

UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

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| In re: |) | PACA Docket No. D-04-0021 |
| |) | |
| A & B 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 August 26, 2004 by the Associate Deputy Administrator, Perishable Agricultural Commodities Branch of Fruit and Vegetable Programs of the Agricultural Marketing Service.

The Complainant alleged that Respondent A & B 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 \$1,426,837.12 to 31 sellers for 204 lots of perishable agricultural commodities which it purchased, received, and accepted in interstate and foreign commerce during the period December 2002 through October 2003. 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 the 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. A & B Produce, Inc., (hereinafter "Respondent") is a corporation organized and existing under the laws of the State of Pennsylvania. Respondent's business mailing address while operating was 3301 S. Galloway Street, Unit 65, Philadelphia, Pennsylvania 19148-5442. Respondent's current address is 17 Morningstar Court, Sicklerville, New Jersey 08081.
2. At all times material herein, Respondent was licensed under the PACA. PACA license number 20021152 was issued to Respondent on June 4, 2002. That license terminated on June 4, 2004, 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. During the period December 2002 through October 2003, Respondent failed to make full payment promptly to 31 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$1,426,837.12, for 204 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 31 sellers of the agreed purchase prices, or balances thereof, 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.

this 10th day of August, 2005




Administrative Law Judge
PETER M. DAVENPORT

For Respondent




Anthony Badolato
President, Vice President, Secretary,
Treasurer, and Director
A & B 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