

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: ) PACA Docket No. D-03-0002  
)  
A. J. Kennedy's Fruit & )  
Produce, Inc., )  
)  
Respondent )

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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"). On October 9, 2002, Complainant filed a Complaint alleging that from December 2, 2000 through December 31, 2001, Respondent willfully, flagrantly and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to twenty-eight sellers of the agreed purchase prices in the total amount of \$905,676.66 for 651 lots of perishable agricultural commodities that it purchased, received and accepted in interstate commerce. The Complaint requested that the Administrative Law Judge issue a finding that Respondent willfully, flagrantly and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order that the PACA license of Respondent be revoked.

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).

### Findings of Fact

1. A. J. Kennedy's Fruit & Produce, Inc., (hereinafter "Respondent") is a corporation incorporated in the State of Maine on January 12, 1987. Respondent's business mailing address is 116 Pleasant Hill Road, Scarborough, Maine 04074.

2. At all times material herein, Respondent was licensed or operating subject to license under the PACA. Respondent was issued PACA license number 880135 on October 27, 1987. This license has been renewed annually and is next subject to renewal on October 27, 2004.

3. Respondent, during the period December 2, 2000, through December 31, 2001, failed to make full payment promptly to 28 sellers of the agreed purchase prices in the total amount of \$905,676.66 for 651 lots of perishable agricultural commodities, that it purchased, received and accepted in interstate commerce.

### Conclusion

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

### Order

Respondent's PACA license is revoked. However, that revocation shall be held in abeyance in accordance with the terms of the Understanding Regarding the Consent Decision (hereinafter "Understanding") entered into between Complainant and Respondent and any

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supplemental understandings regarding the consent that may be entered by the parties. If the Respondent fails to satisfy the terms of the Understanding, or any supplemental understandings entered by the parties, the revocation of Respondent's PACA license will automatically take effect without further procedure, upon application of Complainant to the Administrative Law Judge. 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 15th day of April, 2004

  
Administrative Law Judge


For Respondent,

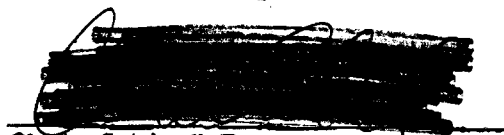
  
Richard Kennedy, President  
AJ Kennedys Fruit & Produce, Inc.

  
Jeffrey Kennedy, Corporate Officer  
AJ Kennedys Fruit & Produce, Inc.

  
Stephen P. McCarron, Esq.  
Attorney for Respondent

For Complainant,

  
Eric M. Forman  
Associate Deputy Administrator  
Perishable Agricultural Commodities Branch  
Fruit and Vegetable Programs  
Agricultural Marketing Service

  
Charles Spicknall, Esq.  
Attorney for Complainant