is 7548 Patricia Street, Arabi, Louisiana 70032.
2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 971153 was issued to Respondent on March 28, 1997. This license

terminated on March 28, 2003, 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. Respondent, during the period January 2002 through June 2002, failed to make full payment promptly to 18 sellers of the agreed purchase prices in the total amount of \$337,694.77 for 251 lots of perishable agricultural commodities, which it purchased, received and accepted in interstate commerce.

4. On July 17, 2002, Respondent filed a voluntary petition pursuant to Chapter 7 of the United States Bankruptcy Code (11 U.S.C. § 701 *et seq.*) in the United States Bankruptcy Court for the Eastern District of Louisiana. In that matter, case number 02-15072, Respondent admitted in its bankruptcy schedules that the 18 sellers listed in paragraph III of the complaint hold unsecured claims in an amount greater than or equal to the amounts alleged in the complaint.

5. In its answer to the complaint, Respondent admitted its failure to make full payment promptly.

6. Respondent failed to pay the produce debt described above, and failed to come into full compliance with the PACA, within 120 days of service of the complaint against it.

Conclusions

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

Order

Respondent has committed willful, flagrant and repeated violations of Section 2 of the Act (7 U.S.C. § 499b), and the facts and circumstances of the violations shall be published.

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

Pursuant to the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 et seq.), 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 parties.

Done at Washington, D.C.

this 30th day of July, 2004

/s/ Marc R. Hillson
Administrative Law Judge