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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-04-0020
)	
Fresh Fare, Inc.)	
)	
Respondent)	Decision Without Hearing by Reason of Consent

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (“the Act”) and the regulations issued thereunder (7 C.F.R. Part 46)(“the Regulations”), instituted by a Complaint filed on August 26, 2004 by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture.

The Complaint alleged that Respondent Fresh Fare, Inc. (hereinafter “Respondent”) failed to make full payment promptly in the total amount of \$668,235.07 to 35 sellers for 175 lots of perishable agricultural commodities which it purchased, received, and accepted in interstate and foreign commerce during the period April 2002, through January 2003, and requested that the Administrative Law Judge find that Respondent has wilfully, flagrantly and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)), and order that the facts and circumstances of these violations be published.

A copy of the Complaint was served upon Respondent, which filed an answer, denying the allegations of the complaint.

The parties have now agreed to the entry of a Decision Without Hearing by Reason of Consent as set forth herein. Therefore, this Decision Without Hearing by Reason of Consent is

entered without further procedure or hearing pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

Findings of Fact

1. Fresh Fare, Inc. (hereinafter "Respondent") is a corporation incorporated under the laws of the state of New York. Respondent's business address was 205 Jackson Street, Englewood, New Jersey 07631. The current mailing address for Respondent is c/o Respondent's attorney, Bruce Levinson, Esq., 747 3rd Avenue, 4th Floor, New York, NY 10017-2803.

2. At all times material herein, Respondent was licensed, or subject to license, under the PACA. Respondent was issued PACA license number 19980329 on December 9, 1997. The license terminated on December 9, 2002, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

3. Respondent, during the period April 2002 through January 2003, failed to make full payment promptly to 35 sellers of the agreed purchase prices in the total amount of \$668,235.07 for 175 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in the course of interstate and foreign commerce.

Conclusion

Respondent's failure to make full payment promptly for perishable agricultural commodities, as set forth in Finding of Fact 3 above, constitutes wilful, flagrant and repeated violations of section 2(4) of the PACA.

Order

Respondent is found to have engaged in repeated and flagrant violation of Section 3(4) of the PACA (7 U.S.C. § 499b(4)).

The facts and circumstances of these violations shall be published pursuant to Section 8(a) of the PACA (7 U.S.C. § 499h(a)).

This order shall become final upon issuance. Copies of this order shall be served upon the parties.


Done at Washington, D.C.


this 6th of February, 2006



Administrative Law Judge
PETER M. DAVENPORT


For Respondent

For Complainant


for Fresh Fare, Inc.


Associate Deputy Administrator
Fruit and Vegetable Programs
Agricultural Marketing Service


Bruce Levinson, Esq.
Attorney for Respondent


Charles L. Kendall, Esq.
Attorney for Complainant