

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Central Market of FL II, Inc.,) PACA-D Docket No. 21-J-0064
)
Respondent.)

REC'D - USDA/OALJ/HCO
2022 APR 6 8:30 AM

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Buren W. Kidd, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service (“AMS”)

Preliminary Statement

This is a proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a *et seq.*) (“PACA”); the regulations promulgated thereunder (7 C.F.R. Part 46) (“Regulations”); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) (“Rules of Practice”).

The Deputy Administrator of the Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture (“Complainant”), initiated this proceeding by filing a complaint against Central Market of FL II, Inc. (“Respondent”) on September 9, 2021. The Complaint alleges that Respondent violated PACA section 2(4) (7 U.S.C. § 499b(4)) by failing to make full payment promptly to eight sellers for 109 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate commerce in the total amount of \$150,383.62.¹ Further, the Complaint requests:

¹ Complaint at 2-3.

1. That *unless Respondent fails to file an answer within the time allowed*, or admits all the material allegations of this Complaint, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the PACA; and
2. That the Administrative Law Judge find that Respondent has willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order the publication of the facts and circumstances of Respondent's PACA violations pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

Complaint at 4 (emphasis added).

Respondent was duly served with a copy of the Complaint and did not file an answer within the twenty-day period as prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).²

On November 30, 2021, Complainant filed a motion for decision without hearing by reason of default ("Motion for Default") and proposed decision without hearing by reason of default ("Proposed Decision") pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Respondent has not filed any objections to Complainant's Motion for Default or Proposed Decision.³

² United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on November 3, 2021. Respondent had twenty days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent's answer was due on or before November 23, 2021. Respondent has not filed an answer.

³ United States Postal Service records reflect that Complainant's Motion for Default and Proposed Decision were sent to Respondent via certified mail but returned to the Hearing Clerk's Office marked "unclaimed." In accordance with the Rules of Practice, the Hearing Clerk re-mailed the Motion for Default and Proposed Decision to Respondent via ordinary mail on March

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision.⁴ Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an unfiled answer where, as in the present case, no meritorious objections have been filed.⁵

As Respondent failed to answer the Complaint, and upon Complainant's motion for the issuance of a decision without hearing, this Decision and Order is issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Central Market of FL II, Inc. is or was a corporation organized and existing under the laws of the State of Florida. Respondent's business address is or was 7430 Commerce Place, Sarasota, Florida 34243.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of PACA. License number 2013 0617 was issued to Respondent on April 13, 2013. The license is currently terminated due to bankruptcy.

7, 2022. 7 C.F.R. § 1.147(c); *see* 7 C.F.R. § 1.132. Respondent had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent's objections were due on or before March 28, 2022. Respondent has not filed any objections.

⁴ 7 C.F.R. § 1.136(c).

⁵ *See supra* note 3 and accompanying text.

3. Respondent, during the period November 2019 through May 2020, on or about the dates and in the transactions set forth in Appendix A (attached to the Complaint and incorporated herein by reference), failed to make full payment promptly to eight sellers for 109 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate commerce, in the total amount of \$150,383.62.
4. On May 15, 2020, Respondent filed a voluntary petition pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. §§ 1101 *et seq.*) in the U.S. Bankruptcy Court, Middle District of Florida. This petition was designated Case No. 8:20-bk-03815-RCT. Respondent admits in its bankruptcy Schedule F that it owes the eight creditors/sellers listed in Appendix A to the Complaint undisputed unsecured produce debt in the amount of \$536,261.04.⁶ The investigation found that these eight creditors were owed the total amount of \$463,378.65 and pursuant to a settlement agreement approved by the Bankruptcy Court, have been paid a total amount of \$312,995.03. As a result, the total amount due and owing is \$105,383.62.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Central Market of FL II, Inc.'s failure to make full payment promptly with respect to the transactions referenced in Finding of Fact No. 3 above, and as set forth in Appendix A to the Complaint, constitutes willful, flagrant, and repeated violations of PACA section 2(4) (7 U.S.C. § 499b(4)), for which the below Order is issued.

⁶ See Complaint, Appendix B.

3. The total unpaid balance due to sellers represents more than a *de minimis* amount, thereby obviating the need for a hearing in this matter.⁷
4. As Respondent's PACA license is terminated, the appropriate sanction is publication of the facts and circumstances of Respondent's violations.⁸

ORDER

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. A finding is made that Respondent Central Market of FL II, Inc. committed willful, flagrant, and repeated violations of PACA section 2(4) (7 U.S.C. § 499b(4)).
3. The facts and circumstances of Respondent's PACA violations shall be published in accordance with PACA section 8(a) (7 U.S.C. § 499h(a)).

This Decision and Order shall be final and effective without further proceedings thirty-five (35) days after service, unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (30) days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

⁷ 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).

⁸ See *Baiardi Chain Food Corp.*, 64 Agric. Dec. 1822, 1832 (U.S.D.A. 2005), *pet. for review denied*, 482 F.3d 238 (3d Cir. 2002); *Scamcorp, Inc.*, 57 Agric. Dec. 527, 571 n.23 (U.S.D.A. 1998); *Hogan Distrib., Inc.*, 55 Agric. Dec. 622, 633 (U.S.D.A. 1996).

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk.

Done at Washington, D.C.,
this 5th day of April 2022

CHANNING
STROTHER

Digitally signed by CHANNING STROTHER
Date: 2022.04.05 16:46:08 -04'00'

Channing D. Strother
Chief Administrative Law Judge

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