

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

USDA
OALJ/HCO
2004 MAY 28 P 3:33

RECEIVED

In re:) PACA Docket No. D-04-0002
)
American 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" or "Act"), instituted by a Complaint filed on October 31, 2003 by the Associate Deputy Administrator, Perishable Agricultural Commodities Branch of Fruit and Vegetable Programs of the Agricultural Marketing Service.

The Complainant alleged that Respondent American Produce, Inc., committed willful, flagrant and repeated violations of Section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly in the total amount of \$4,336,243.50 to 123 sellers for 739 lots of perishable agricultural commodities which it purchased, received, and accepted in interstate and foreign commerce during the period August 2000 through May 2001. The Complaint requested that the Administrative Law Judge find that Respondent has willfully, flagrantly and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order the facts and circumstances of those violations be published.

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. American Produce, Inc., (hereinafter "Respondent") is a corporation organized and existing under the laws of the State of Virginia. Respondent's business address while operating was Route 621 North, Arcola, Virginia 22010. Respondent's current address is c/o Joerg A. Eichmann, Registered Agent, 103 North Loudoun Street, Winchester, Virginia 22601.

2. At all times material herein, Respondent was licensed under or subject to the PACA. PACA license number 930892 was issued to Respondent on March 23, 1993. That license terminated on March 23, 2002, pursuant to Section 4(a) of the PACA (7 U.S.C. § 499d(a)) when Respondent failed to pay the required annual fee.

3. During the period August 2000 through May 2001, Respondent failed to make full payment promptly to 123 sellers of the agreed purchase prices in the total amount of \$4,336,243.50 for 739 lots of perishable agricultural commodities which it purchased, received and accepted in interstate and foreign commerce.

Conclusion

Respondent's failure to make full payment promptly to 123 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

The Respondent is found to have committed willful, flagrant and repeated violations of Section 2(4) of the PACA (7 U.S.C. § 499b(4)). The facts and circumstances of those 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.

28th ~~2004~~
this ~~28th~~ day of , 2004



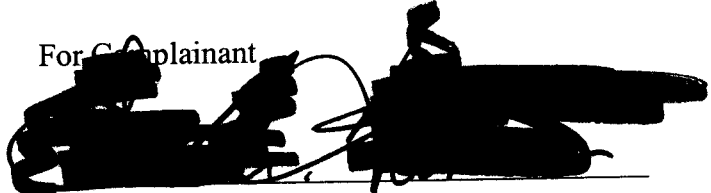
Administrative Law Judge

For Respondent



Joerg A. Eichmann
Registered Agent
American Produce, Inc.

For Complainant



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



Clara Kim, Esq.
Attorney for Complainant