AGRICULTURE DECISIONS

Volume 78

Book One

Part Three (PACA Decisions)

Pages 180–247

THIS IS A COMPILATION OF DECISIONS ISSUED BY THE SECRETARY OF AGRICULTURE AND THE COURTS PERTAINING TO STATUTES ADMINISTERED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

LIST OF DECISIONS REPORTED

JANUARY – JUNE 2019

PERISHABLE AGRICULTURAL COMMODITIES ACT

DEPARTMENTAL DECISIONS

--

REPARATION DECISIONS

--

MISCELLANEOUS ORDERS & DISMISSALS

--

DEFAULT DECISIONS

--

CONSENT DECISIONS

--

PERISHABLE AGRICULTURAL COMMODITIES ACT

DEPARTMENTAL DECISIONS

In re: JONATHAN DYER; DREW JOHNSON, a/k/a DREW R. JOHNSON; and MICHAEL S. RAWLINGS.
Docket Nos. 14-0166, 14-0168, 14-0169.
Decision and Order.
Filed February 7, 2019.

PACA-APP – Alter ego – Appointments Clause – Hearing, new – *Lucia v. SEC* – Owner – Remand – Responsibly connected.

Stephen P. McCarron, Esq., for Petitioners.
Charles L. Kendall, Esq., for AMS.
Initial Decision and Order entered by Jill S. Clifton, Administrative Law Judge.
Decision and Order entered by Bobbie J. McCartney, Judicial Officer.

ORDER AFFIRMING IN PART AND REVERSING IN PART INITIAL DECISION AND ORDER IN DOCKET NOS. 14-0166, 14-0168, AND 14-0169

Summary of Procedural History and Preliminary Findings

This is a "responsibly connected" proceeding under the Perishable Agricultural Commodities Act, as amended (7 U.S.C. § 499(a) *et seq.)* (PACA), which is conducted pursuant to the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.)* (Rules or Rules of Practice).

On June 28, 2013, a disciplinary complaint (Complaint) was filed against Adams Produce Company LLC (Adams), for failing to make full payment promptly in the amount of $10,735,186.81 to 51 produce sellers for 9,314 lots of perishable agricultural commodities that the company purchased, received, and accepted during the period of August 8, 2011 through May 18, 2012. As of the filing of the Complaint, $1,928,417.72 remained unpaid.

On November 22, 2013, a Default Decision and Order was entered against Adams, finding that Adams willfully, repeatedly and flagrantly

violated section 2(4) of the PACA, by failing to make full payment promptly as alleged in the Complaint. The Default Decision and Order became final and effective on January 8, 2014.

Petitioners Jonathan Dyer, Steven C. Finberg, Drew Johnson, and Michael S. Rawlings, each filed a petition for review of the determination of the Director of the PACA Division, Specialty Crops Program, Agricultural Marketing Service (Respondent) determining that each Petitioner was "responsibly connected" with Adams, as that term is defined under section l(b)(9) of the PACA (7 U.S.C. § 499a(b)(9)), during the period of time Adams violated section 2 of the PACA. These four "responsibly connected" cases were consolidated for hearing in accordance with 7 C.F.R. § 1.137 of the Rules of Practice by direction of Rulings and Preliminary Instructions filed on September 4, 2014. The hearings in these proceedings took place on March 22, 2016 in Dallas, Texas, and on August 23, 2016 in Washington, DC, before the Administrative law Judge (ALJ) Jill S. Clifton (Judge Clifton).[1] Although the four petitions for review of the Director's responsibly connected determinations were consolidated for hearing, Judge Clifton indicated in her Initial Decision that she would issue a separate decision regarding Steven Finberg's responsibly connected status.

On May 19, 2017 Judge Clifton issued a Decision and Order (Initial Decision or ID) in Dockets 14-0166, 14-0168, and 14-0169, finding that Petitioners Dyer, Johnson, and Rawlings were not "responsibly connected" with Adams during the period that Adams violated section 2(4) of the PACA.

On June 21, 2017, Respondent timely filed an appeal of Judge Clifton's Initial Decision seeking to establish that Petitioners Dyer, Johnson and Rawlings have each failed to rebut the presumption that they were "responsibly connected" with Adams at the time it committed violations of section 2 of the PACA and requesting that the determination by the Director of the PACA Division that Petitioners were "responsibly connected" with Adams during the period of its repeated and flagrant

[1] The parties' Updated Stipulation as to Proceedings filed on June 11, 2015 provided, among other things: All evidence in the consolidated hearing will be available to be considered in each case.

violations of the PACA be affirmed. Specifically, Respondent requests that the Judicial Officer reverse the ALJ's holdings in the Initial Decision that: 1) Petitioners Dyer, Johnson, and Rawlings were not owners of Adams when Adams violated the PACA; and 2) Adams was the *alter ego* of Scott Grinstead when Adams violated the PACA. Also, Respondent asserts that if the Judicial Officer agrees that one or both of these conclusions are in error, the determinations by the Director of the PACA Division that Petitioners Dyer, Johnson, and Rawlings were each "responsibly connected" with Adams during the period that Adams willfully, repeatedly and flagrantly violated section 2(4) of the PACA, should be affirmed.

On July 25, 2017, Judge Clifton issued her Decision and Order on Docket 14-0167, affirming the determination of the Agency and finding that Petitioner Finberg was "responsibly connected" to Adams, within the meaning of the PACA, pursuant to 7 C.F.R. §499a(b)(9).

On August 21, 2017, Petitioner Finberg timely filed an appeal to the Judicial Officer asserting that he was not "actively involved" in the activities resulting in the violations, that Adams was the *alter ego* of Mr. Grinstead, and, therefore, that he had successfully rebutted the presumption that he was "responsibly connected" with Adams at the time it committed violations of section 2 of the PACA.

On December 28, 2017, the Judicial Officer remanded the instant proceeding to Judge Clifton in order to put to rest any Appointments Clause claim that may arise in this proceeding in light of the Solicitor General's position in *Lucia v. SEC* (*Raymond J. Lucia, et al. v. S.E.C.*, 138 S. Ct. 2044 (2018)) (*Lucia*)[2]. On February 1, 2018, the Judicial Officer denied the Petitioners' request for reconsideration of the Remand Order.

On November 30, 2018, Judge Clifton issued her Notice of Completion

[2] At the time *Lucia v. SEC,* 138 S. Ct. 2044 (2018) was pending before the Supreme Court of the United States. The Solicitor General took the position that administrative law judges of the Securities and Exchange Commission are inferior officers for purposes of the Appointments Clause, U.S. Const. Art. II, § 2, cl. 2.

of Judge's Tasks on Remand (Notice) concluding that Docket Nos. 14-0166, 14-0167, 14-0168 & 14-0169 were ready for return to the Judicial Officer based on the following findings:

1) That Petitioners Jonathan Dyer, Drew Johnson, and Michael S. Rawlings have consistently declined to request relief pursuant to the decision of the Supreme Court of the United States issued on June 21, 2018 in *Lucia v. SEC*, 138 S. Ct. 2044 (2018). (Petitioners' Response filed October 31, 2018, by Stephen P. McCarron, Esq.)

2) That Petitioner Steven C. Finberg has respectfully requested a new hearing conducted under the decision of the Supreme Court of the United States issued on June 21, 2018 in *Lucia v. SEC*, 138 S. Ct. 2044 (2018), before a different administrative law judge, who did not previously participate in the matter. (Petitioners' Response filed October 31, 2018, by Stephen P. McCarron, Esq.); and,

3) That Respondent did not initiate a challenge to Judge Clifton's authority pursuant to the decision of the Supreme Court of the United States issued on June 21, 2018 in *Lucia v. SEC*, 138 S. Ct. 2044 (2018); further, AMS indicated that if the parties were to waive any challenge to the issue of Judge Clifton's authority to enter a Decision and Order in these cases, Respondent prefers that the cases continue to resolution before the Judicial Officer but that absent such waiver, the cases may need to be set for a new hearing, potentially before a different administrative law judge. (Respondent's Response filed October 10, 2018, by Charles L. Kendall, Esq.).

During the course of my February 1, 2019 phone conference with Mr. McCarron on behalf of the Petitioners and Mr. Kendall on behalf of Respondent, the parties reaffirmed their respective positions as reflected by these findings.

REMAND ORDER

Based on the foregoing, it is my determination that Docket Nos. **14-0166**, **14-0167**, **14-0168** & **14-0169** are properly before the Judicial Officer in accordance with Judge Clifton's November 30, 2018 Notice. However, in light of the fact that Petitioner Finberg has requested that a new hearing be conducted in accordance with *Lucia,* while the other three petitioners have declined to request such relief, the dockets have become procedurally distinguishable. Accordingly, Docket Nos. **14-0166**, **14-0168** & **14-0169** pertaining to Petitioners Jonathan Dyer, Drew Johnson, and Michael S. Rawlings will remain consolidated and will remain in appeal status before the Judicial Officer, while Docket No. **14-0167** pertaining to Petitioner Steven C. Finberg will be Remanded for further proceedings to be conducted in accordance with *Lucia.*

In a ceremony on July 24, 2017, the Secretary of the United States Department of Agriculture, Sonny Perdue (Secretary Perdue), personally ratified the prior appointments of Chief ALJ Bobbie J. McCartney (retired from that position on 1/20/2018), ALJ Jill S. Clifton, and ALJ Channing D. Strother and personally administered and renewed their Oaths of Office. On December 5, 2017, Secretary Perdue issued a statement affirming that he "conducted a thorough review of the qualifications of this Department's administrative law judges," and "affirm[ing] that in a ceremony conducted on July 24, 2017, [he] ratified the agency's prior written appointments of the [USDA ALJs] before administering their oath of office …"

On June 21, 2018, almost one year later, the U.S. Supreme Court held that the Securities and Exchange Commission's ALJs are inferior officers of the United States, U.S. Const. Art. II, §2, cl. 2., *Raymond J. Lucia, et al. v. S.E.C.*, 138 S. Ct. 2044 (2018) (*Lucia*) and therefore must be appointed consistent with the Appointments Clause. The actions of the Secretary of Agriculture in reviewing the qualifications of his ALJs, personally ratifying their appointments, and personally administering their renewed Oaths of Office, go well beyond a simple recitation of ratification, are clearly consistent with the Supreme Court's ruling in *Lucia* and are therefore entitled to full deference. Accordingly, certainly as of July 24, 2017, the USDA's ALJs, as inferior officers of the United States subject to

the Appointments Clause, were duly appointed by a "head of the department" as required by U.S. Constitution, Art. 2, §2, cl. 2 and the Supreme Court's ruling in *Lucia*.

Because the hearing conducted by Judge Clifton in these proceedings took place on March 22, 2016 in Dallas, Texas, and on August 23, 2016 in Washington, DC, and the ensuing Decision and Orders issued on July 25, 2017 pertaining to Petitioner Finberg, predate the July 24, 2017 and December 5, 2017 actions of the Secretary of Agriculture addressing the Appointments Clause requirements; Petitioner Finberg's request for a hearing before an ALJ other than Judge Clifton is **GRANTED** and the proceedings in Docket No. 14-0167 are hereby **REMANDED** for further proceedings to be conducted in accordance with *Lucia.*

The parties are advised that the newly appointed ALJ shall exercise the full powers conferred by the USDA Rules of Practice and the Administrative Procedure Act and shall not give weight to or otherwise presume the correctness of any prior opinions, orders, or rulings issued in this matter. Rather, the Decision and Order issued on July 25, 2017 by Judge Clifton in Docket No. 14-0167 is hereby **VACATED** and the written record which has already been made by the parties in this proceeding shall be reviewed ***de novo*** to determine whether to ratify or revise previous substantive or procedural ALJ actions and to determine whether the written record will be supplemented with any ***new*** testimony or other evidence.

Testimony taken at USDA hearings are taken under oath and with a full opportunity for both direct and cross examination of witnesses. Further, exhibits offered and admitted into the record are done so with full regard and adherence to applicable administrative due process rules of practice and procedure. Accordingly, the parties may rely on the written record for all purposes moving forward and will not be required to recall witnesses or resubmit exhibits which have already been admitted into evidence as part of that written record. However, the parties will be given an opportunity to show good cause for the submission of any ***new*** evidence not previously submitted in the prior proceeding.

Copies of this Order shall be served by the Hearing Clerk upon each of the parties in all of the dockets identified herein above.

___

In re: OLYMPIC WHOLESALE PRODUCE, INC.
Docket No. 18-0009.
Decision and Order.
Filed February 13, 2019.

PACA – *De minimis* amount – Failure to pay – Flagrant violations – Full payment promptly, failure to make – License, revocation of – Motion to vacate – Produce debt – Prompt payment – Repeated violations – Sanctions – Trust claim, withdrawal of – Willful violations – Written record, decision on.

Christopher P. Young, Esq., for AMS.
Stephen P. McCarron, Esq., for Respondent.
Initial Decision and Order entered by Jill S. Clifton, Administrative Law Judge.
Decision and Order entered by Bobbie J. McCartney, Judicial Officer.

ORDER DENYING RESPONDENT'S MOTION TO VACATE DECISION AN ORDER ON THE WRITTEN RECORD AND AFFIRMING DECISION AND ORDER

Summary of Background

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a *et seq*.) ("PACA"), wherein Administrative Law Judge ("ALJ") Jill Clifton issued an August 28, 2018 Decision and Order on the Written Record ("Decision and Order") finding, *inter alia*, that Respondent, during the period December 2016 through May 2017, on or about the dates and in the transactions set forth in Appendix A to the Complaint filed in this case, violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to four (4) sellers for 108 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of $898,725.70. ALJ Clifton further denied Respondent's request for an oral hearing and ordered that the facts and circumstances of Respondent's PACA violations be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

On September 28, 2018, Respondent filed a Motion to Vacate Decision and Order on the Written Record, or in the Alternative, to Appeal to the

Judicial Officer Pursuant to 7 C.F.R. § 1.145 ("Motion to Vacate"),[1] apparently on the sole basis that on May 15, 2018, one of the unpaid produce sellers listed on Appendix A to the Complaint in the instant case filed a Voluntary Dismissal and Withdrawal of its Trust Claim in District Court (in the United States District Court for the Northern District of Illinois, Eastern Division, Case No. 17-cv-08381). Respondent asserts in its motion that because the produce seller New Era Produce, LLC ("New Era") withdrew its claim in District Court, New Era should be removed from the list of produce sellers that ALJ Clifton in the August 28, 2018 Decision and Order found were owed unpaid and past due produce debt by Respondent (New Era is owed $762,253.05 by Respondent). Respondent seeks to have the amount owed to New Era removed from consideration in an effort to argue that the remaining balance of $136,472.65 ($898,725.70 - $762,253.05 = $136,472.65), an amount which Respondent apparently does not dispute is a past due unpaid produce debt, is a *de minimis* amount and that therefore does not warrant a finding or sanctions against Respondent. Complainant's Response to Respondent's Motion to Vacate was filed on October 23, 2018.

For the reasons discussed more fully herein below, Respondent's Motion to Vacate is denied and the Decision and Order issued by ALJ Clifton on August 28, 2018 is affirmed.

Discussion

1. New Era's withdrawal of trust claim is not dispositive to Respondent's failure to pay.

Respondent provides, as an exhibit to its Motion to Vacate, the May 15, 2018 Voluntary Dismissal and Withdrawal of its Trust Claim filed by New Era in the United States District Court for the Northern District of Illinois, Eastern Division, Case No. 17-cv-08381. The Voluntary Dismissal consists of two lines stating only that New Era voluntarily withdrew its PACA trust claim and offers no substantive explanation for the dismissal of the trust claim. The fact that the claim was withdrawn and

[1] Complainant asserts that Respondent's filing does not meet the requirements of a petition for appeal (7 C.F.R. § 1.145); however, Respondent's filing will be deemed sufficient for purposes of this Order.

dismissed in District Court is not dispositive of whether Respondent failed to pay New Era in accordance with the provisions of the PACA.

The fact that a PACA produce seller has perfected its rights under the trust provisions of the PACA, or that a PACA trust claimant has withdrawn or waived its PACA trust rights under the PACA, in no way precludes the Secretary from enforcing the full and prompt payment provisions of the PACA under section 2(4) (7 U.S.C. § 499b(4)). *Baiardi Food Chain v. United States*, 482 F.3d 238, 242-44 (3rd Cir. 2007). Nor do these facts preclude disciplinary sanctions for a violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)). *Id.* Complainant's position on this issue, set forth in its October 23, 2018 Response to Respondent's Motion, accurately summarizes the applicable law and is hereby adopted. Full payment promptly in accordance with the PACA means payment by a buyer within ten days after the day(s) on which produce is accepted, provided that parties may elect to use different payment terms, so long as those terms are reduced to writing prior to entering into the transaction. The burden of proof of such written agreement is on the party claiming existence of the agreement. 7 C.F.R. §§ 46.2 (aa)(5) and 46.2 (aa)(11); *see Scamcorp, Inc.*, 57 Agric. Dec. 527, 547-49 (U.S.D.A. 1998). A PACA licensee always has a duty under section 2(4) of the PACA to make full payment promptly (*Scamcorp*, *Inc.*, 57 Agric. Dec. at 547-49); the PACA trust is an additional remedy under a separate section of the Act (7 U.S.C. § 499e(c)) against a buyer failing to make prompt payment. *Idahoan Fresh*, 157 F.3d 197, 199 (3d Cir. 1998); H.R. REP. NO. 98-543, at 2 (1983), *reprinted in* 1984 U.S.C.C.A.N. 405, 406. Prior to this amendment to the PACA, unpaid produce suppliers were unsecured creditors vulnerable to the buyers' practice of granting other creditors a security interest in their inventory and accounts receivable. *In re Lombardo Fruit & Produce Co.*, 12 F.3d 806, 808-09 (8th Cir. 1994).

Respondent, in its Motion to Vacate, in no way substantively addresses the debt owed to New Era or states that the debt has been (or will be) paid. Moreover, Respondent does not address the declaration of PACA Senior Marketing Specialist Jacob Garcia, who on July 10, 2018 (two months after New Era's Voluntary Dismissal and waiver of trust claims in District Court) communicated with Gregory Holzhausen, Managing Member of New Era and was told by Mr. Holzhausen that as of that date, the entire New Era debt of $762,253.05 as stated in the Complaint was still owed by

Respondent. Nor does Respondent in any way address Jacob Garcia's finding that as of July 10, 2018, Respondent had accumulated $123,567.00 in additional roll-over PACA produce debt to produce sellers. *See* Declaration of Jacob Garcia; Decision and Order on the Written Record at 8-9.

The amount owed to New Era, as stated in Appendix A to the Complaint, the Declaration of Jacob Garcia, and as found by ALJ Clifton in her August 28, 2018 Decision and Order, is supported by the record; therefore, it will not be subtracted from the total debt of $898,725.70 that ALJ Clifton found Respondent owed to produce sellers. That New Era withdrew and waived its PACA trust rights in the District Court forum does not eliminate Respondent's PACA prompt-payment violation as to New Era, nor does it bar a finding by the Secretary that Respondent committed willful, flagrant, and repeated violations of section 2(4) of the PACA when it failed to promptly pay New Era. *Baiardi Food Chain*, 482 F.3d at 241-44.

2. Respondent is incorrect as to what constitutes a *de minimis* amount.

Assuming *arguendo* that the New Era debt should be subtracted from the $898,725.70 total debt that ALJ Clifton found Respondent owed to produce sellers, the $136,472.65, which Respondent apparently does not dispute is a past-due unpaid produce debt owing to three produce sellers, is not a *de minimis* amount. *See, for example*, *D.W Produce, Inc.*, 53 Agric. Dec. 1672, 1678 (U.S.D.A. 1994) (a finding of PACA violation and sanction is appropriate whenever the total amount due and owing exceeds $5,000); *Fava & Co.*, 46 Agric. Dec. 79, 81 (U.S.D.A. 1984) (Ruling on Certified Question) (no hearing required unless "the amount presently due and unpaid would be *de minimis*, *e.g.*, less than $5,000"), *final decision*, 44 Agric. Dec. 870 (U.S.D.A. 1985). *See also Scamcorp, Inc.*, 57 Agric. Dec. at 551 n.7.

Respondent has made no assertion in the Answer, or in any subsequent filing, that full payment of the past due and unpaid New Era debt or *any* of the past due and unpaid produce debt owed to the other sellers listed in the Appendix to the Complaint in this case will be made or full compliance will be achieved pursuant to the parameters set by the *Scamcorp* case. *See*

id. at 548-49. Under the policy enunciated in the *Scamcorp* case (*see* ALJ Clifton's Decision and Order at 5-6), this is a no-pay case for which revocation of Respondent's license is warranted, or publication in lieu of revocation. *Id.* No genuine issue of fact exists in this case that would require a hearing.[2] Under these circumstances, a Decision and Order on the record and finding of PACA violation and sanction was appropriate. *Id.*; *see also H.M. Shield, Inc.*, 48 Agric. Dec. 573, 581 (U.S.D.A. 1989); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984); 7 C.F.R. § 1.139.

3. Respondent's PACA Violations Were Repeated, Flagrant, and Willful.

The Secretary of Agriculture may revoke the license of a dealer who is found to have committed repeated, flagrant, and willful PACA violations.[3] As the Judicial Officer has explained:

> [O]ne of the primary remedial purposes of the PACA [is] the financial protection of sellers of perishable agricultural commodities. Failure to pay for perishable agricultural commodities not only adversely affects those who are not paid, but such violations of the P ACA have a tendency to snowball. On occasion, one PACA licensee fails to pay another licensee who is unable to pay a third licensee. Thus, the failure to pay could have serious repercussions to perishable agricultural commodity producers and other P ACA licensees and even customers of perishable agricultural commodities who ultimately bear increased industry costs resulting from failures to pay. *These adverse repercussions can be avoided by limiting participation in the perishable agricultural*

[2] *See Veg-Mix, Inc. v. U.S. Dep't of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987) ("Common sense suggests the futility of hearings when there is no factual dispute of substance.").

[3] *See* 7 U.S.C. § 499h(a); 5 U.S.C. § 588(c); *Norinsberg v. U.S. Dep't of Agric.*, 47 F.3d 1224, 1225 (D.C. Cir. 1995).

> *commodities industry to financially responsible persons, which is one of the primary goals of the PACA.*[4]

ALJ Clifton's finding that Respondent's violations in this case were repeated is fully supported by the record and is affirmed. Violations are "repeated" under PACA when they are committed multiple times, non-simultaneously.[5] As Respondent failed to pay four sellers promptly and in full for 108 lots of perishable agricultural commodities over a nearly six-month period, its violations were clearly repeated.

ALJ Clifton's finding that Respondent's PACA violations were flagrant is also supported by the record and is hereby affirmed. Flagrancy is determined by evaluating the number of violations, total money involved, and length of time during which the violations occurred.[6] The signed declaration by PACA employee Jacob Garcia provides that, as of July 10, 2018, Respondent owes a total of at least $889,233.70 to the four sellers named in Appendix A to the Complaint.[7] The declaration further states: "Since the completion of my compliance investigation there have been three additional informal complaints filed against Olympic Wholesale Produce, Inc., in the amount of $123,567.00. Olympic Wholesale Produce, Inc., has not responded to two complaints, and is not disputing the other."[8] By failing to pay that money – far more than a *de minimis* amount – to multiple sellers over a near six-month period and proceeding to accumulate an additional $123,567.00 in produce debt thereafter, Respondent has committed flagrant PACA violations.[9] Respondent submits no evidence to the contrary.

---

[4] *Havana Potatoes of N.Y. Corp.*, 55 Agric. Dec. 1234, 1273-74 (U.S.D.A. 1996) (emphasis added).

[5] *See H.C. MacClaren, Inc. v. U.S. Dep't of Agric.*, 342 F.3d 584, 592 (6th Cir. 2003); *Zwick v. Freeman*, 373 F.2d 110, 115 (2d Cir. 1967); *Five Star Food Distribs., Inc.*, 56 Agric. Dec. 880, 895 (U.S.D.A. 1997).

[6] *Five Star Food Distribs., Inc.,* 56 Agric. Dec. at 895; *Havana Potatoes,* 55 Agric. Dec. at 1270; *see Reese Sales Co. v. Hardin*, 458 F. 2d 183, 185 (9th Cir. 1972).

[7] *See* Mot. for Decision Without Hr'g Attach. at 1 ¶¶ 3-6.

[8] *Id.* at 1 ¶ 7.

[9] AMS is not required to prove – and ALJ Clifton was not required to find – the

Lastly, ALJ Clifton's finding that Respondent's violations were willful is fully supported by the record and is hereby affirmed.

> A violation is willful under the Administrative Procedure Act (5 U.S.C. § 558(c)) if a prohibited act is done intentionally, irrespective of evil intent, or done with careless disregard of statutory requirements. Willfulness is reflected by Respondent's violations of express requirements of the PACA (7 U.S.C. § 499b(4)) and the Regulations (7 C.F.R. § 46.2(aa)) and in the length of time during which the violations occurred and the number and dollar amount of violative transactions involved.[10]

Given the many transactions, substantial amount of debt, and continuation of violations over a six-month period in this case, ALJ Clifton correctly found that Respondent's violations were willful in that Respondent knew or should have known it did not have sufficient funds with which to comply with the prompt-payment provisions of PACA.[11]

ORDER

For the foregoing reasons, Respondent's Motion to Vacate is DENIED. The Decision and Order issued by Administrative Law Judge Jill Clifton on August 28, 2018 is AFFIRMED.

1. Olympic Wholesale Produce, Inc.'s Motion to Vacate Decision and Order on the Written Record is DENIED.

2. The finding that Olympic Wholesale Produce, Inc. committed willful, flagrant, and repeated violations of section 2(4) of PACA (7 U.S.C. § 499b(4)) is fully supported by the record and is AFFIRMED.

---

exact number of unpaid produce sellers or the exact amount Respondent owes each seller. *See Baiardi Chain Food Corp.*, 64 Agric. Dec. 1822, 1835-36 (U.S.D.A. 2005*), petition for review denied,* 482 F.3d 238 (3d Cir. 2007); *see also Hunts Point Tomato Co.*, 64 Agric. Dec. 1914, 1929-31 (U.S.D.A. 2005).

[10] *Scamcorp, Inc.*, 57 Agric. Dec. 527, 552-53 (U.S.D.A. 1998).

[11] *The Square Group, LLC*, 75 Agric. Dec. 689, 695 (U.S.D.A. 2016).

3. Olympic Wholesale Produce, Inc.'s PACA license, No. 19740290, is revoked. In the alternative, in the event that Olympic Wholesale Produce, Inc. failed to renew its license, the facts and circumstances of Olympic Wholesale Produce Inc.'s PACA violations shall be published.

Copies of this Order shall be served by the Hearing Clerk upon each of the parties in all the dockets identified herein above.

___

In re: HUXTABLE'S KITCHEN, INC.; and LEWIS MACLEOD.
Docket Nos. 18-0007, 18-0024.
Decision and Order.
Filed May 16, 2019.

PACA-APP – PACA-D – Admissions – Answer, failure to file – Attorney of record, service on – Bankruptcy – Complaint, service of – Default – Due process – Full payment promptly, failure to make – Responsibly connected – Schedule F – Service of process – Stay – Violations, publication of facts and circumstances regarding.

Shelton S. Smallwood, Esq., and Joyce McFadden, Esq., for AMS.
Jason C. Manfrey, Esq., for Respondent Huxtable's Kitchen, Inc.
John C. Gentile, Esq., and Jennifer R. Hoover, Esq., for Petitioner Lewis Macleod.
Lawyer.
Initial Order entered by Channing D. Strother, Chief Administrative Law Judge.
Decision and Order entered by Bobbie J. McCartney, Judicial Officer.

DECISION AND ORDER AFFIRMING IN PART AND REVERSING IN PART ALJ ORDER ON SUGGESTION OF BANKRUTPCY AND SEGREGATING DOCKETS FOR REMAND

Appeal Petition

This is a disciplinary proceeding initiated by Complainant, Specialty Crops Program, Agricultural Marketing Service ("Complainant" or "AMS"), against Huxtable's Kitchen, Inc. ("Respondent") on October 24, 2017 pursuant to the provisions of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a *et seq.*) ("PACA"); the regulations promulgated pursuant to the PACA (7 C.F.R. §§ 46.1

through 46.45) ("Regulations"); and the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) ("Rules of Practice" or "Rules").

Complainant appeals the March 30, 2018 Order[1] issued by the Acting Chief Administrative Law Judge ("Chief Judge" or "ALJ") denying Complainant's Motion for Decision Without Hearing by Reason of Default ("Motion for Default") based on a finding that service of the Complaint on Respondent was not properly effected under the Rules of Practice.

Relevant Procedural History as to PACA-D Docket No. 18-0007

The record reflects that during all times relevant to the alleged violations Respondent Huxtable's Kitchen, Inc. was licensed and operating subject to the provisions of the PACA. License number 20120330 was issued to Respondent on October 6, 2011. This license was succeeded by license number 20160338, which was issued to Respondent on January 25, 2016. The license terminated on January 25, 2017, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), after Respondent failed to pay the required annual renewal fee.

Complainant filed a disciplinary complaint on October 24, 2017, alleging that Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to six sellers of the agreed purchase prices, or balances thereof, in the total amount of $551,829.47 for 174 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate commerce. The Complaint alleged that the violations occurred in commerce during the period of October 2015 through May 2016, on or about the dates and in the transactions set forth in Appendix A and B to the Complaint, attached thereto and incorporated therein by reference, which were documents referenced from the filings in Respondent's

[1] The March 30, 2018 Order also found that the Complaint in this matter is not barred by the Bankruptcy Code's Section 362 automatic stay. *See* Order at 10. This finding, which was not appealed, is fully supported by statutory, regulatory, and judicial authority and is affirmed and adopted herein.

Voluntary Petition for Bankruptcy filed on June 4, 2016 under Chapter 7 of the Bankruptcy Code (11 U.S.C. §§ 701 *et seq.*) in the United States Bankruptcy Court, District of Delaware (designated Case No. 16-11538) ("Chapter 7 Bankruptcy").

Respondent admits in Schedule F of its Chapter 7 Bankruptcy filings that the six creditors listed in Appendix A to the Complaint were collectively owed undisputed unsecured produce debt in the amount of $535,954.79 for 174 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate commerce. Accordingly, pursuant to section 1.141(h)(6) of the Rules of Practice,[2] Complainant respectfully requested that the ALJ take official notice of Respondent's Voluntary Bankruptcy Petition and Schedule F therein.

Based on these admissions, the Complaint also requested that an Administrative Law Judge find that Respondent has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) ***and order that the facts and circumstances of the violations be published***. It is important to note that the relief requested by the Complaint does not seek reparations, restitution, or any sort of money judgment of the underlying debts.

The Complaint was attached to a detailed letter from the Hearing Clerk's Office explaining the nature of the proceedings, providing a citation to the applicable Rules of Practice, explaining that under the Rules of Practice a written answer to the Complaint signed by Respondent or his attorney of record must be filed within twenty days from the receipt of the letter and attached Complaint, providing information for the submission of filings to the Hearing Clerk's Office by means of email, providing the Hearing Clerk's Office email address, and providing a phone number for the Hearing Clerk Liaison Officer should Respondent wish to contact the Hearing Clerk's Office. The record reflects that the Hearing Clerk's letter and the Complaint were served on October 30, 2017 by means of the United States Postal Service ("USPS"), Certified Mail with Return Receipt Requested, to the last known principal place of business for Respondent's attorney of record, Jason R. Parish of Kirkland & Ellis, LLP, at 655

[2] 7 C.F.R. § 1.141(h)(6).

Fifteenth Street, NW, Washington, DC 20005.[3]

Complainant provided, as proof of service of the Complaint, a copy of the USPS Tracking Report[4] downloaded from the USPS official website.[5] The Tracking Report reflects that following several unsuccessful attempts, two because no authorized recipient was available, the Complaint was "delivered to an agent at 7:29am on October 30, 2017 in WASHINGTON, DC 20005."[6] The full address was not reflected on the Tracking Report but was spelled out in full on the Certified Mail Receipt associated with the USPS Tracking number.

Respondent failed to file an answer to the Complaint; therefore, pursuant to section 1.139 of the Rules of Practice,[7] on January 23, 2018, Complainant filed a Motion for Decision Without Hearing by Reason of Default ("Motion for Default"). The record reflects that Complainant's Motion for Default was served by the Hearing Clerk's Office via certified mail on January 24, 2018 to the same name and address and in the same manner as the Complaint.[8]

On February 2, 2018 the Hearing Clerk's Office received and filed a Notice of Appearance from Jason C. Manfrey, Esq. of Fox Rothschild LLP for Alfred T. Guiliano, the Chapter 7 Trustee for the estate of Respondent Huxtable's Kitchen, Inc.,[9] dated February 1, 2018. The Notice of Appearance directed that:

---

[3] Mr. Parish identified himself as counsel for Huxtable's Kitchen, Inc. and even attended the investigation's exit interview on the company's behalf. *See* Complainant's "RESPONSE TO [ACTING] CHIEF ALJ'S ORDER OF FEB. 28, 2018" (hereinafter "Complainant's Response") at 2.

[4] USPS Certified Mail Tracking No. 7012 3460 0003 3833 6058.

[5] U.S. POSTAL SERV., https://www.usps.com/ (last visited May 14, 2019).

[6] Copies of the USPS Tracking Report and the corresponding USPS Certified Mail Receipt were attached to Complainant's Appeal Petition as "Attachment A."

[7] 7 C.F.R. § 1.139.

[8] USPS Certified Mail Tracking No. 7015 3010 0001 5187 3507.

[9] The "Suggestion of Bankruptcy" advised that, on June 24, 2016, Respondent

> All future communications, documents, notices, and copies of any pleadings, papers, and other materials relevant to this matter should be directed to and served upon the undersigned at the following address:
>
> > Fox Rothschild LLP, Attn: Jason C. Manfrey, Esq.
> > 2000 Market Street, 20th Floor
> > Philadelphia, PA 19103[.]

Notice of Appearance at 1.

While Mr. Manfrey did not file an answer to the Complaint with his Notice of Appearance, he did file a "Suggestion of Bankruptcy" asserting that: (1) Complainant "is precluded from prosecuting the above-entitled case at this time"[10] because Respondent filed for bankruptcy; and (2) Respondent was not properly served with the Complaint because:

> Kirkland & Ellis, LLP has never been counsel of record for the Trustee or Debtor Huxtable's Kitchen in its bankruptcy case. As the sole representative of Debtor Huxtable's Kitchen and the only party with the capacity to sue or be sued, proper service of the Complaint was not made on the Trustee or Respondent.

Suggestion of Bankruptcy at 3.

Mr. Manfrey concludes this filing with the contention that ". . . [because] Complainant had knowledge of Debtor Huxtable's Kitchen's filing of its chapter 7 bankruptcy case at the time Complainant filed the Complaint and initiated these proceedings, Complainant knowingly and

---

filed a Voluntary Petition pursuant to Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court, District of Delaware. The document also provided that "[o]n July 24, 2016, the Office of the United States Trustee appointed Alfred T. Giuliano as the Chapter 7 trustee for the estates of Huxtable's Kitchen, Inc. and the other Debtors." Suggestion of Bankruptcy at 1, 4.

[10] *Id.* at 4.

willfully violated the automatic stay under 11 U.S.C. § 362(a)."[11]

Mr. Manfrey does not challenge that service of the Complaint was properly effected on Kirkland & Ellis, LLP by USPS as a procedural matter; rather, he simply asserts that as counsel for the Trustee in the Chapter 7 Bankruptcy he should have been served with a copy of the Complaint rather than Kirkland & Ellis; therefore, Respondent was not properly served with the Complaint. Notably, Mr. Manfrey affirms that he had knowledge of the disciplinary proceeding against Debtor Huxtable's Kitchen as of January 31, 2018, yet he still declined to file an answer to the Complaint.

On February 28, 2018, the Acting Chief ALJ issued an order directing Complainant to address certain questions presented by the Suggestion of Bankruptcy. Complainant did so on March 20, 2018. As previously noted, the record reflects that Respondent made no further filings in this proceeding either before the ALJ or on appeal to the Judicial Officer.

On March 30, 2018 the Acting Chief ALJ issued an order that found that the Complaint in this matter is not barred by the Bankruptcy Code's Section 362 automatic stay. However, the ALJ denied Complainant's Motion for Default based on a finding that service of the Complaint on Respondent was not effected. The March 30, 2018 Order also consolidated this docket with the captioned docket *Lewis Macleod*, No. 18-0024, which involved a "potential" petition for review of the February 15, 2018 Director of the United States Department of Agriculture, Agricultural Marketing Service, PACA Division, determination that under PACA Mr. Macleod was responsibly connected to Huxtable's Kitchen, Inc., the Respondent in Docket No. 18-0007.

Discussion and Findings as to PACA-D Docket No. 18-0007

I. Assertions in Suggestion of Bankruptcy

The Suggestion of Bankruptcy makes two related sets of assertions: (1) the filing and continuation of this disciplinary proceeding against Debtor Huxtable's Kitchen violates the automatic stay afforded to

[11] *Id.*

Debtor Huxtable's Kitchen and its estate under 11 U.S.C. § 362(a)(1) ("Section 362"); and (2) service of the Complaint at the last known principal place of business of Respondent's named attorney of record, Jason R. Parish, Esq. of Kirkland & Ellis, LLC, was ineffective because Mr. Manfrey of Fox Rothschild LLP, as counsel for the Bankruptcy Trustee, is the sole representative of Huxtable's Kitchen, the only party with the capacity to sue or be sued, and therefore the only person upon whom service of the Complaint could be effected.

A. Bankruptcy Stay

The analysis and finding of the Acting Chief ALJ regarding the impact of the automatic stay provisions of the Bankruptcy Code on this regulatory disciplinary enforcement is well supported by the PACA statute, Regulations, and judicial precedent and is affirmed and adopted as provided herein below.

First, Mr. Manfrey's reference to 11 U.S.C. § 362(a) as a bar to the instant case is misplaced. Under the plain language of 11 U.S.C. § 362(b)(4), the automatic stay of paragraph (a) does not apply to:

> . . . the commencement or continuation of an action or proceeding by a governmental unit . . . , to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power.

11 U.S.C. § 362(b)(4).

The police and regulatory exception to the automatic stay has been applied to USDA actions to deny a PACA license[12] and to undertake and pursue an investigation for a debtor's failure to pay for livestock.[13] In other

[12] *In re Fresh Approach, Inc*., 49 Bankr. 494, 496 (Bankr. N.D. Tex. 1985).

[13] *In re Farmers & Ranchers Livestock Auction, Inc*., 46 B.R. 781, 784 (Bankr. E.D. Ark. 1984).

settings, courts have recognized the authority of governmental agencies to strip a debtor of its broadcasting license or refuse to allow the broadcaster to transfer or assign its license,[14] to suspend a debtor's license as a horse trainer based on demonstrated lack of financial responsibility,[15] and to revoke a debtor's mobile home dealer's license.[16]

The Complaint in this case was issued based on Respondent's failure to make full payment promptly to six sellers of the agreed purchase prices, or balances thereof, in the total amount of $551,829.47 for 174 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate commerce during the period of October 2015 through May 2016 (on or about the dates and in the transactions set forth in Appendix A and B to the Complaint). As previously explained, this proceeding is a disciplinary enforcement action under the PACA and is a matter of Complainant AMS exercising police or regulatory power, not a matter of a government agency seeking collection of a debt. The Complaint seeks a finding that the Respondent's actions constitute willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) as well as publication of the facts and circumstances thereof in accordance with the congressional intent of the PACA: to protect the agricultural industry from insolvent participants.[17]

---

[14] *In re D.H. Overmyer Telecasting Co., Inc*., 35 B.R. 400, 401 (Bankr. N.D. Ohio 1983).

[15] *In re Christmas*, 102 B.R. 447, 458-59 (Bankr. D. Md. 1989).

[16] *Matter of Edwards Mobile Home Sales, Inc*., 119 B.R. 857, 860-61 (Bankr. M.D. Fla. 1990).

[17] The exception can even apply where, unlike here, the governmental action seeks disgorgement of funds by the debtor. A cause of action by the New Jersey Bureau of Securities, seeking to compel disgorgement, on unjust enrichment theory, of proceeds of alleged Ponzi scheme from Chapter 7 debtor in her capacity as innocent recipient of such proceeds, was excepted from automatic stay as a cause of action that the government brought in exercise of its "police and regulatory power." *In re D'Angelo*, 409 B.R. 296, 297-99 (Bankr. D.N.J. 2009). The state sought disgorgement not to remedy any pecuniary loss it had suffered but to recapture funds lost by victims of securities fraud in manner that fostered public purpose behind New Jersey securities law, though the debtor was not alleged to be guilty of any wrongdoing. *See id.*

Second, the Secretary is expressly authorized by Bankruptcy Code § 525 to proceed under licensing provision of PACA. Section 525(a) of the Code states that:

> *Except as provided in the Perishable Agricultural Commodities Act, 1930* . . . a government unit may not deny revoke, suspend or refuse to renew a license . . . to a person that is or has been a debtor under this Title . . . solely because such bankrupt or debtor . . . has not paid a debt that is dischargeable in the case under this title. . . .

11 U.S.C. § 525(a) (emphasis added).

Section 525(a) has been long and consistently held to except PACA proceedings such as the current one from a Section 362 stay.[18] As the Judicial Officer stated in *Ruma Fruit & Produce Co., Inc.*:[19]

> Congress, in 1978, specifically amended section 525 of the Bankruptcy Code, (11 U.S.C. § 525), in order to authorize continuation of the Secretary's license suspension or revocation authority under the PACA even where, as here, the violations involve debts that are discharged in bankruptcy. *Melvin Beene Produce Co. v. Agricultural Marketing Service*, 728 F.2d 347, 351 (6th Cir. 1984); *In re Fresh Approach, Inc*., 49 B.R. 494, 496-98 (N.D. Tex. 1985). In addition, it has repeatedly been held that there is no conflict between the maintenance of PACA disciplinary proceedings and a bankruptcy action. *Marvin Tragash Co. v. United States Dep't of Agric*., 524 F.2d 1255 (5th Cir. 1975); *Zwick v. Freeman*, 373 F.2d 110 (2d Cir. 1967), *cert. denied*, 389 U.S. 835 (1967); *In re Fresh Approach, Inc*., . . ., 49 B.R. at 496.

---

[18] *See* Complainant's Response at 4-5 (discussing and citing precedents interpreting 11 U.S.C. § 362(b)(4) as exempting PACA proceedings from a Section 362 stay). This proceeding is a matter of Complainant AMS exercising police or regulatory power, not a matter of a government agency seeking collection of a debt.

[19] 55 Agric. Dec. 642, 655 (U.S.D.A. 1996).

Ruma Fruit & Produce Co., Inc., 55 Agric. Dec. 642, 655 (U.S.D.A. 1996).

The "express authority in Code section 525 is a clearly defined exception inserted by Congress to the 'fresh start' otherwise available to a debtor in bankruptcy."[20] "To apply the automatic stay of section 362, or to enjoin the administrative proceedings under section 105, would unfortunately be inconsistent with section 525 of the Code and would trample the plain Congressional intent that the Secretary have the ability to protect the agricultural industry from insolvent participants."[21]

Accordingly, contrary to Respondent's contentions in the Suggestion in Bankruptcy, there is no violation of the Section 362 bankruptcy automatic stay by the initiation, continuation, and resolution of the PACA Complaint filed by Complainant in the instant proceeding. Indeed, in light of this clear statutory, regulatory, and judicial authority, Respondent's continued refusal to file an answer to the Complaint even after acknowledging receipt of the Complaint on January 31, 2018 is perplexing.

B. Service of Process

For the reasons discussed more fully herein below, service of the Complaint on Respondent was properly effected in accordance with the Rules of Practice applicable to this administrative disciplinary enforcement.

The Rules of Practice are very clear as to what constitutes effective service. In section 1.147(c), the Rules state:

> **§ 1.147 Filing; service; extensions of time; and computation of time.**
>
> (c) *Service on party other than the Secretary.* (1) Any complaint or other document initially served on a person

[20] *In re Fresh Approach, Inc*., 49 Bankr. at 498.

[21] *Id.*

> to make that person a party respondent in a proceeding , proposed decision and motion for adoption thereof upon failure to file an answer or other admission of all material allegations of fact contained in a complaint, initial decision, final decision, appeal petition filed by the Department, or other document specifically ordered by the Judge to be served by certified or registered mail, shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the ***date of delivery by certified or registered mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party,*** or last known residence of such party if an individual, *Provided that*, if any such document or paper is sent by certified or registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date remailing by ordinary mail to the same address.

7 C.F.R. § 1.147(c) (emphasis added).

Respondent had an affirmative obligation, as a party licensed and operating under the provisions of the PACA, to apprise AMS of its contact information and failed to identify any person other than Mr. Parish of Kirkland & Ellis as its attorney of record, to provide change of address information, or to advise AMS of the Chapter 7 Bankruptcy. The PACA regulations specifically provide in pertinent part as follows:

> **§ 46.13 Address, ownership, changes in trade name, changes in number of branches, changes in members of partnership, and bankruptcy.**
>
> The licensee shall:
>
> (a) Promptly report to the Director in writing;
>
> (1) **Any change of address**; . . . . [and]

> (5) ***When the licensee, or if the licensee is a partnership, any partner is subject to proceedings under the bankruptcy laws***. . . .

7 C.F.R. § 46.13 (emphasis added). AMS is entitled to rely on the last know business address of Respondent or its attorney of record to effect service of the subject Complaint. The Complaint was delivered by certified mail to the last known principal place of business of the attorney of record, and the mailing was not returned to the Department by USPS. Accordingly, service was effected in accordance with section 1.147(c) of the Rules of Practice.[22]

Indeed, as previously noted, Mr. Manfrey did not challenge the fact that service of the Complaint was effected as to Kirkland & Ellis, LLP but asserts that Respondent was not properly served with the Complaint because "proper service of the Complaint was not made on the Trustee" as "the sole representative of Debtor Huxtable's Kitchen and the only party with the capacity to sue or be sued."[23] Mr. Manfrey provides no authority to support his contention that simply because he serves as counsel for the Bankruptcy Trustee he is the sole representative of Huxtable's Kitchen and therefore the only person who can be properly served with the subject disciplinary Complaint. Further, Mr. Manfrey seems to imply that when he was appointed as the Chapter 7 trustee for the estate of Huxtable's Kitchen, Inc. on July 24, 2016, he was somehow automatically substituted for Respondent's designated counsel of record. This position runs contrary to the above-referenced statutory, regulatory, and judicial authorities and is untenable given the complexity of the United States bankruptcy system and the sheer number of filings.[24]

In response to the ALJ's Order of February 28, 2016, Complainant

---

[22] 7 U.S.C. § 1.147(c).

[23] Suggestion of Bankruptcy at 3.

[24] In the twelve-year span from October 1, 2005 to September 30, 2017, about 12.8 million consumer bankruptcy petitions were filed in the federal courts with the number of filings continuing to grow. *Just the Facts: Consumer Bankruptcy Filings, 2006-2017*, USCOURTS.GOV (published Mar. 7, 2018), https://www.uscourts.gov/news/2018/03/07/just-facts-consumer-bankruptcy-filings-2006-2017 (last visited May 14, 2019).

provided, as proof of service of the Complaint, a copy of the USPS Tracking Report[25] downloaded from the USPS official webpage. The Tracking Report reflects that following several unsuccessful attempts, two because no authorized recipient was available, the Complaint was "delivered to an agent at 7:29am on October 30, 2017 in WASHINGTON, DC 20005."[26] The full address was not reflected on the Tracking Report but was spelled out in full on the Certified Mail Receipt associated with the USPS Tracking number. Accordingly, the Complaint was served by means of USPS, Certified Mail with Return Receipt, to the last known principal place of business for Respondent's attorney of record, Jason R. Parish, Kirkland & Ellis, LLP at 655 Fifteenth Street, NW, Washington, DC 20005 in accordance with the provisions of the Rules of Practice.[27]

The March 30, 2018 Order may be read to imply that remailing of the Complaint by regular mail was required to effectuate service.[28] The additional step of remailing by ordinary mail to the same address is only necessary to effectuate service in cases where the original mailing was returned to the Department with either "unclaimed" or "refused" stamped on it by USPS.[29] Here, the Complaint was not returned but rather delivered

---

[25] USPS Certified Mail Tracking No. 7012 3460 0003 3833 6058.

[26] Copies of the USPS Tracking Report and the corresponding USPS Certified Mail Receipt were attached to Complainant's Appeal Petition as "Attachment A."

[27] *See* 7 C.F.R. § 1.147(c)(1) ("Any complaint or other document initially served on a person to make that person a party respondent in a proceeding . . . shall be deemed to be received by any party to a proceeding, other than the Secretary or an agent thereof, on the date of delivery by certified or registered mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual[.]").

[28] *See* Order at 6-7.

[29] *See* 7 C.F.R. 1.147(c)(1) ("Any complaint or other document initially served on a person to make that person a party respondent in a proceeding . . . shall be deemed to be received by any party to a proceeding, other than the Secretary or an agent thereof, on the date of delivery by certified or registered mail to the . . . last known principal place of business of the attorney or representative of record of such party . . . *Provided that*, if any such document or paper is sent by certified or registered mail but is *returned marked by the postal service as*

by certified mail to the last known principal place of business of Respondent's named attorney of record at the time and date specified above. Therefore, service was complete and met not only the requirements of the Rules of Practice but also the requirements of due process under the law.[30]

Establishing that the Complaint was delivered by certified mail to the last known principal place of business of the attorney of record and that the mailing was not returned to the Department by USPS is sufficient to effectuate service under section 1.147(c) of the Rules of Practice.[31] Complainant is not required to show "in hand delivery" to Respondent to effectuate service.

In an order denying a petition to reconsider filed in *Morgan*, 65 Agric. Dec. 1188 (U.S.D.A. 2006), the Judicial Officer held that:

> To meet the requirement of due process of law, it is only necessary that notice of a proceeding be sent in a manner "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306,314 (1950). As held in *Stateside Machinery Co., Ltd. v. Alperin*, 591 F.2d 234, 241-42 (3d Cir. 1979):
>
> Whether a method of service of process accords an intended recipient with due process depends on "whether or not the form of . . . service [used] is *reasonably*

---

unclaimed or refused, it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address.") (emphasis added).

[30] *See, e.g.*, *Trimble v. U.S. Dep't of Agric.*, 87 F. App'x 456, 458 (6th Cir. 2003) ("Service by certified package is a constitutionally adequate method of notice. *Mennonite Bd. Of Missions v. Adams*, 462 U.S. 791, 800 (1983). The fact that [the respondent] may not have received the certified package does not negate the constitutional adequacy of the attempt to accomplish adequate notice."); *see supra* note 32 and accompanying text.

[31] 7 C.F.R. § 1.147(c).

> *calculated* to give him actual notice of the proceedings and an opportunity to be heard." *Milliken*, 311 U.S. at 463, 61 S. Ct. at 343 (emphasis added); *see Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315, 70 S. Ct. 652, 94 L.Ed. 865 (1950). As long as a method of service is reasonably certain to notify a person, the fact that the person nevertheless fails to receive process does not invalidate the service on due process grounds. In this case, Alperin attempted to deliver process by registered mail to defendant's last known address. That procedure is a highly reliable means of providing notice of pending legal proceedings to an adverse party. That Speigel nevertheless failed to receive service is irrelevant as a matter of constitutional law. [Omission and emphasis in original.]
>
> Similarly, in *Fancher v. Fancher*, 8 Ohio App. 3d 79,455 N.E.2d 1344, 1346 (Ohio Ct. App. 1982), the court held: It is immaterial that the certified mail receipt was signed by the defendant's brother, and that his brother was not specifically authorized to do so. The envelope was addressed to the defendant's address and was there received; this is sufficient to comport with the requirements of due process that methods of service be reasonably calculated to reach interested parties. *See Mullane v. Central Hanover Bank & Trust Co.* (1950), 339 U.S. 306,314, 70 S. Ct. 652, 94 L.Ed. 865.

Morgan, 65 Agric. Dec. 1188, 1191 (U.S.D.A. 2006) (Order Den. Pet. to Reconsider).[32]

---

[32] *See also Trimble*, 87 F. App'x at 458 (holding that sending a complaint to the respondent's last known business address by certified mail is a constitutionally adequate method of notice and lack of actual receipt of the certified mailing does not negate the constitutional adequacy of the attempt to accomplish actual notice); *Harrington*, 66 Agric. Dec. 1061, 1067-68 (U.S.D.A. 2007) (stating proper service of a complaint is made under the Rules of Practice when the complaint is delivered by certified mail to the respondent's last known address and someone signs for the complaint); *Kwon*, 55 Agric. Dec. 78, 93 (U.S.D.A. 1996) (Order Den. Late Appeal) (stating proper service by certified mail is made

Delivering the Complaint by certified mail to the last known principal place of business of the attorney of record was "reasonably calculated" to apprise interested parties of the pendency of this action. Doing so met the requirements of due process and satisfied service requirements in the applicable Rules of Practice. Not only was the mailing in this proceeding not returned to the Department by USPS, it is noteworthy that Complainant's Motion for Default, filed on January 23, 2018, was also served to the last know principal place of business of Respondent's attorney of record in precisely the same manner as the Complaint[33] and was apparently received by the Respondent, as evidenced by the February 2, 2018 filing of a Notice of Appearance and Suggestion of Bankruptcy by the Chapter 7 Trustee affirming knowledge of this disciplinary proceeding as of January 31, 2018.

In his March 30, 2018 Order, the ALJ suggested that service of the Complaint may have been defective because "the certified mail green card has never been returned to her [Hearing Clerk's] office by the Post Office."[34] However, as Complainant correctly points out, the Rules of Practice do not require that the certified mail green card be returned in order to effectuate service. While the Rules do specify that the return of the certified or registered mail receipt (certified mail green card) is one way to prove service was effective, it is not the only way. In section 1.147(e), the Rules state, in pertinent part:

> (e) *Proof of service*. ***Any*** of the following, in the possession of the Department, showing such service, shall

---

when a respondent is served with a certified mailing at his or her last known address and someone signs for the document); *Kaplinsky*, 47 Agric. Dec. 613, 619 (U.S.D.A. 1988) (stating the excuse, occasionally given in an attempt to justify the failure to file a timely answer, that the person who signed the certified receipt card failed to give the complaint to the respondent in time to file a timely answer has been and will be routinely rejected); *Bejarano*, 46 Agric. Dec. 925, 929 (U.S.D.A. 1987) (stating a default order is proper where the respondent's sister signed the certified receipt card as to a complaint and forgot to give it to the respondent when she saw him two weeks later).

[33] USPS Certified Mail Tracking No. 7015 3010 0001 5187 3507.

[34] Order at 6.

be deemed to be ***accurate***:

> (1) A certified or registered mail receipt returned by the postal service with a signature;
>
> (2) An official record of the postal service; . . . .

7 C.F.R. § 1.147(e) (emphasis added).

Regardless of whether or not the certified mail green card was returned to the Hearing Clerk's Office, the Department is in possession of "an official record of the postal service" that outlines the specifics of when the Complaint was delivered in this matter. The Tracking Report attached to Complainant's Appeal Petition as "Attachment A" provides proof that the Complaint was delivered by certified mail to the last know principal business address for Respondent's attorney of record. In accordance with the Rules of Practice, this official record of USPS "shall be deemed accurate," and a "strong presumption" of effective service arises.[35]

Relevant Procedural History as to PACA-D Docket No. 18-0024

The captioned docket *Lewis Macleod*, No. 18-0024, involves a petition for review of the February 15, 2018 determination of the Director of the United States Department of Agriculture, Agricultural Marketing Service, PACA Division, that under the PACA Lewis Macleod ("Mr. Macleod" or "Petitioner") was responsibly connected to Huxtable's Kitchen, Inc., the Respondent in Docket No. 18-0007.

On March 21, 2018, Mr. Macleod's attorney of record, Mr. Gentile,

---

[35] *See Matter of Grijalva*, 21 I. & N. Dec. 27, 37 (BIA 1995) (Interim Decision 3246), *superseded by statute on other grounds,* 8 U.S.C. § 1229(a)(1)*, as stated in Patel v. Holder*, 652 F.3d 962, 968 n.4 (8th Cir. 2011) ("[I]n cases where service of a notice of a deportation proceeding is sent by certified mail through the United States Postal Service and there is proof of attempted delivery and notification of certified mail, a strong presumption of effective service arises. There is a presumption that public officers, including Postal Service employees, properly discharge their duties.") (citing *United States v. Chem. Found., Inc.*, 272 U.S. 1 (1926); *Powell v. CIR*, 958 F.2d 53 (4th Cir. 1992), *cert. denied*, 506 U.S. 965 (1992)).

sent an email to the Hearing Clerk's Office indicating that Mr. Macleod intended to file a petition for review and requesting an extension of time to do so. The Acting Chief Judge directed the Hearing Clerk to open and assign a docket number to that expected petition to have an established docket in which to consider the request for extension. On March 22, 2018, the Acting Chief ALJ issued an Order Granting Extension of Time for Filing of Petition for Review providing Mr. Macleod until April 27, 2018 to file a petition for review.

Although no petition for review had yet been filed in Docket No. 18-0024, the Acting Chief ALJ's March 30, 2018 Order "consolidated" Docket No. 18-0024 with Docket No. 18-0007 pursuant to Rule 1.137(b).[36]

On April 27, 2018, Mr. Macleod, by and through his counsel and pursuant to section 47.49 of the Rules of Practice Under the Perishable Agricultural Commodities Act ("PACA Rules of Practice")[37] and 7 C.F.R. § 1.135, filed a petition for review ("Petition") of the decision of the Director of the United States Department of Agriculture, Agricultural Marketing Service, PACA Division, that Mr. Macleod was "responsibly connected" to Huxtable's Kitchen, Inc. during the period of the alleged PACA violations.

Decision and Order

For the reasons discussed more fully herein above, it is the determination of the Judicial Officer that delivering the subject Complaint in this PACA disciplinary enforcement action (Docket No. 18-0007) by USPS Certified Mail to the last known principal place of business of Respondent's attorney of record met the requirements of due process and satisfied the service requirements of the applicable Rules of Practice; that

---

[36] *See* 7 C.F.R. § 1.137(b) (*Joinder.* The Judge shall consolidate for hearing with any proceeding alleging a violation of the Perishable Agricultural Commodities Act, 7 U.S.C. 499a *et seq*., any petitions for review of determination of status by the Chief, PACA Branch, that individuals are responsibly connected, within the meaning of 7 U.S.C. 499a(b)(9), to the licensee during the period of the alleged violations.").

[37] 7 C.F.R. § 47.49(d).

the time for Respondent to answer the Complaint under Rule 1.136(a)[38] has run; and that Respondent is in default under Rules 1.136(c) and 1.139 for failure to timely answer a complaint.[39] Based upon careful consideration of the record, the ALJ's Ruling Denying Complainant's Motion for Decision Without Hearing by Reason of Default in Docket No. 18-0007 is hereby **REVERSED.**

In accordance with the applicable Rules of Practice, it is the determination of the Judicial Officer that because of Respondent Huxtable's Kitchen, Inc.'s failure to answer the Complaint within the time prescribed in 7 C.F.R. § 1.136(a), the Respondent is in **DEFAULT.** [40] The material allegations of the Complaint are deemed admitted and are hereby adopted as findings of fact for all purposes in this proceeding,[41] with the exception that I take judicial notice of the fact that Complainant has affirmed that the amount past due and unpaid as of January 19, 2018, after PACA conducted a compliance check, was $159,985.87—down from the $551,829.47 of the original Appendix A to the Complaint.[42] The lesser balance still due to sellers does not impact the finding regarding Respondent's repeated, willful, and flagrant violations of section 2(4) of

---

[38] 7 C.F.R. § 1.136(a).

[39] 7 C.F.R. §§ 1.136(c) and 1.139.

[40] *See* 7 C.F.R. § 1.136(c) ("Failure to file an answer within the time provided under paragraph (a) of this section shall be deemed, for purposes of the proceeding, an admission of the allegations in the Complaint[.]").

[41] *See McCoy v. U.S. Dep't of Agric.*, No. 16-3842, slip op. at 4-6 (6th Cir. Aug. 21, 2017) (holding that the Judicial Officer "properly granted a default decision in favor of the USDA" and reversed the ALJ's decision denying a motion for default where the respondent failed to file a timely answer to the complaint) ("The JO's determination that the USDA was entitled to a default decision does not constitute an abuse of discretion and was not arbitrary or capricious. It is undisputed that McCoy did not file a timely answer to the complaint. . . . In addition, the JO found that the Hearing Officer provided McCoy with a cover letter that advised McCoy that he had 20 days to answer the complaint. The Rules of Practice also set forth the deadline for answer a complaint and explain that parties may appear in person or by an attorney. 7 C.F.R. §§ 1.136(a) and 1.141(c).").

[42] *See* Complainant's Response at 6; 7 C.F.R. § 1.141(i)(6).

the PACA (7 U.S.C. § 499b(4)).[43]

It is also the Judicial Officer's determination that the Petition for Review of the decision of the Director of the United States Department of Agriculture, Agricultural Marketing Service, PACA Division, that Petitioner Lewis Macleod (Docket No. 18-0042) was "responsibly connected" to Huxtable's Kitchen, Inc. during the period of alleged PACA violations was timely filed in accordance with the extension of time granted by the Chief ALJ. Accordingly, Docket Nos. 18-0007 and 18-0024 shall be segregated, and Docket No. 18-0024 shall be remanded to the Chief ALJ for further proceedings in accordance with the applicable Rules of Practice.

Based on the foregoing, the following Order shall be entered.

ORDER

1. The ALJ's Ruling on Suggestion of Bankruptcy that the Complaint filed in Docket No. 18-0007 is not barred by a Bankruptcy Code Section 362 automatic stay is **AFFIRMED**.

2. The ALJ's Ruling Denying Complainant's Motion for Decision Without Hearing by Reason of Default in Docket No. 18-0007 is **REVERSED**.

3. Because of Respondent Huxtable's Kitchen, Inc.'s failure to answer the Complaint within the time prescribed in 7 C.F.R. § 1.136(a), the Respondent is in **DEFAULT.**

4. Based on the material allegations of the Complaint, which are deemed admitted by reason of Respondent's default, [44] Huxtable's Kitchen, Inc.

---

[43] The total unpaid balance due to sellers represents more than a *de minimis* amount, thereby obviating the need for a hearing in this matter. *See The Square Group,* LLC, 75 Agric. Dec. 689, 695 (U.S.D.A. 2016); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984) (Ruling on Certified Question).

[44] With the exception of an adjustment to the unpaid balance due to the sellers based on Judicial Notice that Complainant has affirmed that the amount past due

has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

5. The facts and circumstances of Huxtable's Kitchen, Inc.'s PACA violations shall be published.

6. Docket Nos. 18-0007 and 18-0024 are hereby **SEGREGATED**.

7. Docket No. 18-0024 is **REMANDED** to the Chief Judge for further proceedings in accordance with the applicable Rules of Practice.

RIGHT TO SEEK JUDICIAL REVIEW

Huxtable's Kitchen, Inc. has the right to seek judicial review of this Decision and Order as it pertains to Docket No. 18-0007 in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. Huxtable's Kitchen, Inc. must seek judicial review within sixty (60) days after entry of this Decision and Order as of the date reflected herein below.[45]

Copies of this Decision and Order shall be served by the Hearing Clerk upon each party, with courtesy copies provided via email where available.

___

and unpaid as of January 19, 2018, after PACA conducted a compliance check, was $159,985.87—down from the $551,829.47 of the original Appendix A to the Complaint. *See* Complainant's Response at 6.

[45] 28 U.S.C. § 2344.

REPARATION DECISION

AYCO FARMS, INC. v. MELON ONE, INC.
Docket No. E-R-2018-231.
Decision and Order.
Filed June 27, 2019.

PACA-R.

Practice and Practice – Amount Awarded Limited by Pleading.
When parties fail to agree on a price for disputed transactions thereby requiring the Department to determine a reasonable price, we will not award additional damages beyond the amount sought in the complaint even when the complaint contains a prayer for relief requesting we award such additional damages. We do not deem it appropriate to assign a higher value to the produce at issue than that assigned to them by the complainant.

Complainant, *pro se*.
Respondent, *pro se*.
Leslie S. Veveers, Examiner.
Shelton S. Smallwood, Presiding Officer.
Decision and Order issued by Bobbie J. McCartney, Judicial Officer.

DECISION AND ORDER

Preliminary Statement

Complainant instituted this reparation proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a-499s) (PACA); and the Rules of Practice under the PACA (7 C.F.R. §§ 47.1-47.49) (Rules of Practice), by filing a timely Complaint. Complainant seeks a reparation award against Respondent in the amount of $97,377.90 in connection with 22 truckloads of watermelons shipped in the course of interstate and foreign commerce.

Copies of the Report of Investigation (ROI) prepared by the Department were served upon the parties. A copy of the Complaint was served upon the Respondent, which filed an Answer thereto, denying liability to Complainant.

Although the amount claimed in the Complaint exceeds $30,000.00, the parties waived oral hearing. Therefore, the documentary procedure provided in section 47.20 of the Rules of Practice is applicable. (7 C.F.R.

§ 47.20.) Pursuant to this procedure, the verified pleadings of the parties are considered part of the evidence of the case, as is the Department's ROI. In addition, the parties were given the opportunity to file evidence in the form of verified statements and to file briefs. Complainant filed an Opening Statement. Respondent did not file any additional evidence. Neither party submitted a brief.

Findings of Fact

1. Complainant is a corporation whose post office address is 1501 N.W. 12th Avenue, Pompano Beach, FL 33069. At the time of the transactions involved herein, Complainant was licensed under the PACA.

2. Respondent is a corporation whose post office address is 26 Brooklyn Terminal Market, Brooklyn, NY 11236-1510. At the time of the transactions involved herein, Respondent was licensed under the PACA.

188432

3. On or about March 6, 2018, Complainant sold to Respondent one truckload of watermelons. (Compl. Ex. 15.) The watermelons were shipped on March 8, 2018, from loading point in the state of Florida, to Respondent in Brooklyn, New York. (Compl. Ex. 17.) Complainant issued invoice number 188432 billing Respondent for 57 bins of 36-count seedless watermelons at $160.00 per bin, for a total f.o.b. invoice price of $9,120.00. (Compl. Ex. 15.)

189303

4. On or about March 22, 2018, Complainant sold to Respondent one truckload of watermelons. (Compl. Ex. 20.) The watermelons were shipped on March 22, 2018, from loading point in the state of Florida, to Respondent in Brooklyn, New York. (Compl. Ex. 22.) Complainant issued invoice number 189303 billing Respondent for 12 bins of 36-count seedless watermelons at $230.00 per bin, or $2,760.00, and 34 bins of 45-count seedless watermelons at $287.00 per bin, or

$9,758.00, plus $5.00 for a temperature recorder, for a total f.o.b. invoice price of $12,523.00. (Compl. Ex. 20.)

189301

5. On or about March 22, 2018, Complainant sold to Respondent one truckload of watermelons. (Compl. Ex. 25.) The watermelons were shipped on March 23, 2018, from loading point in the state of Florida, to Respondent in Brooklyn, New York. (Compl. Ex. 27.) Complainant issued invoice number 189301 billing Respondent for 57 bins of 36-count seedless watermelons at $230.00 per bin, or $13,110.00, plus $5.00 for a temperature recorder, for a total f.o.b. invoice price of $13,115.00. (Compl. Ex. 25.)

189251A

6. On or about March 20, 2018, Complainant sold to Wal-Mart Stores, Inc. 540 cartons of size 06 MiniMe watermelons at $13.80 per carton, for a total delivered invoice price of $7,452.00. (Compl. Ex. 31.) The watermelons were shipped on March 20, 2018, from loading point in the state of Florida, to Wal-Mart Stores, Inc. in Bedford, Pennsylvania. (Compl. Ex. 33.)

7. On March 26, 2018, the watermelons mentioned in Finding of Fact 6 were rejected by Wal-Mart Stores, Inc. and sent to Respondent, who agreed to purchase the watermelons on a PAS basis. (Compl. Ex. 30.) Complainant issued invoice number 189251A billing Respondent for 540 cartons of size 06 MiniMe watermelons at $7.00 per carton, for a total f.o.b. invoice price of $3,780.00. (Compl. Ex. 29.)

189252A

8. On or about March 20, 2018, Complainant sold to Wal-Mart Stores, Inc. 540 cartons of size 06 MiniMe watermelons at $13.80 per carton, for a total delivered invoice price of $7,452.00. (Compl. Ex. 38.) The watermelons were shipped on March 24, 2018, from loading point in the state of Florida, to Wal-Mart Stores, Inc. in Johnstown, New York. (Compl. Ex. 39.)

9. On March 27, 2018, the watermelons mentioned in Finding of Fact 8 were rejected by Wal-Mart Stores, Inc. and sent to Respondent, who agreed to purchase the watermelons on a PAS basis. (Compl. Ex. 37, 39.) Complainant issued invoice number 189252A billing Respondent for 540 cartons of size 06 MiniMe watermelons at $7.00 per carton, for a total f.o.b. invoice price of $3,780.00. (Compl. Ex. 36.)

189291

10. On or about March 29, 2018, Complainant sold to Respondent one truckload of watermelons. (Compl. Ex. 43.) The watermelons were shipped on March 26, 2018, from loading point in the state of Florida, to Respondent in Brooklyn, New York. (Compl. Ex. 45.) Complainant issued invoice number 189291 billing Respondent for 1,200 cartons of size 06 MiniMe watermelons on a PAS basis. (Compl. Ex. 43.) Complainant issued a second invoice number 189291 billing Respondent for 1,200 cartons of size 06 MiniMe watermelons at $6.50 per carton, for a total f.o.b. invoice price of $7,800.00. (Compl. Ex. 42.)

189628

11. On or about March 26, 2018, Complainant sold to Respondent one truckload of watermelons. (Compl. Ex. 48.) The watermelons were shipped on March 26, 2018, from loading point in the state of Florida, to Respondent in Hamilton, New Jersey. (Compl. Ex. 50.) Complainant issued invoice number 189628 billing Respondent for 40 bins of 45-count seedless watermelons at $261.00 per bin, for a total f.o.b. invoice price of $10,440.00. (Compl. Ex. 48.)

189635

12. On or about March 26, 2018, Complainant sold to Respondent one truckload of watermelons. (Compl. Ex. 53.) The watermelons were shipped on March 26, 2018, from loading point in the state of Florida, to Respondent in Hamilton, New Jersey. (Compl. Ex. 55.) Complainant issued invoice number 189635 billing Respondent for 40 bins of 45-count seedless watermelons at $261.00 per bin, for a total f.o.b. invoice price of $10,440.00. (Compl. Ex. 53.)

189636

13. On or about March 26, 2018, Complainant sold to Respondent one truckload of watermelons. (Compl. Ex. 58.) The watermelons were shipped on March 28, 2018, from loading point in the state of Florida, to Respondent in Hamilton, New Jersey. (Compl. Ex. 60.) Complainant issued invoice number 189636 billing Respondent for 40 bins of 45-count seedless watermelons at $261.00 per bin, for a total f.o.b. invoice price of $10,440.00. (Compl. Ex. 58.)

189630

14. On or about March 26, 2018, Complainant sold to Respondent one truckload of watermelons. (Compl. Ex. 63.) The watermelons were shipped on March 29, 2018, from loading point in the state of Florida, to Respondent in Hamilton, New Jersey. (Compl. Ex. 65.) Complainant issued invoice number 189630 billing Respondent for 40 bins of 45-count seedless watermelons at $261.00 per bin, for a total f.o.b. invoice price of $10,440.00. (Compl. Ex. 63.)

189388A

15. On March 30, 2018, Complainant sold and shipped to Paradise Produce Inc. 30 bins of 60-count seedless watermelons and 256 cartons of 5-count seedless watermelons. (Compl. Ex. 71.) The 60-count seedless watermelons were rejected by Paradise Produce Inc. and sent to Respondent, who agreed to purchase the watermelons on a PAS basis. (Compl. Ex. 69-70.) Complainant issued invoice number 189388A billing Respondent for 30 bins of 60-count seedless watermelons at $86.6667 per bin, for a total delivered invoice price of $2,600.00. (Compl. Ex. 68.)

189467A

16. On March 29, 2018, Complainant sold and shipped to Del Monte Fresh Produce 900 cartons of size 06 MiniMe watermelons. (Compl. Ex. 76.) The watermelons were rejected by Del Monte Fresh Produce and sent to Respondent, who agreed to purchase the watermelons on a PAS

basis. (Compl. Ex. 74-75.) Complainant issued invoice number 189467A billing Respondent for 900 cartons of size 06 MiniMe watermelons at $5.34 per carton, for a total delivered invoice price of $4,806.00. (Compl. Ex. 73.)

189736

17. On or about March 29, 2018, Complainant sold to Respondent one truckload of watermelons. (Compl. Ex. 80.) The watermelons were shipped on March 30, 2018, from loading point in the state of Florida, to Respondent in Brooklyn, New York. (Compl. Ex. 82.) Complainant issued invoice number 189736 billing Respondent for 44 bins of 45-count seedless watermelons at $243.00 per bin, for a total f.o.b. invoice price of $10,692.00. (Compl. Ex. 80.)

189741

18. On or about March 29, 2018, Complainant sold to Respondent one truckload of watermelons. (Compl. Ex. 85.) The watermelons were shipped on March 30, 2018, from loading point in the state of Florida, to Respondent in Brooklyn, New York. (Compl. Ex. 87.) Complainant issued invoice number 189741 billing Respondent for 40 bins of 45-count seedless watermelons at $243.00 per bin, for a total f.o.b. invoice price of $9,720.00. (Compl. Ex. 85.)

189753

19. On or about April 4, 2018, Complainant sold to Respondent one truckload of watermelons. (Compl. Ex. 90.) The watermelons were shipped on the same date, from loading point in the state of Florida, to Respondent in Brooklyn, New York. (Compl. Ex. 92.) Complainant issued invoice number 189753 billing Respondent for 57 bins of 36-count seedless watermelons at $175.00 per bin, for a total f.o.b. invoice price of $9,975.00. (Compl. Ex. 90.)

188160A

20. On April 6, 2018, Complainant sold and shipped to C&S Wholesale Produce 1,070 cartons of size 06 MiniMe watermelons. (Compl. Ex.

98.) The watermelons were rejected by C&S Wholesale Produce and sent to Respondent, who agreed to purchase the watermelons on a PAS basis. (Compl. Ex. 96-97.) Complainant issued invoice number 188160A billing Respondent for 1,070 cartons of size 06 MiniMe watermelons at $8.1729 per carton, for a total delivered invoice price of $8,745.00. (Compl. Ex. 95.)

189710A

21. On April 10, 2018, Complainant sold and shipped to WalMart Stores, Inc. 57 bins of 45-count seedless watermelons. (Compl. Ex. 102.) The watermelons were rejected by Wal-Mart Stores, Inc. and sent to Respondent, who agreed to purchase the watermelons on a PAS basis. (Compl. Ex. 100-102.) Complainant issued invoice number 189710A billing Respondent for 57 bins of 45-count seedless watermelons at $125.00 per bin, for a total delivered invoice price of $7,125.00. (Compl. Ex. 99.)

189662A

22. On April 6, 2018, Complainant sold and shipped to WalMart Stores, Inc. 57 bins of 120-count MiniMe watermelons. (Compl. Ex. 106.) The watermelons were rejected by Wal-Mart Stores, Inc. and sent to Respondent, who agreed to purchase the watermelons on a PAS basis. (Compl. Ex. 104, 107-108.) Complainant issued invoice number 189662A billing Respondent for 57 bins of 120-count MiniMe watermelons at $100.00 per bin, for a total delivered invoice price of $5,700.00. (Compl. Ex. 103.)

190184A

23. On April 9, 2018, Complainant sold and shipped to Topco Associates LLC 1,080 cartons of size 08 MiniMe watermelons. (Compl. Ex. 110.) The watermelons were rejected by Topco Associates LLC and sent to Respondent, who agreed to purchase the watermelons on a PAS basis. Complainant issued invoice number 190184A billing Respondent for 1,080 cartons of size 08 MiniMe watermelons at $6.75 per carton, for a total delivered invoice price of $7,290.00. (Compl. Ex. 109.)

189844

24. On or about April 25, 2018, Complainant sold to Respondent on a PAS basis one truckload of watermelons. (Compl. Ex. 112.) The watermelons were shipped on the same date, from loading point in the state of Florida, to Respondent in Brooklyn, New York. (Compl. Ex. 112.) Complainant issued invoice number 189844 billing Respondent for 60 bins of 100-count MiniMe watermelons at $165.00 per bin, for a total f.o.b. invoice price of $9,900.00. (Compl. Ex. 111.)

189845

25. On or about April 25, 2018, Complainant sold to Respondent on a PAS basis one truckload of watermelons. (Compl. Ex. 119.) The watermelons were shipped on the same date, from loading point in the state of Florida, to Respondent in Brooklyn, New York. (Compl. Ex. 120.) Complainant issued invoice number 189845 billing Respondent for 15 bins of 100-count MiniMe watermelons at $165.00 per bin, or $2,475.00, and 45 bins of 120-count MiniMe watermelons at $165.00 per bin, or $7,425.00, for a total f.o.b. invoice price of $9,900.00. (Compl. Ex. 118.)

189666A

26. On April 27, 2018, Complainant sold and shipped to WalMart Stores, Inc. 57 bins of 100-count MiniMe watermelons. (Compl. Ex. 127.) The watermelons were rejected by Wal-Mart Stores, Inc. and sent to Respondent, who agreed to purchase the watermelons on a PAS basis. (Compl. Ex. 125-126.) Complainant issued invoice number 189666A billing Respondent for 57 bins of 100-count MiniMe watermelons at $150.00 per bin, for a total delivered invoice price of $4,650.00. (Compl. Ex. 124.)

27. The informal complaint was filed on June 25, 2018 (ROI Ex. 001), which is within nine months from the date the cause of action accrued.

Conclusions

This dispute concerns Respondent's liability for 22 truckloads of watermelons purchased from Complainant. Complainant states Respondent accepted the watermelons in compliance with the contracts of sale but has since paid only $85,600.00 of the agreed purchase prices thereof, leaving a balance due Complainant of $97,377.90. (Compl. ¶ 6.) In response to Complainant's allegations, Respondent states it bought some of the loads in question but the majority were loads accepted on a price after sale basis after being rejected from Complainant's other customers. (Answer ¶ 4.)

We will address each of the 22 transactions in question individually by invoice number below:

Invoice No. 188432

Complainant states it sold to Respondent 57 bins of 36-count seedless watermelons from Guatemala at an f.o.b. price of $160.00 per bin, for a total invoice price of $9,120.00, of which Respondent paid $3,800.00, leaving a balance due Complainant of $5,320.00. (Compl. Ex. 7.) Complainant states no inspection or account of sales was provided to support the reduced payment. In support of its contentions, Complainant submitted a copy of the invoice, passing and bill of lading for the shipment. (Compl. 15-17.)

In response to Complainant's allegations, Respondent states the watermelons were "handled" following their rejection by WalMart. (ROI Ex. 108.) In support of this allegation, Respondent submitted evidence showing that the watermelons were rejected by WalMart in Henderson, North Carolina, on March 10, 2018, for undersize and scarring. (ROI Ex. 176-178.) Respondent did not, however, submit any independent evidence, such as a USDA inspection, to substantiate its contentions with respect to the size and quality of the watermelons.

"We have often discounted testimonial evidence concerning the condition of perishable commodities, and stated the necessity of obtaining a neutral inspection showing the exact extent of damage." *Chiquita Brands, Inc. v. Joseph Williams, Jr. Co. Inc.*, 45 Agric. Dec. 374, 376 (U.S.D.A. 1986). As WalMart was Respondent's customer and therefore

had a financial interest in the watermelons, its assessment as to their quality and size can hardly be considered "neutral."

Absent a neutral inspection we find that Respondent has failed to establish that the watermelons did not conform to the contract requirements. Respondent is, therefore, liable to Complainant for the watermelons it accepted at the agreed purchase price of $9,120.00, less the $3,800.00 already paid, or a balance of $5,320.00.[1]

Invoice No. 189303

Complainant states it sold to Respondent 12 bins of 36-count seedless watermelons from Guatemala at $230.00 per bin and 34 bins of 45-count seedless watermelons from Guatemala at $287.00 per bin, for a total f.o.b. invoice price of $12,523.00, of which Respondent paid $10,566.00, leaving a balance due Complainant of $1,957.00. (Compl. Ex. 7.) Complainant states no inspection or account of sales was provided to support the reduced payment. In support of its contentions, Complainant submitted a copy of the invoice, passing and bill of lading for the shipment. (Compl. 20-22.)

In response to Complainant's allegations Respondent states the shipment contained short weight bins and that some bins were lost when the bins were refilled. (ROI Ex. 108.) Respondent did not submit any evidence to substantiate its contention of short weight bins. Without evidence to establish that the watermelons it accepted did not conform to the contract requirements, Respondent is liable to Complainant for the watermelons it accepted at the agreed purchase price of $12,523.00, less the $10,566.00 already paid, or a balance of $1,957.00.

Invoice No. 189301

[1] A buyer who accepts produce becomes liable to the seller for the full purchase price thereof, less any damages resulting from any breach of contract by the seller. *Fresh W. Mktg., Inc. v. McDonnell & Blankfard, Inc.*, 53 Agric. Dec. 1869, 1875 (U.S.D.A. 1994); *Theron Hooker Co. v. Ben Gatz Co.*, 30 Agric. Dec. 1109, 1112 (U.S.D.A. 1971).

Complainant states it sold to Respondent 57 bins of 36-count seedless watermelons from Guatemala at an f.o.b. price of $230.00 per bin, for a total invoice price of $13,115.00, of which Respondent paid $3,200.00, leaving a balance due Complainant of $9,915.00. (Compl. Ex. 7.) Complainant states no inspection or account of sales was provided to support the reduced payment. In support of its contentions, Complainant submitted a copy of the invoice, passing and bill of lading for the shipment. (Compl. 25-27.)

In response to Complainant's allegations, Respondent states the watermelons were "handled" following their rejection by WalMart. (ROI Ex. 108.) In support of this allegation, Respondent submitted evidence showing that the watermelons were rejected by WalMart on March 23, 2018, for hollow heart and bruising. (ROI Ex. 188.) Respondent did not, however, submit any independent evidence, such as a USDA inspection, to substantiate its contentions with respect to the quality and condition of the watermelons.

Without a neutral inspection to establish that the watermelons it accepted did not conform to the contract requirements, Respondent is liable to Complainant for the watermelons it accepted at the agreed purchase price of $13,115.00, less the $3,200.00 already paid, or a balance of $9,915.00.

Invoice No. 189251A

Complainant states it sold to Respondent 540 cartons of 6-count miniature watermelons from Guatemala on a PAS (price after sale) basis, and that it billed Respondent for the watermelons at $7.00 per carton based on Market News, for a total invoice amount of $3,780.00. (Compl. Ex. 7.) Complainant states no inspection or account of sales was provided for the watermelons. In support of its contentions, Complainant submitted a copy of its invoice to Respondent, as well as a copy of the original invoice billing WalMart for the watermelons, and a report that it prepared showing that WalMart rejected the watermelons because they showed 14 percent decay and soft. (Compl. 28-30.)

In response to Complainant's allegations, Respondent agrees that it purchased the watermelons on a PAS basis after they were rejected by

Complainant's customer. (ROI Ex. 108.) The term "price after sale" is not defined in either the Uniform Commercial Code or the PACA and the Regulations (Other Than Rules of Practice) under the PACA (7 C.F.R. § 46.43(j)). It is considered a subcategory of the "open price term" (U.C.C. § 2-305(1)),[2] and is generally understood as meaning that the parties will agree on a price following the prompt resale of the produce. *See Eustis Fruit Co., Inc. v. The Auster Co., Inc.*, 51 Agric. Dec. 865, 877 (U.S.D.A. 1991). If the parties are unable to agree upon a price, U.C.C. § 2-305(1) provides that the price shall be a reasonable price at the time for delivery.

There is no indication that the parties agreed upon a price for the watermelons. Therefore, a reasonable price must be determined. On the issue of determining a reasonable price, in *Carmack v. Selvidge*[3] we stated that under normal circumstances, we would examine two factors in determining the reasonable price of produce at the time and place of delivery:

> 1) the average price of similar [commodities] at the time and place of delivery as reported in the Market News Service reports; and
>
> 2) any accountings of sale submitted by the parties.

Id. at 898 (1992). Similarly, in *M. Offutt Co., Inc. v. Caruso Produce, Inc.*,[4] we held that even where relevant market quotations are available, "the results of a prompt and proper resale should be given consideration, *i.e.*, they should be looked at, and if circumstances indicate that use of such results would enable us to arrive at a more accurate figure, they should be factored in."[5]

---

[2] *See Well Pict, Inc. v. Ag-West Growers, Inc.,* 39 Agric. Dec. 1221, 1227-28 (U.S.D.A. 1980). U.C.C. section 2-305(1) states "the parties if they so intend can conclude a contract for sale even though the price is not settled."

[3] 51 Agric. Dec. 892 (U.S.D.A. 1992).

[4] 49 Agric. Dec. 596 (U.S.D.A. 1990).

[5] *Id.* at 605; *see also Bonanza Farms, Inc. v. Tom Lange Co.*, 51 Agric. Dec. 839, 847 n. 4 (U.S.D.A. 1992) (describing the *Offutt* decision).

Respondent accounted for the 540 cartons of watermelons in this shipment together with the 540 cartons of watermelons billed on Complainant's invoice number 189252A and reported sales of 175 cartons at $16.00 per carton, or a total of $2,800.00, and 10 24-inch bins at $120.00 per bin, or $1,200.00, for total proceeds of $4,000.00. (ROI Ex. 115.) Respondent's accounting shows 134 cartons were re-packed into 10 bins and 706 cartons were dumped. Since Respondent disposed of the majority of the watermelons without obtaining any independent evidence to establish that the watermelons it dumped were without commercial value, we cannot use the accounting supplied by Respondent to determine the reasonable value of the watermelons.

Relevant USDA Market News reports show that 6-count miniature watermelons originating from Guatemala were selling for $20.00 per carton on the New York City terminal market. At this price, the 540 cartons of 6-count miniature watermelons billed on invoice 189251A had a market value of $10,800.00.

As we mentioned, the evidence submitted by Complainant includes a report that it prepared stating that the watermelons showed 14 percent decay and soft. We conclude, on this basis, that the $10,800.00 market value of the watermelons should be reduced by 14 percent, or $1,512.00, to account for these defects. This results in an adjusted market value of $9,288.00.

From the adjusted market value of $9,288.00, Respondent may deduct 20 percent, or $1,857.60, for profit and handling. *A.P.S. Marketing, Inc. v. R. S. Hanline & Co., Inc.*, 59 Agric. Dec. 407, 411 (U.S.D.A. 2000). This leaves a net amount due Complainant from Respondent of $7,430.40 for the watermelons. As Complainant is, however, seeking to recover only $3,780.00 as the reasonable value of the watermelons, Complainant's award will be limited to the amount requested. *See, e.g.*, *Barton Willoughby d/b/a Willoughby Farms v. Frito-Lay, Inc.*, 45 Agric. Dec. 1245, 1263 (U.S.D.A. 1985); *see also Clark Produce v. Primary Export International, Inc.*, 52 Agric. Dec. 1710, 1718 (U.S.D.A. 1993); *Denice & Felice Packing Co. v. Corgan & Son*, 45 Agric. Dec. 785, 788 (U.S.D.A. 1986). In billing Respondent this amount, Complainant presumably attempted to secure the best possible price for the watermelons, i.e., Complainant did not charge less than it thought the watermelons were

worth. As a result, we see no reason to assign a value to the watermelons that is greater than that assigned to it by Complainant.[6] Accordingly, we find that Respondent owes the lesser amount billed by Complainant, or $3,780.00, for this load of watermelons.

Invoice No. 189252A

Complainant states it sold to Respondent 540 cartons of 6-count miniature watermelons from Guatemala on a PAS (price after sale) basis, and that it billed Respondent for the watermelons at $7.00 per carton based on Market News, for a total invoice amount of $3,780.00. (Compl. Ex. 8.) Complainant states no inspection or account of sales was provided for the watermelons. In support of its contentions, Complainant submitted a copy of its invoice to Respondent, as well as a copy of the original invoice billing WalMart for the watermelons and a copy of the bill of lading showing that WalMart rejected the watermelons for scarring and decay. (Compl. 36-39.)

In response to Complainant's allegations, Respondent agrees that it purchased the watermelons on a PAS basis after they were rejected by Complainant's customer. (ROI Ex. 108.) There is no indication that the parties agreed on a price for the watermelons. Therefore, a reasonable price must be determined.

---

[6] In *Perco USA, Inc. v. Eagle Fruit Traders LLC*, 67 Agric. Dec. 645 (U.S.D.A. 2008), we held that where a claim includes a prayer for relief requesting that the claimant be awarded "such amount of damages as it may be entitled to receive according to the facts established," the amount of the award will be based on the Secretary's findings, even where the party specified a different amount in its pleading. *Id*. at 670-671. Most complaints for reparation, including the one at issue here, have such a prayer for relief; however, while the prayer requests that we award additional damages when we consider it appropriate to do so, we do not deem it appropriate to award additional damages in this case. Unlike in *Perco*, the instant case did not involve a dispute wherein the parties had previously agreed upon a contract price for the produce in dispute. Here, the parties failed to agree on a price and as a result, a reasonable price for the disputed produce had to be determined by the Department. Awarding additional damages beyond what the complainant is requesting for transactions with previously unsettled price terms would not be appropriate. Therefore, we will not assign a higher value to the produce at issue than that assigned to them by the seller.

As we mentioned earlier, Respondent accounted for the 540 cartons of watermelons in this shipment together with the 540 cartons of watermelons billed on Complainant's invoice number 189251A. For the reasons already stated, we are unable to use Respondent's accounting to determine a reasonable price for the watermelons. Therefore, we will refer exclusively to relevant USDA Market News reports to determine this value.

The relevant USDA Market News report for the New York City terminal market shows that 6-count miniature watermelons originating from Guatemala were selling for $20.00 per carton. At this price, the 540 cartons of 6-count miniature watermelons billed on invoice 189252A had a market value of $10,800.00. From this amount Respondent may deduct 20 percent, or $2,160.00, for profit and handling. This leaves a net amount due Complainant from Respondent of $8,640.00 for the watermelons. This is substantially more than the $3,780.00 that Complainant billed Respondent for the watermelons. For the reasons already stated,[7] we find that Respondent owes the lesser amount billed by Complainant, or $3,780.00, for this load of watermelons.

Invoice No. 189291

Complainant states it sold to Respondent 1,200 cartons of 6-count miniature watermelons from Guatemala on a PAS (price after sale) basis, and that it billed Respondent for the watermelons at $6.50 per carton based on Market News, for a total invoice amount of $7,800.00. (Compl. Ex. 8.) Complainant states no inspection or account of sales was provided for the watermelons. In support of its contentions, Complainant submitted copies of its invoices billing Respondent both on a PAS basis and at an f.o.b. price of $6.50 per carton. (Compl. 42-43.)

In response to Complainant's allegations, Respondent agrees that it purchased the watermelons on a PAS basis. (ROI Ex. 108.) There is no indication that the parties agreed on a price for the watermelons. Therefore, a reasonable price must be determined.

---

[7] *See supra* note 6.

Respondent reported repacking 214 cartons into 16 bins of 80-count watermelons and dumping the other 986 cartons. (ROI Ex. 122.) Since Respondent disposed of the majority of the watermelons without obtaining any independent evidence to establish that the watermelons it dumped were without commercial value, we cannot use the accounting supplied by Respondent to determine the reasonable value of the watermelons. Therefore, we will refer exclusively to relevant USDA Market News reports to determine this value.

The applicable report for the New York City terminal market shows that 6-count miniature watermelons originating from Guatemala were selling for $20.00 per carton. At this price, the 1,200 cartons of 6-count miniature watermelons billed on invoice 189291 had a market value of $24,000.00. From this amount Respondent may deduct 20 percent, or $4,800.00, for profit and handling. This leaves a net amount due Complainant from Respondent of $19,200.00 for the watermelons. This is substantially more than the $7,800.00 that Complainant billed Respondent for the watermelons. For the reasons already stated,[8] we find that Respondent owes the lesser amount billed by Complainant, or $7,800.00, for this load of watermelons.

Invoice No. 189628

Complainant states it sold to Respondent 40 bins of 45-count seedless watermelons from Guatemala at an f.o.b. price of $261.00 per bin, for a total invoice price of $10,440.00, of which Respondent paid $10,179.00, leaving a balance due Complainant of $261.00. (Compl. Ex. 8.) Complainant states no inspection or account of sales was provided to support the reduced payment. In support of its contentions, Complainant submitted a copy of the invoice, passing and bill of lading for the shipment. (Compl. 48-50.)

In response to Complainant's allegations Respondent states the shipment contained short weight bins and that some bins were lost when the bins were refilled. (ROI Ex. 108.) Respondent did not submit any evidence to substantiate its contention of short weight bins. Without evidence to establish that the watermelons it accepted did not conform to

[8] *See supra* note 6.

the contract requirements, Respondent is liable to Complainant for the watermelons it accepted at the agreed purchase price of $10,440.00, less the $10,179.00 already paid, or a balance of $261.00.

Invoice No. 189635

Complainant states it sold to Respondent 40 bins of 45-count seedless watermelons from Guatemala at an f.o.b. price of $261.00 per bin, for a total invoice price of $10,440.00, of which Respondent paid $10,179.00, leaving a balance due Complainant of $261.00. (Compl. Ex. 8.) Complainant states no inspection or account of sales was provided to support the reduced payment. In support of its contentions, Complainant submitted a copy of the invoice, passing and bill of lading for the shipment. (Compl. 53-55.)

In response to Complainant's allegations Respondent states the shipment contained short weight bins and that some bins were lost when the bins were refilled. (ROI Ex. 108.) Respondent did not submit any evidence to substantiate its contention of short weight bins. Without evidence to establish that the watermelons it accepted did not conform to the contract requirements, Respondent is liable to Complainant for the watermelons it accepted at the agreed purchase price of $10,440.00, less the $10,179.00 already paid, or a balance of $261.00.

Invoice No. 189636

Complainant states it sold to Respondent 40 bins of 45-count seedless watermelons from Guatemala at an f.o.b. price of $261.00 per bin, for a total invoice price of $10,440.00, of which Respondent paid $10,179.00, leaving a balance due Complainant of $261.00. (Compl. Ex. 8.) Complainant states no inspection or account of sales was provided to support the reduced payment. In support of its contentions, Complainant submitted a copy of the invoice, passing and bill of lading for the shipment. (Compl. 58-60.)

In response to Complainant's allegations Respondent states the shipment contained short weight bins and that some bins were lost when the bins were refilled. (ROI Ex. 108.) Respondent did not submit any evidence to substantiate its contention of short weight bins. Without

evidence to establish that the watermelons it accepted did not conform to the contract requirements, Respondent is liable to Complainant for the watermelons it accepted at the agreed purchase price of $10,440.00, less the $10,179.00 already paid, or a balance of $261.00.

Invoice No. 189630

Complainant states it sold to Respondent 40 bins of 45-count seedless watermelons from Guatemala at an f.o.b. price of $261.00 per bin, for a total invoice price of $10,440.00, of which Respondent paid $9,657.00, leaving a balance due Complainant of $783.00. (Compl. Ex. 8.) Complainant states no inspection or account of sales was provided to support the reduced payment. In support of its contentions, Complainant submitted a copy of the invoice, passing and bill of lading for the shipment. (Compl. 63-65.)

In response to Complainant's allegations Respondent states the shipment contained short weight bins and that some bins were lost when the bins were refilled. (ROI Ex. 108.) Respondent did not submit any evidence to substantiate its contention of short weight bins. Without evidence to establish that the watermelons it accepted did not conform to the contract requirements, Respondent is liable to Complainant for the watermelons it accepted at the agreed purchase price of $10,440.00, less the $9,657.00 already paid, or a balance of $783.00.

Invoice No. 189388A

Complainant states it sold to Respondent 30 bins of 60-count seedless watermelons from Guatemala on a PAS (price after sale) basis after they were rejected by Paradise Produce Inc., and that it billed Respondent for the watermelons at $86.66 per bin, for a total invoice amount of $2,600.00. (Compl. Ex. 8.) Complainant states no inspection or account of sales was provided for the watermelons. In support of its contentions, Complainant submitted copies of its invoices billing Respondent for the watermelons both on a PAS basis and at a delivered price of $86.6667 per bin. (Compl. 68-71.)

In response to Complainant's allegations, Respondent agrees that it purchased the watermelons on a PAS basis after they were rejected by

Complainant's customer. (ROI Ex. 108.) There is no indication that the parties agreed on a price for the watermelons. Therefore, a reasonable price must be determined.

Respondent submitted an accounting showing that it repacked 10 bins of watermelons into 120 cartons of size 5 watermelons and dumped the other 20 bins. (ROI Ex. 126.) Respondent reported selling the 120 cartons of size 5 watermelons for $24.00 per carton, for total sales of $2,880.00. Since Respondent disposed of the majority of the watermelons without obtaining any independent evidence to establish that the watermelons it dumped were without commercial value, we cannot use the accounting supplied by Respondent to determine the reasonable value of the watermelons. Therefore, we will refer exclusively to relevant USDA Market News reports to determine this value.

The applicable report for the New York City terminal market does not include prices for 60-count seedless watermelons in bins; however, the f.o.b. price report for Central American imports through South Florida shows that 60-count bins of seedless watermelons were selling for $240.00 to $280.00 per bin on March 28, 2018. Although the watermelons in question were not shipped until March 30, 2018, the reports for that date and the day prior state that supplies were insufficient to quote a price. Therefore, using the average reported price of $260.00 per bin, the 30 bins of 60-count seedless watermelons in question had a shipping point value of $7,800.00. This is substantially more than the $2,600.00 that Complainant billed Respondent for the watermelons. For the reasons already stated,[9] we find that Respondent owes the lesser amount billed by Complainant, or $2,600.00, for this load of watermelons.

Invoice No. 189467A

Complainant states it sold to Respondent 900 cartons of 6-count miniature watermelons from Guatemala on a PAS (price after sale) basis after they were rejected by Del Monte, and that it billed Respondent for the watermelons at $5.34 per carton, for a total invoice amount of $4,806.00. (Compl. Ex. 9.) Complainant states no inspection or account of sales was provided for the watermelons. In support of its contentions,

[9] *See supra* note 6.

Complainant submitted copies of its invoices billing Respondent both on a PAS basis and at a delivered price of $5.34 per carton, and a copy of a report that it prepared showing that Del Monte rejected the watermelons because they showed decay and were soft to the touch. (Compl. Ex. 73-75.)

In response to Complainant's allegations, Respondent agrees that it purchased the watermelons on a PAS basis after they were rejected by Complainant's customer. (ROI Ex. 108.) There is no indication that the parties agreed on a price for the watermelons. Therefore, a reasonable price must be determined.

Respondent reported repacking 400 cartons into 30 bins of 80-count watermelons and dumping the other 500 cartons. (ROI Ex. 130.) Since Respondent disposed of the majority of the watermelons without obtaining any independent evidence to establish that the watermelons it dumped were without commercial value, we cannot use the accounting supplied by Respondent to determine the reasonable value of the watermelons. Therefore, we will refer exclusively to relevant USDA Market News reports to determine this value.

The first date following Respondent's receipt of the watermelons that relevant prices were reported for the New York City terminal market is April 3, 2018. That report shows that 6-count miniature watermelons originating from Guatemala were selling for $16.00 per carton. At this price, the 900 cartons of 6-count miniature watermelons billed on invoice 189467A had a market value of $14,400.00. From this amount Respondent may deduct 20 percent, or $2,880.00, for profit and handling. This leaves a net amount due Complainant from Respondent of $11,520.00 for the watermelons. This is substantially more than the $4,806.00 that Complainant billed Respondent for the watermelons. For the reasons already stated,[10] we find that Respondent owes the lesser amount billed by Complainant, or $4,806.00, for this load of watermelons.

Invoice No. 189736

[10] *See supra* note 6.

Complainant states it sold to Respondent 44 bins of 45-count seedless watermelons from Guatemala at an f.o.b. price of $243.00 per bin, for a total invoice price of $10,692.00, of which Respondent paid $10,206.00, leaving a balance due Complainant of $486.00. (Compl. Ex. 9.) Complainant states no inspection or account of sales was provided to support the reduced payment. In support of its contentions, Complainant submitted a copy of the invoice, passing and bill of lading for the shipment. (Compl. 80-82.)

In response to Complainant's allegations Respondent states the shipment contained short weight bins and that some bins were lost when the bins were refilled. (ROI Ex. 108.) Respondent did not submit any evidence to substantiate its contention of short weight bins. Without evidence to establish that the watermelons it accepted did not conform to the contract requirements, Respondent is liable to Complainant for the watermelons it accepted at the agreed purchase price of $10,692.00, less the $10,206.00 already paid, or a balance of $486.00.

Invoice No. 189741

Complainant states it sold to Respondent 40 bins of 45-count seedless watermelons from Guatemala at an f.o.b. price of $243.00 per bin, for a total invoice price of $9,720.00, of which Respondent paid $9,234.00, leaving a balance due Complainant of $486.00. (Compl. Ex. 9.) Complainant states no inspection or account of sales was provided to support the reduced payment. In support of its contentions, Complainant submitted a copy of the invoice, passing and bill of lading for the shipment. (Compl. 85-87.)

In response to Complainant's allegations Respondent states the shipment contained short weight bins and that some bins were lost when the bins were refilled. (ROI Ex. 108.) Respondent did not submit any evidence to substantiate its contention of short weight bins. Without evidence to establish that the watermelons it accepted did not conform to the contract requirements, Respondent is liable to Complainant for the watermelons it accepted at the agreed purchase price of $9,720.00, less the $9,234.00 already paid, or a balance of $486.00.

Invoice No. 189753

Complainant states it sold to Respondent 57 bins of 36-count seedless watermelons from Guatemala at an f.o.b. price of $175.00 per bin, for a total invoice price of $9,975.00, of which Respondent paid $8,400.00, leaving a balance due Complainant of $1,575.00. (Compl. Ex. 9.) Complainant states no inspection or account of sales was provided to support the reduced payment. In support of its contentions, Complainant submitted a copy of the invoice, passing and bill of lading for the shipment. (Compl. 90-92.)

In response to Complainant's allegations Respondent states the shipment contained short weight bins and that some bins were lost when the bins were refilled. (ROI Ex. 108.) Respondent did not submit any evidence to substantiate its contention of short weight bins. Without evidence to establish that the watermelons it accepted did not conform to the contract requirements, Respondent is liable to Complainant for the watermelons it accepted at the agreed purchase price of $9,975.00, less the $8,400.00 already paid, or a balance of $1,575.00.

Invoice No. 188160A

Complainant states it sold to Respondent 1,070 cartons of 6-count miniature watermelons from Guatemala on a PAS (price after sale) basis after they were rejected by C&S Wholesale, and that it billed Respondent for the watermelons at $8.17 per carton, for a total invoice amount of $8,741.90. (Compl. Ex. 9.) Complainant states no inspection or account of sales was provided for the watermelons. In support of its contentions, Complainant submitted copies of its invoices billing Respondent both on a PAS basis and at a delivered price of $8.1729 per carton, and a copy of a report that it prepared showing that C&S Wholesale rejected the watermelons because they showed 16 percent internal decay and 40 percent internal discoloration. (Compl. 95-97.)

In response to Complainant's allegations, Respondent agrees that it purchased the watermelons on a PAS basis after they were rejected by Complainant's customer. (ROI Ex. 108.) There is no indication that the parties agreed on a price for the watermelons. Therefore, a reasonable price must be determined.

Respondent did not submit any evidence concerning its handling of the watermelons in this shipment. Relevant USDA Market News reports issued on or about the date of arrival for the watermelons show that 6-count miniature watermelons originating from Guatemala were selling for $16.00 per carton. At this price, the 1,070 cartons of 6-count miniature watermelons billed on invoice 188160A had a market value of $17,120.00.

As we mentioned, the evidence submitted by Complainant includes a report that it prepared stating that the watermelons showed 16 percent internal decay and 40 percent internal discoloration, for total defects of 56 percent. We conclude, on this basis, that the $17,120.00 market value of the watermelons should be reduced by 56 percent, or $9,587.20, to account for these defects. This results in an adjusted market value of $7,532.80.

From the adjusted market value of $7,532.80, Respondent may deduct 20 percent, or $1,506.56, for profit and handling. This leaves a net amount due Complainant from Respondent of $6,026.24 for the watermelons.

Invoice No. 189710A

Complainant states it sold to Respondent 57 bins of 45-count seedless watermelons from Guatemala on a PAS (price after sale) basis after they were rejected by WalMart, and that it billed Respondent for the watermelons at $125.00 per bin based on Market News, for a total invoice amount of $7,125.00. (Compl. Ex. 9.) Complainant states no inspection or account of sales was provided for the watermelons. In support of its contentions, Complainant submitted copies of its invoices billing Respondent both on a PAS basis and at a delivered price of $125.00 per bin, and a copy of a report that it prepared showing that WalMart rejected the watermelons because they showed overripe and soft. (Compl. 99-101.)

In response to Complainant's allegations, Respondent agrees that it purchased the watermelons on a PAS basis after they were rejected by Complainant's customer. (ROI Ex. 108.) There is no indication that the parties agreed on a price for the watermelons. Therefore, a reasonable price must be determined.

Respondent reported repacking 53 bins of the watermelons into 472 cartons of 5 size watermelons that it resold for $26.00 per carton, or a total

of $12,272.00. (ROI Ex. 133.) The remaining four bins of watermelons were dumped. As the loss reported by Respondent was minimal and the evidence Complainant submitted shows the watermelons were affected by overripe and soft, we accept the gross sales of $12,272.00 as the best available measure of the reasonable value of the watermelons. From this amount Respondent may deduct 20 percent, or $2,454.40, for profit and handling. This leaves a net amount due Complainant from Respondent of $9,817.60 for the watermelons. Complainant is, however, seeking to recover only $7,125.00 as the reasonable value of the watermelons. For the reasons already stated,[11] we find that Respondent owes the lesser amount billed by Complainant, or $7,125.00, for this load of watermelons.

Invoice No. 189662A

Complainant states it sold to Respondent 57 bins of 120-count miniature watermelons from Guatemala on a PAS (price after sale) basis after they were rejected from a previous customer, and that it billed Respondent for the watermelons at $100.00 per bin based on Market News, for a total invoice amount of $5,700.00. (Compl. Ex. 9.) Complainant states no inspection or account of sales was provided for the watermelons. In support of its contentions, Complainant submitted copies of its invoices billing Respondent both on a PAS basis and at a delivered price of $125.00 per bin, and a copy of a rejection notification stating that the watermelons showed 16 percent overripe. (Compl. 103-04, 107.)

In response to Complainant's allegations, Respondent agrees that it purchased the watermelons on a PAS basis after they were rejected by Complainant's customer. (ROI Ex. 108.) There is no indication that the parties agreed on a price for the watermelons. Therefore, a reasonable price must be determined.

Respondent reported repacking six bins of the watermelons into 120 cartons of 6-size watermelons, and another 20 bins into 400 cartons of 6-size watermelons, all of which were resold for $16.00 per carton, or a total of $8,320.00. (ROI Ex. 136) Respondent also reported, however, that 120 of the repacked cartons were returned and subsequently dumped, along with the remaining 31 bins of watermelons. (ROI Ex. 136.) Since

[11] *See supra* note 6.

Respondent disposed of the majority of the watermelons without obtaining any independent evidence to establish that the watermelons it dumped were without commercial value, we cannot use the accounting supplied by Respondent to determine the reasonable value of the watermelons. Therefore, we will refer exclusively to relevant USDA Market News reports to determine this value.

The applicable report for the New York City terminal market does not include prices for 120-count miniature watermelons in bins; however, the report does show that 6 and 8-count cartons of miniature watermelons originating from Guatemala were selling for $16.00 and $14.00 per carton, respectively, on April 10, 2018.[12] Presuming an average weight per melon of four pounds for the 8-count watermelons and six pounds for the 6-count watermelons, the cartons weighed approximately 36 and 32 pounds respectively. Applying these weights to the market prices just mentioned, the price per pound for both the 6-count and 8-count watermelons is $0.44. Assuming an average weight per melon of five pounds for the watermelons in question,[13] the watermelons had a market value of $15,048.00 (120 melons per bin at five pounds per melon = 600 pounds at $0.44 per pound = $264 per bin x 57 bins = $15,048.00). This is substantially more than the $5,700.00 that Complainant billed Respondent for the watermelons. For the reasons already stated,[14] we find that Respondent owes the lesser amount billed by Complainant, or $5,700.00, for this load of watermelons.

Invoice No. 190184A

Complainant states it sold to Respondent 1,080 cartons of 8-count miniature watermelons from Guatemala on a PAS (price after sale) basis after they were rejected by Topco Associates, and that it billed Respondent for the watermelons at $6.75 per carton based on Market News, for a total invoice amount of $7,290.00.(Compl. Ex. 9.) Complainant states no inspection or account of sales was provided for the watermelons. In support of its contentions, Complainant submitted a copy of its invoice

[12] Supplies of watermelons of this type were reported insufficient to quote prior to this date.

[13] Miniature watermelons weigh from four to six pounds on average.

[14] *See supra* note 6.

billing Respondent for the watermelons at a delivered price of $6.75 per carton, and a copy of the bill of lading. (Compl. 109-110.)

In response to Complainant's allegations, Respondent submitted an accounting showing that it received the watermelons and stating that all 1,080 cartons of the watermelons were dumped. (ROI Ex. 143.) Absent any evidence to establish the condition of the watermelons Respondent accepted, we are unable to conclude that the watermelons had no commercial value.

USDA Market News reports issued at or near the time of Respondent's acceptance show that 8-count miniature watermelons originating from Costa Rica were selling for $12.00 per carton. Prices for watermelons of the same type from Guatemala are not provided. Nevertheless, presuming an approximate market value of $12.00 per carton, the 1,080 cartons of watermelons in question would have a market value of $12,960.00. From this amount, Respondent may deduct 20 percent, or $2,592.00, for profit and handling. This leaves a net amount due Complainant from Respondent of $10,368.00. Complainant is, however, seeking to recover only $7,290.00 as the reasonable value of the watermelons. For the reasons already stated,[15] we find that Respondent owes the lesser amount billed by Complainant, or $7,290.00, for this load of watermelons.

Invoice No. 189844

Complainant states it sold to Respondent 60 bins of 100-count miniature watermelons from Guatemala on a PAS (price after sale) basis, and that it billed Respondent for the watermelons at $165.00 per bin based on Market News, for a total invoice amount of $9,900.00. (Compl. Ex. 10.) Complainant states no inspection or account of sales was provided for the watermelons. In support of its contentions, Complainant submitted copies of its invoices billing Respondent both on a PAS basis and at a delivered price of $165.00 per bin. (Compl. 111-12.)

In response to Complainant's allegations, Respondent agrees that it purchased the watermelons on a PAS basis. (ROI Ex. 108.) There is no

[15] *See supra* note 6.

indication that the parties agreed on a price for the watermelons. Therefore, a reasonable price must be determined.

Respondent reported repacking 29 bins into 480 cartons of 6-size watermelons and dumping the other 31 bins. (ROI Ex. 158.) The evidence submitted by Respondent includes an inspection sheet that was apparently emailed by Complainant's Ken Kodish to Respondent which shows the watermelons were 50 percent overripe and soft and had 25 percent bruising and four percent scars. (ROI Ex. 150-51.) On this basis, we accept the loss of bins reported by Respondent and find that its reported gross sales of $7,680.00 represent the best available measure of the reasonable value of the watermelons. From this amount, Respondent may deduct 20 percent, or $1,536.00, for profit and handling. This leaves a net amount due Complainant from Respondent of $6,144.00 for the watermelons.

Invoice No. 189845

Complainant states it sold to Respondent 15 bins of 100-count and 45 bins of 120-count miniature watermelons from Guatemala on a PAS (price after sale) basis, and that it billed Respondent for the watermelons at $165.00 per bin based on Market News, for a total invoice amount of $9,900.00. (Compl. Ex. 10.) Complainant states no inspection or account of sales was provided for the watermelons. In support of its contentions, Complainant submitted copies of its invoices billing Respondent both on a PAS basis and at a delivered price of $165.00 per bin. (Compl. 118-19.)

In response to Complainant's allegations, Respondent agrees that it purchased the watermelons on a PAS basis. (ROI Ex. 108.) There is no indication that the parties agreed on a price for the watermelons. Therefore, a reasonable price must be determined.

Respondent reported that the entire shipment of watermelons was unsalable and had to be dumped. (ROI Ex. 159-160, 169.) Respondent submitted evidence indicating that the watermelons in this shipment were similar in condition to the watermelons billed on invoice number 189844. (ROI Ex. 147, 150, 162, 164.) For those watermelons, Respondent reported gross sales $7,680.00. Absent any explanation as to why the former shipment of watermelons was salable and this one was not, we conclude that the watermelons in this shipment had the same value as those

billed on invoice number 189844, i.e., $7,680.00. From this amount, Respondent may deduct 20 percent, or $1,536.00, for profit and handling. This leaves a net amount due Complainant from Respondent of $6,144.00 for the watermelons.

Invoice No. 189666A

Complainant states it sold to Respondent 31 bins of 100-count miniature watermelons from Guatemala on a PAS (price after sale) basis after they were rejected by WalMart, and that it billed Respondent for the watermelons at $150.00 per bin based on Market News, for a total invoice amount of $4,650.00. (Compl. Ex. 10.) Complainant states no inspection or account of sales was provided for the watermelons. In support of its contentions, Complainant submitted copies of its invoices billing Respondent for the watermelons both on a PAS basis and at a delivered price of $150.00 per bin. (Compl. 124-125.)

Respondent reported repacking 15 bins of the watermelons into 240 cartons of 6-size watermelons, all of which were resold for $16.00 per carton, or a total of $3,840.00. (ROI Ex. 174) Respondent also reported that the remaining 16 bins of watermelons were dumped. (ROI Ex. 172, 174.) Since Respondent disposed of the majority of the watermelons without obtaining any independent evidence to establish that the watermelons it dumped were without commercial value, we cannot use the accounting supplied by Respondent to determine the reasonable value of the watermelons. Therefore, we will refer exclusively to relevant USDA Market News reports to determine this value.

The applicable report for the New York City terminal market does not include prices for 100-count miniature watermelons in bins; however, the report does show that 6-count cartons of miniature watermelons originating from Guatemala were selling for $18.00 to $22.00 per carton, or an average of $20.00 per carton, on April 30, 2018. Presuming an average weight per melon of six pounds for the 6-count watermelons, the 6-count cartons weighed approximately 36 pounds. Applying this weight to the market price just mentioned, the price per pound for the 6-count watermelons is $0.56. Assuming an average weight per melon of five pounds for the watermelons in question, the watermelons had a market value of $15,960.00 (100 melons per bin at five pounds per melon = 500

pounds at $0.56 per pound = $280 per bin x 57 bins = $15,960.00). This is substantially more than the $4,650.00 that Complainant billed Respondent for the watermelons. For the reasons already stated,[16] we find that Respondent owes the lesser amount billed by Complainant, or $4,650.00, for this load of watermelons.

The total amount due Complainant from Respondent for the 22 shipments of watermelons at issue in the Complaint is $87,150.24, as set forth in the table below:

INVOICE NO.	AMOUNT DUE
188432	$5,320.00
189303	$1,957.00
189301	$9,915.00
189251A	$3,780.00
189252A	$3,780.00
189291	$7,800.00
189628	$261.00
189635	$261.00
189636	$261.00
189630	$783.00
189388A	$2,600.00
189467A	$4,806.00
189736	$486.00
189741	$486.00
189753	$1,575.00
188160A	$6,026.24
189710A	$7,125.00
189662A	$5,700.00
190184A	$7,290.00
189844	$6,144.00
189845	$6,144.00
189666A	$4,650.00
TOTAL	**$87,150.24**

Respondent's failure to pay Complainant $87,150.24 is a violation of section 2 of the PACA (7 U.S.C. § 499b) for which reparation should be

[16] *See supra* note 6.

awarded to Complainant. Section 5(a) of the PACA (7 U.S.C. § 499e(a)) requires that we award to the person or persons injured by a violation of section 2 of the PACA (7 U.S.C. § 499b) "the full amount of damages . . . sustained in consequence of such violation." 7 U.S.C. § 499e(a). Such damages, where appropriate, include interest. *See Louisville & Nashville R.R. v. Sloss-Sheffield Steel & Iron Co.*, 269 U.S. 217, 239-40 (1925); *see also Rou v. Severt Sons Produce, Inc.*, 70 Agric. Dec. 489, 498 (U.S.D.A. 2011); *Rogers Bros. Farms, Inc. v. Skyline Potato Co.*, 69 Agric. Dec. 1599, 1618 (U.S.D.A. 2010).

Complainant seeks pre-judgment interest on the unpaid produce shipments listed in the Complaint at a rate of 1.5 percent per month (18 percent per annum). Complainant's claim is based on its invoices to Respondent which expressly state: "Past due accounts are subject to interest charge of 1 1/2 % per month, maximum 18% per annum." (*See, e.g.*, Compl. Ex. 15.) There is nothing to indicate that Respondent objected to the interest charge provision stated on Complainant's invoices. In the absence of a timely objection by Respondent, the interest charge provision stated on Complainant's invoices was incorporated into each sales contract. *See Coliman Pacific Corp. v. Sun Produce Specialties LLC*, 73 Agric. Dec. 639, 646 (U.S.D.A. 2014). Accordingly, pre-judgment interest will be awarded to Complainant at the rate of 1.5 percent per month (18 percent per annum). Post-judgment interest to be applied

> shall be determined in accordance with 28 U.S.C. § 1961, i.e., the interest rate shall be calculated . . . at a rate equal to the weekly average one-year constant maturity treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the Order.

PGB Int'l, LLC v. Bayche Cos., 65 Agric. Dec. 669, 672-73 (U.S.D.A. 2006); Notice of Change in Interest Rate Awarded in Reparation Proceedings Under the Perishable Agricultural Commodities Act, 71 Fed. Reg. 25,133 (Apr. 28, 2006).

Complainant in this action paid $500.00 to file its formal Complaint as required by section 47.6(c) of the Rules of Practice (7 C.F.R. § 47.6(c)). Pursuant to 7 U.S.C. § 499e(a), the party found to have violated section 2

of the PACA (7 U.S.C. § 499b) is liable for any handling fees paid by the injured party.

ORDER

Within 30 days from the date of this Order, Respondent shall pay Complainant as reparation $87,150.24, with interest thereon at the rate of 18 percent per annum from June 1, 2018, up to the date of this Order. Respondent shall also pay Complainant interest at the rate of percent per annum on the sum of $87,150.24 from the date of this Order, until paid, plus the amount of $500.00.

Copies of this Order shall be served upon the parties.

___

MISCELLANEOUS ORDERS & DISMISSALS

Editor's Note: This volume continues the new format of reporting Administrative Law Judge orders involving non-precedent matters [Miscellaneous Orders] with the sparse case citation but without the body of the order. Substantive Miscellaneous Orders (if any) issued by the Judicial Officer will continue to be reported here in full context. The parties in the case will still be reported in Part IV (List of Decisions Reported – Alphabetical Index). Also, the full text of these cases will continue to be posted in a timely manner at: https://oalj.oha.usda.gov/current.

PERISHABLE AGRICULTURAL COMMODITIES ACT

In re: EACH CASE PENDING BEFORE THE USDA OFFICE OF ADMINISTRATIVE LAW JUDGES.
All Dockets Pending Before USDA OALJ.
Blanket Order Extending Filing Deadlines Occurring During Furlough in All Cases Pending Before USDA Administrative Law Judges.
Filed January 11, 2019.

In re: EACH CASE PENDING BEFORE THE USDA OFFICE OF ADMINISTRATIVE LAW JUDGES.
All Dockets Pending Before USDA OALJ.
Blanket Order Amending to February 11, 2019 Filing Deadlines Occurring During the Furlough Period in All Cases Pending Before USDA Administrative Law Judges.
Filed January 29, 2019.

___

DEFAULT DECISIONS

Editor's Note: This volume continues the new format of reporting Administrative Law Judge orders involving non-precedent matters [Default Orders] with the sparse case citation but without the body of the order. Default Orders (if any) issued by the Judicial Officer will continue to be reported here in full context. The parties in the case will still be reported in Part IV (List of Decisions Reported – Alphabetical Index). Also, the full text of these cases will continue to be posted in a timely manner at: https://oalj.oha.usda.gov/current].

PERISHABLE AGRICULTURAL COMMODITIES ACT

SPIECH FARMS, LLC.
Docket No. 18-0081.
Default Decision and Order.
Filed March 6, 2019.

___

CONSENT DECISIONS

PERISHABLE AGRICULTURAL COMMODITIES ACT

Paradise Produce, LLC.
Docket No. 18-0056.
Consent Decision and Order.
Filed March 4, 2019.

—