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
)

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


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
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

[Signature]
Administrative Law Judge

For Respondent,

Richard Kennedy, President
AJ Kennedy's Fruit & Produce Inc.

Jeffrey Kennedy, Corporate Officer
AJ Kennedy's Fruit & Produce Inc.

Stephen P. McCarron, Esq.
Attorney for Respondent

For Complainant,

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

Charles Spickmull, Esq.
Attorney for Complainant