

USDA
OALJ/OHC

2006 SEP 18 PM 4: 02

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

RECEIVED

In re:) PACA Docket No. D-06-0001
)
 Keith A. Pillow, d/b/a,)
 Fluvanna Fruits and Vegetables,)
)
 Respondent)

Decision Without Hearing By Reason of Consent

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.; hereinafter "PACA"). Complainant filed a Complaint on October 4, 2005 alleging that Respondent, during the period December 26, 2003 through December 29, 2004, failed to comply with PACA employment and licensing restrictions which became effective on October 25, 2003, by conducting business subject to the PACA as an individual proprietorship, doing business as Fluvanna Fruits & Vegetables. The Complaint requested that the Administrative Law Judge issue a finding that Respondent has been unlawfully employed pursuant to Section 8(b) of the PACA (7 U.S.C. §499h(b)), and that the Administrative Law Judge extend the period of employment sanction for an additional year in accordance with Section 8(b)(3) of the PACA (7 U.S.C. §499h(b)(3)).

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 Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 et seq.; hereinafter "Rules of Practice") applicable to this proceeding (7 C.F.R. §1.138).

2.

Respondent neither admits nor denies that, during the period of December 26, 2003 through December 29, 2004, Respondent failed to comply with PACA employment and licensing restrictions which became effective on October 25, 2003, by conducting business subject to the PACA as an individual proprietorship, doing business as Fluvanna Fruits & Vegetables.

Findings of Fact

(1) Keith A. Pillow is an individual, doing business as Fluvanna Fruits & Vegetables (hereinafter "Respondent"). Respondent's business and mailing address is 1429 Salem Church Road, Palmyra, VA 22983.

(2) At all times material herein, Keith A. Pillow, doing business as Fluvanna Fruits & Vegetables, was operating subject to the PACA.

(3) On February 6, 2003, an administrative complaint was issued against Seminole Produce, Inc., alleging that Seminole committed willful, flagrant, and repeated violations of Section 2(4) of the PACA by failing to pay 5 sellers \$236,493.90 for perishable agricultural commodities.

(4) On February 25, 2003, the PACA Branch served a letter on Keith Pillow advising him that the PACA Branch determined that he was responsibly connected as sole principal and stockholder to Seminole Produce, Inc., when it allegedly committed willful, flagrant and repeated violations of the PACA by failing to pay for perishable agricultural commodities. Mr. Pillow did not contest this determination.

(5) On August 26, 2003, a Decision and Order By Reason of Default was issued by Administrative Law Judge Jill Clifton, finding that Seminole Produce, Inc., committed willful, flagrant, and repeated violations of the PACA by failing to pay 5 sellers \$236,493.90 for

perishable agricultural commodities. This Decision and Order became final on October 14, 2003, and effective on October 25, 2003.

(6) Mr. Pillow did not contest his responsibly connected status, communicated to him in the February 25, 2003 letter from the PACA Branch. Therefore, his employment restrictions under Section 8(b) of the PACA (7 U.S.C. §499h(b)) began as of October 25, 2003, the effective date of the Decision and Order.

Conclusion

During the period of December 26, 2003 through December 29, 2004, Respondent's failure to comply with PACA employment and licensing restrictions which became effective on October 25, 2003, by conducting business subject to the PACA as an individual proprietorship, doing business as Fluvanna Fruits & Vegetables, constitutes a willful violation of Section 8(b) of the PACA (7 U.S.C. §499h(b)). The failure of Respondent to comply with the employment and licensing restrictions under the PACA warrants the extension of an additional year of employment sanctions pursuant to Section 8(b) of the Act.

The Parties have agreed that Respondent's employment and licensing restrictions shall be extended for 9 (nine) months, beginning on August 4, 2006. During the nine month period, the PACA Branch may approve Respondent's employment with a PACA licensee or entity operating subject to the PACA, if the licensee or entity furnishes and maintains a surety bond in form and amount satisfactory to the PACA Branch as assurance that the licensee or entity will pay all reparation awards, subject to their right of appeal under 7(c) of the Act, which may be issued against them in connection with transactions occurring within four years following the approval.

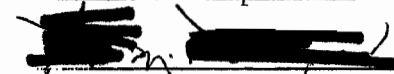
Order

Respondent willfully violated Section 8(b) of the PACA. Respondent's employment and licensing restrictions under Section 8(b) of the PACA (7 U.S.C. §499h(b)) are hereby extended for a period of 9 (nine) months. The Administrative Law Judge will retain jurisdiction over this case pending any final motions by the parties.

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

Done at Washington, D.C.

this 18th day of September, 2006



Administrative Law Judge


Date signed


Date Signed

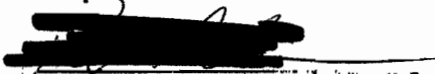
Date Signed

Date Signed


Eric M. Forman
Associate Deputy Administrator
Fruit and Vegetable Programs
Date signed
Agricultural Marketing Service


Christopher Young-Morales, Esq.
Attorney for Complainant


Keith Pillow
Respondent


Robert Dwoskin, Esq.
Attorney for Respondent

9-7-06

Date Signed

7-31-06

Date Signed

7-31-06

Date Signed