

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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

In re: )  
)  
G & K Citrus, LLC, ) PACA-D Docket No. 22-J-0022  
)  
Respondent. )

**DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT**

Appearance:

*Christopher Young, Esq., and Shelton Smallwood, 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 G & K Citrus, LLC (“Respondent”) on January 10, 2022. The Complaint alleges that Respondent violated PACA section 2(4) (7 U.S.C. § 499b(4)) by failing to make full payment promptly to four sellers for thirty-two lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce in the total amount of \$265,700.90.<sup>1</sup> Further, the Complaint requests:

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<sup>1</sup> 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 publish the facts and circumstances of Respondent's violations pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

Complaint at 3-4 (emphasis added) (internal footnote omitted).

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).<sup>2</sup>

On February 8, 2022, 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.<sup>3</sup>

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<sup>2</sup> United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on January 15, 2022. 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 February 4, 2022. Respondent has not filed an answer.

<sup>3</sup> United States Postal Service records reflect that Complainant's Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on February 22, 2022. 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

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.<sup>4</sup> 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.<sup>5</sup>

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 G & K Citrus, LLC is or was a limited liability company organized under the laws of the State of Florida. Respondent's business address is or was 1223 NW 21<sup>st</sup> Street, Miami, Florida 33142.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of PACA. License number 2012 1225 was issued to Respondent on July 13, 2012. Respondent's license was suspended due to an unpaid reparation order on March 27, 2020, pursuant to PACA section 7(d) (7 U.S.C. § 449(g)(d)). Neither reparation order has been paid as of the time the Complaint was filed. The license terminated on July 13, 2020, pursuant to

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following work day. 7 C.F.R. § 1.147(h). In this case, Respondent's objections were due on or before March 14, 2022. Respondent has not filed any objections.

<sup>4</sup> 7 C.F.R. § 1.136(c).

<sup>5</sup> See *supra* note 3 and accompanying text.

PACA section 4(a) (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

3. Respondent, during the period October 18 through June 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 four sellers for thirty-two lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$265,700.90.

### Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent G & K Citrus, LLC's failure to make full payment promptly with respect to the thirty-two transactions referenced in Finding of Fact No. 3 above, and 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.
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.<sup>6</sup>
4. As Respondent's PACA license is terminated, the appropriate sanction is publication of the facts and circumstances of Respondent's violations.<sup>7</sup>

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<sup>6</sup> 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).

<sup>7</sup> 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).

## ORDER

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. A finding is made that Respondent G & K Citrus, LLC 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).

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 16:54:33 -04'00'

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Channing D. Strother  
Chief Administrative Law Judge

Hearing Clerk's Office  
United States Department of Agriculture  
Stop 9203, South Building, Room 1031  
1400 Independence Avenue, SW  
Washington, DC 20250-9203  
Tel: 202-720-4443  
Fax: 844-325-6940  
SM.OHA.HearingClerks@USDA.GOV